REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CONTEX CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8493

Members:

Castañeda,Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

APR 2 2 2015 2:15 p.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.:*

This resolves the Petition for Review filed on May 17, 2012 by Contex Corporation seeking the cancellation and withdrawal of the assessments issued against it for alleged deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, fringe benefit tax, and final tax on dividends for taxable year 2007 in the total amount of ₱41,262,629.86, broken down as follows:

Income Tax	₱ 662,912.59
Value-added Tax	14,744,475.64
Expanded Withholding Tax	18,303.25
Withholding Tax on Compensation	2,921.21
Fringe Benefit Tax	327,141.15
Final Tax on Dividends	25,506,876.02
Total	**₱41,262,629.86**

STATEMENT OF FACTS

Petitioner Contex Corporation is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at Subic, Philippines.[1]

[1] Exhibit "K", docket, pp. 461-468.

On the other hand, respondent Commissioner of Internal Revenue is the government officer charged with, among others, the responsibility of assessing and collecting all internal revenue taxes. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On June 29, 2011, petitioner received a Preliminary Assessment Notice (PAN) dated June 10, 2011, issued by Regional Director Romulo L. Aguila, Jr., with attached Details of Discrepancies and Audit Sheets prepared by the Investigating Officer, informing petitioner of its deficiency taxes for taxable year 2007 in the total amount of ₱39,559,445.42.[2]

On July 12, 2011, petitioner filed its request to submit its reply to the PAN on or before July 31, 2011.[3]

In response to the said request, a letter was issued by Regional Director Romulo L. Aguila, Jr. informing petitioner that it may not be necessary considering that a Formal Letter of Demand (FLD) and an Assessment Notice were already issued.[4]

Still, petitioner filed its reply to the PAN on August 1, 2011 to refute the findings and support its objections against the alleged deficiency taxes.[5]

On August 26, 2011, petitioner received the FLD with attached Details of Discrepancies and Audit Result/Assessment Notices, dated July 15, 2011, issued by Regional Director Romulo L. Aguilar, Jr., assessing petitioner of deficiency taxes in the total amount of ₱40,054,946.19.[6]

---

[2] Par. c, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 229; Exhibit "A", docket, p. 402.
[3] Exhibit "B", docket, p. 411.
[4] Exhibit "C", docket, p. 412.
[5] Exhibit "D", docket, pp. 413-417.
[6] Exhibit "E", docket, pp. 418-435.

On September 23, 2011, petitioner filed its protest letter assailing the assessment contained in the FLD.[7] Petitioner also sent a letter to respondent on November 21, 2011, stating that it is submitting the documents enumerated therein to support its letter dated September 23, 2011.[8]

Subsequently, a letter was received by petitioner from Revenue District Officer Rey Roberto Y. Manalili on February 7, 2012, informing petitioner of the revised deficiency taxes pursuant to petitioner's request for re-investigation.[9]

A Final Decision on Disputed Assessment (FDDA) was later issued by Regional Director Araceli L. Francisco on April 17, 2012, stating the basis of the assessment.[10]

Accordingly, petitioner filed the instant Petition for Review on May 17, 2012.

Respondent filed her Answer [11] on July 19, 2012, interposing the following special and affirmative defenses:

> 4. Respondent observed both procedural and substantial due process in issuing the assessment subject of this case. The Preliminary Assessment Notice, Formal Letter of Demand with Audit Result/Assessment Notice and Final Decision on Disputed Assessment were issued in accordance with law, rules and jurisprudence.
>
> 5. It is quite illogical for petitioner to assert that respondent failed to observe due process. Contrary to its claim that it was outright denied due process when it pointed out in its own Petition for Review that it received the Preliminary Assessment Notice, Formal Letter of Demand and Final Decision on Disputed Assessment issued by respondent.
>
> 6. Petitioner was informed of the factual and legal basis of the assessment. The Preliminary Assessment Notice, Formal Letter of Demand and Final Decision on Disputed Assessment indicated not only the deficiency taxes involved, compromise penalties and interest due

---

[7] Exhibit "F", docket, pp. 436-441.
[8] Exhibit "G", docket, pp. 442-444.
[9] Exhibit "H", docket, pp. 445-453.
[10] Exhibit "I", docket, pp. 454-457.
[11] Docket, pp. 179-187.

thereon, but also sufficiently stated the facts, the law, rules and regulations on which the assessment is based.

7. The Revenue Officer performed comprehensive audit procedures and techniques. Petitioner's Financial Statements and books of accounts were analyzed, comprehensive study of petitioner's pertinent accounting records disclosed that it is liable to pay deficiency tax assessments.

8. The basis for the assessment of deficiency Income Tax came from disallowed operating expenses particularly telephone charges and discrepancy in the depreciation expense account.

9. The Telephone Expense was disallowed because the Cost Sharing Agreement between petitioner and its affiliates is not notarized and no billing statements covering such expense were furnished to petitioner in relation to the alleged Cost Sharing Agreement.

10. Furthermore, petitioner failed to reconcile its Depreciation Account. The disallowed Depreciation refers to a write-off made as of December 21, 2006, which has nothing to do with the Depreciation Expense of 2007.

xxx xxx xxx

12. With regard to deficiency Value Added Tax, all of petitioner's sales were made to Unet Distributor Corporation, a non-locator. Evidence as to payments of VAT on transfer of goods to the customs territory prior to release was not presented. Thus, all sales were subjected to VAT pursuant to Sections 106 and 113 of the National Internal Revenue Code of 1997.

xxx xxx xxx

14. The deficiency Withholding Tax on Wages arose from the item of Salary Account which was not reconciled and subsequently subjected to an effective rate of 15% per audit pursuant to the provisions of Sections 78, 80, 81 and 83 of the NIRC of 1997. Petitioner likewise failed to submit documentary evidences to refute the findings of respondent.

xxx xxx xxx

16. Petitioner has deficiency Expanded Withholding Tax on Insurance Expense because the Insurance Account is directly billed to Contex based from the documents submitted. In addition, pursuant to Section 57 of the

NIRC in relation to Section 2.57.2 of Revenue Regulations No. 2.98 Income Payments are subjected to Withholding Tax. Petitioner, as one of the top 10,000 corporations, is required in its Income Payments to withhold the Expanded Withholding Tax.

xxx xxx xxx

18. The deficiency Fringe Benefit Tax assessment arose from accommodation expenses of officers which were imposed pursuant to Section 33 of the NIRC of 1997, as amended and Revenue Regulation No. 3-98. Petitioner also failed to submit documentary evidence to controvert the findings of respondent.

xxx xxx xxx

20. With regard to the Final Tax on Dividends, Cash Dividends declaration of ₱35,199,723.01 are subject to final withholding of 35% and 25% pursuant to Section 28 (B) (1) and 25 (B) of the NIRC of 1997, as amended. Verification of the General Information Sheet of Contex Corporation disclosed that Medtecs International Corporation Limited, Bermuda, USA is the major stockholder of the former. Hence, Dividends to the latter are subject to withholding tax.

xxx xxx xxx

22. Petitioner must also prove that the Petition for Review with Court of Tax Appeals was filed within thirty (30) days from receipt of the Final Decision of Disputed Assessments.

23. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously.

24. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands.

25. Based on the foregoing, the finding of deficiency tax liabilities against petitioner is proper in all respects. Worthy of note, are the words of the Supreme Court in the

case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands:*

> "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 favour of the correctness of tax assessments." *(Citations omitted)*

Thereafter, the case was set for pre-trial conference on September 27, 2012.[12] Respondent's Pre-Trial Brief[13] was filed on September 20, 2012; while the Pre-trial Brief (For the Petitioner)[14] was filed on September 21, 2012.

On October 12, 2012, the parties filed their Joint Stipulation of Facts and Issues[15]; which was later approved in this Court's Resolution[16] dated October 16, 2012. In the same Resolution, the pre-trial was considered terminated.

During trial, both parties presented their respective documentary and testimonial evidence.

After presentation, marking and identification, the Court admitted Exhibits "A" to "U" [17] as part of petitioner's documentary evidence; while Exhibits "6", "9", "11" to "11-f", "12", "13", "13-A"[18] and "14" to "21-a"[19] were admitted as respondent's documentary evidence.

The case was submitted for decision on May 13, 2014,[20] after petitioner submitted its Memorandum[21] on March 25,

[12] Notice of Pre-Trial Conference issued on August 29, 2012, docket, p. 201.
[13] Docket, pp. 202-211.
[14] Docket, pp. 213-221.
[15] Docket, pp. 229-231.
[16] Docket, p. 232.
[17] Resolution dated December 27, 2012, docket, pp. 563-564.
[18] Resolution dated February 26, 2014, docket, p. 708.
[19] Resolution dated September 13, 2013, docket, pp. 649-650.
[20] Resolution dated May 13, 2014, docket, p. 749.
[21] Docket, pp. 709-732.

2014 and respondent filed her Memorandum[22] on May 8, 2014.

STATEMENT OF ISSUES

The parties submitted the following issues[23] for this Court's disposition:

1. Whether the deficiency tax assessments against petitioner complied with the due process requirements under the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations No. 12-99; and

2. Whether petitioner is liable for deficiency tax liabilities representing income tax, value-added tax, withholding tax on compensation, expanded withholding tax, fringe benefit tax, and final tax on dividend in the aggregate amount of ₱41,262,629.86 for taxable year 2007, as well as penalty, deficiency and delinquency interests as provided in Sections 248 and 249 of the NIRC of 1997, as amended.

DISCUSSION/RULING

As to the issue pertaining to respondent's failure to comply with the due process requirements under the NIRC of 1997 and Revenue Regulations No. 12-99, petitioner alleges that it was advised by respondent that an administrative protest against the PAN is no longer necessary since respondent already issued the FLD even prior to the expiration of the period for petitioner to protest the PAN. Petitioner further avers that respondent failed to consider the documentary evidence submitted in support of its administrative protests. Thus, petitioner concludes that the deficiency tax assessments issued by respondent are void and should be cancelled or withdrawn.

[22] Docket, pp. 738-747.
[23] Statement of Issues, JSFI, docket, p. 230.

According to petitioner, when it received the PAN on June 29, 2011, it had until July 14, 2011 within which to file an administrative protest. When petitioner allegedly wrote to respondent two days before the deadline for filing a protest to ask for an extension of time, respondent supposedly told petitioner that it already issued the FLD and that protest against the PAN is no longer necessary.

Petitioner further alleges that respondent's revenue officer denied under oath that he advised petitioner that protesting the PAN is no longer necessary. Such denial, according to petitioner, is contrary to the letter received by petitioner; which letter was offered as Exhibit "C".

In opposition, respondent contends that a considerable amount of time had lapsed from the issuance of the PAN to petitioner by registered mail. Respondent insists that the BIR deemed petitioner to have constructively received the PAN considering that more than a month have passed since the same was sent through registered mail on June 10, 2011 pursuant to Section 3.1.7 of Revenue Regulations (RR) No. 12-99. Accordingly, the BIR believed that the former had been sufficiently given ample time to protest the PAN. Respondent therefore submits that the issuance of FAN was legally due since no protest was received from petitioner within the fifteen (15)-day period from date of posting thereof in the mail.

Respondent further notes that petitioner's response to the PAN was not even a protest but a mere request for an extension of time to file the same. Nevertheless, Ms. Luisa San Antonio was allegedly clear in her response to petitioner's letter dated July 12, 2011 that it was not denied the right to protest the assessment as it may do so in its protest against the FAN. Respondent points out that petitioner's protest to the FAN is similar in every way to its belatedly filed protest to the PAN.[24]

Section 228 of the NIRC of 1997, as amended, and Revenue Regulations No. 12-99 provide the procedural

[24] Respondent's Memorandum, docket, p. 742.

requirements that must be followed in order for an assessment to be valid.

Section 228 of the NIRC of 1997, as amended, reads:

> "SEC. 228. *Protesting Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice.** If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

Relevantly, Section 3 of RR No. 12-99 states:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedures in the issuance of deficiency tax assessment:

xxx xxx xxx

> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**

xxx xxx xxx

> 3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence, on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void xxx The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: xxx" *(Emphasis supplied)*

In other words, the taxpayer is given fifteen days to make a Reply and is also permitted to examine the records and present his arguments in writing. If the taxpayer fails to respond to the PAN, the taxpayer shall then be sent a Formal Letter of Demand and Assessment Notice, which shall state the facts and the law on which the assessment was based. The taxpayer may file a protest within thirty days. After filing the protest, the taxpayer must submit the relevant supporting documents within sixty days, otherwise the assessment shall become final.

Applying the above-quoted provisions of law and rules to the instant case, this Court finds that respondent has substantially complied with the requirements of due process.

As admitted by petitioner, it only had until July 14, 2011 within which to file an administrative protest or reply to the PAN. Instead of filing its reply to the PAN before the expiration of the said period, petitioner wrote to respondent two days before the deadline to ask for an extension of time. In a letter dated July 15, 2011, respondent supposedly told petitioner that she already issued the FLD on even date and that a protest against the PAN is no longer necessary.

The contents of the letter issued by respondent in reply to petitioner's request for extension of time are quoted as follows:

> "This is in connection with the letter of your plant controller, Ms. Anita P. Sabado, dated July 11, 2011, requesting for extension to reply to our Preliminary Assessment Letter dated June 10, 2011.
>
> In reply, please be informed that it may not be necessary at this point of time considering that a Formal Letter of Demand and Assessment Notice were already issued on even date. However, the same can still be protested within thirty (30) days from receipt thereof. Your protest letter should conform with the required detailed presentation of applicable laws, rules and regulations and statement of facts under Section 3.15 of Revenue Regulations No. 12-99 so that the same can be acted upon favorably."[25]

From the foregoing, it appears that the letter does not prohibit petitioner from filing its reply to the PAN within the 15-day period provided by law. The statement in the letter saying that "it may not be necessary at this point of time considering that a Formal Letter of Demand and Assessment Notice were already issued on even date" appears to be the response to the letter requesting for an extension of time to reply to the PAN. Clearly, what is unnecessary is not the filing of a reply to the PAN within the 15-day period but the request for extension of time to file the said reply.

---

[25] Exhibit "C".

Respondent's advice that it is unnecessary to file an extension of time to file reply to the PAN considering that an FLD was already issued on July 15, 2011 does not deprive petitioner of the opportunity to file its reply to the PAN within the 15-day period provided under the Revenue Regulations.

It has been held that the essence of due process is found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. What the law proscribes is the lack of opportunity to be heard. As long as the party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[26]

Furthermore, while petitioner claims that it was deprived of its right to file the reply within the 15-day period provided by Revenue Regulations, records indicate that petitioner was able to file its reply to the PAN, though belatedly. It is likewise significant to note that the reply to the PAN[27] had the same allegations as those contained in petitioner's reply to the FAN, which respondent's revenue officer considered in arriving at the revised assessment.

To be clear, after the filing of petitioner's protest[28] against the FLD on September 23, 2011 and the submission of documents to support the said protest on November 21, 2011[29], Revenue District Officer Rey Roberto Y. Manalili issued a letter addressing petitioner's request for re-investigation of its internal revenue taxes for taxable year 2007. In the said letter, it was stated that after review and evaluation of the documents that petitioner submitted, they arrived at the revised deficiency taxes. Thus, in the FDDA, the expanded withholding tax assessment was reduced from ₱707,135.01 to ₱18,050.14. Accordingly, petitioner cannot claim that it was denied due process in this case.

Petitioner also avers that the revenue examiner, Ma. Gracita D. Agaton, whose findings became the basis for the

---

[26] *Spouses Estares vs. Court of Appeals, et al.*, G.R. No. 144755, June 8, 2005.
[27] Exhibit "D".
[28] Exhibit "F".
[29] Exhibit "G".

issuance of the PAN, failed to consider the evidence submitted to Revenue Officer Leilanie Arellano who started the audit of petitioner. Petitioner maintains that the revenue officer's partial consideration of the evidence submitted by petitioner is arbitrary in nature and makes the assessment without any factual basis. Petitioner likewise observes that the revenue officer lied under oath in her judicial affidavit when she said that petitioner did not submit supporting documents. In view thereof, petitioner asserts that the revenue examiner's findings which became the basis of the PAN have no factual and legal bases, and thus, the deficiency tax assessment should be cancelled and withdrawn.

As to the allegation that Revenue Officer Agaton lied under oath when she said that petitioner did not submit supporting documents, petitioner failed to present evidence to support such allegation. Consequently, the same is considered bereft of merit.

With respect to petitioner's allegation that the revenue officer's partial consideration of the evidence submitted by petitioner is arbitrary in nature which makes the assessment without any factual basis, let it be stressed that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a Petition for Review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for taxpayer initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the Tax Code. However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis. Hence, the determination by this

Court must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.[30]

Accordingly, the Court shall determine whether petitioner can overturn the presumption of correctness of respondent's assessment and prove that the subject tax assessment is without foundation for respondent's alleged failure to consider the evidence presented by petitioner during the administrative proceedings. Such determination shall likewise address the issue on whether petitioner is liable for deficiency tax liabilities representing income tax, value-added tax, withholding tax on compensation, expanded withholding tax, fringe benefit tax, and final tax on dividend and increments for taxable year 2007.

On April 17, 2012, petitioner received the BIR's FDDA informing petitioner of its deficiency income tax, value-added tax, and withholding taxes for taxable year 2007 in the amount of ₱41,262,629.86 (inclusive of increments), broken down as follows:

Income Tax	₱ 662,912.59
Value-added Tax	14,744,475.64
Expanded Withholding Tax	18,303.25
Withholding on Compensation	2,921.21
Final Withholding Tax (Dividends)	25,506,876.02
Fringe Benefit Tax	327,141.15
TOTAL	**₱41,262,629.86**

The foregoing tax assessments stem from the Memorandum dated June 2, 2011 prepared by Revenue Officer Gracita D. Agaton, which recommended the issuance of a Preliminary Assessment Notice in view of the findings that petitioner has deficiency taxes due for taxable year 2007.[31]

Notably, the Memorandum mentions that petitioner is a taxpayer registered with the Subic Bay Metropolitan Authority (SBMA) and is enjoying the five percent (5%) preferential tax

[30] *Commission of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.
[31] Exhibit "12".

rate on gross income, net of allowable deductions under Republic Act (RA) No. 7227.

Nevertheless, the findings in the Memorandum further states that regular taxation was applied for the year under audit, quoting the provisions of RR No. 1-95.

Bearing in mind the foregoing uncontroverted findings of respondent's revenue officer, the Court shall now determine the propriety of each of the tax assessments subject of the instant Petition for Review.

I. INCOME TAX

The deficiency income tax assessment was computed by respondent as follows:

Net income per return		₱ 5,887,209.14
Add: Disallowance per audit		
Telephone charges of affiliated company	₱ 989,179.05	
Depreciation	42,442.58	1,031,621.63
Taxable Income per audit		₱ 6,918,830.77
Tax Due		₱ 2,421,590.77
Less: Tax paid		2,060,523.28
Income Tax Deficiency		₱ 361,067.49
Add: Interest (April 16, 2008 to March 30, 2012)		285,845.10
Compromise penalties		16,000.00
TOTAL DEFICIENCY INCOME TAX		**₱ 662,912.59**

a. Telephone charges of affiliated company - ₱989,179.05

The FLD states that respondent allowed all of petitioner's operating expenses except for telephone charges amounting to ₱989,179.05 and depreciation in the amount of ₱42,442.58. Respondent alleges that the telephone charges pertain to cost of an affiliate company.[32]

Petitioner assails the said item of assessment and avers that the telephone expenses pertained to its affiliate based on

[32] Exhibit "E".

a Cost Sharing Agreement[33] and as such, portions of the telephone charges are not petitioner's expense. In its protest against the FLD/FAN, petitioner explained that the said affiliate paid the telecom service provider and subsequently billed petitioner.[34]

On the other hand, respondent contends that the said Cost Sharing Agreement is not even notarized; hence, she concludes that there was no valid agreement reached with petitioner's affiliates. Even assuming there was such an agreement, the contract is self-serving considering petitioner's failure to attach competent supporting evidence.

The amount of discrepancy was derived by respondent from the following computation:[35]

	Per Return	**Per Audit**	**Difference**
Communication, light and water	₱2,102,264.00	₱1,113,084.95	**₱989,179.05**

Section 34(A)(1)(a)(b) of the NIRC of 1997, as amended, provides that:

> "SEC. 34. *Deductions from Gross Income.* – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
>
> (A) *Expenses.* –
>
> (1) *Ordinary and Necessary Trade, Business or Professional Expenses.* –
>
> (a) *In General.* – There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development,

[33] Exhibit "O".
[34] Exhibit "F".
[35] Exhibit "11-A".

> management, operation and/or conduct of the trade, business or exercise of a profession, including:
>
> xxx xxx xxx
>
> (b) *Substantiation Requirements.* – No deduction from gross income shall be allowed under Subsection (A) hereof unless **the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.**" *(Emphasis supplied)*

From the foregoing, petitioner must substantiate with sufficient evidence, all its ordinary and necessary expenses that were claimed as deductions from its gross income for the year under consideration, not only the amount thereof, but also the direct connection or relation of the same to the development, management, operation and/or conduct of respondent's trade, business or profession.

However, records show that petitioner failed to offer and submit evidence to prove the direct connection or relation of the said telephone expenses to the development, management, operation and/or conduct of its trade or business.

Furthermore, petitioner failed to sufficiently substantiate by evidence its claim that the amount of disallowed telephone expense actually pertains to its affiliate pursuant to a Cost Sharing Agreement[36]; that the said affiliate paid the telecom service provider; and that the said affiliate subsequently billed petitioner.

Clearly, there is non-compliance with the substantiation requirements laid down by Section 34(A)(1)(b) of the NIRC of 1997. As a result, the Court upholds the deficiency income tax assessment relating to the telephone expense.

---

[36] Exhibit "O".

b. Depreciation - ₱42,442.58

The Memorandum dated June 2, 2011 mentions that depreciation of ₱42,442.58 was disallowed because of the difference between costs claimed per financial statement and the schedule submitted by petitioner to the BIR. The Analysis of Income Tax[37] presented by respondent as part of the BIR Records shows that the discrepancy in the depreciation was computed as follows:

	Per Return	**Per Audit**	**Difference**
Depreciation	₱5,512,207.31	₱5,469,764.73	**₱42,442.58**

The amount of depreciation per audit was derived from the amount of depreciation per petitioner's own schedules, to wit:[38]

Depreciation per schedule:

Building	₱3,579,050.28
Building improvements	629,080.77
Machinery and Equipment	1,261,633.68
Total	₱5,469,764.73

On this matter, petitioner claims that the discrepancy in the depreciation pertains to the write-off of fully depreciated equipment by the same amount. According to petitioner, the write-off did not involve any expense, thus, there is nothing to disallow in the first place and, consequently, there is no deficiency income tax to speak of. Petitioner's journal voucher on the write-off of the fully depreciated factory machine and equipment in the amount of ₱42,442.63 was offered in evidence as Exhibit "P".

Petitioner also offered in evidence Exhibit "Q", which is petitioner's Schedule of Fixed Asset-Machinery and Equipment for the year 2007, where the following fixed assets were written-off:

---

[37] Exhibit "11-A".
[38] *Id.*

Steam Iron (TS-1600)	₱11,846.68
Strapping Machine	2,638.00
Carton Slider	16,844.55
Juki Sewing Machines	8,400.00
Juki Sewing Machines	2,713.40
Total	₱42,442.63

Respondent opposes the foregoing allegations and contends that the said journal voucher on the write-off of fully depreciated assets and the schedule of fixed assets merely show accumulated depreciation of factory machines and equipment without being substantiated by competent evidence such as official invoices, receipts or the like. The documents presented by petitioner allegedly failed to reconcile the discrepancies found in the cost per book and per financial statement. Respondent then concludes that the deficiency assessment on income tax must perforce be upheld.

While the journal voucher on the write-off of fully depreciated assets and the Schedule of Fixed Assets-Machinery and Equipment for the year 2007 may prove the accumulated depreciation of petitioner's factory machines and equipment, the said documents, however, failed to explain why the said amount formed part of the depreciation expense claimed as deduction to petitioner's gross income. As already mentioned, the taxpayer should substantiate with sufficient evidence, such as official receipts or other adequate records, the amount of the expense being deducted and the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

Clearly, petitioner failed to overcome by sufficient evidence the presumption of correctness of the deficiency income tax assessment relating to the disallowed depreciation expense. Thus, this item on the deficiency income tax assessment is upheld.

II. VALUE-ADDED TAX

The deficiency value-added tax assessment against petitioner was computed as follows:[39]

Taxable Sales	₱ 61,483.161.67
Output Tax	₱ 7,377,979.40
Add: 25% Surcharge	1,844,494.85
Interest (July 26, 2008 to March 31, 2012)	5,472,001.39
Compromise penalties	50,000.00
TOTAL DEFICIENCY VALUE-ADDED TAX	**₱14,744,475.64**

The FLD shows the assessment of deficiency VAT in the amount of ₱7,377,979.40 on petitioner's sales to customs territory customer. Respondent claims that all of petitioner's sales were made to Unet Distributor Corporation, a non-locator. Respondent explains that "evidence as to payments of VAT on transfer of goods to customs territory prior to release were not presented, thus all sales were subjected to Value Added Tax."[40]

According to petitioner, this assessment has no basis since respondent already made a contrary ruling in 1999 in the query of Toyota Autoparts, Inc. (TAPI). Petitioner points out that respondent, in VAT Ruling No. 118-99 dated December 10, 1999, held that sales of Toyota Autoparts Philippines, Inc., an entity registered with the Philippine Economic Zone Authority, to Toyota Motor Philippines (TMP), a corporation located in the customs territory, is considered "constructive importation by TMP" and as such, it is TMP and not TAPI which is liable to remit the VAT. Petitioner thus maintains that in the instant case, it is petitioner's customer in the customs territory which should remit and pay the VAT and not petitioner.

On this matter, let it be noted that the ruling cited by petitioner is not a ruling issued in its favor but in favor of another taxpayer. Furthermore, while petitioner alleges that the transactions subjected to VAT by respondent is considered as "constructive importation", the circumstances under which

[39] Exhibit "I".
[40] Exhibits "E" and "I".

the transactions were made were not supported by evidence. What is only clear from the records is that VAT was assessed on petitioner's sales to Unet Distributor Corporation.

Let it be stressed that in the determination of the tax liability of petitioner, the Court is guided by the rule that tax assessments 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 the BIR examiner and approved by his superior officers will not be disturbed.[41]

Since petitioner failed to present and offer evidence to prove that it is not liable to pay the assessed deficiency VAT, the presumption of correctness of the subject tax assessment remains.

III. WITHHOLDING TAX ON COMPENSATION

Respondent assessed petitioner of deficiency withholding tax on compensation based on the following computation:

Taxable basis per return	₱191,956.90
Add: Taxable amount of salaries found untaxed per audit	8,114.00
Taxable amount of salaries per audit	₱200,070.90
Tax due	₱ 16,978.13
Less: Remittances	15,761.03
Deficiency Withholding Tax on Compensation	₱ 1,217.10
Add: Interest (January 21, 2008 to March 31, 2012)	1,004.11
Compromise penalty	700.00
TOTAL DEFICIENCY WITHHOLDING TAX ON COMPENSATION	**₱ 2,921.21**

From the foregoing, respondent found "untaxed salaries" in the amount of ₱8,114.00 per her audit. Respondent's revenue officer found a minor difference upon reconciling the salaries per alphalist as compared against per financial statement. Since petitioner failed to reconcile such difference, the item of salary account not reconciled was subjected to an effective rate of 15% per audit pursuant to the provisions of

[41] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007, citing *Sy Po vs. Court of Tax Appeals*, G.R. No. L- 81446, August 18, 1988.

Sections 78, 80, 81, and 83 of the NIRC of 1997, as amended.[42]

Petitioner, on the other hand, maintains that the said assessment has no basis since the alleged "untaxed salaries" pertain to 13th month pay which is not taxable. Petitioner notes that the 13th month pay to petitioner's employee is ₱11,195.00 as compared to respondent's untaxed salary of ₱8,114.00. Respondent purportedly failed to explain the basis for the untaxed salary of ₱8,114.00.

Respondent counters that the document presented by petitioner is a mere voucher not supported by competent evidence; hence, it deserves no consideration by this Court.

Section 2.78.1(B)(11) of RR No. 2-98 reads:

> "(B) ***Exemptions from withholding tax on compensation.*** – The following income payments are exempted from the requirement of withholding tax on compensation:
>
> xxx xxx xxx
>
> (11) ***Thirteenth (13th) month pay and other benefits.*** –
>
> (a) Thirteenth (13th) month pay equivalent to the mandatory one (1) month basic salary of officials and employees of the government, (whether national or local), including government-owned or controlled corporations, and or private offices received after the twelfth (12th) month pay; and
>
> (b) Other benefits such as Christmas bonus, productivity incentive bonus, loyalty award, gifts in cash or in kind and other benefits of similar nature actually received by officials and employees of both government and private offices.
>
> The above stated exclusions (a) and (b) shall cover benefits paid or accrued during the year provided that the total amount shall not exceed thirty thousand pesos (₱30,000.00) which may be increased through rules and regulations issued by the Secretary of Finance, upon

[42] Exhibit "12".

> recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year." *(Emphasis supplied)*

While it is true that payments on account of 13th month pay and bonuses not exceeding thirty thousand pesos (₱30,000.00) are exempt from withholding tax as provided in the above-quoted provision, it is incumbent upon petitioner to prove that the amount of discrepancy found by respondent actually pertains to payments on account of the said 13th month pay and bonuses exempted from withholding tax.

In this case, petitioner failed to establish by evidence that the amount of discrepancy found by respondent relates to 13th month pay, which is not taxable. Petitioner's Accounts Payable Voucher No. 2957[43] on the alleged 13th month pay payment to its employee, together with a schedule, BIR Form No. 1604 CF for the year 2007 and Alphalist of Employees as of December 31, 2007, merely show that the 13th month pay payments to petitioner's employee is ₱11,195.00. Without any other evidence to support it, the said documents are insufficient to prove that the said discrepancy is not subject to withholding tax.

As to the allegation that respondent failed to explain the basis of the assessment, the Analysis of Withholding Taxes on Compensation[44] presented by respondent as part of the BIR Records and furnished to petitioner as annex to the FLD shows how the so-called "untaxed salary" was computed. The said computation is illustrated hereunder:

Per Financial Statements			
	Salaries, Wages and Benefits		₱200,070.90
Per Alphalist			
	Non-Taxable		
	13th Month Pay & Other Benefits	₱ 21,035.19	
	SSS, GSIS, PHIC & Pag-ibig Contributions	8,616.60	
	Salaries & Other Forms of compensation	-	
	Total	₱ 29,651.79	
	Taxable		
	13th Month Pay & Other Benefits	-	

[43] Exhibit "R".
[44] Exhibit "11-b"; Annexed in Exhibit "E" (FLD sent to petitioner), docket, p. 424.

	Salaries & Other Forms of Compensatior	162,305.11	
	Total	₱ 162,305.11	191,956.90
Difference			₱ 8,114.00
Effective Tax Rate			15%
Tax due on the unreconciled difference			**₱ 1,217.10**

Thus, petitioner's claim that respondent failed to explain the basis of the assessment is bereft of merit.

Also, even assuming that the amount of discrepancy concerns the 13th month pay payments made by petitioner, the above computation shows that the 13th month pay payments made by petitioner were already considered in respondent's determination of petitioner's tax liability. Nevertheless, respondent still found the above discrepancy upon audit and examination of petitioner's books. Accordingly, to reconcile the discrepancy, evidence should have been presented by petitioner to explain why the amount of salaries and wages per alphalist, which already includes the 13th month pay payments made by petitioner, is lesser than the amount of salaries and wages reflected in petitioner's financial statement (trial balance).

For petitioner's failure to explain by substantial evidence the discrepancy found by respondent, the item of deficiency withholding tax on the untaxed salaries remains.

IV. EXPANDED WITHHOLDING TAX

Respondent assessed petitioner of deficiency expanded withholding tax amounting to ₱8,933.29, broken down as follows:[45]

Insurance Expense	₱492,901.92
Withholding Tax Due	₱ 9,858.04
Less: remittance	924.75
Deficiency Expanded Withholding Tax	₱ 8,933.29
Add: Interest (January 21, 2008 to March 31, 2012)	7,369.96
Compromise Penalty	2,000.00
TOTAL DEFICIENCY EXPANDED WITHHOLDING TAX	**₱18,303.25**

[45] Exhibit "I".

Petitioner alleges that the above findings have no bases since petitioner actually withholds and remits the expanded withholding tax on the insurance expense. Petitioner's Accounts Payable Voucher No. 2907 with supporting documents, and the Monthly Remittance Return on Creditable Income Taxes Withheld for the Month of January 2009 were submitted as Exhibit "S".

However, respondent opposes the foregoing allegations and contends that the document presented by petitioner is a mere voucher not supported by competent evidence, deserving no consideration by this Court.

Upon verification of the Analysis of Expanded Withholding Tax attached to the FLD issued to petitioner,[46] the Court finds that the amount of insurance expense was picked up by respondent from the amount per financial statement, to wit:

Income Payment	Per FS	Per 1601e	Difference	Rate	Tax Due
Insurance	₱492,901.92	₱46,237.75	₱446,664.67	2%	₱8,933.29

A review of the said financial statement (Trial Balance As of December 31, 2007)[47] in the BIR Records shows that respondent mistakenly picked up the amount of ₱492,901.92, which actually corresponds to "Amortization of Leasehold Rig" listed just above the item of insurance.

Considering that the basis of the assessment for deficiency expanded withholding tax on insurance expense is incorrect, the said assessment must accordingly be cancelled for lack of factual basis.

V. FRINGE BENEFIT TAX

Respondent computed the assessed deficiency fringe benefit tax as follows:[48]

[46] Exhibit "E".
[47] BIR Records, p. 277.
[48] Exhibit "I".

Gross up monetary value		
Guest house expenses	₱ 75,111.28	
Utilities	27,264.09	
Rental payments	366,210.68	₱ 468,586.05
Tax due		149,947.54
Add: 25% surcharge		37,486.89
Interest (January 21, 2008 to March 31, 2012)		123,706.72
Compromise penalty		16,000.00
TOTAL DEFICIENCY FRINGE BENEFITS TAX		**₱327,141.15**

In the FDDA[49], respondent mentions that the fringe benefit tax on accommodation expenses of officers was imposed pursuant to Section 33 of the NIRC of 1997, as amended, and Revenue Regulations No. 3-98.

Petitioner explains that in 2007, due to business reversal, it had only one employee, a driver. Thus, the staffhouse expense where the deficiency fringe benefit tax assessment was based was allegedly used by petitioner's affiliate personnel. Consequently, there is no basis for respondent's assessment of deficiency fringe benefit tax.

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

[49] *Id.*

rates imposed thereat: *Provided, further,* That the grossed-up value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by the difference between one hundred percent (100%) and the applicable rates of income tax under Subsections (B), (C), (D), and (E) of Section 25.

(B) *Fringe Benefit defined.* – For purposes of this Section, the term *'fringe benefit'* means any good, service or other benefit furnished or granted in cash or in kind by an employer to an individual employee **(except rank- and-file employees as defined herein)** such as, but not limited to, the following:

(1) Housing;

xxx xxx xxx

(C) *Fringe Benefits Not Taxable.* – The following fringe benefits are not taxable under this Section:

xxx xxx xxx

(3) Benefits given to the rank and file employees, whether granted under a collective bargaining agreement or not; and xxx" *(Emphasis supplied)*

While it is clear from the foregoing that benefits given to rank- and-file employees, such as accommodation expenses of non-officers, are not subject to fringe benefit tax, petitioner, however, failed to prove by evidence its claim that the staffhouse expense was used by the personnel of its affiliate and not by its officers. Since petitioner failed to overcome the presumption of correctness of the deficiency fringe benefit tax assessment, the Court sustains the said assessment.

VI. FINAL WITHHOLDING TAX

Respondent assessed petitioner of deficiency final tax on dividends derived from the following computation:[50]

	Amount of Dividends	Tax Due
Dividend declaration subjected to 35% and 25%		
Medtecs International Corp. Ltd. (Bermuda)	₱34,804,914.25	₱ 12,181,719.99

[50] Exhibits "H" and "I".

Yang Su Chin	394,808.76	98,702.19
Total Amount Due		12,280,422.18
Add: 25% Surcharge		3,070,105.54
Interest (January 21, 2008 to March 31, 2012)		10,131,348.30
Compromise penalty		25,000.00
TOTAL DEFICIENCY FINAL WITHHOLDING TAXES		**25,506,876.02**

In the FLD and the Details of Discrepancies[51], the share of Medtecs International Corp. Ltd–Bermuda in the dividends amounting to ₱34,804,914.25 was subjected to 35% final withholding tax pursuant to Section 28(B)(1) of the NIRC of 1997, as amended. Likewise, the share of Yang Su Chin in the cash dividends in the amount of ₱394,808.76 was subjected to 25% final tax in accordance with Section 25(B) of the NIRC of 1997, as amended.

Respondent assessed petitioner of deficiency final withholding tax amounting to ₱12,280,422.18 on the accrual of dividends payable to Medtecs International Corporation Limited–Philippine Branch (MICL) as a resident foreign corporation, and to Yang Su Chin, as a resident foreign individual.

Petitioner assails this item of assessment and contends that the same has no basis in law and fact. Petitioner alleges that its books reveal that all dividends were paid to Medtecs International Corporation Limited–Philippine Branch. Section 28(A)(7)(d) of the Tax Code provides that dividend income received by a resident foreign corporation is not subject to final withholding tax, which in this case is allegedly evidenced by petitioner's journal voucher submitted as Exhibit "T".

However, the Court agrees with respondent's contention that the document presented by petitioner is a mere voucher not supported by competent evidence; hence, deserves no consideration by this Court.

As already mentioned, petitioner's books allegedly show that all dividends were paid to Medtecs International Corporation Limited– Philippine Branch. Yet, to prove its allegation, petitioner only presented a mere voucher which is

[51] Exhibit "E".

insufficient to prove that the dividends were paid to Medtecs International Corporation Limited–Philippine Branch and not to Medtecs International Corp. Ltd–Bermuda.

The evidence presented by petitioner is insufficient to overcome the presumption of correctness of this assessment. It must be emphasized that there is a presumption that the BIR personnel regularly performed their duties in preparing the assessment.[52] Since petitioner failed to present evidence to prove that the deficiency final withholding tax assessment is without foundation, the Court upholds the same.

VII. COMPROMISE PENALTY

Respondent assessed petitioner of compromise penalties in the following amounts:

Compromise penalties for:	**Amount**
Income tax deficiency	₱ 16,000.00
Value-added tax deficiency	50,000.00
Deficiency withholding tax on compensation	700.00
Deficiency expanded withholding tax	2,000.00
Deficiency fringe benefit tax	16,000.00
Deficiency final withholding tax	25,000.00
TOTAL	**₱109,700.00**

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code.[53] Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-07, compromise penalties are only suggested in settlement of criminal liability, and may not be imposed or exacted on a taxpayer in the event that a taxpayer refuses to pay the same. Clearly, the compromise penalty implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised. The imposition of the compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[54]

---

[52] *Commission of Internal Revenue vs. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.
[53] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.,* G.R. Nos. L-12928 and L-12932, March 31, 1962.
[54] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.,* G.R. No. 35266, January 21, 1991.

In this case, there is nothing in the records which would show that petitioner consented to the compromise penalty. As a consequence, the compromise penalty should not be imposed and must be cancelled.

At this juncture, it must be reiterated that when assessments are assailed, the burden of proof is upon the complaining party (petitioner). It is incumbent upon the complaining party to clearly show that the assessment was erroneous, in order to relieve himself from it.[55] Also, as cases filed before this Court are litigated *de novo*, party-litigants must prove every minute aspect of their cases.[56]

In the case of *Republic Cement Corporation (as surviving corporation in a merger involving FR Cement Corporation) vs. Commissioner of Internal Revenue*[57], this Court sitting *En Banc* ruled that journal vouchers, being a document used for internal purposes, is unverifiable and self-serving. Absent any other document to corroborate the allegations it presented, the Court cannot subscribe to the submissions of petitioner. It is the obligation of petitioner to fully substantiate its claim before this Court. Unlike tax assessments that enjoy the presumption of regularity, taxpayers' claims of no liability against deficiency taxes should be sufficiently established and, by that, clear and convincing evidence should be presented to support such claims.

While the pieces of evidence presented by petitioner, consisting mainly of vouchers and schedules, were already considered, these evidence, however, failed to sufficiently explain and reconcile all of the discrepancies found by respondent relating to the deficiency income tax, value-added tax, withholding tax on compensation, fringe benefit tax, and final withholding tax for taxable year 2007 which were derived by respondent upon her audit and examination of petitioner's books of accounts. Consequently, the presumption of correctness of the said deficiency tax assessments should be upheld.

[55] *Commissioner of Internal Revenue vs. Construction Resources of Asia, et al.*, G.R. No. L-68230, November 25, 1986.
[56] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[57] CTA EB No. 821, July 18, 2012.

On the other hand, considering the Court's findings that the deficiency expanded withholding tax assessment and the compromise penalties lack factual basis, the same should be cancelled.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the deficiency expanded withholding tax assessment and the compromise penalties for taxable year 2007 are hereby **CANCELLED AND WITHDRAWN**. However, the deficiency income tax, value-added tax, withholding tax on compensation, fringe benefit tax, and final withholding tax assessments for taxable year 2007 are hereby **AFFIRMED**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **₱25,213,292.14** representing deficiency income tax, value-added tax, withholding tax on compensation, fringe benefit tax, and final withholding tax for taxable year 2007, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

Deficiency Tax	Basic Tax	25% Surcharge	Total
Income Tax	₱ 361,067.49	₱ 90,266.87	₱ 451,334.36
Value-added Tax	7,377,979.40	1,844,494.85	9,222,474.25
Withholding Tax on Compensation	1,217.10	304.28	1,521.38
Fringe Benefits Tax	149,947.54	37,486.89	187,434.43
Final Withholding Tax	12,280,422.18	3,070,105.55	15,350,527.73
Total	**₱20,170,633.71**	**₱5,042,658.43**	**₱25,213,292.14**

In addition, petitioner is hereby **ORDERED TO PAY**:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, value-added tax, withholding tax on compensation, fringe benefit tax, and final withholding tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

Tax Type	Basic Tax	Deficiency Interest computed from
Income Tax	₱ 361,067.49	April 15, 2008
Value-added Tax	7,377,979.40	January 25, 2008
Withholding Tax on	1,217.10	January 15, 2008

Compensation		
Fringe Benefits Tax	149,947.54	January 10, 2008
Final Withholding Tax	12,280,422.18	January 15, 2008

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱25,213,292.14 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from April 17, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice