REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

GOLDEN DONUTS, INC., *Petitioner,*	**CTA Case No. 10336**
	Members:
-versus-	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 30 2024 4:02 p.m.

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DECISION

MANAHAN, *J.*:

This is a *Petition for Review*[1] filed by petitioner Golden Donuts, Inc. (GDI) against respondent on August 28, 2020, praying for the nullity and cancellation of the alleged assessment for deficiency income tax (IT), value-added tax (VAT), final tax (FT), expanded withholding tax (EWT), and documentary stamp tax (DST) for the taxable year (TY) 2010 in the amount of ₱159,296,703.65.[2]

THE PARTIES

Petitioner GDI is a corporation duly organized under the laws of the Republic of the Philippines with office address at GDI Building, Reliance corner Sheridan Streets, Mandaluyong City.[3] It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. (TIN) 000-122-565-00000 under the BIR Large Taxpayers Service, Revenue District Office (RDO) No. 116 – Regular Large Taxpayers (LT) Division 1.[4]

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[1] Docket, CTA Case No. 10336, Vol. I, pp. 6-42.
[2] *Id.*, Vol. I, Prayer, Petition for Review, p. 41.
[3] *Id.*, Vol. II, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), p. 754.
[4] *Id.*, Vol. I, Exhibit "P-1", Certificate of Registration, p. 69.

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) with office address at BIR Building, Diliman, Quezon City.[5]

THE FACTS

On October 10, 2011, petitioner received a *Letter of Authority* (LOA) No. 116-2011-00000151 (eLA201100003039) dated October 6, 2011,[6] signed by then Officer-in-Charge (OIC)-Assistant Commissioner – Large Taxpayers Service Alfredo V. Misajon, designating Revenue Officers Riza Budaño, Aurora Pelayo, Olivia Aviles, Olivia Sison, Rogelio Gonzales and Group Supervisor Marivic Bautista of LT Regular Audit Division 1, to examine petitioner GDI's books of accounts for the period January 1, 2010 to December 31, 2010.[7]

On February 14, 2013, petitioner executed a *Waiver of Defense of Prescription Under the Statute of Limitations* (1st Waiver)[8] under the 1997 National Internal Revenue Code (NIRC), as amended, valid until December 31, 2014, which was accepted by OIC-Assistant Commissioner Alfredo V. Misajon on March 22, 2013.[9]

On November 19, 2014, petitioner received the *Preliminary Assessment Notice*[10] (PAN) dated November 19, 2014 for the alleged deficiency IT, VAT, FT, withholding tax on compensation (WTC), EWT, and DST in the aggregate amount of ₱312,088,978.56, inclusive of interest and penalties.[11]

On December 4, 2014, petitioner executed a *Waiver of Defense of Prescription Under the Statute of Limitations* (2nd Waiver)[12] under the 1997 NIRC, as amended, which was accepted by OIC-Assistant Commissioner Nestor Valeroso on December 16, 2014.[13]

Petitioner received the copy of the *Formal Letter of Demand*[14] (FLD) dated February 2, 2015 and its *Audit*

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[5] Docket, Vol. II, Summary of Admitted Facts, JSFI, p. 754.
[6] *Id.*, Vol. I, Exhibit "P-2", p. 71.
[7] *Id.*, Vol. II, Summary of Admitted Facts, JSFI, p. 754.
[8] *Id.*, Vol. I, Exhibit "P-4", p. 76; BIR Records, Exhibit "R-4", pp. 1242-1244.
[9] *Id.*, Vol. II, Summary of Admitted Facts, JSFI, p. 754.
[10] *Id.*, Vol. I, Exhibit "P-12", pp. 87-89.
[11] *Id.*, Vol. II, Summary of Admitted Facts, JSFI, p. 755.
[12] *Id.*, Vol. I, Exhibit "P-14", p. 120; BIR Records, Exhibit "R-9", pp. 1244-a to 1244-c.
[13] *Id.*, Vol. II, Summary of Admitted Facts, JSFI, p. 755.
[14] *Id.*, Vol. I, Exhibit "P-15", pp. 121-123; BIR Records, Exhibit "R-11", pp. 1669-1684.

Result/Assessment Notices[15] on even date in the aggregate amount of ₱272,615,710.31, broken down as follows:[16]

Kinds of Tax	Basic Deficiency Tax	Interest	Total Amount
IT	₱57,784,335.40	₱45,784,191.23	₱103,568,526.63
VAT	90,183,447.10	75,358,770.86	165,542,217.96
FT	83,026.70	68,650.57	151,677.27
WTC	296,689.71	249,544.50	546,234.21
EWT	1,462,662.77	1,230,239.64	2,692,902.41
DST	61,818.12	52,333.70	114,151.82
Total	**₱149,871,979.80**	**₱122,743,730.50**	**₱272,615,710.30**

On March 4, 2015, petitioner filed a letter dated March 3, 2015 as its protest on the said FLD.[17]

On July 30, 2020, petitioner received a copy of the *Final Decision on Disputed Assessment*[18] (FDDA) and corresponding Assessment Notices, demanding payment of total deficiency taxes in the amount of ₱159,296,703.65 on or before December 31, 2019, broken down as follows:[19]

Kinds of Tax	Basic Deficiency Tax	Interest	Total Amount
IT	₱25,680,581.02	₱40,644,268.61	₱66,324,849.63
VAT	32,509,243.18	52,876,952.02	85,386,195.20
FT	522,228.26	852,276.52	1,374,504.78
EWT	2,310,597.50	3,770,895.13	6,081,492.63
DST	49,161.11	80,500.30	129,661.41
Total	**₱61,071,811.07**	**₱98,224,892.58**	**₱159,296,703.65**

Thus, petitioner filed the instant petition on August 28, 2020.

On September 17, 2020, respondent was directed by the Court to file his Answer to the instant petition.[20]

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[15] BIR Records, Exhibit "R-11", pp. 1663-1668.
[16] Docket, Vol. II, Summary of Admitted Facts, JSFI, p. 755; Docket, Vol. V, Memorandum for Petitioner, p. 3173.
[17] *Id.*, Vol. V, Exhibit "P-16", pp. 3065-3079.
[18] *Id.*, Vol. I, Exhibit "P-17", pp. 152-153.
[19] *Id.*, Vol. II, Summary of Admitted Facts, JSFI, p. 755; Docket, Vol. V, Memorandum for Petitioner, p. 3174.
[20] *Id.*, Vol. I, Summons dated September 17, 2020, p. 567.

On November 16, 2020, respondent filed his *Answer*[21] after the Court granted[22] its *Motion for Extension of Time to File Answer*,[23] raising the following special and affirmative defenses, to wit:

1. The Honorable Court's power of judicial review over decisions of the Commissioner of Internal Revenue on disputed assessment is by nature exclusive and appellate, hence, petitioner should not be allowed to raise issues for the first time on appeal;

2. The FLD is valid and was received by petitioner;

3. The deficiency assessment issued against petitioner is correct; and

4. The assessment issued against petitioner is valid and lawful.

On December 11, 2020, the Court referred the case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation by the parties.[24] However, the parties decided not to have their case mediated by the PMC-CTA.[25] Thus, the case was set for Pre-Trial Conference and directed the parties to file their respective Pre-Trial Brief.[26]

On May 20, 2021, respondent filed his *Pre-trial Brief*[27] while petitioner's *Pre-Trial Brief*[28] was filed on June 25, 2021. On July 16, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*.[29] Thus, on April 8, 2022, this Court issued the *Pre-Trial Order*[30] of the instant case.

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[21] Docket, Vol. I, pp. 577-595.
[22] *Id.*, Vol. I, Resolution dated October 28, 2020, p. 576.
[23] *Id.*, Vol. I, pp. 569-572.
[24] *Id.*, Vol. I, Resolution dated December 11, 2020, pp. 709-710.
[25] *Id.*, Vol. I, No Agreement to Mediate dated February 11, 2021, p. 711.
[26] *Id.*, Vol. I, Resolution dated February 22, 2021, p. 714; Notice of Pre-Trial Conference, pp. 715-720.
[27] *Id.*, Vol. I, pp. 723-727.
[28] *Id.*, Vol. I, pp. 731-739.
[29] *Id.*, Vol. II, pp. 754-759.
[30] *Id.*, Vol. V, pp. 3001-3017.

Then trial ensued. Petitioner presented first its witnesses and evidence.[31] The *Formal Offer of Evidence for Petitioner*[32] was filed on May 5, 2022

On August 18, 2022, this Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-7-A", "P-8", "P-8-A", "P-9", "P-9-A", "P-10", "P-10-A", "P-11", "P-11-A", "P-12", "P-13", "P-13-A", "P-14", "P-15", "P-16", "P-16-A", "P-17", "P-17-A", "P-17-B", "P-17-C", "P-17-D", "P-17-E", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-24-1", "P-24-A", "P-24-A-1", "P-25", "P-25-A", "P-26", "P-27", "P-28", "P-29", "P-30", "P-30-A", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-37-A", "P-39", "P-39-A", "P-40", "P-40-A", "P-41", "P-41-A", "P-42", "P-42-A", "P-43", "P-6-A.1 to P-6-L.4-ICPA", "P-7-A.1 to P-7-M.3-ICPA", "P-8-A.1 to P-8-D.9-ICPA", "P-9-A.1 to P-9-L.3-ICPA", "P-10-A to P-10-D-ICPA", "P-11-A to P11-H-ICPA", "P-12-A to P-12-AP-ICPA", "P-13-A.1 to P-13-AI.16-ICPA", "P-14-A to P-14-X-ICPA", "P-15-A to P-15-AE-ICPA", "P-16-A to P-16-AE-ICPA", "P-17-B.1-ICPA to P-17-AG.10-ICPA", "P-18-B.1-ICPA to P-18-Q.7-ICPA", "P-18-Q.9-ICPA to P-18-Y.2-ICPA", "P-18-Y.4-ICPA to P-18-AL.12-ICPA", "P-19-A to P-19-M-ICPA", "P-19-O-ICPA to P-19-AV-ICPA", "P-19-AX-ICPA to P-19-FN-ICPA", "P-20-A to P-20-BH-ICPA", "P-20-BL-ICPA to P-20-FR.5-ICPA", "P-21.A.1 to P-21-E.38-ICPA", "P-21-E.41-ICPA to P-21-E.57-ICPA", "P-22-A to P-22-CG-ICPA", "P-23-A.1-ICPA to P-23-D.108-ICPA", "P-23-D.110-ICPA to P-23-D.161-ICPA", "P-23-D.163-ICPA to P-23-E.62-ICPA", "P-23-F.1-ICPA to P-23-F.17-ICPA", "P-23-F.19-ICPA to P-23-F.73-ICPA", "P-23-F.75-ICPA to P-23-H.4-ICPA", "P-24-A to P-23-AA-ICPA", "P-25-A-ICPA to P-225-F-ICPA", "P-26-A.1 to P-26-D.38-ICPA", "P-26-D.40-ICPA to P-26-D.41-ICPA", "P-26-D.43-ICPA to P-26-D.71-ICPA", "P-26-D.73-ICPA to P-26-D.111-ICPA", "P-26-D.113-ICPA to P-26-D.115-ICPA", "P-27-A to P-27-EI-ICPA", "P-27- EK-ICPA to P-27-UC-ICPA", "P-29-A to P-29-BX-ICPA", "P-30-A.1 to P-30-C.2-ICPA", "P-31-A to P-30-EQ-ICPA", "P-32-A to P-32-J-ICPA", "P-33-A.1 to P-33-L.4-ICPA", "P-33-L.6-ICPA to P-33-Z.8-ICPA", "P-33-BA.1-ICPA to P-33-BI.4-ICPA", "P-33-BJ.1-ICPA to P-33-BO.4-ICPA", "P-33-BQ.1-ICPA to P-33-BZ.6-ICPA", "P-33-DA.1-ICPA to P-33-FR.2-ICPA", "P-33-FR.4-ICPA to P-33-MA.4-ICPA", "P-34-A to P-34-B-ICPA", "P-35-A to P-35-B-ICPA", "P-36-A.1 to P-36-B.121-ICPA", "P-36-C.31-ICPA to P-36-C.71-ICPA", "P-37-A to P-37-U-ICPA", "P-38-A to P-38-H-ICPA", "P-39-A.1 to P-39-T.8-ICPA", "P-39-T.10 to P-39-AB.2-ICPA", "P-40-A to P-40-D-ICPA", "P-41-A.1 to P-41-K.4-ICPA", "P-42-A to P-42-F-ICPA",

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[31] Docket, Vol. V, Minutes of the hearing held on April 19, 2022, pp. 3018-3021.
[32] *Id.*, Vol. V, pp. 3029-3059.

"A-ICPA", "B-ICPA", "C-ICPA to C.16-ICPA", "D-ICPA to D.15-ICPA", "E-ICPA to E.35-ICPA", "F-ICPA to F.39-ICPA", "G-ICPA", "H-ICPA", "I-ICPA to I.11-ICPA", "J-ICPA", "K-ICPA", "L-ICPA", "M-ICPA to M.5-ICPA", "N-ICPA", and "O-ICPA".[33]

However, the following were denied to wit: Exhibits "P-17-A.1-ICPA to P-17-A.10-ICPA", "P-18-A.1-ICPA to P-18-A.12-ICPA", "P-18-Q.8-ICPA", "P-18-Y.3-ICPA", "P-19-N-ICPA", "P-19-AW-ICPA", "P-20-BI-ICPA", "P-20-BJ-ICPA", "P-20-BK-ICPA", "P-21-E.39-ICPA to P-21-E.40-ICPA", "P-23-D.162-ICPA", "P-23-E.63-ICPA to P-23-E.251-ICPA", "P-25-A.1-ICPA", "P-26-D.39-ICPA", "P-26-D.42-ICPA", "P-26-D.72-ICPA", "P-26-D.112-ICPA", "P-27-EJ-ICPA", "P-28-A to P-28-E-ICPA", "P-33-L.5-ICPA", "P-33-AA.1-ICPA to P-33-AZ.5-ICPA", "P-33-BI.5-ICPA to P-33-BI.10-ICPA", "P-33-BP.1-ICPA to P-33-BP.4-ICPA", "P-33-CA.1 to P-33-CZ.9-ICPA","P-33-FR.3-ICPA", "P-36-C.1-ICPA to P-36-C.30-ICPA", "P-36-D.1-ICPA to P-36-D.9-ICPA", "P-39-T.9-ICPA", "P-39-AB-ICPA", "P-41-L.1-ICPA to P-41-AK.6-ICPA" and "P-43-A-ICPA", for not being found in the records of the case; and Exhibits "P-23-F.18-ICPA" and "P-23-F.74-ICPA", for being totally unreadable/blurred or almost blank.

Petitioner moved for the reconsideration of the denied exhibits on September 15, 2022.[34] Except for Exhibits "P-23-E.103-ICPA to P-23-E.119-ICPA", "P-23-E.179-ICPA", "P-23-E.228-ICPA", and P-33-AQ.2-ICPA, all other denied exhibits were reconsidered and admitted.[35]

Respondent then presented his witness and other evidence on March 7, 2023.[36] Respondent filed his *Formal Offer of Evidence*[37] on March 17, 2023 where all exhibits offered were admitted by the Court, hence, the parties were directed to submit their respective memoranda.[38]

Respondent submitted a *Manifestation*[39] on July 14, 2023 which states that he was adopting all his arguments in his submitted Answer as his Memorandum. On the other hand, a

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[33] Docket, Vol. V, Resolution dated August 18, 2022, pp. 3108-3118.
[34] *Id.*, Vol. V, Motion for Reconsideration (Re: Resolution dated August 18, 2022, pp. 3124-3127.
[35] *Id.*, Vol. V, Resolution dated January 6, 2023, pp. 3141-3144.
[36] *Id.*, Vol. V, Order dated March 7, 2023, pp. 3146-3147.
[37] *Id.*, Vol. V, pp. 3148-3154.
[38] *Id.*, Vol. V, Resolution dated June 1, 2023, pp. 3163-3164.
[39] *Id.*, Vol. V, pp. 3165-3167.

Memorandum for Petitioner[40] was filed on July 21, 2023. Thus, the case was submitted for decision on July 27, 2023.[41]

ISSUE

The issue to be resolved by the Court is as follows:

> "Whether or not petitioner is liable to pay the amount of Php159,296,703.65 representing petitioner's deficiency IT, VAT, FT, EWT, and DST inclusive of surcharge and interest, for taxable year 2021 (*sic*), plus 25% surcharge and 20% deficiency and delinquency interest at the rate of 12% per annum from 1 January 2018 until the amount is fully paid pursuant to Section 249(C) of the 1997 NIRC, as amended, in relation to Section 249(A) of the same Code, as amended by the TRAIN law."[42]

Petitioner's Arguments[43]

Petitioner argues that the assessments issued by respondent were null and void for want of authority of the revenue officers and group supervisors to examine its books of accounts for TY 2010 as the Authorization Letter dated March 27, 2013 signed by Mr. Cesar D. Escalada, Chief, Regular LT Audit Division 1, was not equivalent to an LOA.

Petitioner insists that the mandatory requisites for a valid assessment are not present in the instant case as the FLD and the Assessment Notices failed to indicate a definitive amount of tax liabilities and clear and categorical demand for payment as required under Section 228 of the 1997 NIRC, as amended, and Revenue Regulations (RR) No. 12-99, and that the FDDA does not indicate a valid due date for payment.

Petitioner insists further that the assessments were invalid for lack of factual and legal bases, and that the portions of the EWT and FT assessments issued against petitioner were barred by prescription.

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[40] Docket, Vol. V, pp. 3170-3231.
[41] *Id.*, Vol. V, Minute Resolution dated July 27, 2023, p. 3234.
[42] *Id.*, Vol. II, Minutes of the Pre-Trial Conference held on July 1, 2021, p. 747; Docket, Vol. II, Order dated July 1, 2021, p. 749.
[43] *Supra*, Note 40.

Respondent's Arguments[44]

Respondent argues that the Court's power of judicial review over his decisions on disputed assessment is by nature exclusive and appellate, hence, petitioner should not be allowed to raise issues for the first time on appeal.

Respondent further argues that the FLD was validly issued and received by petitioner. Respondent insists that the assessment for the deficiency taxes was correct, valid, and lawful.

RULING OF THE COURT

This Court shall determine first whether the appeal was timely filed, thus, acquiring jurisdiction over the instant petition. Sections 7(a) and 11 of Republic Act (RA) No. 1125[45], as amended by RA No. 9282[46], provide as follows:

> "SEC. 7. ***Jurisdiction.*** **- The CTA shall exercise:**
>
> **(a) Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> > **(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> xxx xxx xxx
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA **within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

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[44] *Supra*, Note 21.
[45] AN ACT CREATING THE COURT OF TAX APPEALS.
[46] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx." *(Emphasis supplied)*

The instant petition is grounded on respondent's FDDA issued against petitioner GDI. As shown above, petitioner received said FDDA on July 30, 2020. Petitioner, thus, has thirty (30) days from July 30, 2020 or until August 29, 2020 to file the instant petition. Petitioner filed the instant petition on August 28, 2020. Hence, petitioner's Petition for Review was timely filed.

According to the FDDA[47], petitioner was assessed of deficiency IT, VAT, FT, EWT and DST, in the aggregate amount of ₱159,296,703.65 including interest for TY 2010, as shown below:

Tax	Basic Deficiency Tax	Interest	Total Amount
IT	₱25,680,581.02	₱40,644,268.61	₱66,324,849.63
VAT	32,509,243.18	52,876,952.02	85,386,195.20
FT	522,228.26	852,276.52	1,374,504.78
EWT	2,310,597.50	3,770,895.13	6,081,492.63
DST	49,161.11	80,500.30	129,661.41
TOTAL	₱61,071,811.07	₱98,224,892.58	₱159,296,703.65

INCOME TAX

Details of IT assessment in the amount of ₱25,680,581.02 reflected in the FDDA are as follows:

	Assessment Details	Tax Base	IT (30%)
IT-1	Disallowed Royalty and Management Fee	10,577.33	3,173.20
IT-1.1	Undeclared Royalty Income	7,657,672.35	2,297,271.71
IT-2	Discrepancy in Ending Inventory	1,814,426.81	544,328.04
IT-3	Disallowed Charitable Contributions	1,973,327.65	591,998.30
IT-4	Income Payments not Subjected to EWT	71,142,981.01	21,342,894.30
IT-5	Additional Income on Undeclared Sales per SLS, SAWT and LN Data	2,818,172.67	845,451.80
IT-6	Additional Income on Undeclared Purchases per SLP, 1604E and LN Data	184,876.92	55,463.68
	TOTAL		**25,680,581.02**

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[47]Docket, Vol. 1, Exhibit "P-17", pp. 152 to 153.

IT-1 – Disallowed Royalty and Management Fee – ₱10,577.33.

The Independent Certified Public Accountant (ICPA) noted that petitioner did not present any schedule nor relevant supporting documents. For failure of the petitioner to provide evidence to refute the discrepancy noted by the respondent, the assessment on disallowed royalty and management fee amounting to ₱10,577.33 shall remain.

IT-1.1 – Undeclared Royalty Income – ₱7,657,572.35.

In the Details of Discrepancies attached to the FDDA, respondent found petitioner liable for undeclared royalty income in the amount of ₱7,657,572.35. The respondent computed the difference between the total of the sales subjected to royalty income multiplied by 6.60% royalty rate and the royalty income declared in the ITR/AFS multiplied by 20% final withholding tax.

Petitioner argues that respondent's finding is erroneous.

Petitioner noted that this assessment item only appeared for the first time in the FDDA[48] stage, and nowhere to be found during the PAN[49] and FLD[50] stages.

Based on the review by the ICPA, the respondent was not able to consider the fact that not all of petitioner's franchisees are subject to a 6.60% royalty rate. Petitioner claims that two (2) of its franchisees namely Eastway Bakeries, Inc. and North Area Bakeries, Inc., herein referred to as "EBI" and "NABI", respectively, paid royalties to the petitioner at a lower rate of 3.0% in 2010.

However, evaluation and review of the franchise agreements[51] of the petitioner's franchisees, reveal that the Franchise Agreement of NABI was not submitted, and the Court

[48] Docket, Vol. I, Exhibit "P-17", pp. 152 to 162.
[49] *Id.*, Vol. I, Exhibit "P-12", Docket – Vol. I, pp. 87 to 99.
[50] *Id.*, Vol. I, Exhibit "P-15", pp. 121 to 136.
[51] Exhibits "P-13-B.1-ICPA" to "P-13-AI.16-ICPA", USB.

confirmed that the royalty rate of EBI is only 3.0%[52]. Without the Franchise Agreement of NABI, its royalty rate will remain at 6.6%, royalty fee re-computed as follows:

Franchisee's Sales	₱2,351,329,428.00	
Management Fee	2,871,403.00	₱2,354,200,831.00
Less: Franchise Sales of EBI		68,557,901.00[53]
Sub- Total		2,285,642,930.00
Royalty Rate		6.60%
Sub- Total		150,852,433.38
Franchise Sales of EBI	₱68,557,901.00[54]	
Royalty Rate	3%	2,056,737.03
Royalty Income Per Audit		152,909,170.41
Less: Royalty Income Declared per ITR/AFS		
Royalty Income	₱118,175,746.00	
Add: 20% FWT	29,543,936.50	147,719,682.50
Undeclared Royalty Income		**₱5,189,487.91**

However, the undeclared royalty income of ₱5,189,487.91 cannot be assessed against the petitioner because this assessment item was only included in the FDDA[55] which was not found in the FLD[56] and PAN[57].

To allow respondent to incorporate new assessments in the FDDA would deprive the taxpayer of its right to due process and would put the latter at the mercy of the former. Hence, this particular assessment item amounting to ₱7,657,572.35 should be cancelled for being issued contrary to the guidelines of RR No. 12-99, as amended by RR No. 18-2013.

IT-2 – Discrepancy in Ending Inventory – ₱1,814,426.81.

In the Details of Discrepancies attached to the FDDA, respondent assessed petitioner the total amount of ₱1,814,426.81 for discrepancies in the Filed Inventory Lists for the years 2009 and 2010 against the ending inventory declared in the Audited Financial Statements/Income Tax Return

[52] Exhibit "P-13-A.4", USB.
[53] ICPA Report, p. 10; Annex B-ICPA; Exhibits "P-14-A-ICPA" to "P-14-L-ICPA", USB.
[54] ICPA Report, p. 10; Annex B-ICPA; Exhibits "P-14-A-ICPA" to "P-14-L-ICPA", USB.
[55] Docket, Vol. I, Exhibit "P-17", pp. 152 to 162.
[56] *Id.*, Vol. I, Exhibit "P-15", pp. 121 to 136.
[57] *Id.*, Vol. I, Exhibit "P-12", pp. 87 to 99.

(AFS/ITR). This discrepancy allegedly affects the amount of cost of sales and consequently under/overstates gross income a violation of Section 41 of the 1997 NIRC, as amended. Respondent adds that the changes in the amounts of inventories were not properly substantiated with valid documents, hence disallowed pursuant to Section 34(A)(1)(b) of the 1997 NIRC, as amended.

Dec. 31, 2009, Inventory Lists:	Inventory Lists	Per FS/ITR	Difference
Central Warehouse	₱24,302,850.00		
Outlets	1,671,983.93		
Production Center	1,576,700.09		
	27,551,534.02	₱40,308,323.00	₱12,756,788.98
Dec. 31, 2010, Inventory Lists:			
Central Warehouse	₱31,845,653.55		
Outlets	2,556,649.37		
Production Center	1,821,857.91		
	36,224,160.83	47,166,523.00	(10,942,362.17)
Net Discrepancy			₱1,814,426.81

Petitioner argues that the respondent's assessment is erroneous and states that this assessment item must be cancelled for lack of factual and legal basis.

Moreover, petitioner asserts that respondent failed to consider the fact that the discrepancy arose because petitioner's external auditor made adjustment entries to account for the errors in the Inventory List prepared by the petitioner's accounting staff. The accounting staff who prepared the Inventory List inadvertently omitted some items such as boxes and dining supplies. Petitioner's external auditor spotted the error and reflected the correct amount in the AFS and ITR.

To support its argument, petitioner presented the following documents as well as schedules for the re-computation of its ending inventory for the TYs 2009 and 2010:

a. 2010 AFS;[58]
b. 2009 Filed Inventory List;[59]
c. 2010 Filed Inventory List;[60]

[58] Exhibits "P – 12 – A-ICPA" to "P-12-AP-ICPA", USB.
[59] Exhibits "P-15-A-ICPA" to "P-15-AE – ICPA", USB.
[60] Exhibits "P-16-A-ICPA" to "P-16-AE – ICPA", USB.

d. 2009 Inventory Count Sheet;[61]
e. 2010 Inventory Count Sheet;[62]
f. 2009 Inventory Schedule per type;[63]
g. 2010 Inventory Schedule per type;[64]
h. 2009 Schedule of Ending Inventory (Boxes and Other Dining Suppliers - 2010);[65]
i. 2010 Schedule of Ending Inventory (Boxes and Other Dining Suppliers - 2010);[66]
j. 2009 Schedule of Purchases (Boxes and Dining Supplies);[67]
k. 2010 Schedule of Purchases (Boxes and Dining Supplies);[68]
l. 2009 Supporting Documents for Boxes and Other Dining Supplies;[69]
m. 2010 Supporting Documents for Boxes and Other Dining Supplies;[70]
n. Reconciliation of ITR and Inventory list.

Upon review of the voluminous invoices and official receipts of petitioner's suppliers,[71] the commissioned ICPA was able to provide reconciliation and re-computation schedules of the ending inventory in taxable years 2009 and 2010 to account for the alleged discrepancy.

Reconciliation for Calendar Year (CY) 2009:

PARTICULARS	PER INVENTORY LISTINGS	PER FS/ ITR	DIFFERENCE	REFERENCE
MI-DONUTS				
FLOUR MIXES	1,022,429.97	1,022,429.97	-	
FILLINGS	1,369,167.67	1,369,167.67	-	
FLAVORINGS	140,115.79	140,115.79	-	
TOPPINGS	2,045,050.75	2,009,442.79	35,607.96	
SUGARS	659,471.48	659,471.48	-	
SHORTENING	2,479,026.41	2,479,026.41	-	
MI-BAKERY	401,103.71	401,103.72	(0.01)	
MI-PANCAKE	-	35,603.34	(35,603.34)	
MI-SAVORY	1,283,892.22	1,110,767.16	173,125.06	
MI-SOUP	-	14,205.03	(14,205.03)	
MI-BREAKFAST/LUNCH/DINNER	-	27,226.98	(27,226.98)	
MI-OMELET	-	12,348.85	(12,348.85)	

[61] Exhibits "P-17-AA.1-ICPA" to P-17-AG.10-ICPA", USB.
[62] Exhibits "P-18-AA.1-ICPA" to P-18-AL.10-ICPA", USB.
[63] Exhibit "P-43-A-ICPA", Annex C – ICPA of the ICPA Report, USB.
[64] Exhibit "P-43-A-ICPA", Annex D – ICPA of the ICPA Report, USB.
[65] Exhibit "P-43-A-ICPA", Annex E – ICPA of the ICPA Report, USB.
[66] Exhibit "P-43-A-ICPA", Annex F – ICPA of the ICPA Report, USB.
[67] Exhibit "P-43-A-ICPA", Annex G – ICPA of the ICPA Report, USB.
[68] Exhibit "P-43-A-ICPA", Annex H – ICPA of the ICPA Report, USB.
[69] Exhibits "P-19-A-ICPA" to "P-19-FN-ICPA", USB.
[70] Exhibits "P-20-A -ICPA" to "P-20-FR.5-ICPA", USB.
[71] Exhibits "P-17-A.1" to "P-17-AG.10-ICPA", "P-18.A.1-ICPA" to "P-18-AL.12-ICPA", "P-19-A" to "P-19-FN-ICPA", "P-20-A" to "P-20-FR.5-ICPA", USB.

MI-SALAD	-	12,070.05	(12,070.05)	
MI-GOURMET SANDWICHES	-	57,641.42	(57,641.42)	
MI-WRAPS	-	7,476.37	(7,476.37)	
MI-PASTA	-	17,583.44	(17,583.44)	
MI-COLD BEVERAGES				
SOFTDRINKS	91,873.02	91,873.02	-	
PUNCH	1,044,554.66	1,044,554.66	-	
OTHER BEVERAGES	796,237.52	791,081.65	5,155.87	
MI-HOT BEVERAGES				
COFFEE	348,293.75	353,712.95	(5,419.20)	
CHOCO POWDER	38,803.28	38,803.28	-	
MI-NON-FOODS	15,831,513.67	15,831,261.67	252.00	
MI-BOXES & OTHER DINING SUPPLIES		12,590,022.85	(12,590,022.85)	Annex E-ICPA
TOTAL	27,551,533.90	40,116,990.55	(12,565,456.65)	
ADD (DEDUCT) ADJUSTMENTS				
MI-GRMO	-	247,259.65		
MI-FIXED ASSETS ORACLE	-	(2,566,527.75)		
MI-OTHERS ORACLE MIGRATION	-	3,374,451.99		
UNUSED KITCHEN & DINING SUPPLIES	-	80,513.60		
MI-QTY DIFFERENCE	-	1,916,611.88		
MI-CLEARING	-	(124,367.04)		
MI-RECEIVING ACCRUAL	-	(0.07)		
MI-QTY DIFFERENCE - FIXED ASSETS	-	680,693.68		
MI-STAGING	-	(263,750.41)		
SUB-TOTAL	-	3,344,885.53	(3,344,885.53)	
TOTAL	-	43,461,876.08		
LESS: ALLOWANCE FOR OBSOLESCENCE	-	3,153,553.06	3,153,553.06	Exhibit 12-ICPA
NET TOTAL	27,551,533.90	40,308,323.02	(12,756,789.12)	

Careful examination of the above table shows the inventory difference amounting to -₱3,320,319.33 shall remain because it was not supported with documents or reference materials from which the Court can verify the accuracy of the said accounts, to wit:

PARTICULARS	**DIFFERENCE**
MI-DONUTS - TOPPINGS	₱35,607.96
MI-BAKERY	- 0.01
MI-PANCAKE	- 35,603.34
MI-SAVORY	173,125.06
MI-SOUP	- 14,205.03
MI-BREAKFAST/LUNCH/DINNER	- 27,226.98
MI-OMELET	- 12,348.85
MI-SALAD	- 12,070.05
MI-GOURMET SANDWICHES	- 57,641.42
MI-WRAPS	- 7,476.37
MI-PASTA	- 17,583.44
MI-COLD BEVERAGES - OTHER BEVERAGES	5,155.87
MI-HOT BEVERAGES - COFFEE	- 5,419.20
MI-NON-FOODS	252.00
MI-GRMO	-247,259.65
MI-FIXED ASSETS ORACLE	2,566,527.75
MI-OTHERS ORACLE MIGRATION	-3,374,451.99
UNUSED KITCHEN & DINING SUPPLIES	-80,513.60
MI-QTY DIFFERENCE	-1,916,611.88

MI-CLEARING	124,367.04
MI-RECEIVING ACCRUAL	0.07
MI-QTY DIFFERENCE - FIXED ASSETS	-680,693.68
MI-STAGING	263,750.41
TOTAL	-₱3,320,319.33

Furthermore, scrutiny of the documents supporting the inventory difference account, "MI-Boxes & Other Dining Supplies", amounting to ₱12,590,022.85 such as Schedule of Inventory Count[72] as well as the Physical Count Sheet[73] reveal that the inventory difference was all accounted for except for Farmers MRT – BODS (₱84.78)[74] and SMMM S' Market – BODS (₱7,006.32)[75] because they were not supported with Physical Count Sheet.

Petitioner has also set-up an allowance for possible inventory obsolescence amounting to ₱3,153,553.06 as stated in its AFS.[76] The re-computation of the ending inventory of CY 2009 upon consideration of reconciling items with supporting documents shows the following:

Inventory per Inventory Listing[77]		₱27,551,534.03
Inventory per FS/ITR[78]		40,308,323.00
Difference		-12,756,788.97
Less:		
Inventory Without Supporting Documents	-₱3,320,319.33	
Inventory Without Physical Count Sheet:		
Farmers MRT - BODS	-84.78	
SMMM S' Market - BODS	-7,006.32	-3,327,410.43
Adjusted, CY 2009		-₱9,429,378.54

[72] Annex E-ICPA to Annex E.35-ICPA, USB.
[73] Exhibits "P-17-A.1-ICPA" to "P-17-AG.10-ICPA", USB.
[74] Annex E.34-ICPA, USB.
[75] Annex E.35-ICPA, USB.
[76] Exhibit "P-12-AC-ICPA", Notes to FS No. 17; Exhibit "P-12-AM-ICPA", Notes to FS No. 29; USB.
[77] Exhibit "P-15-AE-ICPA", USB.
[78] Exhibit "P-12-C-ICPA", USB.

Reconciliation for CY 2010:

PARTICULARS	PER INVENTORY LISTINGS	PER FS/ ITR	DIFFERENCE	REFERENCE
MI-DONUTS				
FLOUR MIXES	785,075.01	785,075.01	-	
FILLINGS	706,725.26	706,725.26	-	
FLAVORINGS	263,183.64	263,183.64	-	
TOPPINGS	2,939,558.33	2,939,558.33	-	
SUGARS	1,085,879.89	1,085,879.89	-	
SHORTENING	2,403,300.38	2,403,300.38	-	
MISCELLANEOUS	1,030,083.50	795,643.64	234,439.86	
MI-BAKERY	-	270,915.20	(270,915.20)	
MI-PANCAKE	-	20,444.09	(20,444.09)	
MI-SAVORY	-	356,875.70	(356,875.70)	
MI-SOUP	-	13,014.66	(13,014.66)	
MI-BREAKFAST/LUNCH/DINNER	-	48,337.13	(48,337.13)	
MI-OMELET	-	186,827.03	(186,827.03)	
MI-SALAD	-	3,109.25	(3,109.25)	
MI-GOURMET SANDWICHES	-	144,646.23	(144,646.23)	
MI-PIZZA	-	3,751.89	(3,751.89)	
MI-WRAPS	-	2,964.44	(2,964.44)	
MI-PASTA	-	15,228.82	(15,228.82)	
MI-COLD BEVERAGES	-			
SOFTDRINKS	131,782.59	131,782.59	-	
PUNCH	259,455.94	259,455.94	-	
OTHER BEVERAGES	305,332.83	305,332.86	(0.03)	
MI-HOT BEVERAGES				
COFFEE	342,724.65	342,724.65	-	
CHOCO POWDER	86,443.63	86,443.63	-	
MI-NON-FOODS	25,884,615.15	25,884,615.20	(0.05)	
MI-BOXES & OTHER DINING SUPPLIES	-	13,264,240.91	(13,264,240.91)	Annex F-ICPA
TOTAL	36,224,160.80	50,320,076.37	(14,095,915.57)	
LESS: ALLOWANCE FOR OBSOLESCENCE	-	3,153,552.06	(3,153,552.06)	
NET TOTAL	36,224,160.80	47,166,524.31	(10,942,363.51)	

Study and evaluation of the CY 2010 reconciliation table made by the ICPA also reveals that inventory difference amounting to (₱831,674.66) shall remain because it was not supported with documents or reference materials from which the Court can verify their accuracy, to wit:

PARTICULARS	DIFFERENCE
MI-DONUTS - Miscellaneous	₱234,439.86
MI-BAKERY	-270,915.20
MI-PANCAKE	-20,444.09
MI-SAVORY	-356,875.70
MI-SOUP	-13,014.66
MI-BREAKFAST/LUNCH/DINNER	-48,337.13
MI-OMELET	-186,827.03
MI-SALAD	-3,109.25
MI-GOURMET SANDWICHES	-144,646.23
MI-PIZZA	-3,751.89
MI-WRAPS	-2,964.44

MI-PASTA	-15,228.82
MI-COLD BEVERAGES - Other Beverages	-0.03
MI-NON-FOODS	-0.05
TOTAL	-₱831,674.66

Moreover, scrutiny of the documents supporting the inventory difference account, "MI-Boxes & Other Dining Supplies" amounting to ₱13,264,240.91 such as Schedule of Inventory Count[79] as well as the Physical Count Sheet[80] reveal that the inventory difference was all accounted except for Procurement – BODS amounting to (₱311.79)[81] because it was not supported with Physical Count Sheet.

Petitioner has also set-up an allowance for possible inventory obsolescence amounting to ₱3,153,553.06 as stated in its AFS.[82]

The re-computation of the ending inventory of CY 2010 upon consideration of reconciling items with supporting documents shows the following:

Inventory per Inventory Listing[83]		₱36,224,160.83
Inventory per FS/ITR[84]		47,166,523.00
Difference		-10,942,363.51
Less:		
Inventory Without Supporting Documents	-₱831,674.66	
Inventory Without Physical Count Sheet:		
Procurement - BODS	-311.79	-831,986.45
Adjusted, CY 2010		-₱10,110,377.06

[79] Annex F-ICPA to Annex F.39-ICPA, USB.
[80] Exhibits "P-18-A.1-ICPA" to "P-18-AL.12-ICPA", USB.
[81] Annex F.39-ICPA, USB.
[82] Exhibit "P-12-AC-ICPA", Notes to FS No. 17; Exhibit "P-12-AM-ICPA", Notes to FS No. 29; USB.
[83] Exhibit "P-16-AE-ICPA", USB.
[84] Exhibit "P-12-C-ICPA", USB.

From the foregoing, petitioner has a net discrepancy in its ending inventory of ₱680,998.52, to wit:

Adjusted Inventory, December 31, 2009	-₱9,429,378.54
Adjusted Inventory, December 31, 2010	-10,110377.06
Net Discrepancy	₱680,998.52

IT-3 – Disallowed Charitable Contributions – ₱1,973,327.65.

Based on ICPA's inquiry, these pertain to petty disbursements of thirty-nine (39) stores in 2010 to external parties *e.g.*, individuals in the community where the store is located. However, petitioner did not present any schedule nor relevant supporting documents to refute the respondent's disallowance.

The Court agrees with the ICPA's conclusion that considering no reconciliation and relevant supporting documents were provided, the disallowed charitable contribution amounting to ₱1,973,327.65 is proper.

IT-4 – Income Payments Not Subjected to EWT – ₱71,142,981.01.

Respondent's analysis of petitioner's income payments per Trial Balance as against the Alphalist of Payees (BIR Form 1604E) disclosed that there were income payments that were not subjected to EWT, which is a violation of RR No. 2-1998, as amended. The total discrepancy amounting to ₱71,142,981.01 was disallowed for failure to withhold and remit the corresponding withholding tax pursuant to Section 34(K) of the 1997 NIRC, as amended:

	Goods	Services	Rentals	Prof/ Brokerage	Prof/ Management Fee	Director's Fee	TOTAL
Prepaid Rent	-	-	18,623,120.04	-	-	-	18,623,120.04
Prepaid Rent – Current	-	-	125,233.34	-	-	-	125,233.34
Advanced Rental	-	-	539,546.09	-	-	-	539,546.09
Prepaid Insurance	-	1,045,791.14	-	-	-	-	1,045,791.14
Prepaid Interest	-	353,930.70	-	-	-	-	353,930.70
Prepaid Others	-	-	4,214,128.63	-	-	-	4,214,128.63
Building and Improvements	-	4,288,498.32	-	-	-	-	4,288,498.32
Store and Leasehold Improvements	-	17,533,729.27	-	-	-	-	17,533,729.27
Store/ Office Furniture and Fixtures	7,044,957.44	-	-	-	-	-	7,044,957.44

Store/ Office Equipment	10,642,210.26	-	-	-	-	-	10,642,210.26
Kitchen Dining Equipment	13,033,334.86	-	-	-	-	-	13,033,334.86
Transportation Equipment	1,766,266.68	-	-	-	-	-	1,766,266.68
Software Cost	-	4,814,470.04	-	-	-	-	4,814,470.04
Deposit – Rentals	-	-	3,774,277.84	-	-	-	3,774,277.84
Refundable Deposit	-	-	562,631.52	-	-	-	562,631.52
Prepaid Rent - Non-Current	-	-	996,415.16	-	-	-	996,415.16
Local Purchases	776,224,130.80	-	-	-	-	-	776,224,130.80
Insurance	-	1,144,125.00	-	-	-	-	1,144,125.00
Freight and Other Charges	-	-	-	2,542,207.00	-	-	2,542,207.00
Music and Décor	141,242.39	-	-	-	-	-	141,242.39
Production Cost	-	62,029,639.60	-	-	-	-	62,029,639.60
Rental – Equipment	-	-	52,408.93	-	-	-	52,408.93
Rental - Office/ Store	-	-	4,944,981.93	-	-	-	4,944,981.93
Repairs and Maintenance	3,220,759.71	-	-	-	-	-	3,220,759.71
Boxes and Other Dining Supplies	11,231,862.16	-	-	-	-	-	11,231,862.16
Cleaning and Sundry Supplies	4,635,555.36	-	-	-	-	-	4,635,555.36
Glassware and Kitchen Supplies	438,028.51	-	-	-	-	-	438,028.51
Linen and Uniform	1,126,605.32	-	-	-	-	-	1,126,605.32
Office Supplies	6,644,317.70	-	-	-	-	-	6,644,317.70
Audit, Legal and Other Fees	-	-	-	783,659.90	2,786,509.35	-	3,570,169.25
Insurance Expense	-	941,327.34	-	-	-	-	941,327.34
Medical Expense	-	1,579,044.13	-	-	-	-	1,579,044.13
Seminar and Training	-	744,832.83	-	-	-	-	744,832.83
Ice and Refrigeration	1,004,307.71	-	-	-	-	-	1,004,307.71
Light, power and water	-	18,472,665.37	-	-	-	-	18,472,665.37
Telephone, telex and postage	-	4,418,136.93	-	-	-	-	4,418,136.93
Management fee	-	-	-	-	52,512,343.85	-	52,512,343.85
Transportation expense	-	32,151,379.94	-	-	-	-	32,151,379.94
Travelling expense	-	989,806.38	-	-	-	-	989,806.38
Bank service charges	-	112,049.07	-	-	-	-	112,049.07
Director's Fee	-	-	-	-	-	620,000.00	620,000.00
Dues and subscription	-	373,844.78	-	-	-	-	373,844.78
Inauguration Cost	-	27,702.19	-	-	-	-	27,702.19
Janitorial Expense	-	2,601,257.94	-	-	-	-	2,601,257.94
QC Research Development Cost	-	1,219,012.95	-	-	-	-	1,219,012.95
Representation Expense	-	3,509,005.31	-	-	-	1,243,047.80	4,752,053.11
Security Agency Fee	-	748,784.49	-	-	-	-	748,784.49
Collection Fee – Ministop	-	121,794.92	-	-	-	-	121,794.92
Miscellaneous Expense	-	993,518.84	-	-	-	-	993,518.84
Advertising Expense	-	12,224,499.47	-	-	-	-	12,224,499.47
Promotions	-	1,463,817.51	-	-	-	-	1,463,817.51
Local advertising expense	-	1,357,756.13	-	-	-	-	1,357,756.13
Local promo expense	-	1,360,627.49	-	-	-	-	1,360,627.49
Interest expense	-	384,866.81	-	-	-	-	384,866.81
Interest expense (PAS 39)	-	1,496,322.64	-	-	-	-	1,496,322.64
Per Trial Balance	837,153,578.90	**178,510,237.53**	33,832,743.48	3,325,866.90	55,298,853.20	1,863,047.80	1,109,984,327.81
Per Alphalist	791,540,415.22	144,204,561.68	40,523,418.48	783,659.90	52,627,314.52	1,863,047.80	1,031,542,417.60
Not subjected to EWT	45,613,163.68	34,305,675.85	(6,690,675.00)	2,542,207.00	2,671,538.68	-	78,441,910.21
Reconciliation: Protest Letter	2,887,133.71	(41,925,044.94)	30,840,172.55	385,333.33	513,482.13	-	(7,298,923.22)
Not subjected to EWT (FDDA)	**48,500,297.39**	**(7,619,369.09)**	**24,149,497.55**	**2,927,540.33**	**3,185,020.81**	-	**71,142,986.99**

Petitioner raised three arguments. *First*, respondent simply assumed that all account titles in the Trial Balance and AFS are subject to EWT and therefore applied the EWT rate for each item. Petitioner maintains that tax assessment must be based on facts and respondent cannot issue an assessment against the taxpayer based on a mere presumption.[85] *Second*, petitioner claims that there was no reference to the particular suppliers or specific transactions that are being assessed with EWT. The FDDA did not provide sufficient verifiable details that would show the legal and factual basis for subjecting the same to EWT. *Third*, petitioner refers to the finding of the ICPA that there are accounts that should not be subjected to EWT on payments made to (i) exempt entities (general professional partnership); (ii) credit cards; and (iii) non-regular suppliers.

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[85] *Collector of Internal Revenue v. Alberto D. Benipayo*, G.R. No. L-13656, 13 January 1962.

Based on the review of the ICPA, the respondent failed to consider the following items.

INCOME PAYMENT	PER TB AND FDDA	PER ALPHALIST	RECONCILING ITEMS	REMAINING DISCREPANCY
	A	B	C	D=A-B-C
1. Purchase of Goods	840,040,712.61	791,540,415.22	33,172,031.70	15,328,265.69
2. Services	136,585,192.59	144,204,561.68	12,215,741.04	(19,385,110.13)
3. Rentals	64,672,916.03	40,523,418.48	33,991,625.71	(9,842,128.16)
4. Professional Fee/ Brokerage	3,711,200.23	783,659.90	2,240,315.08	687,225.25
5. Professional Fee/ Management Fee	55,812,335.33	52,627,314.52	2,717,773.01	467,247.80
TOTAL	**1,100.822,356.79**	**1,029,679,369.80**	**84,337,486.54**	**(13,194,499.55)**

Below is the detailed reconciliation prepared by the ICPA and marked as Annex I-ICPA.

1. Goods – ₱33,172,031.70.

Particulars	Amount
Not Subjected to EWT per FDDA	₱48,500,297.39
Reconciliations:	
Production Cost (Erroneous Adjustment to FDDA)	(7,297,214.31)
Production Cost (Transfer)	10,932,168.41
Part of Local Purchases	(17,432,051.35)
PPE Adjustments	(19,367,053.62)
Payments to Non-Regular Suppliers	(7,880.83)
Total Reconciling Items	(33,172,031.70)
Not Subjected to EWT per ICPA	₱15,328,265.69

a. Production Cost – (₱7,297,214.31).

Study of the reconciliation made by the ICPA in Annex I-ICPA reveals that the amount of ₱7,297,214.31 was erroneously included by the respondent as additional production cost (Goods) in the FDDA.[86] The ICPA made an adjustment to properly break down the account to its correct classifications.

b. Production Cost (subject to 1% EWT) – ₱10,932,168.41.

The ICPA made the adjustment to correct the balance of "Production Overhead cost at 1%" amounting to

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[86] Exhibit "P-2-E-ICPA", USB. *on*

₱10,932,168.41 which was originally included in the account "Production Overhead Cost at 2% to its proper classifications. This is also discussed under 2.h.

c. Local purchases – (₱17,432,051.35).

Per petitioner's allegation, there were various purchases of goods which were locally purchased and were considered twice by the respondent amounting to ₱17,432,051.35, broken down as follows:

		Annex I.9-ICPA
Account	**Amount**	**Reference**
Boxes and Other Dining Supplies	₱11,231,862.16	Exhibit P-2-E-to F-ICPA
Cleaning and Other Sundry Supplies	4,635,555.36	
Glassware and Kitchen Utensils	438,028.51	
Glassware and Kitchen	1,126,605.32	
TOTAL	**₱17,432,051.35**	

However, no proof was submitted to determine whether the said accounts were already included in the "Local Purchases" account in the FDDA amounting to ₱776,224,130.80, thus, petitioner's assertion cannot be given credit.

d. PPE Adjustments – (₱19,367,053.62).

The ICPA prepared account reconciliations[87] and made adjustments to properly break down the account to its correct classifications which the Court considered.

e. Payments to Non-Regular Suppliers – (₱7,880.83).

Petitioner was able to provide sufficient evidence such as summary of non-regular suppliers (Petty cash)[88], petty cash voucher, invoices and Official

[87] Annex I-ICPA, Annex I.10-ICPA, USB.
[88] Annex I.11-ICPA, USB.

Receipts (ORs)[89] for the payment of its trivial casual purchases from non-regular suppliers amounting to ₱7,880.83, thus assessment on this item will be cancelled.

2. Services – ₱12,215,741.04.

Particulars	Amount
Not Subjected to EWT per FDDA	(₱7,619,369.09)
Reconciliations:	
Bank service charges	(112,049.07)
Interest expense	(384,866.81)
Interest expense (PAS 39)	(1,496,322.64)
Prepaid Interest	(353,930.70)
Insurance expense (double entry)	(1,144,125.00)
Production Cost (add back adjustment in FDDA)	30,815,937.75
Production Cost (erroneous adjustment to FDDA)	(10,448,014.97)
Production Cost (Transfers)	(56,360,702.08)
Freight and Other Charges (transfer)	2,542,207.00
Audit, Legal and Other Fees (transfer)	1,233,572.68
PPE Adjustments	23,495,718.34
Payments to Non-Regular Suppliers	(3,165.54)
Total reconciling items:	(12,215,741.04)
Not subjected to EWT (ICPA)	(₱19,835,110.13)

a. Bank service charge – (₱112,049.07).

The Court agrees with the ICPA that bank service charges are not subject to withholding tax, thus the amount of ₱112,049.07 will be cancelled.

b. Interest expense – (₱384,866.81).

[89] Exhibits "P-23-F.1-ICPA" to "P-23-F.141-ICPA", USB.

The Court agrees with the ICPA that interest payments of the petitioner to a loan from a local bank which were appropriately disclosed in the AFS[90] amounting to ₱384,866.81 is not subject to withholding tax, and thus will be cancelled.

c. Interest expense (PAS 39) – (₱1,496,322.64).

Petitioner argued that the accrual of additional interest to payables were also subjected to withholding taxes despite its nature. Unfortunately, petitioner failed to support the foregoing allegations with documentary evidence, thus, the assessment item will remain.

d. Prepaid Interest – (₱353,930.70).

Petitioner also asserts that having the same nature as the interest expense, these prepayments were not subjected to withholding taxes. However, petitioner failed to provide documentary evidence, thus, the assessment item will also remain.

e. Insurance Expense – (₱1,144,125.00).

In the FDDA, the respondent included two (2) line items for insurance expense in the amounts of ₱1,144,125.00 and ₱941,327.34. However, upon evaluation of petitioner's Trial Balance,[91] the Court agrees with the ICPA that the petitioner has only one (1) account for insurance which is 900113 – Insurance Expense with the audited balance of ₱941,327.34, thus assessment on insurance expense amounting to ₱1,144,125.00 will be cancelled.

f. Production Cost – ₱30,815,937.75.

The Court agrees with the reconciliation[92] of the ICPA that this is just an adjustment to reverse

[90] Exhibit "P-12-Z-ICPA", Notes to FS No. 12; Exhibit "P-12-AF-ICPA", Notes to FS No. 22, USB.
[91] Exhibit "R-14", BIR Records, p. 1333.
[92] Annex I-ICPA, USB.

reclassifications made by the respondent in the FDDA in order to properly distribute the account to its appropriate classifications by adding back the stated amount to the 2% assessment.

g. Production Cost – (₱10,448,014.97).

In relation to 1.a and 2.f hereof, the Court agrees with the ICPA that based on his reconciliation,[93] the respondent erroneously included additional production cost in FDDA in excess of the total production cost per GDI's trial balance. The ICPA reversed the adjustment to properly break down the account to its correct classifications.

h. Production Cost (transfers) – (₱56,360,702.08).

The total production costs amounting to ₱62,029,639.60 were all subjected to 2% withholding tax by the respondent. However, upon reconciliation[94] of the ICPA, production cost consists of various overheads which payments were clearly subjected to 1%, 2%, 5%, 10% withholding taxes. It also includes income payments not subject to income tax which were redistributed accordingly, broken down as follows:

Production Overhead Cost @ 1%	₱10,932,168.41
Production Overhead Cost @ 2%	5,668,938.65
Production Overhead Cost @ 5%	1,161,221.40
Production Overhead Cost @ 10%	205,997.74
Not Subject to Withholding Tax	44,061,314.53
Total Production Cost	₱62,029,640.73[95]

The ICPA made the adjustment to properly correct the balance of "Production Overhead cost @ 2%" amounting to ₱5,668,937.52[96] (₱62,029,639.60 less ₱56,360,702.08) to its correct classifications.

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[93] Annex I-ICPA, USB.
[94] Annex I.5-ICPA, USB.
[95] Rounding off Difference of 1.13.
[96] Rounding off Difference of 1.13.

i. Freight and other charges subject to 2% - ₱2,542,207.00.

The Court agrees with the reconciliation[97] of the ICPA that this is just an adjustment to reverse reclassifications made by the respondent in the FDDA in order to properly distribute the account to its appropriate classifications by adding back the stated amount to the 2% assessment. The same were included in the analysis for 10% withholding tax as brokerage fee. However, upon scrutiny of the invoices and ORs[98], only the amount of ₱124,539.46 were subjected to 2% withholding tax amounting to ₱2,490.80. Thus, the assessment on freight and other charges of ₱2,417,667.54 (₱2,542,207.00 less ₱124,539.46) shall remain.

			Annex I.8-ICPA
Payee	**Amount**	**CWT**	**Reference**
DIMENSIONAL SERVICE CORPORATION	₱16,408.30	₱328.17	Exhibit P-23-D.15 to D.17-ICPA
DIMENSIONAL SERVICE CORPORATION	4,673.62	93.47	Exhibit P-23-D.28 to D.30-ICPA
DIMENSIONAL SERVICE CORPORATION	15,909.60	318.20	Exhibit P-23-D.31 to D.34-ICPA
DIMENSIONAL SERVICE CORPORATION	2,756.21	55.12	Exhibit P-23-D.31 to D.34-ICPA
DIMENSIONAL SERVICE CORPORATION	5,612.68	112.25	Exhibit P-23-D.59 to D.61-ICPA
DIMENSIONAL SERVICE CORPORATION	13,674.08	273.48	Exhibit P-23-D.62 to D.65-ICPA
DIMENSIONAL SERVICE CORPORATION	5,151.93	103.04	Exhibit P-23-D.62 to D.65-ICPA
DIMENSIONAL SERVICE CORPORATION	3,125.00	62.50	Exhibit P-23-D.66 to D.68-ICPA
DIMENSIONAL SERVICE CORPORATION	16,041.03	320.82	Exhibit P-23-D.84 to D.86-ICPA
DIMENSIONAL SERVICE CORPORATION	6,012.54	120.25	Exhibit P-23-D.87 to D.89-ICPA
DIMENSIONAL SERVICE CORPORATION	6,528.90	130.58	Exhibit P-23-D.95 to D.97-ICPA
DIMENSIONAL SERVICE CORPORATION	13,637.01	272.74	Exhibit P-23-D.101 to D.103-ICPA
DIMENSIONAL SERVICE CORPORATION	9,388.27	187.77	Exhibit P-23-D.157 to D.159-ICPA
DIMENSIONAL SERVICE CORPORATION	5,620.29	112.41	Exhibit P-23-D.160 to D.162-ICPA
TOTAL	₱124,539.46	₱2,490.80	

j. Audit, legal and other fees subject to 2% - ₱1,233,572.68.

The Court agrees with the ICPA that based on his reconciliation,[99] this is an adjustment to properly break down the account to its correct classifications which was originally included in the FDDA amounting to ₱2,266,961.42 at 15% withholding tax, to wit:

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[97] Annex I-ICPA, Annex I.8-ICPA, USB.
[98] Exhibits "P-23-D.1-ICPA" to "P-23-D.179-ICPA", USB.
[99] Annex I-ICPA, USB.

Audit, Legal and Other Fees @ 2%	₱1,233,572.68
Audit, Legal and Other Fees @ 10%	1,033,388.74
TOTAL	₱2,266,961.42

k. PPE Adjustments – ₱23,495,718.34.

In relation to 1.d hereof, the ICPA prepared account reconciliations[100] and made adjustments to properly break down the account to its correct classifications.

l. Payments to Non-Regular Suppliers – (₱3,165.54).

In relation to 1.e hereof, petitioner was able to provide sufficient evidence such as summary of non-regular suppliers (Petty cash)[101], petty cash voucher, invoices and ORs[102] for the payment of its trivial casual purchases from non-regular suppliers amounting to ₱3,165.54, thus assessment on this item will be cancelled.

3. Rentals – ₱33,991,625.71.

Particulars	Amount
Not Subjected to EWT per FDDA	₱24,149,497.55
Refundable Deposit (PAS 39)	(562,631.52)
Deposit Rental	(3,774,277.84)
Production Cost (add back adjustment in FDDA)	(30,815,937.75)
Production Cost (Transfers)	1,161,221.40
Total reconciling items:	(33,991,625.71)
Not subjected to EWT per ICPA	(₱9,842,128.16)

[100] Annex I-ICPA, Annex I.10-ICPA, USB.
[101] Annex I.11-ICPA, USB.
[102] Exhibits "P-23-F.1-ICPA" to "P-23-F.141-ICPA", USB.

a. Refundable deposit – (₱562,631.52).

The Court agrees with the ICPA finding that the refundable deposits, due to their nature which is only given to the lessor in compliance with the lease agreement and will be refunded to petitioner at the end of the lease term, do not result to an income payment subject to 5% withholding tax, thus, assessment on refundable deposit amounting to ₱562,631.52 will be cancelled.

b. Deposit Rental – (₱3,774,277.84).

The Court agrees with the ICPA finding that the Deposit Rentals, due to their nature which is only given to the lessor in compliance with the lease agreement and will be refunded to petitioner at the end of the lease term, do not result to an income payment subject to 5% withholding tax, thus, assessment on Deposit Rentals amounting to ₱3,774,277.84 will be cancelled.

c. Production Cost – (₱30,815,937.75).

This was already settled in 2.f hereof.

d. Production Cost (subject to 5% EWT) – ₱1,161,221.40.

This assessment item was already settled in 2.h hereof.

4. Professional Fee/ Brokerage – ₱2,240,315.08.

Particulars	Amount
Not subjected to EWT (FDDA)	₱2,927,540.33
Reconciliations:	
Payments to General Professional Partnership	(909,994.56)
Audit, Legal and Other Fees (subject to WTC)	(27,500.00)
Production Cost (Transfers)	205,997.74
Freight and Other Charges (transfer)	(2,542,207.00)
Audit, Legal and Other Fees (transfer)	1,033,388.74
Total reconciling items:	(2,240,315.08)
Not subjected to EWT per ICPA	₱687,225.25

a. Payments to General Professional Partnership (GPP) – (₱909,994.56).

Scrutiny of schedule of payment to GPP[103] which is exempt from withholding tax under Section 26 of the 1997 NIRC, as amended, and its corresponding supporting documents[104] reveal that only payments to GPP in the amount of ₱639,210.00 were properly supported with official receipts, while the amount of ₱270,784.56 were only supported with journal entries. Thus, assessment on payment to GPP amounting to ₱270,784.56 shall remain, to wit:

Payee	Amount	Reference
SGV & CO	₱15,034.56	Exhibit "P-23-A.7-ICPA"
SGV & CO	75,000.00	Exhibit "P-23-A.8-ICPA"
Romulo Mabanta Buenaventura	180,750.00	Exhibit "P-23-A.9-ICPA"
	₱270,784.56	

b. Audit, Legal and Other Fees paid as per diem – (₱27,500.00).

Scrutiny of schedule of Audit, Legal and Other Fees (Subject to WTC)[105] and the computerized journal entries which were also approved by the petitioner's VP- Finance and Administration[106] reveals that the amount of ₱27,500.00 were already subjected to withholding tax. Thus, the assessment item will be cancelled.

c. Production Cost (subject to 5% EWT) – ₱205,997.74.

This assessment item was already settled in 2.h hereof.

d. Freight and Other Charges (Transfer) – (₱2,542,207.00).

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[103] Annex I.1-ICPA, USB.
[104] Exhibits "P-23-A.1-ICPA" to "P-23-A.9-ICPA", USB.
[105] Annex I.3-ICPA, USB.
[106] Exhibits "P-23-C.1-ICPA" to "P-23-C.10-ICPA", USB.

This assessment item was already discussed in 2.j hereof.

e. Audit, Legal and Other Fees (Transfer) – ₱1,033,388.74

This assessment item was already settled in 2.i hereof.

5. Professional Fee/ Management Fee – ₱2,717,773.01.

Particulars	**Amount**
Not subjected to EWT (FDDA)	₱3,185,020.81
Reconciliation:	
Management fee (timing difference)	(450,811.59)
Audit, Legal and Other Fees (transfer)	(2,266,961.42)
Total reconciling items:	(2,717,773.01)
Not subjected to EWT (ICPA)	₱467,247.80

a. Management Fee (timing difference) – (₱450,811.59).

Petitioner asserts that this is just a timing difference. However, evaluation of schedule of Management Fee[107] and the computerized journal entries and the computation of Management Fee[108] reveal that the payments made in the last quarter of 2009 that were allegedly included in the first quarter return of 2010 amounting to ₱13,477,707.60 were not supported with documents, thus, the Court cannot ascertain their accuracy. Hence, the assessment item on management fee amounting to ₱450,811.59 will remain.

b. Audit, legal and other fees subject to 2% - (₱2,266,961.42).

This was already discussed in 2.i hereof.

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[107] Annex I.2-ICPA, USB.
[108] Exhibits "P-23-C.1-ICPA" to "P-23-C.10-ICPA", USB.

From the foregoing, petitioner has income payments not subjected to withholding tax in the amount of ₱6,684,861.83, broken down as follows:

Particulars	Goods	Services	Rentals	Prof/ Bro Fee	Prof/ Mngt Fee	TOTAL	Reference
Not subjected to EWT (FDDA)	48,500,297.39	(7,619,369.09)	24,149,497.55	2,927,540.33	3,185,020.81	71,142,986.99	
Reconciliation:							
Payments to GPP	-	-	-	(639,210.00)	-	(639,210.00)	Annex I.1-ICPA
Mgnt fee (timing difference)	-	-	-	-	-	-	Annex I.2-ICPA
Audit, Legal and Other Fees	-	-	-	(27,500.00)	-	(27,500.00)	Annex I.3-ICPA
Bank service charges	-	(112,049.07)	-	-	-	(112,049.07)	Exh P-2-E-ICPA
Interest expense	-	(384,866.81)	-	-	-	(384,866.81)	Exh P-12-Z-ICPA
Interest expense (PAS 39)	-	-	-	-	-	-	Exh P-2-E-ICPA
Prepaid Interest	-	-	-	-	-	-	Annex I.4-ICPA
Insurance expense (double entry)	-	(1,144,125.00)	-	-	-	(1,144,125.00)	Exh P-2-E-ICPA
Refundable Deposit (PAS 39)	-	-	(562,631.52)	-	-	(562,631.52)	Exh P-2-E-ICPA
Deposit Rental	-	-	(3,774,277.84)	-	-	(3,774,277.84)	Exh P-2-E-ICPA
Production Cost	-	30,815,937.75	(30,815,937.75)	-	-	-	Exh P-2-E-to F.6-ICPA
(add back adjustment in FDDA)							
Production Cost	(7,297,214.31)	(10,448,014.97)	-	-	-	(17,745,229.28)	Exh P-2-E-to F.6-ICPA
(erroneous adjustment to FDDA)							
Production Cost (Transfers)	10,932,168.41	(56,360,702.08)	1,161,221.40	205,997.74	-	(44,061,314.53)	Annex I.5-ICPA
Freight&Other Charges (transfer)	-	2,417,667.54	-	(2,542,207.00)	-	(124,539.46)	Annex I.8-ICPA
Audit,Legal&Other Fees (transfer)	-	1,233,572.68	-	1,033,388.74	(2,266,961.42)	-	
Part of Local	-	-	-	-	-	-	Annex I.9-ICPA
Purchases (double entry)							
PPE Adjustments	(19,367,053.62)	23,495,718.34	-	-	-	4,128,664.72	Annex I.10-ICPA
Payments to Non	(7,880.83)	(3,165.54)	-	-	-	(11,046.37)	Annex I.11-ICPA
Regular Suppliers							
Total reconciling items:	(15,739,980.35)	(10,490,027.16)	(33,991,625.71)	(1,969,530.52)	(2,266,961.42)	(64,458,125.16)	
Not subjected to EWT	32,760,317.04	(18,109,396.25)	(9,842,128.16)	958,009.81	918,059.39	6,684,861.83	

IT-5 – Additional Income on Undeclared Sales per SLS, SAWT & LN Data – ₱2,818,172.67.

In the Details of Discrepancies attached to the FDDA, respondent assessed petitioner for additional income for undeclared sales in the total amount of ₱2,818,172.67 after comparing petitioner's Summary of List of Sales (SLS), Summary Alphalist of Withholding Tax (SAWT) and Third Party Information (TPI) from BIR Audit Information Tax Exemption and Incentives Division (AITEID) (LN/Relief Data). The unreconciled discrepancy in sales reflects the amount of revenue/income which petitioner failed to declare in its AFS/ITR. This assessment was made pursuant to Sec. 32 of the 1997 NIRC, as amended, and should be subject to income tax pursuant to Sec. 27 of the same Code, to wit:

Year 2010	SLS	SAWT	LN/Relief Data	Undeclared Sales
Coca Cola	0.00	8,000,000.00	0.00	8,000,000.00
	SLS	**LN/Relief Data**	**Client Certification**	
Queen City Food Chain	60,903,363.38	68,381,692.69	0.00	7,478,329.31
Pridez Foods Services	54,089,089.60	60,431,845.00	54,101,025.95	11,936.35
Golden Frost	48,166,028.46	53,198,004.90	48,188,464.03	22,435.57
Donutification	29,767,498.63	33,180,597.83	0.00	3,413,099.20
Golden Tribloc	61,514,535.67	64,621,017.48	61,211,251.01	0.00
Rise Shine	17,736,818.95	20,216,884.20	0.00	2,480,065.25
Choco Hill Food Chain	11,830,398.01	12,622,621.55	0.00	792,223.54
Brilliant Bakers	1,639,657.57	2,074,668.83	1,630,382.80	0.00
North Area Bakeries	76,425,628.08	81,936,136.06	77,109,497.05	683,868.97
Metro Bakers Prime Realty	250,315.45	331,826.50	298,972.95	48,657.50
Consolidated Global Imports	-	69,960.59	0.00	0.00
Undeclared sales				**22,930,615.69**
Multiplied by GP rate				12.29%
Additional taxable income on undeclared sales				**2,818,172.67**

Petitioner argued that in the absence of confirmation requests and third-party certifications, the additional income on undeclared sales based on TPI is unverified and not founded on facts and the resulting assessment is invalid and must be cancelled for lack of factual and legal bases.

In the implementation of the BIR's RELIEF system, Revenue Memorandum Order (RMO) No. 04-2003[109] states:

> I. BACKGROUND
>
> The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.
>
> The RELIEF System was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations

[109] Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002.

> Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.
>
> The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. **The consolidation and matching of information <u>with other externally sourced data</u> will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential.**[110]

Corollarily, RMO No. 46-2004[111] has laid down the procedures to be followed for TPI discrepancy, as follows:

> xxx
> III. PROCEDURES
> xxx
>
> <u>Action on Protested LNs due to TPI discrepancy</u>
>
> The <u>Revenue Officer</u> assigned to handle the Letter Notice <u>**shall**</u>:
>
> xxx xxx xxx
>
> 2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.
>
> 3. <u>**Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.**</u>
>
> 3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:
>
> 3.1.1 **Prepare "Confirmation Requests"** (using the format prescribed in Annex "C" of RMO No. 30-2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS[.]

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[110] Emphasis and underscoring supplied.
[111] Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30- 2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

> 3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.
>
> 3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:
>
> 3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:
>
> a. **Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source** (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);
>
> b. **Secure a sworn statement from the TPI source** thru the RDO/LTDO/LTAID having jurisdiction over the same; and,
>
> c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.[112]

Based on the foregoing guidelines, in assessment proceedings, if there arises TPI discrepancies, the taxpayer is required to submit schedules and reconciliations to substantiate its claim. In addition, the taxpayer is required to execute a sworn statement to attest to the veracity and authenticity of the schedules and documents presented or submitted. On the other hand, the BIR is mandated to obtain sworn statements from TPI sources to attest to the veracity of the data provided. To obtain the sworn statements, the BIR must first send confirmation requests to the third-party sources or coordinate with the Revenue District Office (RDO) having jurisdiction over the third-party sources, to course through the confirmation requests to the latter.

Upon examination of the records of the case, respondent did not send confirmation requests to TPI sources in relation to

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[112] Emphasis and underscoring supplied.

the undeclared sales amounting to ₱14,930,615.69 (₱22,930,615.69 - ₱8,000,000.00), thus, no sworn statements were executed by the said third party sources.

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[113]

For lack of factual and legal bases, respondent's findings on undeclared income amounting to ₱1,834,972.67 (₱14,930,615.69 x 12.29%) corresponding to the alleged undeclared sales of ₱14,930,615.69 due to TPI matching should thus be cancelled.

Furthermore, the alleged undeclared revenue amounting to ₱8,000,000.00 pertains to a contract between petitioner and Coca Cola Bottlers Philippines, Inc. whereby the latter extended a marketing subsidy to petitioner to be utilized over the course of the seven (7)-year contract.[114] This marketing support fund was not fully utilized. Thus, petitioner recorded the fund as other income at the end of the contract in the year 2017. Petitioner has declared the other income in its 2017 Annual Income Tax Return (AFIR)[115] and AFS[116] accordingly.

Examination of petitioner's 2017 AITR and AFS revealed that petitioner declared an amount of ₱14,452,198.00[117] for the account "Other Income – Rebates". To corroborate, petitioner also presented the breakdown of Other Income for the year 2017:[118]

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[113] *Collector of Internal Revenue (now Commissioner) v. Alberto D. Benipayo*, G.R. No. L-13656, 31 January 1962.
[114] Exhibits "P-28-A-ICPA" to "P-28-E-ICPA", USB.
[115] CY 2017 AITR, Exhibit "P-29-BN-ICPA", Schedule 3, Line 1, USB.
[116] 2017 AFS, Exhibit "P-29-AL-ICPA", Notes to FS No. 24, USB.
[117] Exhibit "P-29-BN-ICPA", Schedule 3, Line 1, USB.
[118] Annex K-ICPA, USB.

GOLDEN DONUTS, INC. OTHER INCOME BREAKDOWN FOR THE YEAR 2017		
	Amount	**Reference**
Claims from Suppliers	398,190.71	
Design Fees	58,514.02	
Development Fee	1,800,000.00	
FA Charges on Damaged or Lost Assets	151,219.35	
Insurance	1,316.27	
Linen & Uniforms	678,407.60	
Marketing Support	7,474,022.02	
Other Charges	591,839.56	
Penalty Charges	1,040,502.95	
Premium Items	558,360.86	
Rebates	282,725.42	
Scrap	72,770.90	
Service Charge	13,392.80	
Training Fees	1,215,574.48	
Unaccounted Variance	115,361.49	
OI-Others	**14,452,198.43**	Exhibit "P-29-BN-ICPA", Schedule 3, Line 1.
		Exhibit "P-29-AL-ICPA", Note to FS No. 24.
OI-Boxes	273,818.80	
OI-Condiments	33,545.99	
OI-Overages	87,315.86	
OI-Service Charge	334,421.95	
Interest accretion on rental Deposit	443,470.00	
TOTAL	**15,624,771.03**	Exhibit "P-29-BL-ICPA", Line 33.

It is noted from the above table that the account "Other Income-Others" of ₱14,452,198.43 includes "Marketing Support" of ₱7,474,022.02. However, without details of the "Marketing Support" account, the Court cannot ascertain whether the said amount is the unutilized portion of the Marketing Support Fund in the amount of ₱8,000,000.00 granted by Coca-Cola Bottlers Philippines, Inc. to the petitioner back in 2010. Thus, the assessment on additional taxable income on undeclared sales amounting to ₱983,200.00 shall remain:

Undeclared Sales	₱8,000,000.00
Multiply by GP Rate	12.29%
Additional Taxable Income	₱ 983,200.00

IT-6 – Additional Income on undeclared Purchases per SLP, 1604E & LN Data – ₱184,878.92.

In the Details of Discrepancies attached to the FDDA, respondent claimed that petitioner had additional income in the amount of ₱184,878.92 on undeclared purchases after matching the Summary List of Purchases (SLP), Alphabetical List of Payees, and TPI from BIR AITIED (LN/ Relief Data). Hence, the corresponding income tax due thereon was assessed pursuant to Sections 32 and 27 of the 1997 NIRC, as amended.

Year 2010	**SLP**	**1604E**	**LN Data**	**Undeclared Purchases**
Consolidated Prime Development Corp.	0.00	0.00	1,319,424.72	1,319,424.72
Undeclared purchases				**1,319,424.72**
Divided by COS rate				87.71%
Grossed-up				1,504,303.64
Multiplied by GP rate				12.29%
Additional taxable income on undeclared purchases				**184,878.92**

Petitioner adduced that any assessment arising from comparison of taxpayer's data with TPI, which is not accompanied by third party certifications as to amounts per TPI under RMO No. 04-03 should be declared void.

As discussed earlier, in assessment proceedings, if there arises TPI discrepancies, the BIR is mandated to obtain sworn statements from TPI sources to attest to the veracity of the data provided. To obtain the sworn statements, the BIR must first send confirmation requests to the third-party sources or coordinate with the RDO having jurisdiction over the third-party sources, to course through the confirmation requests to the latter.

Upon examination of the records of the case, respondent did not send confirmation requests to TPI sources in relation to undeclared purchases amounting to ₱1,319,424.72, thus, no sworn statements were executed by the said third party sources.

Based on the foregoing, the Court can only conclude that respondent failed to comply with its own regulations, thus resulting in an assessment arising from or based on unverified information.

For lack of factual and legal bases, respondent's findings on undeclared income amounting to ₱184,878.92 corresponding to the alleged undeclared purchases of ₱1,319,424.72 due to TPI matching should be cancelled.

In view of the foregoing, Assessment Notice No. IT-116-LOA-0000151-10-19-188 is sustained but in the reduced amount of ₱3,099,889.60, computed as follows:

IT-1	Disallowed Royalty & Management Fee	₱10,577.33
IT-1.1	Undeclared Royalty Income	-
IT-2	Discrepancy in Ending Inventory	680,998.52
IT-3	Disallowed Charitable Contributions	1,973,327.65
IT-4	Income Payments Not Subjected to EWT	6,684,861.83
IT-5	Additional Income on Undeclared Sales	983,200.00
IT-6	Additional Income on Undeclared Purchases	-
Total Adjustments Per Audit		10,332,965.33
Income Tax Rate		30%
Income Tax Due		3,099,889.60
Less: Income Tax Paid		-
Basic Income Tax Deficiency		₱3,099,889.60

VALUE-ADDED TAX

The respondent assessed the petitioner for deficiency VAT for TY 2010 in the amount of ₱32,509,243.18. Details of assessment reflected in the FDDA,[119] are as follows:

	Assessment Details	Tax Base	VAT (12%)
VT-1	Undeclared Sales per Recon of SLS, SAWT and LN Data	22,930,615.69	2,751,673.88
VT-2	Additional Sales on Undeclared Purchases per SLP, 1604E and LN Data	1,504,303.64	180,516.44
VT-3	Collections for Nationwide Advertising and Promotions Programs	129,323,118.54	15,518,774.22
VT-4	Unsupported input per SLP and SLI vs VATR		16,950,527.75
VT-5	Disallowed due to violations in invoicing requirements		257,533.51
	Less: Final Withholding VAT per 1600		(3,149,782.62)
	TOTAL		32,509,243.18

VT-1 – Undeclared Sales per Recon of SLS, SAWT & LN Data – ₱22,930,615.69.

In relation to "IT-5", respondent noted unreconciled discrepancies amounting to ₱22,930,615.69 on the matching of sales per SLS as against SAWT and BIR AITEID Data (LN/Relief) and which were assessed pursuant to Sections 32 and 106 of the Tax Code.

Petitioner, on the other hand, repleads its argument that in the absence of confirmation requests and third-party certifications, the additional income on undeclared sales based on TPI is unverified and not founded on facts and the resulting assessment is invalid and must be cancelled for lack of factual and legal bases.

As already settled in the discussion under IT - IT-5, for failure to provide substantial documents, assessment on undeclared sales amounting to ₱8,000,000.00 shall be cancelled for failure of the respondent to send confirmation requests, consequently, no sworn statements were executed from TPI sources.

[119] Exhibit "P-17", Docket – Vol. 1, pp. 152 to153.

VT-2 – Additional Sales on undeclared Purchases per SLP, 1604E & LN Data – ₱1,504,303.64.

In relation to "IT-6", respondent noted a discrepancy on the declared purchases per SLP as against Relief Data and 1604E. As such, these purchases were grossed-up to come up with the taxable sales not declared amounting to ₱1,504,303.64. This issue is assessed pursuant to Section 106 of the Tax Code as amended by RR 16-2005 and RR 4-2007.

Likewise, petitioner repleads its argument that any assessment arising from comparison of taxpayer's data with TPI, which is not accompanied by third party certifications as to amounts per TPI under RMO No. 04-03 should be declared void.

As discussed earlier under IT – IT-6, assessment on undeclared purchases amounting to ₱1,319,424.72 was cancelled for failure of the respondent to provide confirmation requests and sworn statements from TPI sources. Consequently, the grossed-up sales on undeclared purchases amounting to ₱1,504,303.64 (₱1,319,424.72 ÷ 87.71%) will also be cancelled.

VT-3 – Collections for Nationwide Advertising and Promotions Program – ₱129,323,118.54.

Respondent's analysis of the Trial Balance and as disclosed in the Notes to FS reveals that petitioner collects from its various franchisees a certain amount that will be used for nationwide advertisement and promotional programs of the Dunkin Donuts Systems in the Philippines. Petitioner being a trustee of the fund and having sole discretion to facilitate the implementation of the said advertising programs, enjoys the benefit of input taxes derived from said advertising and promotional expenses. Respondent maintains that collections for these funds should be considered as gross receipts subject to VAT pursuant to Sections 105 and 108 of the 1997 NIRC, as amended. cm

Year 2010	Franchisee's Net Sales	Rate per Franchise Agreement	Collections subject to VAT
Local Advertising Fund (LAF)	2,351,329,428.00	0.5%	11,756,647.14
Local Promotional Fund (LPF)	2,351,329,428.00	0.5%	11,756,647.14
National Advertising Fund (NAF)	2,351,329,428.00	4.5%	105,809,824.26
Vatable collections			**129,323,118.54**

Petitioner argues that the following accounts are not collections of the petitioner from its franchisees but represent amounts set aside for the following expenses/purposes:

1. National Advertising Fund (NAF) – these are contributions held in trust by the company and shall be exclusively used in the implementation of the national advertising and promotion program. Petitioner attached BIR Ruling DA-137-97,[120] which states that "GDI's receipt of the NAF contributions from its franchisees are merely held in trust and could realize no gain or profit as a result of its receipt but which is to be used solely for national advertising expenses and not includible in GDI's gross income; hence, GDI is not subject to income tax and consequently in the expanded withholding tax".

2. Local Advertising Fund – the credit amount represents set up of local advertising and local promotions. This is done to advertise the brand or support an existing product, new product, store anniversary or local store promotion.

3. Local Store Marketing Fund – the credit amount represents various correcting entries. Petitioner claims that these are not collections but merely set-up/adjusting entries, thus, should not be considered as collections subject to VAT.

Upon review of BIR Ruling No. DA-137-97 dated March 21, 1997, petitioner's NAF was classified as a trust fund not subject to taxes. Since the petitioner's receipt of the NAF contributions from its franchisees are merely held in trust and could realize no gain or profit as a result of its receipt but which is to be used

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[120] Exhibits "P-34-A-ICPA" to "P-34-B-ICPA", USB.

solely for national advertising and promotions program, and advertising-related expenses for the benefit of the said franchisees are not includible in petitioner's gross income; hence, petitioner is not subject to IT and consequently in the EWT.

It was also reiterated/stated in petitioner's Notes to Financial Statement Nos. 11[121], 14[122], and 26[123] that the petitioner acts as a trustee of the fund which shall be used exclusively in the implementation of the national advertising and promotions program. It was presented as "Funds Held in Trust" account in the Statement of Financial Position.

Furthermore, as shown in the Journal Entries[124] for the account "NAF Head Office – National Advertising Fund", petitioner did not claim input VAT credits arising out of disbursements from National Advertising Fund. This was confirmed by the commissioned ICPA in his report[125].

Moreover, in the Details of Discrepancies attached to the FDDA, petitioner was assessed the amount of ₱129,323,118.54[126] representing VAT on the contributions of its franchisees to the NAF. However, scrutiny of the PAN[127] and FLD[128] reveals that only the amount of ₱12,983,466.20 was being assessed, a substantial amount compared to the FDDA. Petitioner was not given the opportunity to refute and provide supporting documents for the assessed amount in the FDDA during the PAN and FLD stages, thus a violation of petitioner's right to due process.

In *Commissioner of Internal Revenue v. First Sumiden Circuits, Inc.*,[129] this Court ruled that an assessment not included in the PAN or FAN/FLD cannot be added to the FDDA for it is a violation of taxpayer's right to due process, to wit:

> "We agree with the court *a quo* that this assessment item is void for violating respondent's right to due process.

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[121] Exhibit "P-12-Y-ICPA", USB.
[122] Exhibit "P-12-AA-ICPA", USB.
[123] Exhibit "P-12-AI-ICPA", Franchise Agreement, c; USB.
[124] Exhibits "P-33-A.1-ICPA" to "P-33-Z.8-ICPA", USB.
[125] Docket, Vol. - IV, Exhibit "P-41", ICPA Report, p. 2172.
[126] Exhibit "P-2-G-ICPA", USB.
[127] BIR Records, Exhibit "R-14", p. 1511.
[128] Exhibit "P-3-L-ICPA", USB.
[129] CTA EB No. 1831, February 12, 2020.

The "realized forex gain not subjected to tax" only appears in the FDDA, and is not found in the PAN and FLD.

Section 228 of the NIRC of 1997 provides that 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.

Since an entirely new assessment item in the form of "realized forex gain not subjected to tax" was included in the FDDA, petitioner was not given the chance to refute within the administrative level the said assessment. It should therefore be cancelled."

From the foregoing, assessment on the collections for Nationwide Advertising and Promotions Program amounting to ₱129,323,118.54 will be cancelled.

VT-4 – Unsupported Input per SLP & SLI vs. VATR – ₱16,950,527.75.

In the Details of Discrepancy attached to the FDDA, respondent disallowed petitioner's input VAT in the amount of ₱16,950,527.75 due to alleged discrepancy between the input tax per SLP and SLI as against petitioner's VAT Returns:

Per Summary List of Purchases	Purchases	Input Tax
Goods	904,382,564.33	
Services	395,475.49	
Capital Goods	4,974,866.12	
Total	909,752,905.94	109,170,348.71
Per Summary List of Importation	72,207,032.77	8,664,843.93
Total Purchases per Summary Lists	981,959,938.71	117,835,192.65
Total Purchases per VATR	1,149,461,994.68	137,935,439.36
Unsupported purchases and input tax per PAN	(167,502,055.97)	(20,100,246.72)
Recon:		
Input on payments to NRFC, not reflected in SLP	26,248,188.58	3,149,782.63
Net unsupported input tax	**(141,253,867.39)**	**(16,950,464.09)**

Petitioner claims that respondent failed to consider the following reconciling items:

a. The amount of ₱7,764,457.30 pertain to valid various expenses erroneously encoded in petitioner's SLS but should have been in the SLP.

b. The difference of ₱7,857,266.09 pertains to capital goods transaction which was declared in the SLP at the time of purchase but for purposes of VAT return, only the amortized input VAT is reported to compute the total VAT payable since for monthly transactions with ₱1 Million and above, they must be deferred and amortized over 5 years or estimated useful life whichever is shorter.

c. Other reconciling items.

To support its allegations, petitioner submitted the following for review by the ICPA:

a. 2010 Quarterly VAT Returns (2550Q)[130];

b. 2010 Sales Transaction, Reconciliation of Listing for Enforcement[131];

c. 2010 Purchase Transaction, Reconciliation of Listing for Enforcement[132];

d. Imports Transaction, Reconciliation of Listing for Enforcement[133];

e. 2010 Unsupported Input VAT Reconciliation Schedule[134]; and

f. 2010 Supporting Documents for Unsupported Input VAT in SLS [135].

The ICPA, upon checking the documents presented, noted that the difference pertains to various purchases not encoded in SLP and presented the following corresponding explanations, to wit:

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130 Exhibits "P-7-A.1-ICPA" to "P-M.3-ICPA", USB.
131 Exhibits "P-24-A-ICPA" to "P-24-AA-ICPA", USB.
132 Exhibits "P-31-A-ICPA" to "P-31-MS-ICPA", USB.
133 Exhibits "P-35-A-ICPA" to "P-35-B-ICPA", USB.
134 Annex M- ICPA, USB.
135 Exhibits "P-36-A.1-ICPA" to P-36-C.71-ICPA", USB.

	VAT Base	VAT Amount
Net unsupported input tax	(141,253,867.39)	(16,950,464.09)
Reconciling items:		
a. Management fee not encoded in SLP	52,505,491.78	6,300,659.01
b. Advertising fee not encoded in SLP	12,198,319.07	1,463,798.29
c. Purchase of capital goods not encoded in SLP – 2010	30,888,278.00	3,706,591.86
d. Purchase of capital goods not encoded in SLP – 2009 and below	39,563,275.00	4,747,590.39
e. Invoices erroneously encoded in SLP	1,682,334.50	201,880.14
f. Brokerage and other charges	705,953.17	84,718.38
Remaining unsupported input tax	**(3,710,215.87)**	**(445,226.02)**

a. Management fee not encoded in SLP – ₱52,505,491.78.

ICPA noted that this pertains to payments to Antares Management, Inc. which were erroneously not included in the SLP. This is duly supported by the technical service agreement as attached in 2.3.1 and marked as *Exhibits "P-11-A-ICPA" to "P-11-H-ICPA"* and further supported with remittance documents[136].

Upon review and study of the documents presented, the Court cannot give evidentiary value to the Technical and Assistance Agreement[137] between Antares Management Inc. and petitioner, as well as the journal entries[138] because they are not valid supporting documents for input taxes, thus, management fee amounting to ₱52,505,491.78 and its corresponding input tax of ₱6,300,659.01 remains unsupported.

b. Advertising fee not encoded in SLP – ₱12,198,319.07.

The ICPA confirmed that petitioner was not able to present a schedule nor supporting documents to enable the Court to validate the advertising fee.

Without supporting documents, assessment on VAT on Advertising fee amounting to ₱1,463,798.29 will remain.

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136 Annex M.1-ICPA, USB; Exhibits "P-36-A.1-ICPA" to "P-36-A.20-ICPA", USB.
137 Exhibits "P-11-A-ICPA" to "P-11-H-ICPA", USB.
138 Annex M.1-ICPA, USB; Exhibits "P-36-A.1-ICPA" to "P-36-A.20-ICPA", USB.

c. Purchase of capital goods not encoded in SLP (2010) – ₱30,888,278.00.
ICPA finds that petitioner was not able to properly declare its purchases of capital goods in its VAT returns for the years 2007 to 2010. Thus, an amended VAT return for the 4th quarter of 2010 was filed to recognize the input VAT from these purchases which is marked as *Exhibit "P-7-M.1-ICPA" to "P-7-M.3-ICPA"*. The total amount of the additional declaration for capital goods amounted to ₱70,451,553.00 which includes purchases from 2010.

d. Purchase of capital goods not encoded in SLP (2009) – ₱39,563,275.00.

ICPA finds that the capital goods purchased in the previous year (CY 2009) are also included in GDI's reconciliation. However, the Court was not able to establish if these purchases were actually not included in the previous year's declarations.

This pertains to letters c and d above. In its amended quarterly VAT return for CY 2010[139], petitioner declared purchases of capital goods exceeding one million amounting to ₱70,451,553.00[140] with corresponding input VAT of ₱8,454,186.36[141] and the input tax on Purchases of Capital Goods exceeding one Million Deferred for the Succeeding Period of ₱7,053,857.36. The amount of ₱1,400,329.00 is the amortization of Capital Goods for CY 2010. Petitioner alleged that the capital goods amounting to ₱70,451,553.00[142] are purchases for the years 2009 (₱39,563,253.25)[143] and 2010 (₱30,888,265.50)[144] as indicated in its summary of purchased capital goods.

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139 Exhibits "P-7-M.1-ICPA" to "P-7-M.3-ICPA", USB.
140 Exhibit "P-7-M.2-ICPA", Line 21C, USB.
141 Exhibit "P-7-M.2-ICPA", Line 21D, USB.
142 Difference of ₱34.25.
143 Annex M.4-ICPA, USB.
144 Annex M.2-ICPA, USB.

However, upon scrutiny of the documents presented such as summary of capital goods purchased for years 2010[145] and 2009[146] and its corresponding invoices and official receipts[147], only input VAT amounting to ₱76,568.67 were supported with proper documents.

Consequently, only the input tax of ₱76,568.67 shall be spread evenly over a period of sixty (60) months or the actual number of months comprising the estimated useful life of a capital good, pursuant to Sec. 4.110-3 of RR No. 16-05. However, petitioner failed to provide a schedule of amortization of capital goods, thus, the amount of ₱76,568.67 should also be denied:

SUPPLIER	VAT	REFERRENCE
MICROPHASE CORPORATION	₱508.93	Exhibit P-36-B.14-ICPA
SLID INNOVATIVE INFRASTRUCTURE, INCORPORATED	115.72	Exhibit P-36-B.15-ICPA
MICROPHASE CORPORATION	508.93	Exhibit P-36-B.19-ICPA
NEW DATCHE PHILIPPINES TRADERS CORPORATION	3,208.93	Exhibit P-36-B.20-ICPA
SLID INNOVATIVE INFRASTRUCTURE, INCORPORATED	1,904.46	Exhibit P-36-B.21-ICPA
MICROPHASE CORPORATION	10,500.00	Exhibit P-36-B.32-ICPA
SLID INNOVATIVE INFRASTRUCTURE, INCORPORATED	535.72	Exhibit P-36-B.33-ICPA
American Technologies	1,607.14	Exhibit P-36-B.52-ICPA
MECHANICAL HANDLING EQUIPMENT CO., INC.	2,320.27	Exhibit P-36-B.54-ICPA
MICRO IMAGE INTERNATIONAL	3,642.86	Exhibit P-36-B.66-ICPA
DEXTERTON CORPORATION	717.86	Exhibit P-36-B.76-ICPA
MICRO IMAGE INTERNATIONAL	4,861.07	Exbibit P-36-B.84-ICPA
MICRO IMAGE INTERNATIONAL	6,428.57	Exhibit P-36-B.90-ICPA
MICRO IMAGE INTERNATIONAL	13,125.00	Exhibit P-36-B.94-ICPA
MICRO IMAGE INTERNATIONAL	17,314.29	Exhibit P-36-B.95-ICPA
MICROPHASE CORPORATION	6,578.57	Exhibit P-36-B.96-ICPA
QUARTZ BUSINES	1,232.14	Exhibit P-36-B.104-ICPA
QUARTZ BUSINES	525.00	Exhibit P-36-B.109-ICPA
QUARTZ BUSINES	750.00	Exhibit P-36-B.121-ICPA
	76,385.46	
Scan Livingston Graphics, Inc.	183.21	Exhibit P-36-D.3-ICPA
TOTAL	₱76,568.67	

In this regard, assessment on input VAT on purchases of capital goods for CY 2009 and 2010

[145] Annex M.2-ICPA, USB.
[146] Annex M.4-ICPA, USB.
[147] Exhibits "P-36-B.1-ICPA" to "P-36-B.121-ICPA" (CY 2010); "P-36-D.1-ICPA" to "P-36-D.9-ICPA" (CY 2009), USB.

is upheld, but only up to the amount of amortization declared in its 4th quarter CY 2010 of ₱1,400,329.00.

e. Invoices erroneously encoded in SLP – ₱1,682,334.50.

ICPA noted that other invoices were also erroneously encoded in SLP.

Evaluation and scrutiny of the schedules[148] and the supporting invoices and official receipts[149] reveals that the invoices erroneously encoded in the SLP amounting to ₱1,682,334.50 have a corresponding VAT amount of ₱201,880.14. However, only input VAT amounting to ₱5,731.86 was supported with proper documents while the amount of ₱196,148.28 were in violation of accounting and invoicing requirements, thus, the assessment will remain but only as to the amount of ₱196,148.28, broken down as follows:

SUPPLIER NAME	VAT	REFERENCE	REASON
JOHANS FABRICON CORPORATION	₱1,440.00	Exhibit P-36-C.1-ICPA	Without TIN
JOHANS FABRICON CORPORATION	835.71	Exhibit P-36-C.3-ICPA	Without TIN
JOHANS FABRICON CORPORATION	1,585.71	Exhibit P-36-C.4-ICPA	Without TIN
wall crown design center	428.57	Exhibit P-36-C.5-ICPA	Without TIN
COMMUNITY COMMERCIAL	338.13	Exhibit P-36-C.6-ICPA	Without TIN
COMMUNITY COMMERCIAL	575.88	Exhibit P-36-C.7-ICPA	Without TIN
COMMUNITY COMMERCIAL	324.64	Exhibit P-36-C.8-ICPA	Without TIN
COMMUNITY COMMERCIAL	236.20	Exhibit P-36-C.9-ICPA	Without TIN
DQA DESIGN AND PLANNiNG, INC.	10,392.00	Exhibit P-36-C.10-ICPA	Without TIN
DQA DESIGN AND PLANNING, INC.	10,392.00	Exhibit P-36-C.11-ICPA	Without TIN
DONUTS ADS INC.	345.26	Exhibit P-36-C.13-ICPA	Without TIN
WORLDINNOX ENTERPRISE	2,410.71	Exhibit P-36-C.14-ICPA	Without TIN
DONUTS ADS INC.	230.16	Exhibit P-36-C.15-ICPA	Without TIN
BROSS FURNITEK CONTRACTORS	2,121.42	Exhibit P-36-C.16-ICPA	Without TIN
DONUTS ADS INC.	19.42	Exhibit P-36-C.17-ICPA	Without TIN
ELEKSIS MARKETING CORPORATION	7,285.71	Exhibit P-36-C.18-ICPA	Without TIN
BROSS FURNITEK CONTRACTORS	685.68	Exhibit P-36-C.19-ICPA	Without TIN

[148] Annex M-ICPA; Annex M.3-ICPA. USB.
[149] Exhibits "P-36-C.1" to "P-36-C-71", USB.

BROSS FURNITEK CONTRACTORS	1,885.71	Exhibit P-36-C.20-ICPA	Without TIN
BROSS FURNITEK CONTRACTORS	5,785.68	Exhibit P-36-C.21-ICPA	Without TIN
wall crown design center	1,514.73	Exhibit P-36-C.22-ICPA	Without TIN
DONUTS ADS INC.	31.82	Exhibit P-36-C.23-ICPA	Without TIN
DONUTS ADS INC.	386.29	Exhibit P-36-C.24-ICPA	Without TIN
AXIS COMPUTER, INC	18,214.29	Exhibit P-36-C.25-ICPA	Without TIN
TECHNOFAB STEEL CO.	50,292.13	Exhibit P-36-C.26-ICPA	Without TIN
DONUTS ADS INC.	231.82	Exhibit P-36-C.27-ICPA	Without TIN
DONUTS ADS INC.	11.57	Exhibit P-36-C.28-ICPA	Without TIN
COMMUNITY COMMERCIAL	300.00	Exhibit P-36-C.29-ICPA	Without TIN
COMMUNITY COMMERCIAL	501.42	Exhibit P-36-C.30-ICPA	Without TIN
SPECIAL OFFICE CONCEPT	304.38	Exhibit P-36-C.31-ICPA	Without TIN
JOHANS FABRICON CORPORATION	621.43	Exhibit P-36-C.32-ICPA	Without TIN
JOHANS FABRICON CORPORATION	2,455.71	Exhibit P-36-C.33-ICPA	Without TIN
JOHANS FABRICON CORPORATION	2,571.43	Exhibit P-36-C.34-ICPA	Without TIN
JOHANS FABRICON CORPORATION	126.43	Exhibit P-36-C.35-ICPA	Without TIN
JOHANS FABRICON CORPORATION	1,026.00	Exhibit P-36-C.36-ICPA	Without TIN
JOHANS FABRICON CORPORATION	14,244.64	Exhibit P-36-C.37-ICPA	Without TIN
DONUTS ADS INC.	46.29	Exhibit P-36-C.38-ICPA	Without TIN
DONUTS ADS INC.	190.92	Exhibit P-36-C.39-ICPA	Without TIN
DONUTS ADS INC.	17.36	Exhibit P-36-C.40-ICPA	Without TIN
DONUTS ADS INC.	637.81	Exhibit P-36-C.41-ICPA	Without TIN
DONUTS ADS INC.	29.15	Exhibit P-36-C.42-ICPA	Without TIN
DONUTS ADS INC.	13.50	Exhibit P-36-C.43-ICPA	Without TIN
DONUTS ADS INC.	39.46	Exhibit P-36-C.44-ICPA	Without TIN
RUEY SHING REFRIGERATION EQUIPMENT PHILIPPINES, CORP.	6,868.12	Exhibit P-36-C.45-ICPA	Without TIN
DONUTS ADS INC.	24.81	Exhibit P-36-C.46-ICPA	Without TIN
DONUTS ADS INC.	23.14	Exhibit P-36-C.47-ICPA	Without TIN
DONUTS ADS INC.	78.89	Exhibit P-36-C.48-ICPA	Without TIN
RUEY SHING REFRIGERATION EQUIPMENT PHILIPPINES, CORP.	9,689.49	Exhibit P-36-C.49-ICPA	Without TIN
DONUTS ADS INC.	59.17	Exhibit P-36-C.50-ICPA	Without TIN
DONUTS ADS INC.	59.17	Exhibit P-36-C.51-ICPA	Without TIN
DONUTS ADS INC.	26.04	Exhibit P-36-C.52-ICPA	Without TIN
TECHNOLUX EQUIPMENT AND SUPPLY CORPORATION	298.93	Exhibit P-36-C.53-ICPA	Without TIN
DQA DESIGN AND PLANNING, INC.	5,196.00	Exhibit P-36-C.54-ICPA	Without TIN
DONUTS ADS INC.	13.43	Exhibit P-36-C.55-ICPA	Without TIN
DONUTS ADS INC.	43.39	Exhibit P-36-C.56-ICPA	Without TIN
DONUTS ADS INC.	172.62	Exhibit P-36-C.57-ICPA	Without TIN
DONUTS ADS INC.	230.17	Exhibit P-36-C.58-ICPA	Without TIN

SAN PABLO SINING-LAYA CORPORATION	4,200.00	Exhibit P-36-C.59-ICPA	Without TIN
DONUTS ADS INC.	19.73	Exhibit P-36-C.60-ICPA	Without TIN
DONUTS ADS INC.	230.18	Exhibit P-36-C.61-ICPA	Without TIN
DONUTS ADS INC.	230.18	Exhibit P-36-C.62-ICPA	Without TIN
PRECIOUS VENTURE	554.46	Exhibit P-36-C.63-ICPA	Without TIN
AGB MACBUILD CORP.	3,750.00	Exhibit P-36-C.65-ICPA	Without TIN
POST MASTER DEPOT, INC.	713.57	Exhibit P-36-C.67-ICPA	Without TIN
BROSS FURNITEK CONTRACTORS	1,542.86	Exhibit P-36-C.68-ICPA	Without TIN
R.D.A. PORTABLE TOILET RENTAL SERVICE	875.16	Exhibit P-36-C.69-ICPA	Without TIN
SOMERVILLE REFRIGIRATION INC.	2,604.00	Exhibit P-36-C.70-ICPA	Without TIN
BROSS FURNITEK CONTRACTORS	4,628.56	Exhibit P-36-C.71-ICPA	Without TIN
Unsupported	12,889.00		
TOTAL	₱196,148.28		

f. Brokerage and other charges – ₱705,953.17.

ICPA noted that charges for insurance and freight were entered as part of importation for VAT return. It should be part of local purchases (service) but entered in SLP partly in goods. To refute respondent's assessment, petitioner submitted original[150] and amended[151] quarterly VAT Returns for the 4th quarter of CY 2010 as well as schedule of brokerage and other fees.[152]

With the submission of the original and amended quarterly VAT Returns for the 4th quarter of CY 2010 only, the Court cannot determine the veracity of petitioner's allegation, thus assessment on insurance and freight amounting to ₱705,953.17 and its corresponding VAT amount of ₱84,714.38 shall remain.

From the foregoing, respondent's assessment on the discrepancy between the input tax per SLP and SLI as against petitioner's VAT Returns shall remain but in the reduced amount of ₱9,890,874.98 broken down as follows:

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[150] Exhibits "P-7-L.1-ICPA" to "P-7-L.3-ICPA, USB.
[151] Exhibits "P-7-M.1-ICPA" to "P-7.
[152] Annex M-ICPA; Annex M.5-ICPA, USB.

Management Fee	₱ 6,300,659.01
Advertising Fee	1,463,798.29
Amortization of Capital Goods For 2009 & 2010	1,400,329.00
Invoices Erroneously encoded in SLP	196,148.28
Brokerages and Other Charges	84,714.38
Unsupported Identified by ICPA	445,226.02
TOTAL	₱ 9,890,874.98

VT-5 – Disallowed Due to Violations in Invoicing requirements – ₱257,533.51.

Respondent's scrutiny of the supplier's invoices disclosed that there were purchases invoices/receipts which failed to comply with the invoicing requirements as prescribed under Section 113 of the 1997 NIRC, as amended, in relation to Section 4-113-1(B) of the RR No.16-2005, as amended:

Supplier's Name	Disallowed Input VAT	Violation
DONUT 168 ADS INC	23.14	Without TIN
FLASH MEDIA CORP	1,285.20	Without TIN
GRAND POTENTIAL PRESS	14,035.71	Input VAT not segregated/Without TIN
HAMBURG TRDG CORP	4,955.36	Without TIN
HAWAIIAN COFFEE CO	81,401.79	Without TIN
INTEGRATED MFG SERVICES PROVIDER	8,773.78	Without TIN
KUDOS EVENTS MANAGEMENT INT	12,321.43	Without TIN
MALABON LONGLIFE TRDG CORP	32,268.00	Without TIN
MURPHY DISTIBUTIONS	340.39	Without TIN
NORTHERN GAS COPR	6,152.68	Without TIN
PAPERTECH	14,595.78	Without TIN
PINECREST SALES AND MKTG CORP	626.36	Without TIN
PLASTIMER INDUSTRIAL CORP	9,514.29	Without TIN
PRINT EASY ENTERPRISE	2,597.25	Without TIN
ROBTON INDUSTRIES INC	17,541.43	Without TIN
SCAN LIVINGSTON GRAPHICS	5,035.50	Without TIN
SHAQ PAPER AND PLASTIC CO LTD	3,780.00	Without TIN
TREVISO CORP	1,800.00	Without TIN
UNICOMM INGREDIENT	437.14	Without TIN
UNITED ASIA INTL PLASTIC CORP	33,503.57	Without TIN
VARIDEL CORP	6,544.73	Input VAT not segregated/Without TIN
TOTAL DISALLOWED INPUT TAX	**257,533.51**	

The respondent made a wholesale disallowance of input VAT corresponding to purchase invoices/receipts allegedly on the ground that the invoicing requirements were not complied with. Petitioner argues that the wholesale disallowance is unwarranted for being confiscatory in nature. Petitioner further argues that the respondent cannot claim that the invoicing requirements were not met when respondent failed to examine each and every VAT invoice.

The Court considered the documents submitted by the petitioner to the respondent. Upon further scrutiny of the BIR Records, invoices, and ORs[153] the Court agrees with all the findings of the respondent that input VAT amounting to ₱257,533.51 will be disallowed in violation of the invoicing requirements.

In view of the foregoing, Assessment Notice No. VT-116-LOA-0000151-10-19-189 is sustained but in the reduced amount of ₱7,958,625.86, computed as follows:

VATable Sales per VAT Return		₱1,328,738,441.67
Add: Findings per Investigation		
VT-1 Undeclared Sales	8,000,000.00	
VT-2 Additional Sales on Undeclared Purchases	-	
VT-3 Collections for NAF	-	8,000,000.00
VATable Sales per Audit		1,336,738,441.67
VAT Rate		12%
Output Tax Due per Audit		160,408,613.00
Unutilized Input Tax for the Year		129,724,365.49
Less: Audit Findings		
VT-4 Unsupported input per SLP &SLI vs. VATR	9,890,874.98	
VT-5 Disallowed due to Violation in Invoicing Requirements	257,533.51	10,148,408.49
Net Allowable Input Tax per Audit		119,575,957.00
Net VAT Due per Audit		40,832,656.00
Less: VAT Credits/Payments		
VAT Remittance per 2550M/Q	29,724,247.51	
Final VAT Withholding per 1600	3,149,782.63	32,874,030.14
Basic VAT Deficiency		₱ 7,958,625.86

FINAL TAX

The respondent assessed petitioner for the entries in the dividends payable set-up in the amounts of ₱316,361.00 and ₱4,897,939.00, or in the aggregate amount of ₱5,214,300.00. These income payments are subject to final tax that allegedly

[153] BIR Records, Exhibit "R-14", pp. 1687 to 1733.

were not properly withheld and remitted, hence, assessed in the amount of ₱522,228.26 pursuant to Section 57(A) of the 1997 NIRC, as amended, and Section 2.57.1 of RR No. 2-98, as amended:

Franchise Fee, per TB			26,256,171.00
Dividends Payable, credits per TB		13,284,954.20	
Reconciliation			
1. Dividends for domestic corp.	(2,528,028.00)	(2,528,028.00)	
2. Cancelled check	(316,361.00)	(316,361.00)	
3. To reclass double entry	(1,236,418.20)	(1,236,418.20)	
4. To correct set-up of dividend payable	(316,361.00)	-	
5. To adjust dividends payable to RE	(4,897,939.00)	-	
6. To reverse entry made in Sept.	(1,303,575.00)	(1,303,575.00)	7,900,572.00
Income payments subject to 10% final tax			34,156,743.00
Multiplied by			10%
Final tax per audit			3,415,674.30
Less: Final tax paid per 1601F			2,893,446.04
Final tax still due – basic			**522,228.26**

Petitioner has provided the composition of its final tax due **wherein the difference was located in the recorded credits in the** Dividends Payable account. Allegedly, respondent did not consider that some of the credits in the account are adjustments made to correct the dividend payable balance in the previous years.

To refute respondent's assessment, petitioner presented Final Withholding Tax Returns;[154] General Information Sheet;[155] and 2010 AFS.[156]

Upon scrutiny of the BIR Form No. 1601-F[157], petitioner indeed paid a total of ₱2,893,446.04 Final Tax for the year 2010.

Study of petitioner's AFS[158] reveals that for the years 2009 and 2010, petitioner declared Dividends of ₱5,214,300.00 as well as in its 2010 Trial Balance.[159] Evidently, the final tax paid by the petitioner on dividends payable is proper except for the amount of ₱798.26 which is unaccounted, to wit:

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154 Exhibits "P-9-A.1-ICPA" to "P-9-L.3-ICPA", USB.
155 2010 General Information Sheet marked as Exhibit "P-38-A" to "P-38-H", USB.
156 2010 Audited Financial Statements (AFS) marked as Exhibit "P-12-A" to P-12-AP", USB.
157 Exhibits "P-9-A.1-ICPA" to "P-9-L.3-ICPA", USB.
158 Exhibits "P-12-E-ICPA"; "P-12-AB-ICPA", Notes to FS No. 16, USB.
159 BIR Records, p. 1335.

Franchise Fee, per TB			₱26,256,171.00
Dividends Payable, credits per TB		13,284,954.20	
Reconciliation			
1. Dividends for domestic corp.	(2,528,028.00)	(2,528,028.00)	
2. Cancelled check	(316,361.00)	(316,361.00)	
3. To reclass double entry	(1,236,418.20)	(1,236,418.20)	
4. To correct set-up of dividend payable	(316,361.00)	(316,361.00)	
5. To adjust dividends payable to RE	(4,897,939.00)	(4,897,939.00)	
6. To reverse entry made in Sept.	(1,303,575.00)	(1,303,575.00)	2,686,272.00
Income payments subject to 10% final tax			28,942,443.00
Multiplied by			10%
Final tax per audit			2,894,244.30
Less: Final tax paid per 1601F			2,893,446.04
Final tax still due – basic			**₱798.26**

EXPANDED WITHHOLDING TAX

Income payments recorded under the Trial Balance (TB)/Financial Statements (FS) were matched with the income payments subjected to EWT per Alphalist of Payees. According to respondent, this procedure revealed that petitioner failed to subject all income payments declared on the TB/FS to EWT. Therefore, as required under the provisions of Sec. 57 of the NIRC and Sec. 2.57.2 of RR 2-1998, as amended by RR 17-2003 and RR 30-2003, deficiency EWT amounting to ₱2,310,597.50 was assessed with details as follows:

Income Payment	Discrepancy per FDDA	Rate	EWT
Goods	₱48,500,297.39	1%	₱485,002.97
Services	(7,619,375.07)	2%	(152,387.50)
Rentals	24,149,497.55	5%	1,207,474.88
Brokerage Fee	2,927,540.33	10%	292,754.03
Management Fee	3,185,020.81	15%	477,753.12
TOTAL	₱71,142,981.01		₱2,310,597.50

Petitioner repleads its arguments found in the discussion under IT-4 which the Court finds tenable.

As already settled in the discussion in IT-4, petitioner has net income payments that were not subjected to withholding tax amounting to ₱6,684,861.83. However, upon computation of its corresponding EWT, petitioner has a tax effect of -₱293,181.27, thus, petitioner should not be held responsible for withholding of taxes on the following income payments, to wit:

Income Payment	Discrepancy	Rate	Tax Effect
Goods	₱32,760,317.04	1%	₱327,603.17
Services	(18,109,396.25)	2%	(362,187.93)
Rentals	(9,842,128.16)	5%	(492,106.41)
Professional Fee/Brokerage	958,009.81	10%	95,800.98
Professional Fee/Mngt Fee	918,059.39	15%	137,708.91
TOTAL	₱6,684,861.83		₱293,181.27

DOCUMENTARY STAMP TAX

In the Details of Discrepancies attached to the FDDA, respondent assessed petitioner for deficiency DST in the amount of ₱49,161.11 on debt instruments and lease contracts pursuant to Sections 179 and 194 of the 1997 NIRC, as amended:

Source	Particulars	Amount	DST
AFS Note 25	Obligations under Finance Lease		
	Current portion	2,020,470.00	10,102.35
	Non-Current portion	814,554.00	4,072.77
Per TB	Lease Contracts:		
Per TB	Prepaid Rent	3,268,210.75	
Per TB	Advanced rental	357,791.84	
Per TB	Deposits Rental	7,330,854.42	
Per TB	Prepaid Rent - Non Current	618,349.70	
AFS Note 17	Rent Expenses	31,068,770.00	
AFS Note 18	Rent Expenses	4,997,391.00	47,643.37
DST Due:			61,818.49
Less: DST payments			12,657.38
DST still due			**49,161.11**

Petitioner argues that the 1997 NIRC, as amended, does not expressly impose a DST on finance leases. Revenue Memorandum Circular (RMC) No. 46-2014 cited by the respondent was issued only in 2014 and cannot be given retroactive application to TY 2010. In the case of DST on lease contracts which is due at the time the contract of lease is executed, petitioner asserts that there is no legal and factual basis to support the method employed by simply imposing the rate of DST on the amount of prepaid rent, rent deposits and rent expense appearing in the TB.

Petitioner also states that DST paid on debt instruments and lease contracts executed in TY 2010 was fully accounted for.

In response, respondent stated that RMC No. 46-2014 is a clarificatory issuance on the very nature of finance lease being an obligation. The imposition of DST on all debt instruments has long been covered under Section 179 of the 1997 NIRC, as amended. Hence, respondent stands firm in his position that DST on financial lease is assessable under Section 179. DST is imposed on rental expenses on the premise that there is an agreed contract of lease executed by the petitioner and the lessor. There being no detailed reconciliation of an existing and new contract of lease, respondent has no recourse but to impose DST on rental expenses claimed by petitioner.

The ICPA stated in his report that respondent was not able to consider payments made by GDI's lessor. Since DST payments could be shouldered by either of the parties, it is not appropriate to subject all of the lease to deficiency. Furthermore, it is not conclusive that all rent accounts are subject to DST since it is imposed upon the execution of the lease contracts. The method used by the BIR to recompute is assuming that the Company executes contract annually and at the beginning of the year which is quite unusual.

However, petitioner only submitted schedule of DST payments[160], statement of account, and official receipts[161] as proof of DST payments amounting to ₱14,870.34. Without the related Lease Contract and the detailed reconciliation of an existing and new contract, the Court cannot verify the accuracy

[160] Annex O-ICPA, USB.
[161] Exhibits "P -39-A.1-ICPA" to "P-39-AB.2-ICPA", USB.

of the DST being paid and as to whether the DST will be shouldered by the lessor.

On the other hand, assessment on the non-current portion of the lease contracts amounting to ₱814,554.00 and ₱618,349.70 will be cancelled on the basis that DST was already collected on the original issue of the debt instrument. Hence, DST assessment is upheld but in the reduced amount of ₱42,256.03, computed as follows:

Source	Particulars	Amount	DST
AFS Note 25	Obligation Under Finance Lease:		
	Current Portion	2,020,470.00	₱10,102.35
	Non-Current Portion	-	-
	Lease Contract:		
Per TB	Prepaid Rent	3,268,210.75	
Per TB	Advance Rental	357,791.84	
Per TB	Deposit-Rentals	7,330,854.42	
Per TB	Prepaid Rent-NonCurrent	-	
AFS Note 17	Rent Expense	31,068,770.00	
AFS Note 18	Rent Expense	4,997,391.00	
		47,023,018.01	47,024.02
DST Due			57,126.37
DST Payment			14,870.34
DST Still Due			₱42,256.03

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency IT, VAT, FT, and DST for CY 2010 are to be **UPHELD IN PART**, while the assessment on EWT shall be **CANCELLED**. Accordingly, petitioner is **ORDERED TO PAY respondent the aggregate amount of FORTY-ONE MILLION EIGHT HUNDRED THIRTY-FIVE THOUSAND TWO HUNDRED THIRTEEN AND 17/100 (₱41,835,213.17)**, inclusive of 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C)(3) of the NIRC of 1997, as amended, computed until December 31, 2017, as follows:

	IT	VAT	FT	DST	TOTAL
Basic Tax Due	₱3,099,889.60	₱7,958,625.86	₱798.26	₱ 42,256.03	₱11,101,569.75
Add: 25% Surcharge	774,972.40	1,989,656.47	199.57	10,564.01	2,775,392.44
20% Deficiency Interest Apr. 16, 2011 to Mar. 31, 2015[162] *(₱3,099,889.60 x 20% x 1446 / 365)*	2,456,131.70				2,456,131.70
20% Deficiency Interest Jan. 26, 2011 to Mar. 31, 2015 *(₱7,958,625.86 x 20% x 1526 /365)*		6,654,719.49			6,654,719.49
20% Deficiency Interest Jan. 16, 2011 to Mar. 31, 2015 *(₱798.26 x 20% x 1536/365)*			671.85		671.85
20% Deficiency Interest Jan. 16, 2011 to Mar. 31, 2015 *(₱42,256.03 x 20% x 1536/365)*				35,564.53	35,564.53
Total Amount Due, Mar. 31, 2015	₱6,330,993.70	₱16,603,001.81	₱1,669.68	₱88,384.56	₱23,024,049.76
20% Deficiency Interest Apr. 01, 2015 to Dec. 31, 2017					
(₱3,099,889.60 x 20% x 1006 /365)	1,708,761.06				1,708,761.06
(₱7,958,625.86 x 20% x 1006 /365)		4,387,056.23			4,387,056.23
(₱798.26 x 20% x 1006/365)			440.03		440.03
(₱42,256.03 x 20% x 1006/365)				23,292.91	23,292.91
20% Delinquency Interest Apr. 01, 2015 to Dec. 31, 2017					
(₱6,483,864.97 x 20% x 1006 /365)	3,489,851.87				3,489,851.87
(₱16,603,001.81 x 20% x 1006 /365)		9,152,120.45			9,152,120.45
(₱1,669.68x 20% x 1006/365)			920.38		920.38
(₱88,384,.56 x 20% x 1006/365)				48,720.48	48,720.48
Total Amount Due, Dec. 31, 2017	**₱11,529,606.64**	**₱30,142,178.49**	**₱3,030.08**	**₱160,397.96**	**₱41,835,213.17**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid deficiency taxes due as of March 31, 2015, in the amount of ₱23,024,049.76 or equivalent to ₱7,569.55[163] per day, computed from January 1, 2018 until full payment thereof pursuant to Section 249© of the NIRC of 1997, as amended by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

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[162] BIR Records, Exhibit "R-11", Due Date per FLD and Assessment Notices, pp. 1663-1684.

[163] ₱23,024,049.76 x 12% / 365.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(on leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice

ATTESTATION

I attest 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.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice