REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MEDICARD PHILIPPINES, INC. (MEDICARD),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7948

Members:

BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, ***JJ.***

Promulgated:

JUN 5 2014 11:41 a.m.

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DECISION

RINGPIS-LIBAN, J.

This is a Petition for Review filed by Medicard Philippines, Inc. **(Medicard)** seeking to reverse and set aside the Final Decision on Disputed Assessment **(FDDA)** issued by the respondent Commissioner of Internal Revenue **(CIR)** finding petitioner liable for deficiency value-added tax **(VAT)** in the amount of ₱196,614,476.69 for Taxable Year 2006.

STATEMENT OF FACTS

The following Statement of Facts is not disputed by the parties.

Petitioner Medicard is a corporation duly organized and existing under and by virtue of the laws of the Philippines[1], with principal offices at the 9th Floor,

[1]Exhibits "A" and "B", docket, pp. 511-512.

Sagittarius Building, H.V. Dela Costa St., Salcedo Village, Makati City.[2] Its primary purpose is to

> "establish, maintain, adopt, and engage in the business of developing and promoting prepaid medical, health maintenance, and related services, with the aim or (sic) providing and offering to the public, a comprehensive, systematic and prevention-oriented concept of medical and health maintenance programs, thru the accreditation and integration and professional management, of the services of a pool of licensed and competent physicians, surgeons, medical specialists, and the participation of medical clinics, hospitals, medical and health research centers of institutions".[3]

It is a VAT-registered taxpayer with Taxpayer Identification No. 000-476-995-000 as evidenced by its Bureau of Internal Revenue **(BIR)** Certificate of Registration No. 0000015774 dated June 21, 1994.[4] It had Clearance to Operate as a Health Maintenance Organization **(HMO)** from January 13, 2004 to January 12, 2011.[5]

Respondent is the Commissioner of the BIR vested with authority to administer and enforce national internal revenue laws, including, among others, the power to issue tax assessments. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its First, Second, and Third Quarterly VAT Returns through Electronic Filing and Payment System **(EFPS)** on April 20, 2006, July 25, 2006 and October 20, 2006[6], respectively, and its Fourth Quarterly VAT Return[7] on January 25, 2007.

Finding discrepancies between its Income Tax and VAT Returns, respondent CIR issued against petitioner Letter Notice **(LN)** No. 122-VT-06-00-00020[8] dated September 20, 2007. This was followed by the issuance of a Preliminary Assessment Notice[9] **(PAN)** against petitioner for deficiency VAT, which the latter received on November 9, 2007[10]. A Memorandum[11] dated December 10, 2007 was likewise issued recommending the issuance of a Formal Assessment Notice **(FAN)** against petitioner. The Memorandum was submitted to

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[2]Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), docket, p. 140.
[3]Exhibit "C", docket, p. 513.
[4]Par. 3, Facts Admitted, JSFI, docket, p. 141.
[5]Exhibits "D", "E", "F", and "G", docket, pp. 527-530.
[6]Exhibits "CC-1", "CC-2", and "CC-3".
[7]Exhibit "CC-4".
[8]Exhibit "1", BIR Records, p. 11.
[9]Exhibit "3", BIR Records, p. 22.
[10]Exhibit "3-A", BIR Records, p. 22.
[11]Exhibit "4", BIR Records, p. 44.

the CIR and signed by Revenue Officers Romualdo I. Plocios and Matias D. Fadri III and Group Supervisor Juvy S. dela Peña.

On January 4, 2008, petitioner received respondent's FAN[12] containing Assessment Number: LTDO-122-VT-2006-00001 dated December 10, 2007[13] for alleged deficiency VAT for taxable year 2006 in the total amount of ₱196,614,476.69, inclusive of penalties, computed as follows:[14]

Receivable from members, beginning		45,265,483.00
Add/Deduct Adjustments		
1. Membership fees for the year	1,956,016,629.00	
2. Administrative service fees	3,388,889.00	
3. Professional fees	11,522,346.00	
4. Processing fees	11,008,809.00	
5. Rental income	119,942.00	
6. Unearned fees, ending	405,616,650.00	2,387,673,265.00
		2,432,938,748.00
Less: Receivable from members, ending	85,189,221.00	
Unearned fees, beginning	412,184,856.00	497,374,077.00
Gross receipts subject to VAT		1,935,564,671.00
VAT Rate		12%
Output tax due		207,381,929.04
Less: Input tax		25,794,078.24
VAT payable		181,587,850.80
Less: VAT payments		15,816,053.22
VAT payable		165,771,797.58
Add: Increment		
Surcharge		
Interest (1-26-07 to 12-31-07 or 339 days)	30,792,679.11	
Compromise penalty	50,000.00	30,842,679.11
Total Deficiency VAT Payable		P196,614,476.69

The "Details of Discrepancies" (Schedule 1)[15] attached to the assessment notice invoked the following legal justifications:

> "Section 4.108.3(k) of RR 16-2005 states that:
>
> 'k) **Health Maintenance Organization (HMOs)** are entities, organized in accordance with the provisions of the Corporation Code of the Philippines and licensed by the appropriate government agency, which arranges for coverage or designated managed care services needed by the plan holders/members for fixed prepaid membership fees and for a specified period of time. HMO's gross receipt shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person,

[12]Exhibit "L", docket, p. 532; Exhibit "5", BIR Records, p. 66.
[13]Exhibit "M", docket, p. 533.
[14]Par. 4, Facts Admitted, JSFI, docket, p. 142.
[15]Exhibit "M-2", docket, p. 535; Exhibit "5-E", BIR Records, p. 62.

> excluding the value-added tax. The compensation for their services representing their services fees, is presumed to be the total amount received as enrollment fee from their members plus other charges received.'

This was further clarified under new RMC 81-2007 which provides that the taxable base of HMOs for VAT purposes shall be the gross receipts without any deduction.

And in CIR vs. Philippine Health Care Providers, Inc. GR 168129, dated April 24, 2007, it ruled that 'as respondent does not actually provide medical and/or hospital services, as provided under Section 103 on exempt transactions, but merely arranges for the same, its services are not VAT-exempt'."

Under date January 28, 2008, petitioner filed with respondent its Protest Letter[16] to protest the Formal Assessment Notice dated December 10, 2007.[17]

The Protest reads in pertinent part:

"In this connection, we hereby protest said deficiency value added tax assessment based on the following factual and legal grounds:

1. Section 109(G) of the 2005 Tax Code expressly provides that "medical, dental, hospital and veterinary services, except those rendered by professionals" shall be exempt from value added tax. Accordingly, a person (other than an individual who is a professional) shall be exempt from value added tax when it provides medical, dental, hospital and veterinary services.

   In this case, Medicard, which is a juridical person and is not thus a 'professional," renders two (2) types of services, namely: (a) medical, dental and hospital services; and (b) services as an independent contractor, to members.

2. Unlike the case of Philippine Health Care Providers, the services of Medicard to its members are not limited to merely arranging for the provision by the hospitals and clinics of medical and/or hospital services. As a general rule, Medicard actually and directly provides medical and laboratory services to members and the services of hospitals and clinics are availed of only by members when the medical, hospital and laboratory services are beyond the competence of the doctors hired by and the clinics and laboratories being operated and maintained by Medicard. In other

[16]Exhibit "N", docket, pp. 537-540.
[17]Par. 6, Facts Admitted, JSFI, docket, p. 143.

words, we take strong objection against the findings of the revenue officers that no actual and direct medical and laboratory services were provided by Medicard to members, so much so that the entire amount of membership fees received from members.

In this connection, the 2006 audited balance sheet of Medicard shows that it owns x-ray and laboratory facilities, which are used by it in providing medical and laboratory services to members.

3. Part of the P1.9 billion membership fees for the year includes P319 million fees received from clients that are registered with the Philippine Export Zone Authority (PEZA), based on certificate of registration submitted by them to Medicard. These are zero-rated sales of services.

4. While RMC 81-2007 provides that the taxable base of HMOs shall be the gross receipts without any deduction, it created a prima facie presumption that no medical and laboratory services were actually and directly provided by the HMOs to members, following the findings of the CTA in the case of Philippine Health Care Provider. The same position was taken by the Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue, when he promulgated Revenue Regulations No. 16-2005. The last sentence in Section 4.108.3(k) states "[T]he compensation for their services representing their service fees, is <u>presumed</u> to be the total amount received as enrollment fee from their members plus other charges received." We want to reiterate that Medicard did provide medical and laboratory services, as evidenced by the documentary evidence described above; hence, only part of the membership fees should be subject to tax.

5. The BIR included in the taxable gross receipts the entire amount of professional fees amounting to P11.5 million. For your information, P5.6 million of the amount represents advances for professional fees due from clients which were made by Medicard. Moreover, the balance of the professional fees amounting to P5.8 million was already subjected to value added tax and to include the same to the taxable gross receipts would mean double taxation, for VAT purposes.

6. As in professional fees, the BIR included in the taxable gross receipts the entire amount of processing fees in the amount of P11 million. It should be noted that P4.2 million of said amount was for medical services (e.g. medical evaluation annual physical examination and pre-employment examination) rendered by Medicard. The balance of P6.8 million is exempt from value added tax either because (a) the amount represents gross receipts for medical services rendered by Diagnostic Networks Inc. (DNI), a

subsidiary company of Medicard merged to the latter on September 12, 2006, which performed medical services through the former's clinics, or (b) the amount represents fees for medical services directly and actually rendered by Medicard to its members; hence, exempt from value added tax.

7. Assuming for the sake of argument that Medicard is liable to VAT, the 12% VAT rate was erroneously applied by the BIR on the entire gross receipts for the year 2006. It must be pointed out that the gross receipts for January, 2006 were still subject to 10% VAT, and the 12% VAT rate was made effective only on or after February 1, 2006, pursuant to the provisions of Republic Act No. 9337, as implemented by Revenue Memorandum Circular No. 8-2006, dated January 31, 2006.

8. If we assume that Medicard is liable for the value added tax on its gross receipts, it necessarily follows that it over declared its taxable income and overpaid its corporate income tax for the year. Also, the amount of gross receipts subject to VAT will be reduced accordingly.

9. Lastly, it should be pointed out that if Medicard were liable to value added tax, equity demands that Medicard should be made to pay only the basic value added tax, without surcharge and deficiency interest, for it did not pass on the value added tax to its members, based on the BIR ruling issued by former Commissioner Beethoven Rualo. Doing so would adversely affect the profitability market share, and viability of the company."

On February 14, 2008, respondent issued a Tax Verification Notice[18] **(TVN)**, authorizing Revenue Officer Romualdo Plocios to verify the supporting documents to petitioner's Protest. By a letter dated March 18, 2008, petitioner submitted to respondent additional supporting documentary evidence in aid of its Protest.[19]

On June 19, 2009, petitioner received respondent's FDDA[20] dated May 15, 2009, denying petitioner's Protest Letter dated January 28, 2008 and Letter dated March 18, 2008. The dispositive portion of the FDDA reads:

"**IN VIEW HEREOF**, we deny your letter protest and hereby reiterate *in toto* assessment of deficiency value added tax in total sum of **P196,614,476.99**. It is requested that you pay said deficiency taxes immediately. Should payment be made later, adjustment has to be

[18]Exhibit "2", BIR Records, p. 72.
[19]Exhibit "O", docket, pp. 541-542.
[20]Exhibit "P", docket, pp. 583-588.

made to impose interest until date of payment. This is our final decision. If you disagree, you may take an appeal to the Court of Tax Appeals within the period provided by law, otherwise, said assessment shall become final, executory and demandable."

Accordingly, petitioner filed the instant Petition for Review on July 20, 2009.

STATEMENT OF THE CASE

The Petition[21] dated July 16, 2009 alleges substantially as follows:

1. Medicard is an HMO that acts as an intermediary between the purchaser of health care services (members) and the healthcare providers (hospitals and clinics) for a fee;

2. By enrolling membership with petitioner, members will be able to avail themselves of the pre-arranged medical services from its accredited competent physicians, surgeons, et al. without the necessary protocol of posting cash bonds/deposits prior to being attended to or admitted to hospitals or clinics;

3. Petitioner's health programs/plans include the Cost-Plus Program (CPP) and Standard Corporate Program (SCP);

4. Petitioner is compensated, in the case of the CPP which it describes as a Fund held in Trust, by way of administrative fees over and above the coverable expenses of the members drawn from the Fund; and, in the case of the SCP, by way of service or management fees equivalent to 20% of the total premiums paid, the balance of such premiums being pooled as Provision for Medical Utilization;

5. Petitioner's services to its members are not limited to merely arranging for healthcare services with third-party hospitals and medical providers, but includes directly providing its members medical and laboratory services through petitioner's own clinics;

6. Petitioner's actual and direct provision of medical and hospital services to its members through its own clinics, x-ray and laboratory facilities partake of services that are VAT exempt under Section 109(G) of the Tax Code which provides that "medical, dental hospital and veterinary services" are exempt from VAT; and, therefore, the fees paid to petitioner by way of professional fees and other charges should not be included in the computation of its gross receipts subject to VAT;

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[21] Docket pp. 1-17.

7. The refusal of the BIR to deduct from petitioner's gross receipts that portion pertaining to payments derived from its "*actual and direct medical and laboratory services to its members*" is therefore incorrect;

8. The directive in RMC 81-2007 that the taxable base of HMOs shall be its gross receipts "without any deduction," assumes that no medical and laboratory services are actually and directly provided by the HMOs to its members;

9. Section 4.108.3(k) of RR No. 16-2005 only creates a "presumption" that the compensation for the services of HMOs represents the total amount received as enrollment fee from their members, and, as such presumption, is subject to the petitioner's allegation that it did provide medical and laboratory services to its members;

10. The Supreme Court has held that gross receipts subject to tax does not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit;

11. Under RR No. 4-2007 amending RR No. 16-2005, "gross receipts" does not include "amounts for payment to unrelated 3rd party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor";

12. Therefore, the amounts earmarked for medical utilization and eventually paid to hospitals, clinics, doctors, dentists and other medical practitioners, shall not form part of petitioner's taxable gross receipts subject to VAT;

13. Part of the P1.9B membership fees collected for the TY 2006, P319M was received from PEZA-registered clients, and are therefore zero-rated;

14. Of the professional fees of P11.5M included in petitioner's alleged gross receipts, P5.6M represents advances made by petitioner for professional fees that are due from clients; and, the P5.8Million balance represents professional fees that had earlier been subjected to VAT and could no longer be subjected to VAT anew without committing double taxation;

15. The item "processing fees" amounting to P11M should not be included in petitioner's gross receipts because: (a) P4.2M of this amount was utilized for medical services (e.g., medical evaluation, annual physical examination and pre-employment medical examination) rendered by petitioner itself; and, (b) the balance of P6.8M represents receipts for the medical services rendered by Diagnostic Networks, Inc. (DNI), a subsidiary of the petitioner's that was eventually merged with the latter, for the benefit of petitioner's members, and are therefore VAT exempt;

16. Assuming that petitioner is liable for VAT, the 12% VAT rate was erroneously applied on the entire receipts for 2006, as the VAT rate applicable for the month of January 2006 was still the lesser 10%, and the increased 12% was effective only beginning February 2006 pursuant to R.A. No. 9337;

17. That in the event petitioner is adjudged liable for deficiency VAT, equity demands that it should not be made to pay surcharge and deficiency interests.

In the Answer[22] filed on August 24, 2009, respondent interposed substantially the following special and affirmative defenses:

1. Petitioner was duly informed of the deficiency tax assessments against it and was given an opportunity to be heard;

2. Section 108.3(k) of Revenue Regulations No. 16-2005 defines an HMO as a corporation which "arranges for coverage or designated managed care services needed by plan holders/members for fixed prepaid membership fees and for a specified period of time," and provides that an HMO's "gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax," such that the "compensation for their services representing their service fee, is presumed to be the total amount received as enrolment fee from their members plus charges received";

3. Accordingly, petitioner's compensation for services as an HMO is taxable for VAT purposes based on the total amount received from the members' enrolment fees including other charges;

4. The Supreme Court has held that that an entity that does not actually provide medical and/or hospital services as provided under the NIRC of 1997 provisions on VAT exempt transactions is not VAT exempt on its sales of services;

5. The enrolment fees in the amount of P319,000,000.00 received from clients registered with the Philippine Export Zone Authority (PEZA) are not subject to zero-rate for VAT purposes because: (a) the presentation of PEZA Certificates of Registration of these clients is insufficient factual basis; (b) petitioner will be subject to zero-rate only upon approval of an application for VAT zero-rating of its sales to VAT-registered customers pursuant to Section 106(A)(2)(c) of the Tax Code; and, (c) the service fees

[22]Docket, pp. 74-81.

received by petitioner are from employees of PEZA-registered enterprises and not directly from PEZA-registered enterprises;

6. The amount of P5.6 million representing advances for professional fees due from clients made by petitioner forms part of gross receipts subject to VAT. Moreover, the declared amount of P5.8 million was not subjected to double taxation because the computation of petitioner's gross taxable receipts is the sum of the entire taxable receipts less VAT payments that petitioner made in 2006, and was therefore properly treated as subject to VAT;

7. The professional fees amounting to P11,008,809.00 was treated entirely as taxable receipt for VAT purposes pursuant to Section 108(A) of the NIRC of 1997 pertaining to VAT on sale of services in relation to Section 108.3(k) of RR No. 16-2005. The gross amount collected by petitioner is within the context of compensation for services, and petitioner's service fees are presumed to be the total amount received as enrolment fees from its members;

8. BIR Ruling No. DA (VAT-054) 529-2008 dated 15 December 2008 which ruled that petitioner is VAT exempt has been revoked due to procedural infirmity, which revocation was circularized through Revenue Memorandum Circular No. 2-2009;

9. In *Commissioner of Internal Revenue vs. Bank of Philippine Islands*[23] the Supreme Court held that "'tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments".

Petitioner submitted its Pre-Trial Brief[24] on September 8, 2009, while Respondent's Pre-Trial Brief[25] was filed on September 4, 2009.

On May 17, 2010, petitioner requested a reinvestigation of the deficiency VAT assessment[26], which respondent granted via Letter[27]dated May 24, 2010.

The parties submitted their Joint Stipulation of Facts and Issues[28] on December 7, 2010. On February 8, 2011, the Court adopted the same and terminated the pre-trial.[29]

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[23] G.R. No. 134062, April 17, 2007.
[24]Docket, pp. 84-100.
[25]Docket, pp. 101-106.
[26]Exhibit "Q", docket, pp. 589-590.
[27]Exhibit "R", docket, p. 591.

Upon motion of petitioner dated March 16, 2001, in accordance with Section 5(a), Rule 12 of the 2005 Revised Rules of the CTA, as amended, the Court appointed Richard R. Lapres of Manabat Delgado Amper and Co. as the Independent Certified Public Accountant (ICPA) for this case on March 29, 2011.[30]

During hearing, petitioner presented Mark Y. Borja, Richard R. Lapres and Miriam Villafuerte as its witnesses. Petitioner then formally offered its documentary evidence on March 23, 2012, consisting of Exhibits "A" to "BBBB", inclusive of sub-markings.[31]

Respondent filed a Motion to Admit Attached Comment, which the Court granted via Resolution[32]dated June 5, 2012. In the same Resolution, the Court admitted petitioner's documentary evidence except some of the sub-markings of the following exhibits:

1. Exhibits "DDD", "DDD-1 to DDD-893";
2. Exhibits "EE", "FF", "GG", "HH", "II", and "LL", consisting of official receipts;
3. Exhibit "QQ", which is a Statement of Accounts with listing of enrolled members;
4. Exhibits "SS", "TT", "UU", and "VV", consisting of vouched check vouchers, summary of medical services, and other supporting documents to the vouched check vouchers; and
5. Exhibits "HHH" and "III", pertaining to schedule of vouched additional check vouchers and summary of medical services.

on ground that they were not submitted to the Court for proper marking or identification, or that they were not identified in the judicial affidavit of petitioner's witnesses.

Petitioner moved for the partial reconsideration of the aforesaid Resolution on June 22, 2012, which motion the Court denied on July 27, 2012.[33] Thus, petitioner filed with the CTA *En Banc* a Petition for Review[34]on September 3, 2012 seeking to reverse and set aside the ruling of the Court in Division denying admission of the aforesaid exhibits.

On November 8, 2012, the CTA *En Banc* gave due course to petitioner's Petition for Review filed on September 3, 2012 and docketed as CTA EB No. 925.

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[28]Docket, pp. 140-145.
[29]Pre-Trial Order, docket, pp. 147-152.
[30]Resolution, docket, p. 181.
[31] Docket, pp. 485-510.
[32]Docket, pp. 602-623.
[33]Resolution dated July 27, 2012, docket, pp. 652-654.
[34]Docket, pp. 698-727.

Petitioner and respondent having filed their memoranda in this case on December 12, 2012 and December 14, 2012, respectively, the Court En Banc issued its Decision on June 19, 2013, denying the petition for lack of merit. Petitioner's Motion for Reconsideration of this Decision was denied by the CTA *En Banc* in its Resolution dated October 23, 2013.

Meanwhile, respondent presented her sole witness Romualdo Plocios, and subsequently filed her Formal Offer of Documentary Evidence[35] on February 18, 2013.

Still meanwhile, petitioner's related motions dated February 5, 2013 and April 26, 2013, both seeking to defer the filing of the parties' memoranda on account of the then pending CTA EB 925, were denied by the Court. Petitioner's Supplemental Formal Offer of Evidence[36] also dated February 5, 2013 was however admitted in the Court's Resolution[37] of March 1, 2013.

On the other hand, the Court admitted respondent's Formal Offer of Evidence[38] dated February 14, 2013 in its Resolution[39]dated March 26, 2013.

Respondent filed her Memorandum on May 31, 2013, and Petitioner, on July 10, 2013. This considering, the instant case was submitted for decision on July 15, 2013.[40]

STATEMENT OF ISSUES

In the parties' Joint Stipulation of Facts and Issues[41] dated December 7, 2010 and adopted by the Court on February 8, 2011, the issues of the case were formulated in this wise:

> 1. Whether or not a Letter of Authority was issued upon the Respondent's Revenue Officers to examine the Petitioner's books of accounts and accounting records for value added tax for the taxable year 2006 in arriving at the Respondent's assessment against the Petitioner for alleged deficiency value added tax for taxable year 2006 in the total amount of ₱196,614,476.69, inclusive of penalties;
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> 2. Whether or not the Respondent's Formal Assessment Notice (Assessment Number: LTDO-122-VT-2006-00001) dated December 10, 2007 against the Petitioner for alleged deficiency value added tax

[35]Docket, pp. 1075-1084.
[36]Docket, pp. 1032-1039.
[37]Docket, p. 1090.
[38]Docket pp. 1075-1085.
[39]Docket, p. 1096.
[40]Resolution dated July 15, 2013, docket, p. 1186.
[41]Docket, pp. 140-145.

DISCUSSION

I. Timeliness of the Assessment and the Petition.

Under Section 203, in relation to Section 114(A), of the Tax Code, respondent has three years within which to assess petitioner for deficiency VAT, the said period to commence from the last day prescribed by law for filing of the return, which, in the case of VAT, is twenty-five (25) days following the close of each taxable quarter.

Petitioner's VAT returns for 2006, and the corresponding deadlines for issuance of assessments on such returns, are as follows:

VAT Returns	Date of Filing	Last Day to Assess
1st Quarter	April 20, 2006[42]	April 25, 2009
2nd Quarter	July 25, 2006[43]	July 25, 2009
3rd Quarter	October 20, 2006[44]	October 25, 2009
4th Quarter[45]	January 25, 2007	January 25, 2010

As the Formal Assessment Notice and the attached Details of Discrepancy were received by petitioner on January 4, 2008, the assessment was timely issued.

On the other hand, Section 228 of the Tax Code provides that:

> xxx a preliminary assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt thereof. If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period.

As stipulated by the parties, the Formal Assessment Notice and the attached Details of Discrepancies were received by petitioner on January 4, 2008.[46] Petitioner filed its Protest Letter[47] against the same on January 28, 2008, and respondent issued the Final Decision on Disputed Assessment on May 15, 2009, which petitioner received on June 19, 2009. As such, petitioner had until July 19, 2009, within which to appeal respondent's decision. As the last said date fell on a

[42]Exhibit "CC-1".
[43]Exhibit "CC-2".
[44]Exhibit "CC-3".
[45]Exhibit "CC-4".
[46]Exhibit "L", docket, p. 532; Par. 4, Facts Admitted, JSFI, docket, p. 141.
[47]Exhibit "N", docket, pp. 537-540.

for taxable year 2006 in the total amount of ₱196,614,476.69, inclusive of penalties, should be cancelled and declared as null and void, for lack of factual and legal basis; and,

3. Whether or not the Respondent Commissioner of Internal Revenue's Decision promulgated on May 15, 2009 denying Petitioner's Protest Letter dated January 28, 2008 and Letter dated March 18, 2008, should be declared as null and void.

Issues 2 and 3 above, being interrelated and corollary of each other, and on the basis of the contradictory positions taken by the parties in their initiatory pleadings, Memoranda and voluminous evidence, are here restated with particularity, as follows:

a. Whether or not of the total membership fees received by petitioner in the amount of P1,956,016,629.00, the amounts representing (i) payments to hospitals, clinics, laboratories, doctors, dentists and other healthcare providers in exchange of services the latter render to petitioner's members; and, (ii) payments to petitioner itself in exchange of "actual and direct" medical and hospital services it provides its members through its own clinics, x-ray and laboratory facilities, should properly be considered part of petitioner's gross receipt for VAT purposes;

b. Whether or not the payments made by petitioner to hospitals, clinics, laboratories, doctors, dentists and other healthcare providers for the services the latter render to petitioner's members qualify as "money entrusted to petitioner" under the terms of *CIR vs. Bank of the Philippine Islands (G.R. No. 147375, June 26, 2006)*, or as "amounts earmarked for payment to unrelated third party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor" under Section 4.108-4 of BIR RR No. 4-2007, and therefore not properly part of the petitioner's gross receipts subject to VAT;

c. Whether or not petitioner's receipts from PEZA registered enterprises are zero-rated for VAT purposes;

d. Whether or not the amounts reflected as "receivables-beginning" and "receivables-ending," should be adjusted in view of petitioner's justifications that portions of such "receivables" did not represent "trade receivables" and are thus not items of gross receipts;

e. Whether or not petitioner, in any case, is entitled to an abatement of the penalties and surcharges assessed in relation to its alleged deficiency VAT in view of the over-all impact of such payment on the economic stability of petitioner as an HMO.

Sunday, the Petition for Review was seasonably filed the following day or on July 20, 2009.

II. Non-issuance of an LOA

A. Pertinent facts and jurisprudence.

Petitioner assails respondent's assessment as a nullity on ground that it was issued without a Letter of Authority (LOA) authorizing the examination of petitioner's books of accounts and accounting records in relation to its alleged deficiency VAT for Taxable Year 2006, subject of FAN No. LTDO-122-VT-2006-00001.

It is not disputed that there was no LOA issued by the BIR against the petitioner. The lone witness for the respondent, Revenue Officer Mr. Romualdo I. Palacios, testified on cross-examination at the hearing of 17 January 2013[48], as follows:

> Atty. Victorino: It's okay. Then you said that a letter notice was issued. Was a letter of authority issued for the investigation of the VAT liability for 2006 of petitioner pursuant to Sec. 13 of the Tax Code of 1997 and pursuant to RMO 32-07 prescribing the procedure on handling of 2006 letter notices for calendar year 2006?
>
> Mr. Plocios: There was no letter of authority issued in relation to that effect.
>
> Atty. Victorino: particularly, for the alleged VAT liability for 2006 of petitioner?
>
> Mr. Plocios: Yes, your Honors.

Section 13 of the Tax Code, as amended, provides that an LOA is issued by the Revenue Regional Director to authorize a Revenue Officer to examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due. RMO 1-00, on the other hand, defines an LOA as that which "authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period."

The case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[49] involved the issuance of an LOA authorizing the examination of taxpayer's Sony Philippines, Inc.'s books of accounts "for the period 1997 and unverified years." Upon the

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[48] TSN pp. 22-23.
[49] G.R. No. 178697, November 17, 2010.

examination and investigation thus conducted, the BIR assessed the taxpayer VAT and EWT deficiencies.

The pivotal issue in *Sony Philippines* is whether or not the LOA, couched as "for the period 1997 and unverified years" is valid, and whether or not the ensuing assessments for tax liabilities, including VAT, that corresponded to the period January to March 1998 were consequentially valid as well.

The Supreme Court held that the coverage of the LOA denominated as "unverified years" is invalid for violating RMO No. 43-90 dated September 20, 1990 which (i) provides that an LOA "should cover a taxable period not exceeding one taxable year;" and, (b) prohibits in very express terms the "practice of issuing L/As covering audit of "unverified years." According to the Court:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of an authority, the assessment or examination is a nullity.

The Court then declared the LOA as valid authority to examine the taxpayer only and exclusively for the period "1997," holding the qualification "and for unverified years" appearing in the same LOA as invalid and without effect. Thus, the VAT assessment issued against taxpayer Sony Philippines for the period of January to March 1998 was set aside. The same ruling was applied in respect of the deficiency EWT found by the CIR in the same case. Said the Court:

> xxx As stated earlier, in the absence of the appropriate LOA specifying the coverage, the CIR's deficiency EWT assessment from January to March 1998, is not valid and must be disallowed.

In *CIR vs. Lancaster Philippines*[50] decided by the CTA *En Banc*, the issue was similarly whether or not the LOA issued for the period "1998 to ___ , 19__" was valid authority for the BIR to examine and assess deficiency income taxes for the period 1999. The CTA En Banc found that:

> xxx the afore-quoted assessment notice, that the income tax due was computed on the basis of respondent's transactions/ purchases made during the fiscal year April 1998 to March 31, 1999, which is beyond the 1998 taxable year indicated in the Letter of Authority.

xxx xxx xxx

[50] CTA EB Case No. 352, April 30, 2008.

> Accordingly, the CTA En Banc found that the "subject deficiency assessment xxx should be considered without force and effect due to the fact that said deficiency assessment issued by petitioner covered not only the taxable year 1998, but extended to taxable year 1999 which is beyond the period covered in the Letter of Authority."

B. Petitioner's assertions.

Petitioner now comes to us claiming that the above rulings compel the recall and cancellation of the VAT assessment pending litigation. As it is undisputed that there was no LOA issued by respondent against petitioner in this case, it is the latter's position that the VAT assessment is a nullity, thus:

> In the present case, the Respondent's Revenue Officers did not have a Letter of Authority as required under BIR (RAMO) 1-00. Clearly then, the Revenue Officers concerned have no authority in arriving at the Petitioner's alleged deficiency value added tax for taxable year 2006 in the total amount of P196,614,476.69, inclusive of penalties since no Letter of Authority was issued for the examination of the Petitioner's books of accounts and accounting records for the alleged value added tax liability for taxable year 2006.[51]

In addition, petitioner relies upon BIR RMO No. 32-2007 dated October 8, 2007, *Prescribing Guidelines and Procedures in Handling 2006 Letter Notices Generated thru Reconcilliation of Listing for Enforcement System (RELIEF) and Third Party Matching-Bureau of Customs (TPM-BOC) Date Program*, in particular, the last paragraph of Section III (5) of which provides:

> In after fifteen (15) days from receipt of Follow-up Letter, no response was received from the taxpayer, or he fails to submit the required documents after filing his protest within the thirty (30)- day period after receipt of the LN, the LN Task Force shall endorse the docket and recommend to the Office of Deputy Commissioner-Operations Group (DCIR-OG) or to the Office of the Commissioner of Internal Revenue (OCIR) in the absence of the former xxx the issuance of an issue-based LA to cover specifically "Income and Value Added Taxes Due to Discrepancy Reflected in the LN."

To the petitioner therefore, a deficiency assessment issued without a valid authority is a nullity.

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[51] Memorandum for the petitioner, July 10, 2013, p. 20.

C. Respondent's retort.

On the other hand, respondent CIR maintains the assessment to be in accord with law, rules and jurisprudence. She claims that:

> "xxx petitioner filed a protest to the Preliminary Assessment Notice as well as to the Formal Letter of Demand and Details of Discrepancies. Hence, there is no denying that petitioner was informed of the factual and legal bases of the deficiency assessment.
>
> Thus, the fact that petitioner filed protest means that it was informed of the findings of the Revenue Officer. The protest although erroneous and self-serving was accomplished with meticulous details trying in vain to overthrow the finding of deficiency VAT.[52]

D. The Court's Ruling.

The Court rejects petitioner's position that the assessment is invalid for having been issued without the corresponding LOA, for the following reasons:

Sony Philippines and *Lancaster Philippines* involved the issuance of LOAs that were, on their faces, irregular and violative of the BIR's own rules and regulations, particularly that which provides that LOAs should specify, in a manner specific and certain as to leave no room for doubt, the taxable periods covered by the investigation. These rulings, clearly, were compelled by due process requirements that demand fair warning to the taxpayer on the extent and limit of the investigation, and, at the same time, by a need to establish constraints on the authority of the Revenue Officer who is acting under delegated authority from the CIR. As the taxpayer cannot be without notice on the coverage of the tax investigation, neither can the examiner claim blanket authority to so investigate.

To declare that the CIR, in the determination of deficiency VAT, should at all times necessarily issue an LOA is to deprive her of the vast powers given her by the National Internal revenue Code (Tax Code) to make assessments and collect the right amount of taxes. Thus, while the examination of taxpayers by a Revenue Officer working under an LOA is one way by which the CIR collects deficiency taxes under Section 13 of the Tax Code, Section 6 does not in any way limit the power of the CIR to determine tax deficiencies only through the issuance of LOAs.

The power of the Commissioner is stated broadly, thus:

> "After a return has been filed as required under the provisions of the Tax Code, the Commissioner or his duly authorized

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[52] Memorandum for the respondent, May 29, 2013, Docket p. 1137.

> representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax. xxx
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative."[53]

The Tax Code authorizes the CIR to issue tax assessments other than by force of LOAs alone, such as on the basis of "the best evidence obtainable"[54] or through "inventory-taking, surveillance and prescribing presumptive gross sales and receivables."[55] In extreme situations, the BIR resorts to "jeopardy assessments" even without the benefit of an audit.[56]

In *Sony Philippines*, what the Supreme Court proscribed was "the lack of authority," not the lack of an LOA, though it happened coincidentally in that case that the "authority" being questioned was in the form of an LOA.

As opposed to *Sony Philippines* and *Lancaster Philippines*, no LOA was issued in this case because what was issued against petitioner was an LN informing petitioner that a comparison of its VAT returns, on the one hand, and its Income Tax Return, on the other hand, mathematically resulted in discrepancies showing underpayment of VAT. The LN would eventually give rise to the issuance of the preliminary assessment against petitioner.

RMO No. 30-2003 dated September 18, 2003 was prefaced as follows:

> The Bureau of Internal Revenue is in the process of establishing a state-of-the-art, centralized Data Warehouse (DW) geared towards enhancing revenue collection. The shift to non-traditional enforcement techniques serves to widen the coverage of xxx auditing system (known as) "Reconciliation of Listing for Enforcement" (RELIEF) (which) can detect tax leaks by matching the data available under the Bureau's Integrated Tax System (ITS) with data gathered from third party sources xxx Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services).

RMO No 30-2003 provided for a system-generated issuance of LNs as a mode of informing taxpayers of the discrepancies uncovered through RELIEF, as

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[53] Sec. 6(a) of the NIRC.
[54] Sec. 6(b) of the NIRC.
[55] Sec. 6(c) of the NIRC.
[56] Hector S. De Leon, the NIRC Annotated, 2000 edition, page 28.

well as the procedure for effecting collection thereon. This RMO contained provisions that clearly distinguished an LOA from an LN, and clarified the effect of the issuance of an LN in situations where an investigation of the taxpayer under an LOA is either pending or has been terminated, or when no LOA had before been issued. In all cases, the policy under this RMO is to collect on the LNs.

RMO No. 42-2003 dated October 23, 2003 then prescribed additional guidelines to RMO No. 30-2003. It authorized a "no-contact-audit-approach" examination and assessment, and the issuance of LNs without need of conducting an examination of a taxpayer's books if so warranted by the results of the matching of computer data with other information or returns filed by the taxpayers with the BIR. It provides in part:

> xxx In order to intensify enforcement, the power of the Commissioner to authorize any examination of taxpayer and the assessment of the correct amount of tax is hereby ordered done through the so-called "no-contact-audit-approach" xxx (which) includes the process of computerized matching of sales and purchases xxx submitted by VAT taxpayers xxx (including) the matching of data from other information or returns filed by the taxpayers with the BIR xxx
>
> Even without conducting a detailed examination of taxpayer's books and records, the computerized/manual matching of sales and purchases/expenses will reveal discrepancies which shall be communicated to the concerned taxpayer through the issuance of LN by the Commissioner.
>
> xxx The issuance of an LN will not preclude the Commissioner from issuing an LOA xxx
>
> xxx The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference xxx
>
> xxx If xxx the taxpayer still fails to respond, the RDO/LTDO/LTAID shall indorse the case with least possible delay to the xxx appropriate office authorized to review report of investigation for the issuance of the Preliminary Assessment Notice and Final Assessment Notice xxx following xxx RR 12-99.

On the basis of the said RMOs, an LOA may be differentiated from an LN as follows:

LETTER OF AUTHORITY	LETTER NOTICE
It is issued directly to the Revenue Officer.	It is issued directly to the taxpayer.
It is issued to authorize the Revenue Officer to examine the taxpayer's books of accounts.	It is issued to inform the taxpayer of the findings of discrepancies due to its under-declared sales or over-claimed purchases, after the computerized/manual matching of data available under the BIR's Integrated Tax System with data gathered from third-party sources detected tax leaks.
After the issuance of a Letter of Authority, the Revenue Officer can examine the taxpayer's books of accounts and other accounting records for the purpose of collecting the correct amount of tax or to recommend the assessment of any deficiency tax due.	After the issuance of a Letter Notice, the taxpayer is given an opportunity to reconcile the discrepancy. Failure of the taxpayer to respond within the prescribed period may result in the issuance of the PAN or FAN.
A Letter of Authority is not required to be preceded by a Letter Notice.	The issuance of a Letter Notice does not preclude the BIR Commissioner from issuing a Letter of Authority

In the present case, respondent issued an LN to petitioner informing the latter of the discrepancies on its VAT and Income Tax returns. LN No. 122-VT-06-00-00020 states that:

> "Records show that as a health maintenance organization (HMO) contemplated under Revenue Regulations No. 16-2005, **the data/information reflected per income tax return against your declarations per VAT returns disclosed the following discrepancy/findings** for calendar year 2006:
>
> xxx
>
> In line with the Bureau's policy of affording taxpayers the opportunity to reconcile the above discrepancy (ies), you are being invited to the LTDO-Makati, Office of Chief Virgilio Cembrano located at 5/F ATRIUM BLDG., MAKATI AVENUE, MAKATI CITY on September 25, 2007 at 10:00 a.m."*(Emphasis supplied)*

Respondent complied with the procedural requirements for the issuance of the assessment, including giving petitioner the opportunity to rebut its findings. It first issued the LN; then the Preliminary Assessment Notice; then the Final Assessment Notice and the Details of Discrepancies which contained the facts and the law upon which the assessment is based pursuant to Section 228 of the NIRC; then the TVN that authorized Revenue Officer Romulado Placios to conduct an investigation on the taxpayer. During the investigation, petitioner submitted additional documents to the BIR.

A revenue memorandum order or RMO is an issuance directed to BIR personnel containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[57] RMC Order No. 32-2007 afore-quoted, and relied upon petitioner here as basis for saying that an LOA should have been issued in this case, is one such issuance that is a natural and necessary incident to the power of the Commissioner to lay down delineations of functions among BIR officials. It does not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.

RMC 32-2007 was issued on October 8, 2007, or subsequent to the issuance of the LN in this case on September 20, 2007. A reading of the RMC in its entirety, as opposed to a reading of some of its provisions in isolation as petitioner would have us do, reveal that it was intended to be applied to LNs issued after its promulgation. In any case, by reiterating in its Section III (14) the provision of RMC 40-2003 (amending RMC 30-2003) defining an LN as a *notice of audit/investigation*, and further quoting the ruling in *Big AA Corporation, represented by Erlinda L. Stohner vs. BIR,*[58] that *LNs issued against a taxpayer xxx may be considered as a "notice of audit or investigation" in the absence of evident error or clear abuse of discretion,"* RMC 32-2007 cannot be deemed to have obviated the provisions of RMC 30-2003 as amended allowing the issuance of assessment on the basis of an LN.

Additionally, this Court observes that petitioner, excepting only in the formulation of the Issues contained in the Parties Joint Stipulation of Facts, did not once question the respondent CIR's jurisdiction in issuing the assessment. At no time did it assail the assessment as void for want of an LOA. Its Protest letters dated January 28, 2008[59] and March 18, 2008,[60] Petition dated July 16, 2009 and Pre-Trial Brief dated September 7, 2009, all were silent on the issue of want of jurisdiction on the part of respondent.

In fact, petitioner did not present any evidence-in-chief pointedly establishing the absence of an LOA. It was only through the cross examination of respondent's lone witness that this fact was elicited. Moreover, and well during the

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[57] Hector S. De Leon, the NIRC Annotated, 2000 edition, p. 20.
[58] CTA Case No. 7093, February 22, 2006.
[59] Exhibit "N".
[60] Exhibit "O".

pendency of the trial of this case, petitioner even filed, and obtained a favorable grant to, a motion to transfer the records of this case to the BIR for a reinvestigation thereby exhibiting unquestioned submission to the jurisdiction of the CIR.

On the matter of the timeliness of raising the issue of lack of jurisdiction, the Supreme Court had occasion to say in *Sps. Rene Gonzaga vs. the Hon. Court of Appeals*[61], that:

> xxx In countless decisions, this Court has consistently held that, while an order or decision rendered without jurisdiction is a total nullity and may be assailed at any stage, active participation in the proceedings in the court which rendered the order or decision will bar such party from attacking its jurisdiction. As we held in the leading case of Tijam v. Sibonghanoy:
>
> "A party may be estopped or barred from raising a question in different ways and for different reasons. Thus we speak of estoppel in pais, or estoppel by deed or by record, and of estoppel by laches. xxx
>
> "It has been held that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate, or question that same jurisdiction . . . [T]he question whether the court had jurisdiction either of the subject matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice cannot be tolerated — obviously for reasons of public policy."

Within the context of the broad powers of the CIR to assess and collect taxes as provided by law, and her concomitant powers to adopt internal procedures within the BIR for purposes of assessment and collection subject only to limitations imposed by law or jurisprudence, this Court holds that the ruling in *Sony Philippines* to the effect that "in the absence of xxx an authority, the assessment or examination is a nullity" is here inapplicable. The issuance by respondent of the LN and the TVN are themselves the authority for the issuance of the Final Assessment subject of this litigation. Therefore, and further in consideration of the fact that (a) the assessment contained the requisite legal and factual bases that put petitioner on notice of the deficiencies; and, (b) petitioner availed itself of the remedies provided by law protesting for and submitting countervailing evidence, the non-issuance of an LOA does not invalidate the FAN issued in this case.

[61] G.R. No. 144025, December 27, 2002.

The Court likewise holds that on the basis of the principle of *estoppel in pais* established in jurisprudence above, petitioner cannot be allowed to repudiate the CIR's jurisdiction to issue the assessment after repeatedly invoking the same jurisdiction to secure for itself the cancellation or modification of the same assessments. Having successively and aggressively utilized all the remedies provided in law for protesting respondent's assessments on grounds other than for lack of jurisdiction, petitioner cannot now be heard to complain that such assessments are from the beginning procedurally infirm.

III. Inclusion of (a) fees paid to hospitals and doctors; and, (b) fees paid to petitioner for the provision of medical and laboratory services directly to its members, in petitioner's gross receipt.

A. Nature of an HMO.

Under Section 4 (o)(3) of R.A. 7875 otherwise known as the Health Insurance Act of 1995, an HMO is defined as *an entity that provides, offers, or arranges for coverage of designated health services needed by plan members for a fixed prepaid premium.*

Petitioner describes itself as a duly incorporated and licensed pioneer health maintenance organization, or HMO, which arranges for coverage or designated managed care services needed by plan members for fixed prepaid membership fees, and for a specified period of time[62]. It is registered with the SEC primarily to:

> (E)stablish, maintain, adopt and engage in the business of developing and promoting prepaid medical, health maintenance, and related services, with the aim of providing and offering to the public a comprehensive, systematic and prevention concept of medical and health maintenance programs, through accreditation and integration and professional management, of the services of a pool of licensed and competent physicians, surgeons, medical specialists, and the participation of medical clinics, hospitals, medical and health research centers or institutions. (Ibid.)

On the other hand, respondent CIR, in Section 108.3(k) of Revenue Regulations No. 16-2005, defines HMOs as:

> xxx entities, organized in accordance with the provisions of the Corporation Code of the Philippines and licensed by the appropriate government agency, which arranges for coverage or designated managed care services needed by plan holders/members for fixed prepaid membership fees and for a specified period of time.

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[62] Memorandum for the petitioner, p. 5, citing Exhibits "A" to "G," "S" and BBBB".

Accordingly, the characteristics of an HMO are as follows:

1. It provides services
2. consisting of offering, packaging and managing
3. pre-arranged
4. and prepaid
5. healthcare services
6. for a specified period of time
7. in favor of members
8. who pay premiums or membership fees.

B. *Petitioner's VAT treatment of its annual premiums.*

According to petitioner, it offers two programs/plans to its members-clients: the Cost-Plus Program **(CPP)** and Standard Corporate Program **(SCP)**.

In the CPP, petitioner alleges that it is not an insurance provider but rather a third-party administrator of medical services. For such services, it is paid administration fee over and above the legitimate and coverable (reimbursable) expenses of the employees (members) of a particular corporate client – actually drawn against its health fund,[63] for which it charges 12% VAT for every claim and availment made by its clients.[64] Petitioner further alleges that *the CCP is a Fund held in Trust (revolving fund) deposited by a corporate client with Petitioner from which Petitioner draws legitimate and coverable expenses exclusively for the employees and their enrolled dependents of that particular client.*[65]

On the other hand, the SCP is a comprehensive health care plan for a group of individuals, usually, business firms or corporations with a minimum number (set by petitioner) of employees.[66] Petitioner collects 20% of the premium as its administration fee and the balance or the 80% is allotted for the actual claims of its members. Only the 20% portion of the total annual premium is subjected by petitioner to VAT.[67]

Petitioner alleges that insofar as the program known as CPP is concerned, its role is not an insurance provider but rather a third party administrator of medical services.[68] For one, petitioner is certainly not licensed to do business as a fund manager. When petitioner thus claims that it only accesses its corporate clients' health funds at the time of availment, at which time petitioner is also paid its administration fee which it subjects to VAT, the Court believes that the nature of its business as a service contractor is not thereby changed. The payment of the members' fees with inseparable components: (a) that which covers medical bills;

63Exhibit "BBBB", docket, p. 399.
64Transcript of Stenographic Notes dated February 27, 2012.
65 Memorandum for the petitioner, docket p. 6.
66Exhibit "BBBB", docket, p. 399
67Transcript of Stenographic Notes dated February 27, 2012
68 Memorandum for petitioner, page 7, citing Exhibits "EE-2641" et al.

and, ((b) that which represents administration fee, is simply made subject to a *trigger*, i.e., payable upon availment rather than at the time of the contracting. These two (2) cash components are inseparable because there is simply no contract for the provision of services with just one without the other.

For HMO packages, petitioner usually issues two official receipts: one for the VATable portion and one for the non-VAT.[69]

C. *Petitioner's legal contention*

(1.) *Payments to doctors/ hospitals, not VATable*

Petitioner argues that the provisions for medical utilization, which it says are earmarked and eventually paid to hospitals, clinics, doctors, dentists and other medical practitioners who are charged with the delivery of medical services, are amounts which do not redound to the benefit of petitioner and should not therefore form part of its taxable gross receipts subject to VAT.

Petitioner explains that *the enrolled members are the beneficiaries of the payments by the Petitioner to the doctors, hospitals, other professional medical practitioners and institutions that rendered medical services to the enrolled members xxx because these amounts paid were earmarked or came from the premiums of Fees on plans sold that the Petitioner collected from the said members and which were set aside to pay for their availment of or utilization of the medical services pursuant to their health agreements.*[70]

Therefore, the earmarked amounts come within the purview of the ruling in *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[71], as follows:

> xxx gross receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not redound to the taxpayer's benefit; and it is not necessary that there be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code. (citing Commissioner vs. Tour Specialists, Inc., G.R. No. 66416, March 21, 1990, 183 SCRA 402).
>
> Unless otherwise provided by law, ownership is essential in determining whether interest income forms part of taxable gross receipts. xxx

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[69]Exhibit "BBBB", docket, p. 401
[70] Memorandum for the petitioner, p. 9.
[71] G.R. No. 147375, June 26, 2006.

> In contrast, the trustee or agent does not own the money received in trust and such money does not constitute income or receipt for which the trustee or agent is taxable. This is fundamental concept in taxation. Thus, funds received by a money remittance agency for transfer and delivery to the beneficiary do not constitute income or gross receipts of the money remittance agency. Similarly, a travel agency that collects ticket fares for an airline does not include the ticket fare in its gross income or receipts. In these cases, the money remittance agency or travel agency does not acquire ownership of the funds received.

Petitioner likewise invokes the definition of "gross receipts" under Revenue Regulations No. 4-2007 amending Revenue Regulations No. 16-2005, thus:

> 'Gross receipts' refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, except those amounts earmarked for payment to unrelated third (3^{rd}) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor.
>
> A payment is a payment to a third (3^{rd}) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).
>
> An advance payment is an advance payment on behalf of another if the same is paid to a third (3^{rd}) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned 'another party') for the sale of goods or services by the former to the latter.
>
> For this purpose 'unrelated party' shall not include taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies), relatives by consanguinity or affinity within the fourth (4^{th}) civil degree, and trust fund where the taxpayer is the trustor, trustee or beneficiary, even if covered by an agreement to the contrary."(Emphasis supplied)

For these reasons, petitioner concludes that:

> xxx the amounts received by HMOs from their member-clients or their employees that are earmarked and intended to be paid for medical, dental and hospital services to independent hospitals, clinics, and medical professionals shall not form part of the taxable gross receipts of HMOs, since these amounts are held by the HMOs for the account of the member-clients.
>
> Petitioner's enrolled members are the beneficiaries of the payments made by the Petitioner to the doctors, hospitals, other professional medical practitioners and institutions that render medical services to these members pursuant to the health maintenance agreements that they have with the Petitioner because these amounts paid were earmarked or came from the premiums or Fees on plans sold that the Petitioner collected from the said members and which were set aside to pay for their availment of or utilization of the medical services pursuant to their health agreements.[72]

(2) Medical and hospital services, exempt from VAT

Further, petitioner explains that the ruling in *Philippine Health Care Providers vs. CIR,*[73] to the effect that HMOs do not provide hospital or medical services but only arranges for the availment of such services for its members, does not apply to petitioner.

Petitioner claims it owns and operates clinics and x-ray and laboratory facilities[74] for the purpose of rendering actual and direct medical and laboratory services to members.

Records reveal that the enrolled members of petitioner availed of such services in the amount of P646,763,929.40.[75] The services described above, according to petitioner, are VAT exempt. Thus:

> *Section 109 (g) of the Tax Code of 1997, as amended, expressly provides that "medical, dental, hospital and veterinary services, except those rendered by professionals, shall be exempt from value added tax. xxx*
>
> *For HMOs that own and operate their own clinics and employ professional staffs therein to provide medical, dental and laboratory services to their member clients*

[72] Memorandum for the petitioner, p. 29.
[73] G.R. No. 168129, April 24, 2007.
[74] Memorandum for the petitioner, p.33, citing Exhibits "AA", "KKK" and "MMM".
[75] Page 5 of Exhibit "KKK".

and their employees, the professional fees and charges corresponding to said services rendered shall be exempt from value added tax.

In this case, Petitioner, which is a juridical person and is not thus a "Professional" renders two (2) types of services, namely: (a) medical and hospital service; and, (b) services as an independent contractor, to members.[76]

D. Respondent's counter-argument

On the other hand, and quoting Section 4.108.3(k) of RR 16-2005, respondent posits that:

> xxx (an) HMO's gross receipts shall be the total amount of money or its equivalent representing service fee actually or constructively received during the taxable period for services performed or to be performed for another person, excluding the value added tax. The compensation for their services presenting their service fee, is presumed to be the total amount received as enrolment fee from their members plus charges received.[77]

Respondent recounts that the pending issue of what constitutes an HMO's gross receipt has long been disposed of by the BIR in its VAT Ruling 018-98,[78] which ruling was reiterated/ reinstated through the issuance of RMC No. 6-2009 (January 15, 2009) that revoked all intervening rulings issued to the contrary, as follows:

> 1. That Section 103(1) (now Section 109[1][G]) of the Tax Code which exempts from VAT "medical, dental, hospital and veterinary services" does not apply to HMOs because HMOs are service contractors under Section 102 (now 108) of the Code and do not perform medical dental, hospital or veterinary services;
>
> 2. That even if an HMO fully owns or controls a hospital or clinic which may directly provide health care services to members, what is being subjected to VAT is the activity of contracting to provide probable future medical and health services the consideration of which are pre-paid and pre-negotiated membership fees;
>
> 3. That the basis for computing VAT in the case of sellers of services shall be gross receipts under Section 102 (now 108), which *means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually*

[76] Memorandum for the petitioner, p. 33.
[77] Memorandum for the respondent, p. 6.
[78] Dated June 23, 1998.

and constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.[79]

E. <u>*The Court's Ruling.*</u>

The Court finds for respondent CIR.

(1.) On the payments made to doctors and hospitals

Petitioner is admittedly an HMO, and, on the basis of the characteristics of an HMO enumerated above, it is immediately a service contractor under Section 108 of the Tax Code. This provision levies VAT *on the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, performed or rendered by construction and service contractors xxx.*

CIR vs. Tours Specialists Inc.[80] cited in *CIR vs. BPI*[81] involved certain payments to hotels for lodging accommodations of tourists that were: (a) payable directly to the hotels by either the tourists or their foreign travel agents; (b) based on arrangements made directly between the hotels, on the one hand, and the tourists or their foreign travel agents, on the other hand; (c) not part of the package fee agreed upon between the tourists and the local tour agency (the taxpayer); (d) not diverted to the funds of the local tour agency; (e) for convenience and economy, entrusted to the local tour agency by the tourists or foreign travel agents for remittance to the hotels; (f) in the custody of the local tour agency for the specific purpose of remittance to the payee hotels.

Therefore, the taxpayer-local travel agency in *Tours Specialists, Inc.*, had nothing at all to do with the contract or engagement between the payors (the tourists or foreign travel agents) and the payees (hotels), or how the amount payable to the payees were negotiated or arrived at. The taxpayer could have thus theoretically refused to make the remittance in behalf of the tourists or the foreign travel agents because that service is not part of the package offered by it, but was nevertheless undertaken only by way of accommodation. The taxpayer in that instance could not have diverted for any other purpose the amounts entrusted to him without incurring criminal liability.

As distinguished from *Tours Specialists, Inc.*, the alleged amounts earmarked for payment, or actually paid, to hospitals and doctors by petitioner HMO in this case form part and parcel of the entire package offered to its members. There is no contract for administrative or management services between the HMO and its

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[79] Memorandum for the respondent, pp. 7-9.
[80] G.R. No. 66416, March 21, 1990, 183 SCRA 402.
[81] G.R. No. 147375, June 26, 2006.

members that is distinct, independent or segregatable from a contract providing for the remittance of the fees payable to doctors and hospitals.

The petitioner's members do not deal directly with the doctors, hospitals and other medical service providers on the matter of the fees payable to the latter. It is in the nature of their health contracts that the members are unaware, or clearly without right to inquire into, much less negotiate, the amounts of their medical bills.

Therefore, no portion of the moneys that go into the hands of petitioner is delineated for "delivery" to an identified third party. Rather, all moneys are surrendered to petitioner lump sum by its members in exchange of an obligation or service to ensure that medical services will be provided the members without the usual payment protocols. How the petitioner does this is entirely the essence of its business as a service contractor.

Furthermore, there is no showing here that the members have the right to require petitioner HMO to account to them the management and disposition of the portions of their premiums which petitioner claims it earmarks for the payment of contingent medical bills. They have no basis to claim for rebate of their premium payments in the event the medical benefits remain unutilized upon the expiration of the period of coverage stated in the health agreements. The members are deemed to have prepaid to the HMO, and not to the doctors and hospitals, the professional fees and bills which may or may not be due the latter.

All these negate the concept of "money in trust" as contemplated in *Tours Specialists, Inc.* Petitioner cannot credibly claim that it acquires no ownership over the contested amounts simply because it internally allocates a portion thereof for medical bills. The act of "earmarking or allocation" is by itself an act of ownership and management over the funds, the entire disposition of which is in truth surrendered to it by the members.

It is along this line of reasoning that Revenue Regulations No. 4-2007 amending Revenue Regulations No. 16-2005 above-quoted should be read and understood. When this RR excludes from "gross receipt" *those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor*, the requirement is that the act of payment to a 3rd party, whether as reimbursement or advance, is pursuant to an obligation between such 3rd party-recipient and another person not the taxpayer. The RR provides:

> *A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).*

In the case of HMOs, it is they, not their members, who are obligated to the doctors and hospitals for payment of the latter's bills. The contractual vinculum, insofar as the provision of medical services is concerned, is between the hospitals and doctors, on the one hand, and the petitioner, on the other hand. In the event, for example, that a doctor refuses to treat a member, the course of action of the member is against petitioner, not the doctor. The doctors on the other hand, cannot refuse to render service for as long as the member is in good standing in the records of the petitioner.

Therefore, all payments to doctors and hospitals, whether earmarked or actually paid, including the item of ₱11,522,346.00 identified as *Professional Fees* in the disputed assessment, are inextricably intertwined with the total fees payable to petitioner by the members and are a crucial factor in the over-all design of the terms and conditions stated in every contract for coverage. They form part of the gross receipt of petitioner subject to VAT.

On the matter of petitioner's claim that a portion of the ₱11,522,346.00 *Professional Fees*, equivalent to ₱5,809,584.88, had already been subjected to VAT and could not therefore be included in its taxable gross receipts without committing double taxation, the Court finds no evidence of this alleged double taxation. The nature and sources of the receipts submitted by petitioner cannot be ascertained on the face of the documents. Further, petitioner's alleged VAT payment showing double taxation has not been adduced.

(2) <u>On its earnings from clinic and laboratory facilities</u>

Petitioner is not a corporation engaged in the establishment and operation of clinics, laboratories and other like facilities. It is an HMO strictly in accordance with how this business is invariably defined by law, by the BIR and petitioner itself. In *Commissioner of Internal Revenue vs. Philippine Health Care Providers* the Supreme Court held that an entity that does not actually provide medical and/or hospital services as provided under the NIRC of 1997 provisions on VAT exempt transactions is not VAT exempt on its sales of services.

The operation of clinics and laboratories by petitioner is not a line of business that is distinct from its operations as an HMO, but rather a desirable incident to its core business as a service contractor. As argued by respondent, what is being subjected to tax is the activity of contracting to provide "probable" future medical and health services in exchange of "pre-paid pre-negotiated membership fees." [82] It is markedly different from a firm which owns a hospital or clinic and having in its employ a complement of medical or dental staff, renders medical, hospital or dental services and is paid for services just rendered.

[82] Memorandum for the respondent, docket p. 1130.

When petitioner explains in its Memorandum that its members have an option to choose who between petitioner and accredited hospitals will render them medical services, to wit:

> "As a general rule, Petitioner actually and directly provides medical and laboratory services to members. Members have a choice of availing of medical, hospital and laboratory services either from Petitioner's clinics or from accredited facilities depending on what is more convenient to them. xxx;"[83]

it suggests that petitioner itself is uncertain if its members would in fact avail themselves of such medical services, thus making it equally uncertain what portions of the fees they pay, if any at all, should be subject to or exempt from VAT.

The rule is that upon receipt of membership fees, the value-added tax immediately accrues. Petitioner would however have portions of the fees received by it declared VAT exempt, conditioned and dependent on whether or not the members actually elected to utilize petitioner's clinics and laboratory facilities, a proposition that renders the payment of VAT subject to the discretion of the members. Therefore, at the time petitioner received the premium payments, at which exact time likewise VAT accrued, petitioner admits it actually had no way of knowing which of the amounts qualified as VAT exempt. There is no evidence that petitioner "segregated" the amounts it claims as VAT-exempt at the time it received the premiums from its clients.

The CIR is vested with the exclusive and original jurisdiction to interpret the provisions of the Tax Code, subject to review by the Secretary of Finance.[84] While not judicially binding, these interpretations are entitled to great weight.[85]

The CIR has long interpreted the "gross receipt" of HMOs in Section 4.108.3(k) of RR 16-2005 as *"the total amount of money or its equivalent representing the service fee actually or constructively received xxx The compensation for their services representing service fees is presumed to the total amount received as enrollment fee from their members plus other charges received."*

There is no incompatibility between Section 4.108.3(k) of RR 16-2005 and the amendments in RR 4-2007 invoked by petitioner. For reasons already explained, the payments made by petitioner to doctors and hospitals do not constitute "money in trust" that ought not to be included as part of gross receipt, while petitioner's receipt of payments for the use of its clinics and laboratory facilities, are not VAT exempt under Section 109 (G) of the Tax Code.

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[83] Memorandum for the petitioner, docket p. 1158.
[84] Section 4, NIRC.
[85] La Suerte Cigar AND Cigarette Factory vs. Court of Appeals, 134 SCRA 29 [17 January 1985].

IV. Inclusion of petitioner's receipts from PEZA-registered enterprises in petitioner's gross receipt.

A. *The Parties' Conflicting Claims*

Petitioner alleges that respondent erroneously included ₱319,247,241.99[86] membership fees received from clients that are registered with the Philippine Export Zone Authority (PEZA). Petitioner asserts that the said fees should be considered as zero-rated sales of services.[87]

Respondent counters that even if these fees were received from PEZA-registered enterprises, the medical and/or hospital services rendered were not to such PEZA-registered enterprises but only to the employees of the latter. Respondent also added that no proof of application for zero-rating has been submitted as required by law.[88]

B. *Governing Principles*

Sales of services to entities registered with PEZA are effectively subject to zero percent (0%) VAT under Section 108(B)(3) of the National Internal Revenue Code of 1997, as amended, which states:

> "SEC. 108.Value-added Tax on Sale of Services and Use or Lease of Properties.–
>
> xxx xxx xxx
>
> (B) Transactions Subject to Zero Percent (0%) Rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> xxx xxx xxx
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate xxx."

Relative thereto, Section 24 of Republic Act No. 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995," provides:

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[86] Exhibit "O-2", docket, p. 544.
[87] Exhibits "N" and "O", docket, pp. 227 and 230.
[88] Exhibit "P", docket, p. 585.

> "SECTION 24. *Exemption from National and Local Taxes.-* Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows: xxx

Clearly, RA No. 7916 is a special law which grants exemption from national and local taxes, VAT included, to duly registered business establishments operating within their proper jurisdiction except payment of the preferential tax rate of 5% on gross income earned. Considering so, sales of services by VAT-registered entities in the Customs Territory, like herein petitioner, to PEZA entities are effectively subject to zero percent (0%) VAT under Section 108(B)(3) of the NIRC of 1997, as amended.

The Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*[89] explained it in this wise:

> "Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT."*(Emphasis supplied).*

Similarly, in the case of *Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.*[90], the Highest Tribunal held that:

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[89] G.R. No. 150154, August 9, 2005.

"Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent." *(Emphasis ours)*

Considering that there is evidence that some of petitioner's clients are BOI-registered entities, it is relevant to note Section 4.106-5 of RR No. 16-05, as amended, classifying as "export sales" the sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported, to wit:

"SEC. 4.106-5.Zero-Rated Sales of Goods or Properties.-xxx

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. -'Export Sales' shall mean:
xxx xxx xxx

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

xxx xxx xxx

xxxx That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

[90] G.R. No. 149671, July 21, 2006.

> xxx Provided, finally, that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI."(Emphasis supplied)

C. *The Court's Ruling.*

Based on the report of the Independent CPA[91], petitioner was able to prove that its receipts from PEZA and/or BOI-registered clients were billed as zero-rated. However, not all PEZA and BOI clients of petitioner were able to provide Certifications/Certificates of Registration from PEZA or BOI since some of petitioner's clients were allegedly already non-operating and some of the copies of the certifications are not readable.

Out of the total vouched zero-rated official receipts of ₱317,755,620.08, only the amount of ₱103,449,353.77 was supported with PEZA and/or BOI certifications[92] and VAT zero-rated official receipts[93]. Therefore, out of petitioner's claimed zero-rated sales to PEZA in the amount of ₱319,247,241.99, only the amount of ₱103,449,353.77 is valid. The remaining claimed zero-rated sales to PEZA in the amount of ₱215,797,888.22 shall be subjected to 12% VAT.

In sum, out of the ₱1,956,016,629.00 Membership Fees subject of the assessment, only the amount of ₱1,852,567,275.23 (₱1,956,016,629.00 less ₱103,449,353.77) is subject to VAT.

V. Adjustment of *Receivables*

A. Increase in *Receivables* – P39,923,738.00

The ICPA noted in his Report[94] that the BIR, in its computation of gross receipts subject to VAT, used total amount of the beginning and ending balances of "Receivables from members". He noticed that the said balance includes "Other Receivables"[95] which are not subject to VAT. The ICPA thus proposed the following adjustments to gross receipts in relation to "Other Receivables":[96]

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[91] Exhibit "CCC", p. 12
[92] Exhibits "AAA-1" to "AAA-42
[93] Exhibits "MM", "MM-1" to "MM-257", "NN", "NN-1" to "NN-186", "OO", "OO-1" to "OO-45", "PP", and "PP-1" to "PP-459"
[94] Exhibit "KKK", Findings and Observations (C), p. 4, docket, p. 363.
[95] Exhibit "AA-1", Notes to Financial Statements, No. 6.
[96] Exhibit "KKK", Findings and Observations (D), p. 5, docket, p. 364.

Other Receivables, Beginning	₱(8,690,916.00)
Other Receivables, Ending	8,716,599.00

A closer look at Note 6[97] to petitioner's Financial Statements, December 31, 2006 and 2005 reveals that the amounts of ₱45,265,483.00 and ₱85,189,221.00 indicated as "Receivables from members, beginning" and "Receivables from members, ending" in respondent's computation of petitioner's gross receipts subject to VAT actually pertained to petitioner's "Trade and Other Receivables–net" as reflected in its Balance Sheets as of December 31, 2006 and 2005 and consisted of the following:

	2006	2005
Receivable from members	₱67,338,453.00	₱28,157,687.00
Advances to officers and employees	16,337,913.00	15,902,220.00
Advances to affiliates	-	792,187.00
Others	8,716,600.00	7,617,134.00
	92,392,966.00	52,469,228.00
Allowance for impairment	(7,203,745.00)	(7,203,745.00)
	₱85,189,221.00	₱45,265,483.00

Petitioner's receivables indicated above as "Others" as of December 31, 2005 and December 31, 2006 amounted to ₱7,617,134.00 (not ₱8,690,916.00 as reported by the ICPA and ₱8,716,600.00. While the ICPA reported that these receivables include payments for the maternity benefits of the employees that should be paid by the Social Security System (SSS) but were advanced by petitioner, and hospital charges which represent erroneous claims by the members which have been previously paid by petitioner and are charged back to the respective hospitals, doctors or members,[98]petitioner failed to provide documents to corroborate such statement. Therefore, these amounts cannot be considered as adjustments to respondent's computation of petitioner's gross receipts subject to VAT.

However, as stated in Note 19(d)[99] to petitioner's Financial Statements, December 31, 2006 and 2005, the Advances to officers and employees as of December 31, 2006 and 2005 in the respective amounts of **₱16,337,913.00 and ₱15,902,220.00 included advances to key management personnel** amounting to ₱9,980,265.00 and ₱11,960,019.00 as of December 31, 2006 and 2005, respectively. Also included were the current portion of car loans granted to certain officers amounting to ₱635,034.00 and ₱1,276,447.00 as of December 31, 2006 and 2005, respectively. Since these advances totalling ₱10,615,299.00 for 2006 and ₱13,236,466.00 for 2005 do not represent petitioner's trade receivables, the same

[97]Exhibit "AA-1".

[98] Exhibit "KKK", Findings and Observations (C), p. 4, docket, p. 363.

[99] Exhibit "AA-1".

should not be considered in the computation of petitioner's gross receipts subject to VAT, thus:

	2006	2005
Current portion of car loans granted to certain officers	₱ 635,034.00	₱ 1,276,447.00
Advances to key management personnel	9,980,265.00	11,960,019.00
TOTAL	**₱10,615,299.00**	**₱13,236,466.00**

According to the ICPA[100], some of the amounts of "Fees on Plans Sold" and "Processing Fees" are auditor's adjustments made at year end, and reversed in the subsequent period. These included a journal entry for the setting-up and reversal of Accrued Accounts Receivable in the amount of ₱33,396,224.32. The ICPA suggested the amount of ₱33,396,224.32[101] to be deducted from respondent's computation of petitioner's VATable gross receipts since the said amount is merely an estimate which should not be subjected to 12% VAT.

Indeed, a perusal of the related adjusting entry[102] shows that the amount of ₱33,396,224.32 represents accrual of "Fees on Plans Sold-H.O." on December 31, 2006 that was reversed on January 1, 2007. Per respondent's computation of petitioner's gross receipts subject to VAT for the year 2006, the amount of ₱33,396,224.32 was added as part of the "Membership Fees for the year" and then deducted as part of the "Receivables from members, ending". This addition and subtraction of the same amount of ₱33,396,224.32 created no effect on petitioner's VATable gross receipts for the year 2006. Hence, the ICPA's recommended deduction from petitioner's gross receipts subject to VAT in the amount of ₱33,396,224.32 was improper.

Likewise, the ICPA recommended that the output VAT portion included in the "Receivables from members" as of December 31, 2006 and 2005 must be deducted from the gross receipts subject to VAT.

The Court concurs with the ICPA. However, as pointed out earlier, the amounts of ₱45,265,483.00 and ₱85,189,221.00 indicated as "Receivables from members, beginning" and "Receivables from members, ending", respectively, in respondent's computation of gross receipts subject to VAT, pertained to petitioner's "Trade and other receivables–net, beginning" and "Trade and other receivables–net, ending", respectively, which included the amounts of ₱10,615,299.00 and ₱13,236,466.00 representing Advances to officers and employees as of December 31, 2006 and 2005, respectively. Therefore, only the

[100] Exhibit "CCC", Findings and Observations (G.2), p. 11
[101] Exhibit "KKK", Findings and Observations (D), p. 5, docket, p. 364
[102] Exhibit "BB-1"

VAT pertaining to the remaining "Trade and other receivables-net" as of December 31, 2006 and 2005 in the respective amounts of ₱74,573,922.00 and ₱32,029,017.00 shall be deducted from respondent's computation of gross receipts subject to VAT, as computed below:

	2006	2005
Trade and other receivables - net,	₱85,189,221.00	₱45,265,483.00
Less: Advances to officers and employees	10,615,299.00	13,236,466.00
Adjusted Trade and other receivables – net	₱74,573,922.00	₱32,029,017.00
Less: Output VAT portion	7,990,063.07	2,911,728.82
Adjusted Trade and other receivables - net of VAT	**₱66,583,858.93**	**₱29,117,288.18**

B. *Decrease in Unearned Fees –₱6,568,206.00*

The ICPA also suggested a deduction from respondent's computation of gross receipts subject to VAT, in the amount of ₱387,456,304.05 pertaining to the auditor's journal entries for the setting-up and reversal of Unearned Fees in 2005 and 2006.[103]

In recording the amount of ₱387,456,304.05, the following entries were made:[104]

12/31/2005	213-0000-10	MEMBERS' DEPOSITS-H.O.	387,456,304.05	
	401-0000-10	FEES ON PLANS SOLD-H.O.		387,456,304.05
		To record unearned fees for 2005		
1/1/2006	401-0000-10	FEES ON PLANS SOLD-H.O.	387,456,304.05	
	213-0000-10	MEMBERS' DEPOSITS-H.O.		387,456,304.05
		To record reversal of unearned fees for 2005		

The Court cannot give credence to the above entries without supporting documents such as general ledger and any other document upon which the amount of ₱387,456,304.05 was based. While it was stated that the entries were made to record the setting-up and reversal of Unearned Fees in 2005 and 2006, it can be readily seen from the above table that what was recognized was a revenue account and not Unearned Fees.

[103]Exhibit "KKK", p. 5, docket, p. 364
[104] Exhibit "BB-2"

C. Other Adjustments

The ICPA recommended that the following accounts be deducted from petitioner's VATable gross receipts:

1. Vouched Commission Expense – ₱63,493,382.28; and
2. Direct Salaries included in the Cost of Sales – ₱42,590,254.00

According to the ICPA's sworn statement[105], he was able to verify the received claims of brokers and/or agents for their commissions through the supporting vouchers and paid checks in the amount of ₱63,493,382.28.

Moreover, Direct Salaries included in the Cost of Sales in the amount of ₱42,590,254.00 in the Audited Financial Statements (AFS) is an allocation made by external auditors for proper AFS presentation.

As stated earlier, pursuant to Section 4.108-3(k) of RR No. 16-05, gross receipts computation for HMO shall be based on the **total amount of money or its equivalent** representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. The compensation for their services representing their service fee is presumed to be the total amount received as enrollment fee from their members plus other charges received. The **only** exclusion stated therein is value-added tax. Therefore, Vouched Commission Expense for brokers and Direct Salaries included in the Cost of Sales should not be deducted from the computation of gross receipts.

VI. Applicable VAT rate

A. *The contending versions*

Petitioner alleges that respondent erroneously applied the 12% VAT rate to its entire gross receipts for 2006, inclusive of its income for January 2006 during which month the VAT rate was still 10%.[106] Thus:

> It must be pointed out that the gross receipts for January, 2006 were still subject to 10% VAT, and the 12% VAT rate was made effective only on or after February 1, 2006, pursuant to the provisions of Republic Act No. 9337, as implemented by Revenue Memorandum Circular No. 7-2006 xxx and Revenue Memorandum Circular No. 8-2006 xxx.[107]

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105 Exhibit "MMM", docket, p. 349
106 Memorandum for the petitioner, dated July 2013, pp. 29-30.
107 Exhibits "CCCC" and "DDDD" respectively, TSN dated January 17, 2013

On the other hand, respondent argued that petitioner's gross receipts should entirely be subject to 12% VAT since petitioner failed to prove compliance with the three (3) conditions set forth under Revenue Memorandum Circular No. 08-06[108], which in pertinent part reads:

> Amounts due on sale of services rendered on or before January 31, 2006, payments of which are received on or after February 1, 2006, shall be considered as accrued as of January 31, 2006 subject to the following conditions:
>
> 1. Taxpayer files an Information Return on or before February 28, 2006 showing the name(s) of the contractor(s), client(s), customer(s) and the amount(s) of the contract price earned and outstanding as of Jan. 31, 2006, and containing a declaration of the obligation to pay the applicable rate of value-added tax due, if any;
>
> 2. The seller billed the unpaid amount not later than January 31, 2006, and a copy of such billing is attached to the information return required in (i) hereof;
>
> 3. The seller has recorded in his books of accounts the amount receivable as of January 31, 2006.
>
> <u>Failure to comply with the above-stated conditions shall automatically subject the gross receipts received on or after February 1, 2006, to the 12% VAT</u>. (Emphasis supplied).

B. *<u>The non-issues and the issue</u>*

The effectivity date of the increase of the VAT rate from 10% to 12% is a non-issue. Under RMC 7-2006, in relation to Section 4 of R.A. 9337, the increase was effective February 1, 2006.

There is also no issue here that the portion of petitioner's income which it claims was wrongfully subjected to 12% VAT instead of 10%, represented income earned and outstanding as of January 31, 2006, or before the effectivity of the increase in VAT rate.

These notwithstanding, the issue now presented is whether or not petitioner's alleged failure to comply with the provisions of RMC 08-06 authorized respondent BIR to impose the higher VAT rate of 12% instead of the lower 10% to income accrued as of January 2006.

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[108] Exhibit "P", docket, p. 587

C. Authority of the CIR to issue rules and regulations

The authority of the Secretary of Finance, upon the recommendation of the CIR, *to promulgate all needful rules and regulations for the effective enforcement* of the provisions of the Code, needs no belaboring.[109] These rules include those *specifying, prescribing or defining,* such as:

a) the manner in which revenue shall be collected and paid, xxx and the proper books, records, invoices and other papers that shall be kept and entries made therein xxx.

b) the manner in which tax returns, information and reports shall be prepared and reported and the tax collected and paid xxx[110].

Accordingly, the CIR had long ago issued Revenue Regulations 16-2005, as amended, consolidating the rules and regulations for the enforcement of VAT collection, such as those relating to invoicing requirements[111]; accounting requirements that provide for the information that must appear in subsidiary journals[112]; filing of VAT returns and declarations[113]; submission of quarterly summary lists of sales and purchases and the information that must be indicated therein,[114] among others.

The provisions of RR 16-2005 are comparable to those provided for in RMC 08-06 insofar as the latter mandate the taxpayer to:

(a) file an information return on the matter of its January sales no later than February 28, 2006;
(b) bill its clients for its January sales no later than January 31; and,
(c) record such sales in its account receivable no later than January 31, 2006.

D. Legal principles on administrative issuances

The following rulings are pertinent:

1. In a case involving an agency's rules and regulations that imposed additional requirements than that provided for by law for the availment of exemption from compulsory fund coverage, the Supreme Court said:

[109] Section 244, Tax Code.
[110] Section 245 (g), (i), Tax Code.
[111] Section 4.113-1.
[112] Section 4.113-3.
[113] Section 4.114.1.
[114] Section 4.114-3.

> (I)t is well settled that rules and regulations, which are the product of a delegated power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law.
>
> xxx xxx
>
> The HDMF (agency) cannot, in the exercise of its rule-making power, issue a regulation not consistent with the law it seeks to apply. Indeed, administrative issuances must not override, supplant or modify the law, but, must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law. (*Emphasis supplied)*[115]

2. *Commissioner of Internal Revenue vs Court of Appeals*[116], struck down BIR's RMC 04-87 for saying that, the law granting tax amnesty for *all unpaid taxes from 1981 to 1985* notwithstanding, cases of tax deficiencies that had priorly been subject of assessment are not entitled to amnesty. Thus:

> More specifically, the plain provisions in the statute granting tax amnesty for unpaid taxes for the period January 1, 1981 to December 31, 1985 shifted the burden of proof on respondent (CIR) to show how the issuance of an assessment before the date of the promulgation of the executive order (tax amnesty) could have a reasonable relation with the objective periods of the amnesty, so as to make petitioner still answerable for a tax liability which, through the statute, should have been erased with the proper availment of the amnesty.
>
> xxx xxx
>
> The authority of the Minister of Finance (now the Secretary of Finance), in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. Much more fundamental than either of the above, however, is that all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor modify, the law. *(Emphasis supplied)*

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115 Romulo Mabanta vs. Home Development Mutual Fund, 333 SCRA 777, 785-786.
116 240 SCRA 386.

E. *The Court's Ruling.*

The Court finds that RMC No. 08-06 is an invalid administrative issuance for the following reasons:

Firstly, RMC No. 08-06 has the effect of retroactively applying the 12% VAT rate, not so much by explicit subordinate legislation, but by imposing it as the consequence for failure to comply with the RMC.

In *BPI Leasing Corporation vs. The Hon. Court of Tax Appeal and CIR*[117], the Supreme Court tackled the issue on whether or not a BIR regulation may be availed of retroactively by a taxpayer. In disposing of this issue, the inviolability of and adherence to *effectivity date* was articulated, like so:

> The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication. In the present case, there is no indication that the revenue regulation may operate retroactively. Furthermore, there is an express provision stating that it "shall take effect on January 1, 1987," and that it "shall be applicable to all leases written on or after the said date." Being clear on its prospective application, it must be given its literal meaning and applied without further interpretation. *(Emphasis supplied)*

Secondly, the Tax Code itself provides for the consequences for failure to pay the proper tax or comply with legal and administrative provisions for the filing of returns and recording of accounts. These consequences are limited to the civil and penal sanctions stated in the Code.

Under the Code, any taxpayer and/or tax return failing to pay and/or compute the correct tax is subject to examination and assessment of deficiency tax[118] which deficiency tax, if unpaid, subjects the taxpayer to compulsive collection through distraint and levy of property, or prosecution in a civil or criminal action.[119] Also, *when a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations, or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.*[120]

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117 416 SCRA 4.
118 Section 6 (A), Tax Code.
119 Section 205, Tax Code.
120 Section 6 (B), Tax Code.

The civil penalties *for failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed* are limited to *additions to the tax or deficiency tax*[121], consisting in most instances of a surcharge equivalent to twenty-five percent (25%) of the amount due[122] plus interest of twenty percent (20%) from the date prescribed for payment.[123]

In particular respect of *Failure to File Certain Information Returns*, Sec. 250 of the Tax Code provides:

> *In the case of each failure to file an information return, statement or list, or keep any record, or supply any information required by this Code or by the Commissioner on the date prescribed therefor, xxx xxx, there shall, upon notice and demand by the Commissioner, be paid by the person failing to file, keep or supply the same, One thousand pesos (P1,000.00) for each such failure xxx*

The CIR cannot, by administrative regulation, impose a penalty higher than, or more burdensome, or distinct, or so far deviates in form and substance from, what the Tax Code clearly and consistently provides. There is no legal principle upon which the CIR can credibly claim authority to impose, by way of civil penalty for failure to file information return or comply with accounting requirements, the automatic imposition of 12% VAT rate for gross receipts alleged by a taxpayer to have been factually received/ accrued/ recognized during such time when the VAT rate was only 10%.

This Court further notes that RMC 08-06[124], ordered all taxpayers with January sales receivables to issue to their clients all bills for such January sales no later than the same day of January 31, 2006. In other words, the deadline for compliance is exactly on the same day that the RMC itself was made effective. Surely, the RMC at once renders improbable compliance with its provisions.

For being contrary to law, the provision of RMC 08-06, to wit: *Failure to comply with the above-stated conditions shall automatically subject the gross receipts received on or after February 1, 2006 to the 12% VAT*, is here declared invalid and without legal effect. The applicable VAT rate is a matter of law. It is not a matter of administrative issuance.

F. Petitioner's evidence as to its gross income for January 2006.

The foregoing notwithstanding, the CIR retains the power to investigate all available evidence to determine petitioner's actual liability for VAT, all in

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121 Section 247, Tax Code.
122 Section 248, Tax Code.
123 Section 249, Tax Code.
124 Issued on January 26, 2001.

accordance with the Tax Code, and to determine which of petitioner's income pertains to January sales that is subject to 10% VAT. For this same reason, the particular amount that should be subject to either 10% or 12% VAT rate is therefore a matter of evidence.

Respondent CIR found petitioner liable for VAT amounting to ₱178,538,566.68, computed as follows:

Trade and Other Receivables, beginning		₱45,265,483.00	
Less:	Advances to officers and employees	13,236,466.00	
Adjusted Trade and Other Receivables, beginning		₱32,029,017.00	
Less:	Output VAT portion	2,911,728.82	
Adjusted Trade and Other Receivables, beginning, net of VAT			₱ 29,117,288.18
Add:	Membership Fees for the Year	₱ 1,956,016,629.00	
	Less: Sales to PEZA and/or BOI registered entities	103,449,353.77	
	Adjusted Membership Fees for the Year	₱ 1,852,567,275.23	
	Administrative Service Fees	3,388,889.00	
	Professional Fees	11,522,346.00	
	Processing Fees	11,008,809.00	
	Rental Income	119,942.00	
	Unearned Fees, ending	405,616,650.00	2,284,223,911.23
Less:	Trade and Other Receivables, ending	₱85,189,221.00	
	Less: Advances to officers and employees	10,615,299.00	
	Adjusted Trade and Other Receivables, ending	₱74,573,922.00	
	Less: Output VAT portion	7,990,063.07	
	Adjusted Trade and Other Receivables, ending, net of VAT	₱ 66,583,858.93	
	Add: Unearned Fees, beginning	412,184,856.00	478,768,714.93
Gross Receipts subject to VAT			₱1,834,572,484.48
Multiply by VAT Rate			12%
Output Tax Due			₱220,148,698.14
Less:	Input Tax		25,794,078.24
VAT Payable			₱194,354,619.90
Less:	Payments		15,816,053.22
Deficiency VAT			**₱178,538,566.68**

On the other hand, petitioner claims that:

> The Court Commissioned Independent Certified Public Accountant observed that "the BIR has computed the output VAT by dividing the Gross Receipts subject to VAT (as derived by the BIR) by 112% and multiplying the same to the 12% VAT rate. It should also be noted that the 12% VAT rate is only applicable starting on February 1, 2006 and onwards. The VAT rate for January 2006 should be 10%. (Exhibits "CCC," and "GGG," inclusive of all sub-markings, respectively and TSNs dated August 15, 2011 and October 3, 2011, respectively)[125]

In his final report dated August 1, 2011, the ICPA[126] verified the following:

125 Petitioner's Memorandum, p.30.
126 Mr. Richard R. Lapres, Tax Partner, Manabat Delgado Amper & Co.

a. The mathematical accuracy of the BIR's assessment of Deficiency VAT against petitioner;
b. The amount of membership fees and other revenues for the taxable year 2006 and determined the amount of output tax paid by petitioner in the same year;
c. The claims of enrolled members through payments made by petitioner in favor of hospitals, clinics, etc., from which the enrolled members utilize their respective health care benefits;
d. The accrued and paid commission through payments made by petitioner in favor of brokers, agents etc., from which the brokers and/or agents were paid;
e. That the members indicated in the "summary of medical services", claiming for medical, dental, and other similar services, were enrolled members in good standing as of the date of utilization; and
f. A reconciliation of member claims, direct cost of salaries and the commission with the cost of services recorded in the books of the petitioner and in the AFS;
g. Fees on plans sold; and
h. Substantiation for zero-rated sales to PEZA and/or BOI registered enterprises.

The ICPA noted that a number of documents have not been verified despite due diligence of the procedures performed due to the huge volume of documents as well as time constraint and damage caused by the 2009 flooding of Metro Manila brought about by Typhoon Ondoy.

Based on the findings and observations of the ICPA, this court finds that the procedures and evidence provided to substantiate the final report does not directly and sufficiently establish that portion pertaining to petitioner's January income that is subject to the ten percent (10%) rate.

VII. Abatement of Penalties and Surcharges.

Petitioner seeks for the abatement of penalties and surcharges imposed on its alleged deficiency VAT in view of the over-all impact of such payment to its economic stability as an HMO.

The Court finds petitioner's contention wanting of legal basis. This Court has no authority to grant the abatement. Under the Tax Code, the CIR has the authority to grant the same. Thus, Section 204 of the Tax Code provides:

Section 204(B) of the Tax Code grants the CIR the authority to abate or cancel a tax liability under certain conditions, viz:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may –
>
> xxx xxx xxx
>
> (B) Abate or cancel a tax liability, when:
>
> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or
>
> (2) The administration and collection costs involved do not justify the collection of the amount due.
>
> All criminal violations may be compromised except: (a) those already filed in court, or (2) those involving fraud.
>
> xxx xxx xxx"

Section 4 of Revenue Regulation (RR) No. 13-2001, also provides:

> "SECTION 4. The Commissioner has the Sole Authority to Abate or Cancel Tax, Penalties and/or Interest. – The Commissioner has the sole authority to abate or cancel internal revenue taxes, penalties and/or interest pursuant to Section 204(B), in relation to Section 7(c) both of this Code. This authority is generally applicable to surcharge and compromise penalties only, however, in meritorious instances, the Commissioner may likewise abate the interest as well as basic tax assessed, provided however, that cases for abatement and cancellation of tax, penalties and/or interest by the Commissioner shall be coursed through the following officials:
>
> 4.1 The Deputy Commissioner (Operations Group), who shall constitute a Technical Working Committee (TWC) for the evaluation and review of any application for abatement or cancellation of tax, penalties and/or interest processed by the Revenue District Office (RDO) as reviewed by the Regional Office (RO), or by the Large Taxpayers' Service's Collection or Audit Division and Large Taxpayers District Office (LTDO) as reviewed by the Large Taxpayers Service (LTS), or by Collection Enforcement Division/Withholding Agent and Monitoring Division as reviewed by the Collection Service, or by the Legal Service, or any other office that has jurisdiction over the case; and

4.2 The Deputy Commissioner (Legal and Inspection Group), who shall evaluate the legal issue involved in the case.

The application for abatement or cancellation of tax, penalties and/or interest should state the reasons and causes for such request. Documentary proofs for the underlying reasons and causes afore-stated should be appended to the "Application for Abatement or Cancellation of Tax, Penalties and/or Interest" (Annex "A"). On the other hand, denial of the application for abatement or cancellation of tax, penalties and/or interest should state the reasons therefor."

CONCLUSION

WHEREFORE, premises considered, the deficiency VAT assessment issued by respondent against petitioner covering taxable year 2006 is hereby **AFFIRMED WITH MODIFICATIONS**. Accordingly, petitioner is ordered to pay respondent the amount of ₱223,173,208.35, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic Deficiency VAT	₱178,538,566.68
Add: 25% Surcharge	44,634,641.67
Total	**₱223,173,208.35**

In addition, petitioner is ordered to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱178,538,566.68 computed from January 25, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱223,173,208.35 representing basic deficiency VAT of ₱178,538,566.68 and 25% surcharge of ₱44,634,641.67and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from June 19, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice