REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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LIQUIGAZ PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8141

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:
NOV 2 2 2012
10:10 a.m.

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DECISION

CASANOVA, J.:

This Petition for Review, filed on July 29, 2010, seeks the cancellation and nullification of the Final Decision on Disputed Assessment (FDDA) issued by the Commissioner of the Bureau of Internal Revenue (BIR) against petitioner Liquigaz Philippines Corporation for alleged deficiency expanded withholding tax, withholding tax on compensation and fringe benefit tax for the year 2005 in the aggregate amount of Twenty Two Million Three Hundred Eighty Thousand Twenty Five Pesos and 19/100 (₱22,380,025.19), inclusive of interests and compromise penalties.

As culled from the records, the facts of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 3/F NOL Tower, Commerce Avenue, Madrigal Business Park, Alabang, Muntinlupa City.[1]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), who was duly appointed and is empowered to perform the duties of her office, including, among others, the power to decide, cancel and abate tax liabilities pursuant to Section 204(B) of the Tax Code, as amended by Republic Act (R.A.) No. 8424, otherwise known as the "Tax Reform Act" (TRA) of 1997.

On July 11, 2006, petitioner received a copy of a Letter of Authority (LOA) No. 00067824 dated July 4, 2006 issued by the respondent, authorizing the investigation of all internal revenue taxes of petitioner for taxable year 2005.[2]

Petitioner received, on April 9, 2008, an undated letter purporting to be a Notice of Informal Conference as well as the detailed computation of petitioner's alleged tax deficiency.[3]

Petitioner received, on May 28, 2008, a copy of the Preliminary Assessment Notice (PAN) dated May 20, 2008, together with the attached

[1] Par. 4, Petition for Review, Docket, p. 7.
[2] Par. 6, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, Ibid, P. 170.
[3] Par. 7, Stipulation of Facts, JSFI, Id.

details of alleged discrepancies, for the calendar year ending December 31, 2005.[4]

On June 25, 2008, petitioner received a copy of the Formal Letter of Demand/Formal Assessment Notice and attached details of alleged discrepancies dated June 16, 2008, covering calendar year ending December 31, 2005.

Petitioner filed its protest relative to the respondent's Formal Letter of Demand/Formal Assessment Notice[5] on July 25, 2008.[6]

Petitioner submitted, on September 23, 2008, to the respondent the supporting documents relative to its protest.[7]

Petitioner received on July 1, 2010 a copy of the assailed FDDA dated June 28, 2010, covering the tax investigation/audit under LOA No. 00067824 for the calendar year ending December 31, 2005.[8]

On the basis of the FDDA, which constitutes as a denial of petitioner's protest, petitioner filed its Petition for Review before this Court on July 29, 2010, in accordance with the provision of Section 228 of the National Internal Revenue Code (NIRC) of 1997, which provides:

> "SEC. 228. Protesting of Assessment. –
>
> xxx xxx xxx
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from

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[4] Par. 8, Stipulation of Facts, JSFI, Id., p. 171.
[5] Par. 9, Stipulation of Facts, JSFI, Id.
[6] Par. 8, Stipulation of Facts, JSFI, Id.
[7] Par. 9, Stipulation of Facts, JSFI, Id.
[8] Par. 10, Stipulation of Facts, JSFI, Id.

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."

In her Answer[9] filed on September 6, 2010, respondent interposed the following Special and Affirmative Defenses:

"6. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses.

7. Respondent belies petitioner's claim that the Final Decision on Disputed Assessment (FDDA) issued against petitioner is null and void because it failed to state the facts and the law on which it is based.

8. The provision under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, mandating that 'taxpayers shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void' does not particularly pertain to the FDDA, rather to the Final Assessment Notice (FAN)/Formal Letter of Demand issued against taxpayers.

9. Respondent's FAN/Formal Letter of Demand contain *(sic)* the specific details of discrepancies to which petitioner's tax deficiencies were computed.

10. The Annex C provided under paragraph 3.1.6 of Revenue Regulations (RR) 12-99[10] is only shown for purposes of giving a sample illustration and does not strictly mean that all FDDA issued by the Commissioner or his authorized representative should be patterned on the same format. Thus, contrary to petitioner's allegations, the subject FDDA has

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[9] Docket, pp. 110-118.

[10] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of Suggested Compromise Penalty.

complied with the requirements under RR 12-99, since it states the facts, the applicable law, rules and regulations on which such decision is based.

11. The essential elements of due process are notice and an opportunity to present one's side, which was accorded to petitioner as evidenced by the protest letter[11] it submitted against respondent's FAN/Formal Letter of Demand. Further, petitioner was duly notified of its tax deficiencies through respondent's issuance of Letter of Authority, Notice of Informal Conference, PAN, FAN/Formal Letter of Demand and FDDA, that was admitted to by petitioner under paragraphs 7, 11, 12, 13, 14 and 17 of its Petition for Review.

12. In its Petition for Review, petitioner exhaustively discussed its alleged: (a) deficiencies on expanded withholding tax (WT); (b) deficiencies on WT on compensation; (c) unpaid fringe benefit taxes; and (d) interest and compromise penalties. Had there been failure of respondent's FDDA to state the fact and the law on which it is based, petitioner could not have exhaustively discussed its alleged deficiencies and unpaid taxes.

13. The FDDA was issued against petitioner after evaluation of the arguments raised by petitioner in its protest against respondent's FAN/Formal Letter of Demand. It should be noted that petitioner's deficiency tax assessments per FAN/Formal Letter of Demand amounted to P24,332,347.20. But after evaluation of the supporting documents it submitted to respondent, there still found deficiency taxes amounting to P22,380,025.19, computed below as follows:

Tax Type	Basic	Interest	Compromise	Total
WT-Expanded	₱ 1,823,782.67	₱1,630,644.08	₱ 25,000.00	₱ 3,479,426.75
WT-Compensation	2,366,836.98	2,116,188.95	25,000.00	4,508,025.93
Fringe Benefits Tax	7,572,236.16	6,770,336.35	50,000.00	14,392,572.51
Total	₱11,762,855.81	₱10,517,169.38	₱ 100,000.00	₱22,380,025.19

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[11] Admitted by petitioner in paragraph 15 of its Petition for Review.

14. Based on the result of the re-investigation conducted against the withholding tax liabilities of petitioner, the total amount of tax discrepancies assessed against petitioner as indicated in the FAN/Formal Letter of Demand amounted to P207,145,707.39, but only P119,653,246.43 was duly supported by petitioner, leaving an unsupported amount of P87,492,460.96, to wit:

Tax Type	**Per FAN**	**Per Supporting Documents**	**Still Unsupported**
WT-Expanded	₱178,838,491.53	(₱115,553,424.62)	₱63,285,066.91
WT-Compensation	9,318,255.84	-	9,318,255.84
Fringe Benefits Tax	18,988,960.02	(4,099,821.81)	14,889,138.21
Total	₱207,145,707.39	(₱119,653,246.43)	₱87,492,460.96

The foregoing amount of "still unsupported" tax discrepancies was used in computing the total deficiency taxes of petitioner which amounted to P22,380,025.19, as indicated in respondent's FDDA. Thus, respondent avers that the FDDA was issued after she completely evaluated the supporting documents submitted by petitioner. Clearly, petitioner's allegations under paragraph 21 of its Petition for Review are baseless and mere exaggerations.

15. Accordingly, deficiency expanded WT on Income Payment amounting to P1,823,782.67 was assessed in accordance with Section *(sic)* 57[12] & 58[13] of the

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[12] SEC. 57. Withholding of Tax at Source. –
(A) Withholding of Final Tax on Certain Incomes. – Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner , requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1),24(B)(2),24(C),24(D)(1);25(A)(2),25(A)(3),25(B),25(C),25(D),25(E);27(D)(1),27(D)(2),27(D)(3),27(D)(5);28(A)(4),28(A)(5),28(A)(7)(a),28(A)(7)(b),28(A)(7)(c),28(B)(1),28(B)(2), 28(B)(3),28(B)(4)28(B)(5)(a),28(B)(5)(b),28(B)(5)(c);33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.
(B) Withholding of Creditable Tax at Source. – The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.
xxx

[13] SEC. 58. Returns and Payment of Taxes Withheld at Source. –
(A) Quarterly Returns and Payments of Taxes Withheld. – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer,

NIRC of 1997, as amended and implemented by RR 2-98[14]. Unpaid WT on Salaries of P2,366,836.98 was assessed pursuant to Section 80[15] & 81[16] of the NIRC of 1997, as amended. Unpaid Fringe Benefit Tax of P7,572,236.16 was assessed pursuant to Section 33[17] of the NIRC, as amended and RR 3-98[18].

Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.

The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

The return for final withholding tax shall be filed and the payment made within twenty-five (5)(*sic*) days from the close of each calendar quarter, while the return for the creditable withholding taxes shall be filed and payment made not later than the last day of the month following the close of the quarter during which withholding was made: Provided, That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.

[14] Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

[15] SEC. 80. Liability for Tax. –

(A) Employer. – The employer shall be liable for the withholding and remittance of the correct amount of tax required to be deducted and withheld under this Chapter. If the employer fails to withhold and remit the correct amount of tax as required to be withheld under the provision of this Chapter, such tax shall be collected from the employer together with the penalties or additions to the tax otherwise applicable in respect to such failure to withhold and remit.

[16] SEC. 81. Filing of Return and Payment of Taxes Withheld. – Except as the Commissioner otherwise permits, taxes deducted and withheld by the employer on wages of employees shall be covered by a return and paid to an unauthorized agent bank, Collection Agent, or the duly authorized Treasurer of the city or municipality where the employer has his legal residence or principal place of business, or in case the employer is a corporation, where the principal office is located.

The return shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter: Provided, however, That the Commissioner may, with the approval of the Secretary of Finance, require the employers to pay or deposit the taxes deducted and withheld at more frequent intervals, in cases where such requirement is deemed necessary to protect the interest of the Government.

The taxes deducted and withheld by employers shall be held in special fund in trust for the Government until the same are paid to the said collecting officers.

[17] SEC. 33. Special Treatment of Fringe Benefit. –

(A) Imposition of Tax. – A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-tree 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

16. Based on the foregoing, respondent affirms the validity of her FDDA against petitioner. The Honorable Supreme Court in the case of *Commissioner of internal Revenue vs. Bank of Philippine Islands*[19] states 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 favor of the correctness of tax assessments."

During trial, the parties presented their pieces of evidence, both testimonial and documentary, to prove their respective case.

On April 11, 2012, this Court ordered the parties to file their respective Memorandum, within thirty (30) days from receipt of the said Resolution[20].

In a Resolution[21] dated June 26, 2012, the case was submitted for decision, taking into consideration respondent's Memorandum[22] filed on May 15, 2012 and petitioner's Memorandum[23] filed on May 16, 2012.

The sole issue jointly stipulated by the parties[24], is as follows:

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

xxx.

[18] Implementing Section 33 of the National Internal Revenue Code, as Amended by Republic Act No. 8424 Relative to Special Treatment of Fringe Benefits.

[19] G.R. No. 134062, April 17, 2007.

[20] Docket, pp. 412-413.

[21] Ibid, p. 486.

[22] Memorandum, Id., pp. 475-482.

[23] Memorandum [For the Petitioner], Id., pp. 414-470.

[24] Stipulation of Issue, JSFI, Id., p. 172.

1. Whether the FDDA issued by the respondent against the petitioner is valid.

Petitioner maintains that the Final Decision on Disputed Assessment (FDDA) issued by respondent is null and void for failure to state the facts and the law on which it is based. Petitioner further argues that respondent only enumerated the laws and regulations upon which the assessment is allegedly based but did not explain as to how the figures were arrived at or which of the arguments raised and supporting documents submitted by the petitioner in its protest merited her appreciation. Hence, petitioner strongly contends that the assessment issued is arbitrary since it failed to comply with the requirements of due process.

Petitioner cites Section 228 of the NIRC of 1997, as amended, and implemented by Revenue Regulations No. 12-99, which provides:

> SEC. 228. ***Protesting of Assessment***.—When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
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> xxx xxx xxx
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> "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."
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> xxx xxx xxx
>
> REVENUE REGULATIONS NO. 12-99
>
> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*—
>
> xxx xxx xxx

> 3.1.6 *Administrative Decision on a Disputed Assessment.*—The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his *final decision.*

On the other hand, respondent counter-argues that the FDDA was issued against petitioner after evaluation of the arguments the latter raised in its protest against the Formal Assessment Notice/Formal Letter of Demand.

The petition is partly meritorious.

Respondent's Formal Letter of Demand (FLD), which included a Details of Discrepancies,[25] showed the following deficiency tax liabilities of petitioner in the total amount of ₱24,332,347.20, broken down as follows: [26]

	Expanded Withholding Tax	**Withholding Tax on Compensation**	**Fringe Benefits Tax**	**Total**
Basic Deficiency tax	₱3,675,048.78	₱2,981,841.87	₱9,501,564.07	₱16,158,454.72
Add: Interest up to June 30, 2008 (49.41%)	1,815,841.60	1,473,328.07	4,744,722.81	8,033,892.48
Compromise	25,000.00	25,000.00	50,000.00	100,000.00
Compromise - non-filing of alphalist	20,000.00	20,000.00	-	40,000.00
Total deficiency taxes	**₱5,535,890.38**	**₱4,500,169.94**	**₱14,296,286.88**	**₱24,332,347.20**

A perusal of the FLD reveals that the Details of Discrepancies attached thereto shows the factual and legal bases of the subject assessments, which in turn, helped petitioner to effectively contest the subject assessments and submit documents in support of its claim.[27] Consequently, the FDDA reflected reductions in petitioner's basic deficiency tax liabilities.

[25] Exhibit "E-1".
[26] Exhibit "E".
[27] Exhibits "F" and "G".

A comparison of the FLD and FDDA, shows the following:

Basic Deficiency Tax	Expanded Withholding Tax	Withholding Tax on Compensation	Fringe Benefits Tax	Total
Per FLD	₱3,675,048.78	₱2,981,841.87	₱9,501,564.07	₱16,158,454.72
Per FDDA	1,823,782.67	2,366,836.98	7,572,236.16	11,762,855.81
Difference	**₱1,851,266.11**	**₱615,004.89**	**₱1,929,327.91**	**₱4,395,598.91**

Upon further scrutiny of the evidence, this Court was able to trace the source of the discrepancy in the amounts reflected in the FLD and the FDDA and noted the following:

<u>Deficiency Expanded Withholding Tax</u>

Respondent's examiner found that the following income payments were allegedly not subjected to expanded withholding tax:[28]

Income Payments	Amount	Tax Rate	Expanded Withholding Tax Due
Contractor/Services	₱ 275,461.54	2%	₱5,509.23
Commission	2,116,203.35	10%	211,620.34
Brokers	1,392,997.76	10%	139,299.78
Purchase-Goods	71,004,300.24	1%	710,043.00
Other Services	7,856,987.02	2%	157,139.74
Professional fees	6,341,391.75	10%	634,139.18
Rentals	4,026,294.54	5%	201,314.73
Interest Expense on Loans	18,909,525.88	2%	378,190.52
Importation Charges:			
Bank Charges	6,118,836.47	2%	122,376.73
Brokers Fee	1,649,254.23	10%	164,925.42
Wharfage	8,961,322.61	2%	179,226.45
Arrastre	26,940,450.94	2%	538,809.02
LPG Purchases	23,245,465.20	1%	232,454.65
TOTAL	**₱178,838,491.53**		**₱3,675,048.78**

Petitioner, on the other hand, raised the following in its protest letter:[29]

[28] Exhibit "E-1".
[29] Exhibit "F".

1. **Commissions**

Petitioner argues that out of the assessed amount of ₱2,116,203.35, income payments to the following persons were subjected to expanded withholding tax:[30]

Payee	Amount
Glen Solis	₱ 53,641.00
Victor Buenaventura	174,331.50
Aristeo Castillo	121,422.18
Mega Metro Manila Gas Corp.	39,329.75
Sojits Philippines Corp.	452,212.20
TOTAL	**₱840,936.63**

2. **Brokers**

Petitioner asserts that it is not liable for deficiency expanded withholding tax in relation to its income payments to brokers for the following reasons:[31]

1. Non-resident suppliers:		
a. COS-Brok.&Handling-(2) Premiership/Wehterby	₱ 112,419.36	
b. COS-Brok.&Handling-Haydock/Clipper Posh	180,382.17	₱ 292,801.53
2. Paid in subsequent year		1,100,196.23
Total		**₱1,392,997.76**

3. **Purchases of Goods**

Respondent's assessment on purchases of goods consists of the following:[32]

Purchases	₱6,350,321,051.29	
Less: Importation	5,732,026,825.85	
Local purchases		₱ 618,294,225.44
Other overhead		5,009,873.00
Personnel Party		258,138.41
Training		270,895.07
Canteen		61,456.07
Working clothes		1,790.00
Electricity		1,630,208.92

[30] Exhibit "F".
[31] Exhibit F, p. 3.
[32] Exhibit "F", pp. 3 to 4.

Water		84,347.90
Gas		6,200.00
Cars-Fuel		1,250,584.66
Small Equipment		119,963.63
Articles of Publicity		461,532.18
Sales campaigns		231,327.29
Gifts		553,837.44
Promotions		40,951.00
Sponsoring		168,752.53
Games		370,808.24
Telephone		1,371,702.84
Portable telephone		1,228,060.57
Small Office Equipment		553,272.52
Printed papers, Docs		486,460.73
Additions to Fixed Assets		56,092,567.00
Total		₱ 688,546,955.44
Less: Per Alpha List		617,542,655.20
Difference		**₱ 71,004,300.24**

Considering the foregoing, petitioner protested some of the items included in the assessment, namely: local purchases, training, electricity, small equipment, articles of publicity, sales campaigns, gifts, small office equipment, printed papers and docs, and additions to fixed assets. Based on the arguments it raised, petitioner offered the following computation:[33]

Purchases	₱6,327,075,405.84	
Less: Importation	5,732,026,825.85	
Local purchases		₱ 595,048,579.99
Other overhead		5,009,873.00
Personnel Party		258,138.41
Training		81,293.33
Canteen		61,456.07
Working clothes		1,790.00
Electricity		1,215,246.08
Water		84,347.90
Gas		6,200.00
Cars-Fuel		1,250,584.66
Small Equipment and materials		17,668.18
Articles for Publicity		255,409.09
Sales campaigns		32,600.00
Gifts		496,037.44
Promotions		40,951.00
Sponsoring		168,752.53
Games		370,808.24
Telephone		1,371,702.84
Portable telephone		1,228,060.57
Small Office Equipment		441,288.68

[33] Exhibit "F", p. 10

Printed papers, Docs		188,720.25
Additions to Fixed Assets		34,806,090.35
Total		₱ 642,435,598.61
Less: Per Alpha List		617,542,655.20
Difference		**₱ 24,892,943.41**

4. Other Services

Petitioner admitted respondent's findings that the following income payments were not subjected to withholding tax in the taxable year 2005 because the same were amortization of prepayments from which the required tax had been withheld:[34]

OH-Insurance	₱ 3,472,367.00
Group Insurance	66,172.00
External Med	1,440,024.61
Insurance-Cars	227,727.74
Insurance-Others	704,746.41
TOTAL	**₱5,911,037.76**

Thus, only payments in the account Rest-Hotel-Phils. amounting to ₱1,945,947.26 remain unexplained.

5. Professional Fees

Respondent found a discrepancy between petitioner's trial balance accounts and alphalist in the amount of ₱6,341,391.08. However, petitioner offered the following computation to show a revised discrepancy of ₱431,642.38, to wit:[35]

Purchases		₱ 6,341,391.08
Less: Non-taxable GPP payments	₱ 2,200,000.00	
Non-professional service payments:		
Interimpers Employees	2,265,506.15	
Other contractors-Utilities	223,194.02	
Other contractors-Sec	1,037,554.08	
Recruitment costs	183,494.45	5,909,748.70
Revised Discrepancy		**₱ 431,642.38**

[34] Exhibit "F", p. 11.
[35] Exhibit "F", p. 12 to 13

6. Rentals

Similarly, petitioner submits that the following should be deducted from respondent's deficiency withholding tax assessment on rentals:[36]

Foreign rental reimbursement	₱ 1,647,372.00
Amortization for various individuals	2,345,911.99
TOTAL	**₱3,993,283.99**

7. Importation Charges

Petitioner claims that amounts recorded in the account "Importation Charges" actually represent wharfage, arrastre and bank charges paid to the Bureau of Customs (BOC), which is not subject to income tax. Hence, the total amount of ₱43,669,864.25 should not be included as part of the deficiency EWT computation. [37]

8. Purchases of LPG

The alleged discrepancy of ₱23,245,465.20 on which it is assessed of deficiency withholding tax corresponds to an adjustment made by petitioner for an overstatement of its importation.[38] As explained, it is petitioner's accounting practice "to record all gas importation and local purchases in the account Cost of Sales (COS). At each month-end, the inventory level is determined and any changes [are] charged to the account 'COS-Inventory Change' to properly set up the actual cost of sales for the period."[39]

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[36] Exhibit "F", p. 13.
[37] Exhibit "F", p. 13 to 14.
[38] Exhibit "F", p. 14.
[39] Exhibit "F", p. 4.

9. Compromise for Non-filing of Alphalist of Payees

Petitioner asserts that respondent's imposition of ₱20,000.00 compromise penalty for non-filing of alphalist of payees is without basis as its Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E) for the taxable year 2005 showed that petitioner likewise filed its related Alphalist.[40]

If all the arguments raised by petitioner in its Protest will be considered there will be an additional deduction of ₱131,074,693.12 thus, resulting in the reduction of ₱843,889.63 in its assessed basic deficiency EWT, computed as follows:

Particulars	Per FLD	Deductions per Protest	Should be per FDDA	Tax Rate	Basic Deficiency Expanded Withholding Tax
Contractor/Services	₱ 275,461.54	₱ -	₱ 275,461.54	2%	₱ 5,509.23
Commission	2,116,203.35	840,936.63	1,275,266.72	10%	127,526.67
Brokers	1,392,997.76	1,392,997.76	-	10%	-
Purchase-Goods	71,004,300.24	46,111,356.83	24,892,943.41	1%	248,929.43
Other Services	7,856,987.02	5,911,039.76	1,945,947.26	2%	38,918.95
Professional fees	6,341,391.75	5,909,748.70	431,643.05	10%	43,164.31
Rentals	4,026,294.54	3,993,283.99	33,010.55	5%	1,650.53
Interest Expense on Loans	18,909,525.88	-	18,909,525.88	2%	378,190.52
Importation Charges:					
Bank Charges	6,118,836.47	6,118,836.47	-	2%	-
Brokers Fee	1,649,254.23	1,649,254.23	-	10%	-
Wharfage	8,961,322.61	8,961,322.61	-	2%	-
Arrastre	26,940,450.94	26,940,450.94	-	2%	-
LPG Purchases	23,245,465.20	23,245,465.20	-	1%	-
TOTAL	**₱178,838,491.53**	**₱131,074,693.12**	**₱47,763,798.41**		**₱ 843,889.63**

However, respondent's FDDA indicates that petitioner's basic deficiency expanded withholding tax remains in the amount of ₱1,823,782.67. Clearly, there are items in petitioner's protest that were not considered by

[40] Exhibits "Z" and "Z-2"

respondent. Thus, respondent's deficiency expanded withholding tax assessment for taxable year 2005 is void pursuant to Section 228 of the NIRC of 1997, as implemented by Revenue Regulations No. 12-99.

Deficiency Fringe Benefits Tax

Petitioner was assessed of deficiency fringe benefits tax as follows:[41]

Income payments subject to FBT per TB:		
Rest Hotel-Abroad	₱ 1,218,293.09	
Less: Hotel-Abroad subjected to FBT	70,552.94	₱ 1,147,740.15
Travel Cost		7,410,238.17
Membership & Subscription	₱ 11,878,118.82	
Less: Membership & Subscription subjected to FBT	1,447,137.12	10,430,981.70
Total MV of FB not subjected to FBT		₱ 18,988,960.02
Grossed up MV		₱ 27,924,941.21
Tax Rate		32%
Basic Deficiency FBT due		₱ 8,935,981.19
Add: Unpaid FBT (ITR vs 1603)		565,582.88
Total Basic Def. FBT due		₱ 9,501,564.07
Add: Interest up to June 30, 2008 (49.41%)		4,744,722.81
Compromise		50,000.00
Total FBT deficiency		**₱14,296,286.88**

In its protest letter, petitioner countered that expenses recorded in its Rest Hotel-Abroad account amounting to ₱1,147,740.15 and "Travel Cost" account amounting to ₱7,410,238.87 are legitimate business expenses for purposes of attending business meetings or conferences abroad and any amount paid specifically, either as advances or reimbursements for travelling, representation and other bona fide ordinary and necessary expenses, incurred or reasonably expected to be incurred by the employee in the performance of his duties are not considered compensation and should not be subject to fringe benefits tax.[42]

[41] Exhibits "E" and "E-1" and "F", p. 16.
[42] Exhibit "F", p. 17.

Anent its Membership & Subscription account, petitioner claims that the following memberships are under its name for being a member thereto and not borne by petitioner for its employee:

Clubs/Associations	Amount
Commerce Condominium Corp.	₱ 549,880.50
French Chamber of Commerce in the Phils.-Le Club	9,000.00
LPGIA Membership (2004-2005)	6,260,000.00
New Petroleum Players Association	29,166.69
Philippine Institute of Petroleum Companies	587,606.83
Rotary Club of Makati-Ayala	15,000.00
Shell Fleet Card	8,083.98
TOTAL	**₱7,458,738.00**

If the foregoing were considered by respondent, petitioner's deficiency fringe benefits tax assessment would only amount to ₱1,964,285.80, computed as follows:

Membership & subscription	₱ 10,430,981.70
Less: Per protest	7,458,738.00
Total MV of FB not subjected to FBT	₱ 2,972,243.70
Grossed up MV	₱ 4,370,946.62
Tax rate	32%
Basic Deficiency FBT	₱ 1,398,702.92
Add: Unpaid FBT (ITR vs 1603)	565,582.88
Total Basic Deficiency FBT	**₱ 1,964,285.80**

Respondent's FDDA shows petitioner's basic deficiency fringe benefits tax liability in the amount of ₱7,572,236.16. However, respondent, again, did not provide the details of its FDDA, thus, petitioner has no way of knowing what items were considered by respondent in making the deficiency fringe benefits tax assessment void.

Deficiency Withholding Tax on Compensation

Respondent assessed petitioner of deficiency withholding tax on compensation as shown below:[43]

Salaries per ITR		₱ 52,239,313.00
Per Alphalist		42,921,057.16
Discrepancy		₱ 9,318,255.84
Tax rate		32%
Tax due		₱ 2,981,841.87
Interest (1.10.06 to 4.30.08)	₱ 1,473,328.07	
Compromise penalty	25,000.00	
Compromise penalty-Non-filing of Alphalist	20,000.00	1,518,328.07
Total amount due		**₱ 4,500,169.94**

Petitioner argues that its salaries account includes accrued bonus, 13th month pay, pre-pension, group insurance, external med care, personnel party, games, canteen costs, working clothes and training, which are not subject to withholding tax on compensation as these are not yet paid (accrued) pursuant to Section 2.79(A) of Revenue Regulations 3-98 and form part of the employees' "*de minimis* benefits". Moreover, it includes contributions to SSS, Medicare and Pag-ibig Fund.[44]

Anent the tax rate used to compute petitioner's deficiency withholding tax on compensation, petitioner asserts that the rate 25.40% (₱10,274,474.70/₱40,446,472.37) is more appropriate because it represents the effective tax on compensation paid for the taxable year 2005. It was computed based on total withholding tax on compensation paid and the total taxable compensation income for the year.[45]

[43] Exhibit "E".
[44] Exhibit "F", pp. 15 to 16.
[45] Exhibit "F", p. 16.

Thus, petitioner claims that it should not be liable to the ₱20,000.00 compromise penalty for non-filing of alphalist as it filed an Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF) with its corresponding Alphalist of Employees for the taxable year 2005.[46]

Since petitioner did not specify how much of the salaries account pertain to "de minimis benefits", or accrued bonuses and salaries & wages, or contributions to SSS, Medicare and Pag-ibig Fund, this Court applied the effective rate suggested by petitioner to the discrepancy found by respondent's examiner per FLD, thus:

Salaries per ITR	₱ 52,239,313.00
Per Alphalist	42,921,057.16
Discrepancy	₱ 9,318,255.84
Tax rate	25.40%
Basic withholding Tax on compensation	**₱ 2,366,836.98**

Respondent's FDDA showed petitioner's basic deficiency withholding tax on compensation in the same amount of ₱2,366,836.98.

The Court-commissioned independent CPA, Mr. Antonio O. Maceda, Jr. of Maceda Farnacio & Co., reported that petitioner was not able to substantiate the discrepancy found by respondent on petitioner's withholding tax liability on compensation[47]. Hence, respondent's assessment for basic deficiency withholding tax on compensation in the amount of ₱2,366,836.98 should be upheld.

[46] Exhibits "XXX" and "XXX-2".
[47] Exhibit "IIII", p. 15.

Given the foregoing discussion, this Court therefore finds that only the assessment for deficiency withholding tax on compensation in the amount of ₱2,366,836.98 was valid, while the assessment for deficiency expanded withholding tax and fringe benefit tax should be declared null and void for failure of respondent to observe due process as provided under Section 228 of the NIRC of 1997, as amended and implemented by Revenue Regulations No. 12-99.

As mentioned earlier, a careful study of the FDDA issued by respondent shows that petitioner was not duly informed as how the assailed assessments were arrived at by the respondent. While it is true that the legal provisions were indicated in the said FDDA, respondent nonetheless failed to show the basis for the amounts indicated therein.

Hence, respondent clearly violated Section 228 of the NIRC of 1997, as amended, as it failed to comply with the requirement set forth in law. Thus, this Court finds the assessment notice insofar as the assessments on deficiency expanded withholding tax and fringe benefit tax invalid on the ground that it failed to state the factual bases on which the assessment on deficiency expanded withholding tax and fringe benefit tax were made.

While it is true that assessments are prima facie 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 duly made by a Bureau of Internal Revenue examiner and approved by his superior will not be disturbed[48]. However, the same is not applicable to the instant case since respondent failed to comply with the requirements of due process under the law, that is, assessments in order to be valid must have legal and factual bases.

As held in the case of *Collector of Internal Revenue vs. Benipayo*[49], "assessments should be based on facts and not mere presumptions". Applying the foregoing jurisprudence in the instant case, the income tax deficiency assessment cannot be enforced against petitioner, otherwise, the Court stands to tax petitioner arbitrarily.

Further, in the case of *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*[50], to wit:

> "**The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory**. The alleged 'factual bases' in the advice, preliminary letter and 'audit working papers' did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice." (boldfacing supplied)

Finally, a void assessment cannot give rise to an obligation to pay deficiency taxes, and it divests the taxing authority of the right to collect them.[51]

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[48] Interprovincial Autobus Co., Inc. vs. CIR, 98 Phil. 290; Sy Po vs. CTA, et. al., G.R. No. 81446, August 18, 1988; Dayrit et. al. vs. Cruz, et. al., L-39910, September 26, 1988.
[49] G.R. No. L-13656, January 31, 1962, 4 SCRA 182.
[50] G.R. No. 166387, January 19, 2009.

As to the compromise penalty charged by respondent against petitioner in the amount of P25,000.00 for the latter's alleged non-filing of Alphalist of Employees, the same shall be cancelled there being no compromise agreement between the parties. Moreover, records show that petitioner actually filed its Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF)[52] for taxable year 2005 with the corresponding Alphalist of Employees[53], contrary to respondent's claim.

WHEREFORE, the *Petition for Review* is hereby **PARTIALLY GRANTED.** Accordingly, the assessments for deficiency expanded withholding tax in the amount of ₱3,479,426.75 and fringe benefits tax in the amount of ₱14,392,572.51 issued by respondent against petitioner for taxable year 2005, both inclusive of interest and compromise penalty is hereby **CANCELLED** and **WITHDRAWN** for being void.

However, the assessment for deficiency withholding tax on compensation for taxable year 2005 is hereby **AFFIRMED** with **MODIFICATIONS.** Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the amount of ₱2,958,546.23, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

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[51] FMF Development Corporation vs. Commissioner of Internal Revenue, CA-GR SP No. 73973, February 23, 2004.
[52] Exhibits "XXX" and "XXX-1".
[53] Exhibit "XXX-2".

Salaries per ITR	₱ 52,239,313.00
Less: Salaries Per Alphalist	42,921,057.16
Discrepancy	₱ 9,318,255.84
Tax rate	25.40%
Basic Withholding Tax on Compensation	₱ 2,366,836.98
Add: 25% Surcharge	591,709.25
Total Amount Due	**₱ 2,958,546.23**

In addition, petitioner is liable to pay: (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency withholding tax on compensation of ₱2,958,546.23 computed from January 20, 2006 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 due of ₱2,958,546.23 and on the deficiency interest which have accrued as aforestated in (a) computed from July 1, 2010 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

The compromise penalty of P25,000.00, originally imposed by respondent is hereby excluded there being no compromise agreement between the parties.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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.

ERNESTO D. ACOSTA
Presiding Justice