REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

DIRECT CONTAINER LINE PHILS., INC. (Now VANGUARD LOGISTICS SERVICES PHILS., INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7616

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

SEP 10 2009 ; 11:00am

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DECISION

BAUTISTA, *J.*:

The Petition for Review seeks the cancellation and withdrawal of the assessments for alleged deficiency income tax, value-added tax, final withholding tax, withholding tax on compensation, fringe benefits tax, and documentary stamp tax and compromise penalties issued against petitioner in the amount of **FOUR MILLION NINE HUNDRED FIVE THOUSAND SIX HUNDRED FOUR PESOS AND 4/100 (P4,905,604.04)** for taxable year 2003.

Direct Container Line Philippines, Inc. (Petitioner) is a domestic corporation duly organized under Philippine laws, with office address at 15th Floor, Ramon Magsaysay Center, 1680 Roxas Boulevard, Manila. On June 9, 2005, the Securities and Exchange Commission (SEC) approved petitioner's application for amendment of

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its corporate name to "Vanguard Logistics Services Phils., Inc." It is likewise registered with the Bureau of Internal Revenue (BIR), as evidenced by its Certificate of Registration No. OCNIRC0000202923 dated November 10, 1994. The nature of petitioner's business is freight forwarding services.[1]

Respondent is the duly appointed Commissioner of the BIR, the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, as well as the enforcement of all forfeitures, penalties, and fines connected therewith. He holds office at the 4th Floor, BIR Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Corporate Income Tax Return (ITR) for taxable year 2003 on April 13, 2004, reflecting the amount of P11,911,287.00 as taxable income and the amount of P3,811,610.00 as tax paid/creditable.[2]

Petitioner filed its Quarterly Value-added Tax (VAT) Returns for taxable year 2003 on the following dates:[3]

Quarter	**Date Filed and Paid**
First	April 25, 2003
Second	July 25, 2003
Third	October 24, 2003
Fourth	January 26, 2003

By virtue of Letter of Authority No. 00000821 dated September 14, 2004[4] issued by the Regional Director of Revenue Region No. 6 (Manila), revenue officers of Revenue District Office (RDO) No. 33 examined the books and records of accounts of petitioner for the determination of any possible internal revenue tax liabilities for taxable year 2003.

[1] Pars. 1, 3, and 4, Summary of Facts Admitted, Stipulation of Facts and Issues (SFI), docket, p. 80
[2] Exhibit "6"
[3] Par. 6, Summary of Facts Admitted, SFI, docket, p. 81
[4] Exhibit "4"

On June 20, 2005, petitioner received a Post-Reporting Notice[5] dated June 14, 2005 from the RDO of Revenue District No. 33, informing petitioner that a report of investigation has been submitted proposing to assess petitioner for deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, final withholding tax, fringe benefits tax, documentary stamp tax, and improperly accumulated earnings tax in the total amount of P9,685,234.19, inclusive of surcharges, interest, and compromise penalties for taxable year 2003.[6]

Petitioner filed its protest[7] to the Post-Reporting Notice on July 15, 2005. A Supplemental Protest[8] was subsequently filed on August 10, 2005.

In a Letter[9] dated January 16, 2006, respondent notified petitioner that the case will be forwarded to the Assessment Division for review and disposition, and that the written protest alone did not warrant the cancellation of the proposed assessment; thus, the need to submit documentary evidence to support petitioner's objections/clarifications. Petitioner submitted proof of the tax exemption of its lessor as well as its Agreement with DCL Logistics (HKG) Limited.[10]

On August 22, 2006, petitioner received six (6) separate Formal Letters of Demand[11], with their corresponding Assessment Notices[12], all bearing the same number 33-2003 and dated August 8, 2006, for alleged deficiency taxes, and seven (7) separate Formal Letters of Demand[13] for alleged compromise penalties, as follows:[14]

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[5] Exhibit "A" and Exhibit "7"
[6] Par. 10, Summary of Facts Admitted, SFI, docket, pp. 81-82
[7] Exhibit "B" and Exhibit "9"
[8] Exhibit "B-1" and Exhibit "10"
[9] Exhibit "C" and Exhibit "11"
[10] Par. 12, Summary of Facts Admitted, SFI, docket, p. 82; Exhibit "U"
[11] Exhibits "D", "E", "F", "G", "H", and "I"; Exhibits "27", "30", "33", "36", "39", and "42"
[12] Exhibits "D-1", "E-1", "F-1", "G-1", "H-1", and "I-1"; Exhibits "28", "31", "34", "37", and "43"
[13] Exhibits "J", "K", "L", "M", "N", "O", and "P"; Exhibits "25", "26", "29", "32", "35", "38", and "41"
[14] Par. 13, Summary of Facts Admitted, SFI, docket, p. 82

Deficiency Income Tax, plus interest	P	909,327.93
Compromise Penalty		20,000.00
Deficiency Value-Added Tax, plus interest	P	2,407,727.72
Compromise Penalty		25,000.00
Deficiency Withholding Tax on Compensation	P	53,576.32
Compromise Penalty		17,000.00
Deficiency Final Withholding Tax plus surcharge and interest	P	837,504.88
Compromise Penalty		16,000.00
Deficiency Fringe Benefits Tax plus surcharge and interest	P	393,337.25
Compromise Penalty		16,000.00
Deficiency Documentary Stamp Tax plus interest	P	189,929.94
Compromise Penalty		16,000.00
Compromise for late filing of 1601E and 1604E	P	4,200.00
TOTAL	**P**	**4,905,604.04**

On September 20, 2006, petitioner formally protested the afore-mentioned Letters of Demand and Assessment Notices by filing an Administrative Protest[15] dated September 19, 2006.

Petitioner filed this Petition for Review on April 17, 2007, after respondent failed to issue a reply or decision with regard to its protest and before petitioner could be barred by prescription.

On May 30, 2007, respondent filed his Answer[16], raising the following Special and Affirmative Defenses:

> "6. The Assessment is valid and correct and the Petitioner has the burden of proof to impugn its validity (*Behn Meyer and Co. vs. Collector of Internal Revenue, 27 Phil. 647*). Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (*Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671*); and assessments duly made by a BIR examiner and approved by her superior officers will not be disturbed (*Gutierrez vs. Villegas, 8 SCRA 547*).

[15] Exhibit "Q" and Exhibit "44"
[16] Docket, pp. 55-58

7. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (*Tan Guan vs. Court of Tax Appeals, et. al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co. 107 Phil. 967 [1960]*).

8. The BIR has issued Pre-Assessment Notice date June 26, 2006 to Direct Container Line Phil., Inc. of 5/F Magsaysay Center, 1680 Roxas Blvd., Malate, Manila and the same was sent to Petitioner by mail. Other communications relative to the findings of the tax investigation, including Post Reporting Notices were also sent to Petitioner, thus, giving Petitioner an opportunity to respond/refute the same. In fact, Petitioner was able to file an administrative protest and eventually, a Petition for Review with the Court of Tax Appeals, concerning the disputed assessment."

Petitioner filed its Pre-Trial Brief for the Petitioner[17] on June 18, 2007; while Respondent's Pre-Trial Brief[18] was filed on July 6, 2007.

On July 13, 2007, Pre-Trial Conference was held. The parties filed their Stipulation of Facts and Issues[19] on July 26, 2007, which was approved in a Resolution[20] dated July 31, 2007.

Petitioner filed its Formal Offer of Evidence[21] on December 21, 2007; while respondent made a formal offer of evidence on June 11, 2008.[22]

The case was submitted for decision on September 10, 2008, after considering the Memorandum for the Petitioner[23] filed on August 14, 2008, and Respondent's Memorandum[24] posted on August 29, 2008.[25]

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[17] Docket, pp. 61-69
[18] Docket, pp. 71-75
[19] Docket, pp. 80-85
[20] Docket, p. 87
[21] Docket, pp. 124-131
[22] Docket, pp. 244-253
[23] Docket, pp. 272-300
[24] Docket, pp. 301-311
[25] Resolution dated September 10, 2008, docket, p. 313

The parties submitted the following jointly stipulated issues[26] for this Court's resolution:

"1. Whether or not Petitioner is correct in filing the Petition for Review with this Honorable Court within 30 days from the lapse of the 180-day period from the filing of the administrative protest against the deficiency assessments in question without waiting for Respondent to render his decision on the disputed assessments.

2. Whether or not the Respondent complied with the due process requirement in issuing the disputed assessments against Petitioner.

3. Assuming that Respondent complied with the due process requirement in issuing the deficiency assessments, whether or not:

    (a) the assessment for deficiency VAT is already barred by prescription

    (b) the assessment for deficiency final withholding tax is void because the income payment is for services performed outside the Philippines by a nonresident foreign corporation and therefore not subject to Philippines income tax.

    (c) the assessment for deficiency income tax is void because the disallowance of expenses is not correct.

    (d) the assessment for withholding tax on compensation is void because the amount involved was a mere accrual in 2003 that was not actually paid in 2003.

    (e) the assessment for fringe benefits tax is void because the representation and transportation and travel expenses are fringe benefits required by the nature of or necessary to the trade or business of Petitioner and therefore not subject to fringe benefits tax.

    (f) the assessment for documentary stamp tax is void because the Petitioner paid the correct amount of tax; and

[26] Statement of the Issue, SFI, docket, pp. 84-85

(g) the assessments for compromise penalties are without the conformity of the Petitioner and therefore illegal and unauthorized."

The issues will be resolved in *seriatim*.

Section 228 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

"**SEC. 228.** *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, that a pre-assessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on exciseable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

The rule is that an assessment must first be disputed by the taxpayer and decided upon by the Commissioner of Internal Revenue, after which a Petition for Review may be filed before this Court. Where an adverse ruling has been rendered by the Commissioner, the taxpayer may appeal the same within thirty (30) days after receipt thereof.[27] In case of inaction by the Commissioner, wherein the protest is not acted upon within one hundred eighty (180) days from submission of documents, taxpayer is likewise given a period of 30 days from the lapse of the 180-day period within which to appeal the same.

In the present case, petitioner received the Formal Letters of Demand with their corresponding Assessment Notices on August 22, 2006. Counting thirty days from receipt thereof, petitioner had until September 21, 2006, within which to file its protest. Petitioner filed its Administrative Protest on September 20, 2006.

Petitioner asserts that it submitted additional documents in support of its earlier protest[28] against the Post-Reporting Notice. Since the supporting documents were submitted prior to the filing of the Administrative Protest on September 20,

[27] Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, G.R. No. 148380, December 9, 2005
[28] Exhibits "B" and "B-1"

2006, the counting of the 180-day period for respondent to act on the protest started from the filing of the protest on September 20, 2006.

In the case of **Solidbank Corporation (now: First Metro Investment Corporation) vs. Commissioner of Internal Revenue**[29], this Court held as follows:

> "A cursory reading of the text of Section 228 of the 1997 National Internal Revenue Code (NIRC) clearly presents that an assessment issued by the Commissioner of Internal Revenue on the basis of his findings, may be protested to administratively by the taxpayer by filing a request for reinvestigation or reconsideration within the period of thirty (30) days from its receipt of said assessment notice. Likewise, under the law, the taxpayer is given the period of sixty (60) days from the filing of the protest within which to submit all necessary documents to corroborate and strengthen its position as discussed in its protest. In cases where the taxpayer fails to submit the supporting documents within sixty (60) days, the assessment notice issued shall become final. In other words, the finality of the assessment, as worded in the provision of law, simply means that where the taxpayer decides to forego with its opportunity to present the documents in support of its claim within sixty (60) days from the filing of its protest, it merely lost its chance to further contest the assessment.
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> Effectively, its non-compliance with the submission of the necessary documents would either mean that the petitioner no longer wishes to further submit any document for the reason that its protest letter filed was more than enough to support its claim, or that the petitioner failed to comply thus it can no longer give justification with regard to its objection as to the correctness of the assessment notices."

Since it is for petitioner to decide which documents are essential to garner a favorable decision from respondent, the decision or the necessity of submitting supporting documents also lies on the former.

From the date the Administrative Protest was filed by petitioner, respondent had 180 days to render a decision thereto. Counting from September 20, 2006, respondent had until March 19, 2007 within which to act upon petitioner's protest.

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[29] CTA Case No. 6557, May 5, 2005

From the lapse of the 180-day period, petitioner had thirty days within which to appeal the said inaction. The thirty-day period ended on April 18, 2007. Consequently, the Petition for Review filed on April 17, 2007 is within the prescribed period.

Petitioner likewise raised the issue of violation of due process in seeking the cancellation of the subject Letters of Demand and Assessment Notices. It argues that respondent failed to issue a preliminary assessment notice, as required under Section 3 of Revenue Regulations (R.R.) No. 12-99, in relation to Section 228 of the NIRC of 1997, before issuing the subject Letters of Demand and Assessment Notices.

The Court disagrees.

Section 228 of the NIRC of 1997 requires the Commissioner of Internal Revenue or his duly authorized representative to send notice of assessment to the taxpayer in order to give the latter an opportunity to contest the same. However, failure on the part of respondent to issue a pre-assessment notice cannot be considered a violation of due process.

Due process in this case refers to the right of petitioner to be informed of the legal and factual findings of respondent as regard its deficiency taxes, with the corresponding right to be given the opportunity to be heard and to file its protest. The failure on the part of respondent to fully afford petitioner this right will cause the nullification of any assessment issued in violation of such right.

One of the most basic and fundamental precepts of law enshrined in the Constitution is that no person shall be deprived of his property without due process of law.[30] And the requirement provided in Section 228 of the NIRC of 1997 is a statutory

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[30] Sec. 1, Article III, 1987 Constitution

right, which cannot be wantonly disregarded without violating the taxpayer's right to due process.

Petitioner denies having received any pre-assessment notice prior to the issuance of the Letters of Demand and Assessment Notices. On the other hand, it admits having received the Letter of Authority and the Post-Reporting Notice issued by respondent. The Post-Reporting Notice stated the proposed assessments against petitioner for deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, fringe benefit tax, documentary stamp tax, and withholding tax on compensation. In fact, upon receipt of the Post-Reporting Notice, petitioner filed its Letter Protest[31] and Supplemental Protest[32] to seek the cancellation of the proposed assessment as embodied in the Post-Reporting Notice. Only upon receipt of the protest letters did respondent issue the subject Letters of Demand and Assessment Notices, against which petitioner, again, filed its Administrative Protest[33].

Apparently, it cannot be said that petitioner was denied the opportunity to dispute the proposed assessment and the Assessment Notices.

It may be argued that the Post-Reporting Notice is not a pre-assessment notice; but, however they may have been labeled would not remove the fact that petitioner was fully informed and notified of the its deficiency taxes based on facts and the law, and that it was given the opportunity to be heard and to dispute the subject assessments. This fact of notifying petitioner of its tax deficiencies and affording it the chance to dispute or protest the same is the very essence of due process.

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[31] Exhibit "B" and Exhibit "9"
[32] Exhibit "B-1" and Exhibit "10"
[33] Exhibit "Q" and Exhibit "44"

Moreover, Section 228 of the NIRC of 1997 clearly refers to the final assessment notice that should be formally protested to by petitioner; else, the same becomes final and executory.

The Court will now address the third issue and its sub-issues will be discussed separately and in detail.

Assessment for deficiency value-added tax

The deficiency value-added tax (VAT) assessment in the amount of P2,407,727.72, inclusive of penalties, was computed by the BIR examiners as follows:[34]

Service Fees			P 31,787,304.00
Less:	Amount subjected to VAT		16,539,353.40
Income not subjected to VAT			P 15,247,950.60
Add:	Book Value of Asset Disposed		73,527.00
Total amount not subjected to VAT			P 15,321,477.60
Multiply by Rate			10%
Output Tax (sec. 106/108, NIRC)			P 1,532,147.76
Add:	Disallowed input tax		
	Input tax per VAT Return	P 284,655.16	
	Less: Input tax per schedule	222,862.35	61,792.81
Deficiency VAT			P 1,593,940.57
Add:	20% Interest from _________ to 8/15/2006		813,787.15
TOTAL AMOUNT DUE AND COLLECTIBLE			**P 2,407,727.72**

Petitioner alleges that the examiners erred in treating the amount of P15,247,950.60 as service fee or income of DCL Logistics (HKG) Limited and in subjecting the same to the ten percent (10%) VAT, because the said amount was turned over or remitted to third parties as part of the latter's contract price, compensation or service fee.[35]

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[34] Exhibit "E" and Exhibit "39"
[35] Exhibit "10"

Petitioner likewise claims that the assessment for deficiency VAT for the first and second quarters is already barred by prescription, pursuant to Section 203 of the NIRC of 1997. Petitioner argues that since its Quarterly VAT Returns for the first and second quarters were filed on April 25, 2003 and July 25, 2003, respectively, the Assessment Notice issued on August 8, 2006 was already beyond the period allowed by law.[36]

On the other hand, respondent avers that the VAT assessment is not yet barred by prescription. The Total Services Fees of petitioner per investigation and Annual Income Tax Return[37] is P31,787,304.00. However, it subjected to VAT only P16,539,353.40. The P15,247,950.60 discrepancy in service income allegedly rendered petitioner's VAT Returns for taxable year 2003 false; thus, the period to assess is ten (10) years.[38]

The Court finds for respondent.

Sections 203 and 222 of the NIRC of 1997 provide:

> "**SEC. 203.** *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."
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> "**SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without

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[36] Exhibit "44"
[37] Exhibit "6"
[38] Respondent's Memorandum, docket, pp. 308-309

> assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: xxx"

Pursuant to Section 203 of the NIRC of 1997, respondent has three years to issue an assessment counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. However, Section 222 of the NIRC of 1997 provides for certain exceptions as to the period of limitation, *i.e.*, in case of false or fraudulent return with intent to evade tax or failure to file a return. In either of these instances, respondent's right to assess is ten (10) years from the discovery of such falsity, fraud or omission.

Based on the deficiency VAT assessment, petitioner's service fees not subjected to VAT amounted to P15,247,950.60. The percentage of such undeclared/unreported value of service fee to that reported in the VAT Returns equals 92.19% (P15,247,950.60 divided by P16,539,353.40). Evidently, there is deviation from the truth, which is too substantial to be ignored and which renders the VAT Returns false within the purview of Section 222(a) of the NIRC of 1997.

The Supreme Court in its Decision in **Aznar vs. Court of Tax Appeals, *et al.***[39], explained that a false return implies a deviation from the truth, whether intentional or not. The High Tribunal declared that in case of false return, the prescription is ten (10) years counted from discovery of the falsity, thus:

> "xxx Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last potion of the provision which segregates the situations into three different classes, namely – 'falsity', 'fraud' and 'omission.' That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.

[39] G.R. No. L-20569, August 23, 1974

> The ordinary period of prescription of five years (now 3 years) within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Section 332(a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced."

In the present case, the basis for the falsity of the return is the substantial under-declaration of VAT sales in the amount of P15,247,950.60. In its Supplemental Protest Letter[40], petitioner explained that the said amount was collected not for its own account as its fee, compensation or income, but collected from its importers/consignees, acting as an agent for and in behalf of international shipping lines, and other principals, such as local trucking companies and domestic shipping companies. After collection, petitioner turned over or remitted the amount collected to the shipping line.

Petitioner however showed no proof that, indeed, the discrepancy of P15,247,950.60 was collected on behalf of and eventually turned over or remitted to third parties. It must be emphasized that the Court of Tax Appeals is a Court of record, and the litigants must prove every aspect of its case. Mere allegations without adducing documentary evidence are not enough. As already held in various cases, assessments are *prima facie* presumed correct and made in good faith. The burden of proof to rebut the presumption of correctness of the assessment is on the taxpayer. Failure of petitioner to show documents that would substantiate its arguments renders the assessment valid and correct. The extent of the falsity is so considerable that the ten-year prescriptive period counted from the time of discovery of the falsity in the

[40] Exhibit "10"

return is clearly applicable. Respondent's right to assess petitioner's deficiency VAT, therefore, has not prescribed.

As to the additional imposition of VAT on the book value of assets disposed and the disallowance of input tax, petitioner offered no explanation. Hence, respondent's findings on these items must be sustained.

In view of the foregoing, petitioner is liable to pay deficiency VAT in the amount of P2,806,212.86, computed as follows:

Service Fees		P 31,787,304.00
Less: Amount subjected to VAT		16,539,353.40
Income not subjected to VAT		15,247,950.60
Add: Book Value of Asset Disposed		73,527.00
Total amount not subjected to VAT		15,321,477.60
Multiply by Rate		10%
Output Tax (sec 1106/108, NIRC)		1,532,147.76
Add: Disallowed input tax		
Input tax per VAT Return	284,655.16	
Less: Input tax per schedule	222,862.35	61,792.81
Deficiency VAT		1,593,940.57
Add: 25% Surcharge	398,485.14	
20% Interest	813,787.15	1,212,272.29
TOTAL AMOUNT DUE AND COLLECTIBLE		**P 2,806,212.86**

Assessment for deficiency Final Withholding Tax

Respondent assessed petitioner for deficiency final withholding taxes due to petitioner's failure to subject the corresponding income payments, not otherwise exempt, to said tax in the amount of P837,504.88, inclusive of increments, computed as follows:[41]

Administration Cost		P 1,479,114.00
Multiply by Tax Rate		32%
Deficiency Final Tax		P 473,316.48
Add: 25% Surcharge		118,329.12
20% Interest from________	to 08/15/2006	245,859.28
TOTAL AMOUNT DUE AND COLLECTIBLE		**P 837,504.88**

[41] Exhibit "G" and Exhibit "33"

Section 28(B)(1) of the NIRC of 1997, in relation to Section 57(A) of the same Code, are quoted as follows:

> "**SEC. 28.** *Rates of Income Tax on Foreign Corporations.* -
>
> xxx xxx xxx
>
> (B) *Tax on Nonresident Foreign Corporation.* -
>
> (1) *In General.* – Except as otherwise provided in this Code, **a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines**, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs 5(c) and (d): *Provided*, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and, effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%)." *(Emphasis supplied)*
>
> "**SEC. 57.** *Withholding of Tax at Source.* -
>
> (A) *Withholding of Final Tax on Certain Incomes.* - Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E), 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5), 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), **28(B)(1)**, 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income **shall be withheld by payor-corporation and/or person** and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code." *(Emphasis supplied)*

Petitioner proffered in evidence the Agreement[42] entered into by and between petitioner and DCL Logistics (HKG) Limited on January 1, 2000, under which the latter provides petitioner international transportation consultancy services, including advice on finance and management; all of which are rendered outside the Philippines.

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[42] Exhibit "U"

Pursuant to Section 42(C)(3) of the NIRC of 1997, compensation for labor or personal services performed outside the Philippines shall be treated as foreign-sourced income. The Administration Costs paid by petitioner were for services rendered abroad by DCL Logistics (HKG) Limited, which is a non-resident foreign corporation; hence, the same are considered income derived from sources outside the Philippines. Such being the case, and since non-resident foreign corporations are subject to income tax only on income derived from sources within the Philippines, said Administration Cost in the amount of P1,479,114.00 is not subject to income tax and consequently, not also subject to thirty-two percent (32%) withholding tax prescribed by Section 28(B)(1), in relation to Section 57(A) of the NIRC of 1997. Accordingly, the deficiency final withholding tax assessment in the amount of P837,504.88 must be cancelled and withdrawn.

Assessment for deficiency Income Tax

The assessment for deficiency income tax, including increments thereon, in the amount of P909,327.93, is detailed below[43]:

Taxable Income per Return			P 11,911,287.00
Add:	Adjustments/Disallowances		
	Discrepancy on Salaries and Wages	P 732,317.48	
	Professional Fees - no EWT	561,300.00	
	Repairs and Maintenance - no EWT	238,559.92	
	Service Expense - no EWT	127,936.11	1,660,113.51
Adjusted Taxable Income			P 13,571,400.51
Tax Due			P 4,342,848.16
Less:	Tax paid/creditable		
	Payment	P 3,682,337.00	
	Creditable tax withheld	129,273.00	
		3,811,610.00	
	Less: Unsupported tax credit	88,994.62	3,722,615.38
Deficiency Income Tax Due			P 620,232.78

[43] Exhibit "D" and Exhibit "42"

Add:	20% Interest from _______ to 08/15/2006	289,095.15
TOTAL AMOUNT DUE AND COLLECTIBLE		**P 909,327.93**

Salaries and Wages

Petitioner contends that the P732,317.48[44] discrepancy between the salaries reflected per its Financial Statement and Alphalist was actually costs incurred by petitioner for the benefit of its employees, such as:

HMO (PHILAM CARE Health Insurance)	P 71,842.84
ER's share in SSS	130,212.40
Seamstress made Employee Uniforms	32,000.00
Bonus Accrual	401,721.00
Staff Refreshments paid out of petty cash	22,537.50
Client representation	65,581.75
2002 tax refund recorded as salaries	8,946.99
Over-recorded 13th month pay	(525.00)
TOTAL	**P732,317.48**

Petitioner alleges that the above-mentioned employee benefits qualify as *de minimis* benefits under Section 33 of the NIRC of 1997, Section 2.78.1(A)(3) of R.R. No. 2-98, and R.R. No. 3-98, which are non-taxable but tax deductible.

Revenue Regulations No. 10-2000, in relation to Section 2.33(C) of R.R. No. 3-98, as last amended by R.R. No. 8-2000, as amended, provides that the term *"de minimis"* benefits which are exempt from the fringe benefits tax shall, in general, be limited to facilities or privileges furnished or offered by an employer to his employees that are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees.

Generally, fringe benefits granted or paid by the employer to the employee (except rank and file employee) is subject to a final withholding tax imposed under

[44] Exhibit "B", page 5.

Section 33(A) of the NIRC of 1997. The said rule is not however without exemptions, among them is "*de minimis* benefits". Accordingly, any benefit furnished by an employer is considered *de minimis* if it is among those benefits included in R.R. No. 3-98, as amended or it complies with the following conditions: (1) it is relatively of small value; and (2) it is provided by the employer merely as a means of promoting the health, goodwill, contentment or efficiency of his employees.[45]

The above-stated expenses may be considered as *de minimis* benefits, which are non-taxable compensation and therefore not subject to withholding tax. However, no sufficient supporting documents were presented to substantiate that these benefits were indeed incurred or paid. A mere allegation is neither proof nor evidence.[46] *Ergo*, the findings of respondent are in order.

Professional Fees

Respondent disallowed the professional fees amounting to P561,300.00 for petitioner's failure to subject the said expenses to expanded withholding tax. Petitioner counters that these were paid to petitioner's independent auditors and retained legal counsel, both of which are professional partnerships.[47]

Income payments made to professional partnership as a juridical person are exempt from income tax *vis-à-vis* the expanded withholding tax. Its partners are the ones liable in their individual capacity for the payment of income tax pursuant to Section 26 of the NIRC of 1997. This was elucidated by the Supreme Court in the case of **Rufino R. Tan, *et al.* vs. Ramon R. del Rosario Jr., as Secretary of Finance and Jose U. Ong, as Commissioner of Internal Revenue**[48], to wit:

[45] BIR Ruling No. DA-159-05 dated April 14, 2005
[46] Masagana Concrete Products vs. NLRC, 372 Phil. 459
[47] Exhibit "B", docket, p. 138
[48] G.R. Nos. 109289 and 109446, October 3, 1994

> "'Exempt partnerships,' upon the other hand, are not similarly identified as corporations nor even considered as independent taxable entities for income tax purposes. A general *professional* partnership is such an example. Here, the partners themselves, not the partnership, although it is still obligated to file an income tax return (mainly for administration and data), are liable for the payment of income tax in their *individual* capacity computed on their respective and distributive shares of profits. In the determination of the tax liability, a partner does so as an *individual*, and there is no choice on the matter. In fine, under the Tax Code on income taxation, the general professional partnership is deemed to be no more than a mere mechanism or a flow-through entity in the generation of income by, and the ultimate distribution of such income to, respectively, each of the individual partners."

Although the law exempts income payments made to general professional partnerships from income tax, and consequently, from expanded withholding tax, petitioner failed to present proof that the amount of P561,300.00 falls within the said exemption. Other than a bare statement that the amount of P561,300.00 pertains to professional fees paid to general professional partnerships such as its legal counsel and independent auditors, petitioner was not able to substantiate such allegation by documentary evidence. Thus, pursuant to Section 34(K) of the NIRC of 1997, in relation to Section 2.57.2 of R.R. No. 2-98, petitioner's claimed professional fees in the amount of P561,300.00 cannot be validly deducted from its gross income as there was no tax withheld therefrom.

Repairs and Maintenance

Petitioner failed to present documents in support of the disallowed repairs and maintenance expenses of P238,559.92. Mere allegation of petitioner that the amount of P238,559.92 was paid to several payees who are not subject to expanded withholding tax does not justify its deduction. Petitioner should prove every minute aspect of its case.[49] Petitioner should have submitted documentary evidence to

[49] Commissioner of Internal Revenue vs. Manila Mining Corporation, G.R. No. 153204, August 31, 2005

support its allegations. Therefore, petitioner's claimed deduction for repairs and maintenance expenses in the amount of P238,559.92 should be disallowed.

Service Expense

Petitioner contends that the amount of P127,936.11 refers to the aggregate of various small expenses, out of petty cash, to facilitate and expedite the processing of documents in the customs. The said expenses constitute ordinary and necessary expenses paid in carrying on the business and that these are not subject to expanded withholding tax, but are deductible as business expense under Section 34(A)(1) of the NIRC of 1997. As earlier discussed, mere allegation by a taxpayer that an item of expense is ordinary and necessary does not justify its deduction; such expense must be proven by documentary evidence or supported by the records.

Based on the above findings, petitioner is liable to pay deficiency income tax, inclusive of increments, in the amount of P1,064,386.13, computed as follows:

Taxable Income per Return			P 11,911,287.00
Add:	Adjustments/Disallowances		
	Discrepancy on Salaries & Wages	P 732,317.48	
	Professional Fees - no EWT	561,300.00	
	Repairs & Maintenance - No EWT	238,559.92	
	Service Expense - no EWT	127,936.11	1,660,113.51
Adjusted Taxable Income			P 13,571,400.51
Tax Due			P 4,342,848.16
Less:	Tax paid/creditable		
	Payment	P3,682,337.00	
	Creditable tax withheld	129,273.00	
		P3,811,610.00	
	Less: Unsupported tax credit	88,994.62	3,722,615.38
Deficiency Income Tax Due			P 620,232.78
Add:	Surcharge		155,058.20
	20% Interest from _______to 08/15/2006		289,095.15
TOTAL AMOUNT DUE AND COLLECTIBLE			**P 1,064,386.13**

Assessment for deficiency Withholding Tax on Compensation

Petitioner's deficiency withholding tax on compensation in the amount of P53,576.32 was computed by the BIR examiners as follows[50]:

Withholding Tax Due per Alphalist		P 417,932.12
Less: Tax Remittance		382,713.37
Basic		P 35,218.75
Interest up to 08/15/2006	P18,176.59	
Interest on Late Filing of 1601C for July (08/11/2003 - 08/20/2003)	180.98	18,357.57
TOTAL AMOUNT DUE AND COLLECTIBLE		**P 53,576.32**

Petitioner maintains that the amount not subjected to withholding tax was a mere accrual in the year 2003, which was not actually paid in the said year; hence, not subject to withholding tax.[51]

Verification of the records indicates otherwise. Petitioner's explanation of the discrepancy is incomplete and cannot be used as basis in determining whether its claim is correct or not. It did not submit concrete and convincing evidence showing that the discrepancy between tax due per Alphalist of employees and tax payments actually pertains to accruals and was paid or remitted to the BIR in the subsequent year. The Court sees no reason to disturb the findings of respondent. Consequently, the assessment for deficiency withholding tax on compensation must be upheld, but in the revised amount of P62,381.01; in order to include the twenty-five percent (25%) surcharge imposed under Section 248(3) of the NIRC of 1997. The amount of P62,381.01 is computed below:

Withholding Tax Due per Alphalist			P 417,932.12
Less:	Tax Remittance		382,713.37
Basic			P 35,218.75
Add:	Surcharge	P 8,804.69	
	Interest up to 08/15/2006	18,176.59	

[50] Exhibit "F" and Exhibit "36"
[51] Exhibit "B", docket, p. 141

Interest on Late Filing of 1601C for July (08/11/2003 - 08/20/2003)	180.98	27,162.26
TOTAL AMOUNT DUE AND COLLECTIBLE		**P62,381.01**

Assessment for deficiency Fringe Benefit Tax

Petitioner was assessed for deficiency fringe benefit tax in the amount of P393,337.25, inclusive of surcharges and interest, detailed below:[52]

Representation	P 117,698.96
Transportation	370,780.80
Actual Monetary Value of Fringe Benefit	P 488,479.76
Gross-up Monetary Value (P488,479.76/68%)	P 718,352.62
Multiply by Rate	32%
Deficiency Fringe Benefit Tax	P 229,872.84
Add: 25% Surcharge	57,468.21
20% Interest from________ to 08/15/2006	105,996.20
TOTAL AMOUNT DUE AND COLLECTIBLE	**P 393,337.25**

The company provides for fringe benefits in the form of representation, transportation and travel to its Country Manager to which no fringe benefit tax was paid by petitioner.

Petitioner claims that these are not subject to fringe benefit tax. As testified to by Ma. Jhoana Tagam, Accounting Supervisor of petitioner, the said expenses fall under the exception in Section 33 of the NIRC of 1997, which states that when the fringe benefit is required by the nature of or necessary to the trade, business or profession of the employer, or when it is for the convenience or advantage of the employer, the fringe benefit tax shall not apply. The very nature of petitioner's business – freight forwarding - which is very competitive, requires its Country Manager to go on frequent business travels to drum up business, and it is but ordinary and necessary that he incurs transportation, traveling, and representation expenses.

[52] Exhibit "H" and Exhibit "30"

Since these expenses are required by the nature of or necessary to the business of petitioner, the same are not subject to the said deficiency tax.

Section 33 of the NIRC of 1997, states:

> "**SEC. 33.** *Special Treatment of Fringe Benefit.* -
>
> (A) *Imposition of Tax.* - A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (**unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer**). The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57 (A) of this Code. The grossed-up monetary value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by sixty-six percent (66%) effective January 1, 1998; sixty-seven percent (67%) effective January 1, 1999; and sixty-eight percent (68%) effective January 1, 2000 and thereafter: *Provided, however*, That fringe benefit furnished to employees and taxable under Subsections (B), (C), (D) and (E) of Section 25 shall be taxed at the applicable rates imposed thereat: *Provided, further*, That the grossed-up value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by the difference between one hundred percent (100%) and the applicable rates of income tax under Subsections (B), (C), (D), and (E) of Section 25." *(Emphasis supplied)*

Based on the afore-quoted provision, a fringe benefit is generally taxable "unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer."

This Court based on previous decisions and applicable revenue regulations required the submission of proofs, such as official receipts, payment slips, billing statements/request for official dispatch allowances, certificate of appearance or certificate of participation, and other documents, to prove that the amount was duly receipted in the name of petitioner/taxpayer and that the expense was necessary for the actual development and maintenance of petitioner's trade or business. All these will readily prove that the travel and representation expenses were incurred for purely official business purpose rather than the employee's personal benefit.

Revenue Regulations No. 3-98, which was issued to implement Section 33 of the NIRC of 1997, corroborates the above requirements, to wit:

> "(2) Expense account –
>
> (a) In general, expenses incurred by the employee but which are paid by his employer shall be treated as taxable fringe benefits, except when the **expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the employee**.
>
> (b) Expenses paid for by the employee but reimbursed by his employer shall be treated as taxable benefits except **only when the expenditures are duly receipted for and in the name of the employer** and **the expenditures do not partake the nature of a personal expense attributable to the said employee**."
>
> xxx xxx xxx
>
> "(7) Expenses for foreign travel –
>
> (a) Reasonable business expenses which are paid for by the employer for the foreign travel of his employee for the purpose of attending business meetings or conventions shall not be treated as taxable fringe benefits. In this instance, inland travel expenses (such as expenses for food, beverages and local transportation) except lodging cost in a hotel (or similar establishments) amounting to an average of US$300.00 or less per day, shall not be subject to a fringe benefit tax. **The expenses should be supported by documents proving the actual occurrences of the meetings or conventions.**
>
> The cost of economy and business class airplane ticket shall not be subject to a fringe benefit tax. However, 30 percent of the cost of first class airplane ticket shall be subject to a fringe benefit tax.

> (b) **In the absence of documentary evidence showing that the employee's travel abroad was in connection with business meetings or conventions, the entire cost of the ticket, including cost of hotel accommodations and other expenses incident thereto shouldered by the employer, shall be treated as taxable fringe benefits.** The business meetings shall be **evidenced by official communications from business associates abroad indicating the purpose of the meetings**. Business conventions shall be **evidenced by official invitations/communications from the host organization or entity abroad. Otherwise, the entire cost thereof shouldered by the employer shall be treated as taxable fringe benefits of the employee.**
>
> (c) Traveling expenses which are paid by the employer for the travel of the family members of the employee shall be treated as taxable fringe benefits of the employee." *(Emphasis supplied)*

This Court made a similar pronouncement in the recent case of **Nesic Philippines, Inc. vs. Commissioner of Internal Revenue**[53], thus:

> "The payment slips, official receipts issued by travel agencies, and billing statements/request for official dispatch allowances, did not coincide with the meetings scheduled in the notices issued to petitioner's President. Further, petitioner failed to prove that the said business meetings actually occurred and that its officers indeed attended the meetings. A certificate of appearance or a certificate of participation issued by NEC-Japan would have sufficed."

Records reveal that except for the self-serving statement of petitioner's Accounting Supervisor, petitioner did not submit any of the above required documentary evidence to prove or confirm petitioner's allegations. Accordingly, the assessment for deficiency fringe benefit tax, involving petitioner's unsubstantiated representation and travel expenses, must be upheld.

Assessment for deficiency Documentary Stamp Tax

In December 2002, petitioner increased its authorized capital stock from P8,000,000.00 to P45,000,000.00 divided into 450,000 shares at a par value of

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[53] CTA Case No. 7012, March 13, 2009

P100.00 per share. Out of the P37,000,000.00 increase, P25,000,000.00 was subscribed and paid by way of stock dividends to the stockholders.

Under the Corporation Code, the capital stock of a corporation is considered increased only after approval and issuance by the SEC of its certificate of increase. Thus, the P25,000,000.00 stock dividend was deemed issued only on May 19, 2004, the date when the SEC approved the increase of capital stock.

In February 2004, Republic Act No. 9243, which revised the DST Law, took effect. It reduced the DST on shares of stock issued from P2.00 on each P200 par value to P1.00 on each P200 par value. Petitioner paid the DST of P125,000.00 on the P25,000,000.00 stock dividend based on this new law. Respondent, on the other hand, assessed petitioner documentary stamp tax of P2.00 per P200 or which is equivalent to 1% on the P25,000,000.00 stock dividend, plus interest in the amount P189,929.94, for petitioner's failure to submit documentary evidence that will prove that the SEC approved the said increase only on May 19, 2004. The breakdown of the amount of P189,929.94 is as follows:

Stock Dividend Declared	P25,000,000.00
Multiply by Rate	1%
DST Due	P 250,000.00
Less DST paid	125,000.00
Deficiency Documentary Stamp Tax	P 125,000.00
Add: 20% Interest from________ to 08/15/2006	64,929.94
TOTAL AMOUNT DUE AND COLLECTIBLE	**P 189,929.94**

However, records prove that petitioner was able to present the SEC Certificate issued on May 19, 2004, covering the SEC's approval of the increase of petitioner's capital stock.[54] Hence, the Court deems it proper to cancel the assessment for deficiency DST.

[54] Exhibit "V"

Assessment for Compromise Penalties

Respondent imposed the following compromise penalties on deficiency taxes in the amount of P114,200.00, as shown below:

Compromise Penalties			
Income Tax[55]			P 20,000.00
Value-added Tax[56]			25,000.00
Withholding Tax on Compensation[57]			
Compromise Penalty		P8,500.00	
Late Filing of 1601C		8,500.00	17,000.00
Final Withholding Tax[58]			16,000.00
Fringe Benefit Tax[59]			16,000.00
Documentary Stamp Tax[60]			16,000.00
Late Filing[61]			
Late Filing of 1601E			
	January	1,000.00	
	July	200.00	
	June and November	2,000.00	3,200.00
Late Filing of 1604E			1,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE			**P 114,200.00**

Respondent's imposition of compromise penalty cannot be sustained. A compromise penalty cannot be imposed since no compromise agreement was reached between the parties. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[62] This holds true for all assessments of respondent in this case.

[55] Exhibit "J" and Exhibit "41"
[56] Exhibit "K" and Exhibit "38"
[57] Exhibit "L" and Exhibit "35
[58] Exhibit "M" and Exhibit "32"
[59] Exhibit "N" and Exhibit "29"
[60] Exhibit "O" and Exhibit "26"
[61] Exhibit "P" and Exhibit "25"
[62] Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., G.R. No. 35266, January 21, 1991; Atlas Consolidated Mining and Development Corporation (doing business under the name Atlas-Itochu Consortium) vs. Commissioner of Internal Revenue, CTA Case No. 5671, August 29, 2002.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for taxable year 2003 covering deficiency final withholding tax in the amount of P837,504.88, documentary stamp tax in the amount of P189,929.94, and compromise penalties in the amount of P114,200.00, are hereby **CANCELLED** and **WITHDRAWN**. However, the assessments for deficiency VAT, income tax, withholding tax on compensation, and fringe benefit tax are hereby **UPHELD**. Accordingly, petitioner is hereby **ORDERED** to **PAY** the aggregate amount of P4,326,317.25, detailed as follows:

	Basic Tax	Surcharge	Interest	Total
Deficiency VAT	P1,593,940.57	P 398,485.14	P 813,787.15	P2,806,212.86
Deficiency Income Tax	620,232.78	155,058.20	289,095.15	1,064,386.13
Deficiency Withholding Tax on Compensation	35,218.75	8,804.69	18,357.57	62,381.01
Deficiency Fringe Benefit Tax	229,872.84	57,468.21	105,996.20	393,337.25
TOTAL	P2,479,264.94	P 619,816.24	P1,227,236.07	P4,326,317.25

In addition, petitioner is hereby **ORDERED** to **PAY** twenty percent (20%) delinquency interest on the amount of P4,326,317.25, computed from September 15, 2006 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division