REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

ESS MANUFACTURING COMPANY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7958

Members:
Bautista, *Chairman, and*
Cotangco-Manalastas, *JJ.*

Promulgated:

FEB 14 2014 2:20 p.m.

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DECISION

BAUTISTA, J.

Before the Court is a "Petition for Review"[1] filed by petitioner ESS Manufacturing Company, Inc ("ESS"), asking the Court to cancel and set aside the Final Assessment Notice ("FAN") dated December 10, 2008, with attached Assessment Notices for deficiency expanded withholding tax, withholding tax on compensation, fringe benefits tax, final withholding tax and final withholding of value-added tax, in the total amount of Php35,101,455.74, inclusive of interest and other charges.

The Parties[2]

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), authorized to perform the duties of her office, including *inter alia*, the power to decide disputed assessments,

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[1] *Records*, pp. 1-23.
[2] *Id.*, p. 2.

refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto.

The Facts

ESS filed a Petition for Review on August 10, 2009, as well as an application for a Temporary Restraining Order and/or Temporary Preliminary Injunction,[3] praying that a TRO be issued and such be converted into a writ of preliminary injunction and that the assessments amounting to Php35,101,455.74 be declared null and void, and that the same be cancelled.[4]

On September 28, 2009, respondent Commissioner of Internal Revenue ("CIR") filed an Answer, asking the Court to dismiss the Petition for Review for lack of jurisdiction and/or lack of merit,[5] with the following Special and Affirmative defenses:

> "**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**
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> 5. [S]he reiterates and repleads the preceding paragraphs of this answer as part of [her] Special and Affirmative Defenses;
>
> 6. Under Section 228 of the 1997 Tax Code, it is partly provided that:
>
> xxx xxx xxx
>
> Implementing the aforesaid provision, Section 3, 3.1.5 of Revenue Regulations No. 12-99 dated September 6, 1999 provides that the taxpayer shall submit the required documents in support of its protest within sixty (60) days from the date of filing of its letter of protest, otherwise, the assessment shall become final, executory, and demandable. The phrase '**submit the required documents**' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit and the said

[3] *Id.*, pp. 1-2.
[4] Raffled to the then Second Division of the Court before the issuance of CTA Administrative Circular No. 01-2010 dated January 5, 2010.
[5] *Id.*, pp. 113-119.

Revenue Officer shall state this fact in his report of investigation.

In the instant case, since the petitioner failed to submit the required documents for scrutiny and evaluation by the Revenue Officer who conducted the audit examination of its 2005 internal revenue tax case, within sixty (60) days from filing its protest on January 13, 2009, the subject assessments have already become final, executory and demandable. As such, this Honorable Court has no jurisdiction to act on the instant petition.

7. The Supreme Court in the case of **Ker & Company, Ltd. vs. CTA, et al., L-12396, January 31, 1962** and **Commissioner of Internal Revenue vs. Joseph, et al. L-14034, August 30, 1962**, has ruled that:

> 'If a statutory remedy provides as condition precedent that the action to enforce must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.'

8. The Letter of Authority No. 00039017 dated September 5, 2006 issued by the respondent to herein petitioner for examination of all its internal revenue taxes for taxable year 2005 was valid and binding upon the latter. Under **BIR Ruling No. DA-121-01 dated July 18, 2001**, which squarely answers the issues raised by herein petitioner, the Commissioner of Internal Revenue, clearly states that:

> '<u>Nowhere from RMO No. 12-98, or any other internal revenue issuance on audit programs and policies, is it mentioned that the lapse of 120-days from the date the revenue examiner received the Letter of Authority and the failure of the said examiner to secure a revalidation within the said 120-days period will give rise to the taxpayer's immunity from audit for that particular period. The requirement is merely directory</u>

> and is intended to enhance efficiency while at the same time ensure quality audit. It does not in any way affect the right of the government to issue assessment notices for deficiency taxes within the period/s set forth by law.' Thus, at any time within the regular three year prescriptive period for issuing assessment notices under Section 203 of the Tax Code, the Commissioner or his duly authorized representative, in this case the Regional Director, may still issue an order revalidating Letter of Authority No. 000015124.' [Emphasis supplied]

Likewise, in the most recent **Revenue Memorandum Circular (RMC) No. 23-2009 dated 16 April 2009** *(Reiteration of Policies and Procedures Relative do Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division)*, the Commissioner of Internal Revenue clearly stated that:

> 'The revalidation of LA shall give rise to the extension of the period within which the Revenue Officer (RO) assigned to the case shall submit the report of investigation to the higher authorities for review and approval, without the imposition of applicable administrative sanctions. Depending on the classification of the pending tax case, said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances. Failure on the part of the RO to request for the revalidation of LA or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.' [Emphasis supplied]

9. The Letter of Authority No. 00039017 dated September 5, 2006 issued by the respondent to herein petitioner clearly shows the BIR dry seal at the left side

portion of the questioned document. In **People vs. Edna Sutter, Criminal Case No. 350934**, the City Prosecutor, in overturning the argument of the accused that the Letter of Authority is null and void due to lack of dry seal, held that:

> 'Nevertheless, we cannot adhere to the arguments of the accused that the BIR Letter of Authority No. 45482 is defective because of the absence of the BIR's official dry seal thereto, thereby making it void and without force and effect.
>
> A close examination of the Letter Authority No. 45482 clearly shows the present (sic) of the dry seal of the BIR at the left side portion of the questioned document.
>
> When we speak of '**dry seal**' it does not necessarily mean that it is the impression of a metal device, to do so shows ignorance on the different manner in which seals may be placed on a document and more importantly, its intended purposes: Security and authentication. Seals in China and Japan were not impressed, as in the West, but were used with ink as stamps, and thus represent an early form of printing. They were usually square and real simply 'The seal of' followed by the name of the owner.' [Emphasis supplied]

10. Petitioner was assessed for deficiency expanded withholding tax, withholding tax on compensation, fringe benefits tax, final withholding tax and final withholding of value-added tax for taxable year 2005, for the reason that during the administrative investigation of its tax case, petitioner failed to substantiate or controvert by concrete evidence the BIR findings, as shown under the Details of Discrepancies attached to the Formal Assessment Notice (FAN) dated December 10, 2008, and briefly discussed hereunder, viz:

A.) Expanded Withholding Tax:

1. Petitioner failed to pay the total amount of P1,161,454.12, representing expanded withholding tax due on its income payments for rental, security and janitorial, sub-con works, professional fees, trainee pay, pursuant to Section 2.57.2 of BIR Revenue Regulations No. 2-98, as amended. The same regulation provides that every person who is required by law to withhold the tax is liable for the payment of such tax to the BIR.

2. Petitioner erroneously subjected to EWT rate of 2% only instead of 10% as provided under Section 2.57.2 of Revenue Regulations No. 2-98, as amended, the Trainee Pay which represent professional fees. The rate of 8% pertains to the difference between the rates of 10% and 2%.

B.) Withholding Tax on Compensation:

1. Petitioner failed to pay the total amount of P7,666,281.74, representing withholding tax due on its salaries and wages, pursuant to Section 2.78.1 of BIR Revenue Regulations No. 2-98, as amended. The same regulation provides that every person who is required by law to withhold the tax is liable for the payment of such tax to the BIR.

C.) Fringe Benefits Tax:

1. Petitioner failed to pay the appropriate fringe benefits expense granted to employees handling managerial positions, in violation of Section 33 of the NIRC of 1997, as implemented by Revenue Regulations No. 3-98.

D.) Final Withholding Tax:

1. Petitioner failed to withhold/remit the withholding tax due on its income payment on Direct Labor paid to non-resident foreign corporation in violation of Section 2.57.1(l)(1) of Revenue Regulations No. 2-98 in relation to Section 28(B)(1) of the 1997 Tax Code, which clearly provides that:

> '(1) *In general* — On gross income derived from all sources within the Philippines such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments, or other fixed or determinable annual, periodic or casual gains, profits and income and capital gains (except capital gains realized from sale, exchange, disposition of shares of stock in any domestic corporation which is subject to capital gains tax under Sec. 28(B)(5)(c) — at the following rates:
>
> 34% - beginning January 1, 1998
> 33% - beginning January 1, 1999 and
> 32% - beginning January 1, 2000 and thereafter'

E.) Final Withholding of Value-Added Tax:

1. Petitioner failed to withhold and remit the total amount of P198,098.00 representing withholding of value-added tax due from the amortization of Microsoft software license acquired abroad pursuant to Section 4.114(A)(1) of BIR Revenue Regulations No. 2-98, as amended in relation to Subsection B of the same Section. The same regulation provides that every person who is

required by law to withhold the tax is liable for the payment of such tax to the BIR.

11. Petitioner was duly appraised by the respondent of the factual and legal basis on how and why he (respondent) arrived such *(sic)* a deficiency expanded withholding tax, withholding tax on compensation, fringe benefits tax, final withholding tax and final withholding of value-added tax for taxable year 2005 through the issuance of the Details of Discrepancy attached to the Formal Assessment Notice (FAN) dated December 10, 2008 and Preliminary Assessment Notice (PAN) dated September 23, 2008, as well as other BIR correspondence to petitioner which are found an the BIR records of this case, which includes but not limited to the following, BIR Letter dated March 5, 2009 and Notice for Informal Conference dated May 15, 2009.

12. Pursuant to Section 222 (a) of the 1997 Tax Code, it is provided that in case of a <u>false</u> or fraudulent return with intent to evade tax or failure to file a return the tax maybe *(sic)* assessed, or a proceeding in court for the collection of such tax maybe *(sic)* begun without assessment at any time within ten (10) years after the discovery of the falsity, fraud, or omission.

In the instant case, granting without admitting that petitioner indeed filed the required tax returns for expanded withholding tax, withholding tax on compensation and fringe benefits tax with the BIR, petitioner's declaration in such returns were deficient and did not disclose the truth regarding the correct amount of income subject to tax, thus, it rendered the subject returns 'false' within the contemplation of Section 222 of the 1997 Tax Code. As such, petitioner may be assessed for deficiency expanded withholding tax, withholding tax on compensation, fringe benefits tax, final withholding tax and final withholding of value-added tax for taxable year 2005 within ten (10) years from the discovery of the said falsity.

A return is considered '**false,**' where the falsity or 'deviation' from the truth would place the government at a disadvantage so as to prevent the assessment and collection of the correct amount of taxes by its lawful agents. (**Aznar vs. Court of Tax Appeals, 56 SCRA 519**).

13. The assessments issued against petitioner for deficiency expanded withholding tax, withholding tax on compensation, fringe benefits tax, final withholding tax and final withholding of value-added tax, for taxable year 2005 were made in accordance with law and regulations.

14. All presumptions are in favor of the correctness of tax assessments."[6]

On October 19, 2009, petitioner filed its Pre-Trial Brief,[7] while respondent filed her Respondent's Pre-Trial Brief on November 17, 2009.[8]

On December 1, 2009, both parties filed their Joint Stipulation of Facts and Simplification of Issues,[9] wherein the facts related are as follows:

"3. On September 5, 2006, Letter of Authority (LOA) No. 00039017 was issued by then Regional Director Nelson M. Aspe, Revenue Region No. 8 of the BIR authorizing Revenue Officer Gerardo Nuestro and Group Supervisor Medina C. Lopez, to examine the books of accounts and other accounting records of the Company for all internal revenue taxes for the period of January 1, 2005 to December 31, 2005 (taxable year 2005), xxx

4. Pursuant to said LOA, and after submission of the necessary documents, the investigation of the alleged tax liabilities of the Company for the taxable year 2005 was pursued by the agents of the BIR. Accordingly, on September 23, 2008 or more than two (2) years from date of issue of LOA No. 00039017, a Preliminary Assessment Notice (PAN) was issued by the BIR alleged deficiency expanded withholding tax, withholding tax on compensation, fringe benefits tax, final withholding tax and final withholding tax of value-added tax for the taxable year 2005, amounting to Php 34,028,524.51. xxx

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[6] *Id.*, pp. 114-118.
[7] *Id.*, pp. 122-129.
[8] *Id.*, pp. 138-142.
[9] *Id.*, p. 159.

5. In a letter dated October 10, 2008, the Company, through its General Manager Mr. Ariel N. Laydia, challenged the aforesaid Preliminary Assessment Notice and moves for a reconsideration of the same. It was contended that the BIR's assessment is bereft of basis and in contravention with existing laws and regulations and that the BIR hastily relied on the gross balances of ledgers or financial statements and failed to consider the details of the accounts, alphalist, schedules, tax returns and other related documents submitted by the Company during the period of the BIR's audit. In addition, specific arguments were interposed by the Company in refutation of the said assessment which shall be discussed hereunder. xxx

6. On December 15, 2008, a Final Assessment Notice (FAN) dated December 10, 2008, with [A]ssessment Nos. WE-39017-05-08-0565, WC-39017-05-08-0565, WR-39017-05-08-0565, WF-39017-05-08-0565, and WG 39017-05-08-0565, was received by the Company finding it liable for deficiency taxes and inclusive of interest amounting to Php35,101,455.74 covering taxable year 2005, the breakdown of which as follows:

I. Expanded [W]ithholding Tax	Php 1,856,417.35
II. Withholding Tax on Compensation	12,253,448.68
Ill. Fringe Benefits Tax	19,645,364.55
IV. Final Withholding Tax	1,029,051.27
IV. Final Withholding of Value Added Tax	317,173.89
Total	**Php 35,101,455.74**

7. An administrative protest dated January 7, 2009 was filed by the Company on January 13, 2009 disputing the said Final Assessment Notice and incorporating therein its arguments against the issues raised by the BIR which arguments are likewise adopted to form part of this Petition for Review. The said defenses were never responded to, resolved nor considered by the BIR. xxx

8. Subsequent correspondences were sent by the Company to the BIR in relation to the aforesaid Final Assessment Notice. One is a Follow-up letter dated March 13, 2009 and the other is a Clarificatory letter supplemental to the administrative protest dated June 26, 2009, xxx

9. Section 203 of the Tax Code which provides:

xxx xxx xxx

10. Upon the other hand, the same Tax Code has provided for exceptions as to the period of limitation of assessment and collection of taxes, viz:

xxx xxx xxx

11. The BIR's own Revenue Regulations 17-2003 provides for the filing of withholding tax returns as the basis for counting of the prescriptive period:

xxx xxx xxx

12. Due receipt of the Preliminary Assessment Notice (PAN) dated September 23, 2008, on October 2, 2008 and Formal Assessment Notice (FAN) dated December 10, 2008, together with the attached Details of Discrepancies on December 15, 2008 by Petitioner.

13. Due receipt of the Notice for Informal Conference dated May 15, 2009 on May 27, 2009, by Petitioner.

14. Due receipt of the Tax Verification Notice No. 00086862 dated March 5, 2009 on March 10, 2009, by Petitioner.

15. Due receipt of Assessment Notice Nos. WE-39017-05-08-0565, WC-39017-05-08-0565, WR-39017-05-08-0565, WF-39017-05-08-0565, and WG 39017-05-08-0565, respectively on December 15, 2008 by Petitioner."[10]

On January 14, 2010, the Court issued an Order transferring the said case to the Third Division of the Court, pursuant to CTA Administrative Circular No. 01-2010 dated January 5, 2010.

[10] *Id.*, Joint Stipulation of Facts and Simplification of Issues, pp.148-152.

On April 16, 2010, petitioner filed a "Motion for the Commissioning of an Independent Certified Public Accountant,"[11] which was granted by the Court in the Resolution dated April 21, 2010.[12]

On February 7, 2011, petitioner filed its "Formal Offer of Evidence and Manifestation,"[13] while respondent filed on March 25, 2011 an "Omnibus Motion (a. For Reconsideration of the Resolution dated 9 March 2011) (b. To Admit Respondent's Comment to Petitioner's Formal Offer of Evidence) (c. To Reset Respondent's Initial Presentation of Evidence)," with petitioner's "Comment (to respondent's Omnibus Motion dated 24 March 2011)" filed on April 18, 2011.[14]

On June 3, 2011, the Court issued a Resolution denying the "Omnibus Motion (a. For Reconsideration of the Resolution dated 9 March 2011) (b. To Admit Respondent's Comment to Petitioner's Formal Offer of Evidence) (c. To Reset Respondent's Initial Presentation of Evidence)," and submitting the "Formal Offer of Evidence and Manifestation" for resolution.[15] On July 15, 2011, the Court, in a Resolution, resolved the "Formal Offer of Evidence and Manifestation."[16]

On July 20, 2011, petitioner filed a "Motion and Manifestation," praying for the Court to admit the exhibits that have been denied;[17] and in the Resolution dated September 7, 2011, the same was granted.[18]

On September 18, 2012, respondent filed her "Formal Offer of Evidence,"[19] with petitioner filing its "Comment [To Respondent's Formal Offer of Evidence]."[20] The Court resolved the same on December 14, 2012, as well as asking the parties to submit their respective Memoranda.[21]

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[11] *Id.*, pp. 310-321.
[12] *Id.*, p. 323.
[13] *Id.*, pp. 533-564.
[14] *Id.*, pp. 579-595.
[15] *Id.*, pp. 597-600.
[16] *Id.*, pp. 602-603.
[17] *Id.*, pp. 604-608.
[18] *Id.*, p. 624.
[19] *Id.*, pp. 693-711.
[20] *Id.*, pp. 721-738.
[21] *Id.*, pp. 769-771.

Respondent filed her "Memorandum for the Respondent" through registered mail on February 21, 2013,[22] while petitioner filed its "Memorandum" on February 18, 2013.[23]

Thus, on March 1, 2013, the Court issued a Resolution submitting the case for decision.[24]

Hence, this Decision.

The Issues[25]

According to the Joint Stipulation of Facts and Simplification of Issues[26] filed on December 1, 2009, the following are the issues to be resolved:

> "1. WHETHER OR NOT THE LETTER OF AUTHORITY NO. 00039017 DATED SEPTEMBER 5, 2006 ISSUED BY THE RESPONDENT TO PETITIONER WAS VALID.
>
> 2. WHETHER OR NOT THE ASSESSMENT[S] FOR DEFICIENCY EXPANDED WITHHOLDING TAX, WITHHOLDING TAX ON COMPENSATION, FRINGE BENEFITS TAX, FINAL WITHHOLDING TAX AND FINAL WITHHOLDING OF VALUE-ADDED TAX ASSESSMENTS ISSUED BY RESPONDENT TO PETITIONER FOR TAXABLE YEAR 2005 HA[D ALREADY] PRESCRIBED.
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> 3. WHETHER OR NOT THE ASSESSED DEFICIENCY EXPANDED WITHHOLDING TAX, WITHHOLDING TAX ON COMPENSATION, FRINGE BENEFITS TAX, FINAL WITHHOLDING TAX, AND FINAL WITHHOLDING OF VALUE-ADDED TAX ISSUED BY THE RESPONDENT TO PETITION FOR TAXABLE YEAR 2005 HA[VE] FACTUAL AND LEGAL BASIS;

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[22] *Id.*, pp. 839-852.
[23] *Id.*, pp. 782-836.
[24] *Id.*, p. 855.
[25] *Id.*, Joint Stipulation of Facts and Simplification of Issues, pp. 152-153.
[26] *Id.*, pp. 147-153.

4. WHETHER OR NOT THE ASSESSED DEFICIENCY EXPANDED WITHHOLDING TAX, WITHHOLDING TAX ON COMPENSATION, FRINGE BENEFITS TAX, FINAL WITHHOLDING TAX, AND FINAL WITHHOLDING OF VALUE-ADDED TAX ISSUED BY THE RESPONDENT TO PETITIONER FOR TAXABLE YEAR 2005 HA[D] ALREADY BECOME FINAL AND EXECUTORY FOR FAILURE OF PETITIONER TO SUBMIT THE REQUIRED DOCUMENTS IN SUPPORT OF ITS PROTEST THAT WAS REQUIRED BY THE [R]ESPONDENT, PURSUANT TO SECTION 228 OF THE NIRC, AS IMPLEMENTED BY SECTION 3 OF REVENUE REGULATIONS [NO.] 12-99 DATED SEPTEMBER 6, 1999, HENCE, THIS HONORABLE COURT HAS NO JURISDICTION TO ACT ON THE INSTANT PETITION.

5. WHETHER OR NOT THE DECLARATIONS IN THE RESPECTIVE TAX RETURNS FILED BY PETITIONER FOR EXPANDED WITHHOLDING TAX, WITHHOLDING TAX ON COMPENSATION, FRINGE BENEFITS TAX, FINAL WITHHOLDING TAX, AND FINAL WITHHOLDING OF VALUE-ADDED TAX FOR TAXABLE YEAR 2005 WERE DEFICIENT AND DID NOT DISCLOSE THE TRUTH REGARDING THE CORRECT AMOUNT OF INCOME SUBJECT TO TAX, AND THUS RENDERED THE SUBJECT RETURN 'FALSE' WITHIN THE CONTEMPLATION OF SECTION 222 OF THE 1997 TAX CODE; and

6. WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE ASSESSED DEFICIENCY EXPANDED WITHHOLDING TAX, WITHHOLDING TAX ON COMPENSATION, FRINGE BENEFITS TAX, FINAL WITHHOLDING TAX, AND FINAL WITHHOLDING OF VALUE-ADDED TAX IN THE AGGREGATE AMOUNT OF PHP35,101,455.74 INCLUSIVE OF INTERESTS, FOR TAXABLE YEAR 2005."

In order to discuss fully all the issues raised by the parties, the Court shall break down and re-organize the issues into the following:

a. Whether or not the Letter of Authority No. 00039017 dated September 5, 2006 issued by respondent to petitioner was valid;

b. Whether or not there is factual and legal basis for the assessments issued by respondent against petitioner for taxable year 2005.

c. Whether or not the declarations in the subject tax returns fall under the definition of a "false" return, as contemplated in Section 222 of the NIRC of 1997;

d. Whether or not the assessments for deficiency expanded withholding tax, withholding tax on compensation, and fringe benefits issued by respondent to petitioner for taxable year 2005 had already prescribed;

e. Whether or not petitioner is liable for deficiency expanded withholding tax on compensation, fringe benefits, as well as final withholding tax and final withholding of value-added tax on gross payments for software licenses; and

f. Whether or not the assessments issued by respondent to petitioner for taxable year 2005 had already become final and executory for failure of petitioner to submit the required documents in support of its protest that was required by respondent, hence, this Court has no jurisdiction to act on the instant petition.

The Ruling of the Court

The Court finds the Petition for Review partially meritorious.

The Letter of Authority issued by BIR is valid

On the issue of whether or not the Letter of Authority No. 00039017 dated September 5, 2006 issued by respondent to petitioner was valid, the Court finds for the respondent.

Petitioner points out that a Letter of Authority becomes void when it contains erasures and if the dry seal of the BIR is not present. Petitioner states that there was no dry seal upon visual examination and that there was an erasure on the name of the Revenue Officer in the subject Letter of Authority No. 00039017.[27]

However, as can be seen from the records of the case petitioner failed to substantiate its claim. Specifically, respondent denied the lack of dry seal, and pointed out the exact location on the actual document. Thus the presumption of regularity in the performance of official duties prevails.[28] As for the said erasure, respondent was correct in pointing out that it was merely a clerical/typographical error which would not affect the substantial rights of the taxpayer. The said error of correcting the name of the Revenue Officer from "NUESTRE" to "NUESTRO" is not the erasure contemplated under the law.

Thus, the Court finds the Letter of Authority issued by BIR valid.

There are factual and legal bases in the assessments issued by respondent

In the case of *Commissioner of Internal Revenue v. Enron Subic Power Corporation*,[29] the Supreme Court ruled, as follows:

> "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.

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[27] *Id*., p. 8.
[28] *People v. De Guzman*, G.R. No. 106025, February 9, 1994, 299 SCRA 795, 799.
[29] G.R. No. 166387, January 19, 2009, 576 SCRA 218.

> We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void."

And based on the records, the figures and the bases for the assessments, as stated in the Details of Discrepancies, were already sufficient to afford petitioner the opportunity to intelligently answer the assessment, as well as to prepare the documentary evidence in support of its protest dated September 23, 2008.[30]

Even a plain reading of the Assessment shows that the amounts were taken from the Audited Financial Statements, as well as the Alphalist and other documents. Clearly, in this case, petitioner was able to reconcile and determine from the Details of Discrepancy where the assessments arose, and what the factual bases of the said discrepancies. Thus, petitioner was afforded due process, as required under the law.

The Tax Returns are not "false" within the definition provided in Section 222 of the NIRC of 1997

Respondent asserts that the returns filed by petitioner are false, as the amounts in the returns were deficient and did not disclose the truth regarding the correct amounts subject to tax; thus the same fall under Section 222 of the NIRC of 1997, giving respondent ten (10) years from discovery to assess. However, a perusal of the records shows that respondent has not substantiated this claim.

In the case of *Aznar v. Court of Appeals*,[31] the Supreme Court explained that it is quite easy for revenue officers to claim that there was falsity in the return filed by the taxpayer. However, the Court also cautioned that mere falsity of a return does not merit the

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[30] Id., pp. 47-49.
[31] G.R. No. L-20569, August 23, 1974, 58 SCRA 519.

application of the 10-year prescriptive period, unless it can be shown that the return was made with a design to mislead or deceive on the part of the taxpayer, or at the very least show culpable negligence.

To note, the rules on prescription are put in place as a way to balance the power of the government's right to assess taxes and to protect the taxpayer from harassment by not indefinitely extending the period of assessment.[32]

In this case, respondent merely relied on the tax returns, as well as the financial statements and trial balance to substantiate her claim that the returns submitted were false; however, the same failed to show such a conclusion, and this is not enough to merit the application of the ten (10)-year period. Such falsity must be established by clear and sufficient evidence.

Thus, the prescriptive period to be applied in the present case is three (3) years, as stated in Section 203 of the 1997 NIRC, as amended.

Three (3)-year prescriptive period on deficiency assessments

On the issue of whether or not the assessments for deficiency expanded withholding tax, withholding tax on compensation, and fringe benefits tax issued by respondent to petitioner for taxable year 2005 had already prescribed, the Court finds that the assessments covering January to November for deficiency expanded withholding tax, withholding tax on compensation, as well as the first three quarters for fringe benefits tax were made beyond the prescribed period.

Applying the earlier discussion, that there being no false return, the prescriptive period of three (3)-years must be applied.

Petitioner states that the Final Assessment Notice issued by respondent was actually received beyond the three (3)-year prescriptive period.[33] Citing the case of *Metro Star Superama, Inc. v. Commissioner of Internal Revenue*,[34] petitioner points out that the assessment is only deemed made when the same is actually received by the taxpayer.

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[32] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004, 447 SCRA 214, 225.
[33] *Records*, p. 793.
[34] CTA Case No. 7169, March 21, 2007.

Specifically, petitioner points out that under Section 203 of the NIRC of 1997,[35] the three (3)-year period commences from the actual date of filing of the return or from the last day prescribed by law for filing such, whichever comes first.

In the case of petitioner, who is required to use the Electronic Filing Payment System ("EFPS"), Revenue Regulations No. 26-2002[36] requires that the monthly returns for Expanded Withholding Tax must be made on or before the eleventh (11th) day following the end of the month.[37] Thus, as summarized below:

Expanded Withholding Tax And Withholding Tax on Compensation				
Month	Actual Date Filed	Last Day to File	End of Prescriptive Period	Status (FAN received on 12/15/2008)
January	2/9/2005	2/11/2005	2/11/2008	Prescribed
February	3/7/2005	3/11/2005	3/11/2008	Prescribed
March	4/8/2005	4/11/2005	4/11/2008	Prescribed
April	5/9/2005	5/11/2005	5/11/2008	Prescribed
May	6/9/2005	6/11/2005	6/13/2008	Prescribed
June	7/8/2005	7/11/2005	7/11/2008	Prescribed
July	8/9/2005	8/11/2005	8/11/2008	Prescribed
August	9/9/2005	9/11/2005	9/12/2008	Prescribed
September	10/7/2005	10/11/2005	10/11/2008	Prescribed
October	11/10/2005	11/11/2005	11/11/2008	Prescribed
November	12/10/2005	12/11/2005	12/12/2008	Prescribed
December	1/11/2006	1/20/2006	1/20/2009	Valid

Clearly, from the foregoing tabulation, only the assessment covering the month of December has not prescribed.

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[35] Section 203. *Period of Limitation Upon Assessment and Collection*. - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.

For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

[36] Amending the Coverage of the Electronic Filing and Payment System (EFPS) By Making It Mandatory for Large Taxpayers and Optional for Certain Identified Non-Large Taxpayers to Avail of the EFPS in the Filing of Their Tax Returns and the Payment of Taxes Due Thereon, issued on March 5, 2002.

[37] *Records*, p. 795.

As for Fringe Benefits Tax, Section 2.33 of Revenue Regulations No. 03-1998[38] requires the withholding and payment of such a tax on a quarterly basis, and that the returns must be made on or before the fifteenth (15th) day following the end of the quarter. Thus, the prescriptive periods are as follows:

Fringe Benefit Tax				
Month	Actual Date Filed	Last Day to File	End of Prescriptive Period	Status (FAN received on 12/15/2008)
1st Quarter	4/6/2005	4/15/2005	4/15/2008	Prescribed
2nd Quarter	7/15/2005	7/15/2005	7/15/2008	Prescribed
3rd Quarter	10/10/2005	10/17/2005	10/17/2008	Prescribed
4th Quarter	1/16/2005	1/16/2005	1/16/2009	Valid

From the foregoing, only the assessment for Expanded Withholding Tax and Withholding Tax on Compensation covering the month of December, as well as the Fringe Benefit Tax covering the 4th Quarter, were made within the prescribed period.

Final Withholding Tax and Final Withholding of VAT are not required when the supplier of goods and services are domestic corporations

On the issue of whether or not petitioner is liable for Final Withholding Tax and VAT on gross payments for software licenses, the Court finds for the petitioner.

Respondent's assessment on the Final Withholding Tax is based on the income payments made particularly on Direct Labor paid to non-resident foreign corporations based on Section 2.57-1(I)(1) of Revenue Regulations No. 2-98,[39] in relation to Section 28(B)(1) of the 1997 NIRC; while the Final Withholding on VAT is based on the failure to withhold and remit the VAT due from the amortization of

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[38] Implementing Section 33 of the National Internal Revenue Code, as Amended by Republic Act No. 8424 Relative to the Special Treatment of Fringe Benefits, issued on May 21, 1998.
[39] 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, issued May 17, 1998.

acquired Microsoft software license from abroad, pursuant to Section 4.114(A)(1) of Revenue Regulations No. 2-98.[40]

To review, Section 2.57-1(I)(1) and Section 4.114(A)(1) of Revenue Regulations No. 2-98 state that:

> "SECTION 2.57.1. *Income Payments Subject to Final Withholding Tax.* — The following forms of income shall be subject to final withholding tax at the rates herein specified:
>
> xxx xxx xxx
>
> (I) *Income Derived From all Sources Within the Philippines by* <u>*Non-Resident Foreign Corporation*</u>. — The following shall be subject to final withholding tax based on the gross amount of income and at the rate of tax prescribed therefor:
>
> > (1) *In general* — On gross income derived from all sources within the Philippines such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments, or other fixed or determinable annual, periodic or casual gains, profits and income and capital gains (except capital gains realized from sale, exchange, disposition of shares of stock in any domestic corporation which is subject to capital gains tax under Sec. 28(B)(5)(c) — at the following rates:
> >
> > 34% - beginning January 1, 1998
> > 33% - beginning January 1, 1999 and
> > 32% - beginning January 1, 2000 …
>
> xxx xxx xxx
>
> SECTION 4.114. *Withholding of Creditable Value-Added Tax.* - In general, value-added tax due on sales of goods and services are not subject to withholding since the tax is not determinable at the time of sale…

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[40] *Records*, p. 48-49.

xxx xxx xxx

(A) *Rates and basis of creditable value-added tax to be withheld.* — The gross payments made by the government to sellers of goods and services shall be subject to withholding tax at the rates herein prescribed:

xxx xxx xxx

(B) *Persons required to deduct and withhold.* — All local government units, represented by the Provincial Treasurer in the provinces, the City Treasurer in cities, the Municipal Treasurer in the municipalities, and Barangay Treasurer in the barangays, Treasurers of GOCCs and the Chief Accountant or any person holding similar position and performing similar function in national government offices and GOCCs, as withholding agents, shall deduct and withhold the value-added tax before making any payment to the seller of goods and services.

Where the government as herein defined has regional offices, branches or units, the withholding and remittance of the creditable VAT may be done on a decentralized basis as such, the treasurer or the chief accountant or any person holding similar function in said regional office, branch or unit shall deduct and withhold the creditable VAT before making any payment to the seller of goods and services. Decentralized remittance, however, is not applicable if the taxpayer-withholding agent is classified as large taxpayer by the Commissioner of Internal Revenue.

Private entities are likewise considered as withholding agents on gross payments made to non-residents applying the final withholding tax rate of twelve percent (12%)"[41]

As applied to the present case, and confirmed by the Independent Certified Public Accountant ("ICPA") Report, the basis of the deficiency assessment on the Final Withholding Tax and Final Withholding of VAT was the sofware payments made to three

[41] As amended by Revenue Regulation Nos. 16-2005 and 02-2006

entities, all of which were domestic corporations.[42] That being the case, the application of the abovementioned provisions in Revenue Regulation No. 2-98 was erroneous on the part of the BIR. Clearly, petitioner was able to show that these entities are domestic corporations by presenting the Certificate of Registration issued by the Securities and Exchange Commission (SEC).[43]

That being the case, the deficiency assessments on the Final Withholding Tax and Final Withholding of VAT in the amount of Php1,029,051.27 and Php317,173.89, which includes interest, should be cancelled.

The assessments for taxable year 2005 have not become final and executory, thus the Court has jurisdiction over the present petition

On the issue of whether or not the assessments issued to petitioner have become final and executory, the Court finds for the petitioner.

A factual review of the circumstances will support petitioner's claim. The PAN was received by petitioner on October 2, 2008, to which a Reply was executed by petitioner on October 17, 2008.[44] On December 15, 2008, petitioner received the FAN, prompting petitioner to submit an Administrative Protest against it on January 13, 2009.[45]

Respondent claims that a taxpayer is required to submit documents in support of its Administrative Protest within sixty (60) days from the date of filing of his letter of protest, otherwise the assessment becomes final, executory and demandable,[46] based on Section 3.3.1.5 of Revenue Regulations No. 12-99.[47] Respondent claims that since petitioner failed to submit said documents; the

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[42] *Exhibit* "YYY."
[43] *Id.*
[44] *Exhibits* "B" to "B-2."
[45] *Exhibits* "D" to "D3."
[46] *Records*, pp. 841-843.
[47] 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 a Suggested Compromise Penalty, issued on September 14,1999.

assessment became final, executory and demandable and would result in the Court having no jurisdiction over the case.[48]

Under Section 228 of the NIRC of 1997, it states that:

> "SEC. 228. *Protesting of Assessment.* –
>
> xxx xxx xxx
>
> 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Clearly, the law states that an assessment may be protested by two ways: (1) by filing a request for reconsideration or (2) by filing a request for reinvestigation.

As correctly cited by petitioner, the Supreme Court in *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*[49] expounded on the difference between filing a request for reconsideration and a reinvestigation when it said that:

> "Revenue Regulations No. 12-85, the Procedure Governing Administrative Protests of Assessment of the Bureau of Internal Revenue, issued on 27 November 1985,

[48] *Records*, p. 843.
[49] G.R. No. 167146, October 31, 2006, 506 SCRA 427.

defines the two types of protest, the request for reconsideration and the request for reinvestigation, and distinguishes one from the other in this manner:

> 'Section 6. *Protest*. - The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars:
>
> xxx xxx xxx
>
> For the purpose of protest herein—
>
> (a) *Request for reconsideration*-- refers to a plea for a re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (b) *Request for reinvestigation*—refers to a plea for re-evaluation of an assessment on the basis of newly-discovered evidence or additional evidence that a taxpayer intends to present in the investigation. It may also involve a question of fact or law or both.
>
> The main difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered or additional evidence." (*emphasis ours*)

Petitioner filed a "Motion for Reconsideration of FAN received on December 15, 2008."[50] Respondent issued Tax Verification Notice No. 00086862 on March 9, 2009,[51] authorizing a reinvestigation. To clarify with the BIR, petitioner established a meeting with the BIR Officers, as well as submitting a letter dated March 13, 2009, stating that petitioner is asking for reconsideration, not a reinvestigation.[52] As if that was not enough, petitioner once again submitted a

[50] *Exhibit* "E."
[51] *Exhibits* "K" to "K-7."
[52] *Exhibits* "F" to "F-3."

clarificatory letter to respondent on June 26, 2009, stating that the Protest Letter is in the nature of a request for reconsideration.[53]

It is the opinion of the Court that there is no merit in the theory of respondent that the assessment in this case was already final and executory, thus cannot be appealed, because petitioner allegedly failed to submit the necessary documents required by respondent.

In the case of *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*,[54] the Supreme Court held that:

> "We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.
>
> The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit."

Section 228 states that if the protest is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the inaction may appeal to the CTA within 30 days from the lapse of the 180-day period.

Petitioner in this case filed an administrative protest to the assessment when it filed a "Motion for Reconsideration of FAN received on December 15, 2008" on January 13, 2009.

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[53] *Exhibits* "I" to "I-1."
[54] G.R. Nos. 172045-46, June 16, 2009, 589 SCRA 253.

It is very clear to the Court that there was no need for a submission of documents, as claimed by respondent, since petitioner is asking respondent to review or re-evaluate the assessment based on all the existing records which was already provided in the audit and during the communication between the parties prior to the issuance of the FAN.

Thus, respondent had 180 days from January 13, 2009, or until July 12, 2009 to decide on the "Motion for Reconsideration of FAN received on December 15, 2008." Upon respondent's inaction after the 180 days, petitioner has 30 days, or until August 11, 2009 to file a petition before this Court. Petitioner filed the present Petition for Review on August 10, 2009, which was clearly within the period provided by law.

Clearly, petitioner complied with the requirements of the law in disputing a tax assessment, pursuant to Section 228 of the Tax Code. Hence, the tax assessment cannot be considered as final, executory and demandable.

Whether or not petitioner is liable to pay the assessed deficiency expanded withholding tax, withholding tax on compensation, fringe benefits tax for taxable year 2005.

In summary, respondent assessed petitioner for deficiency expanded withholding tax (EWT), withholding tax on compensation (WTC), fringe benefits tax (FBT), final withholding tax (FWT) and final withholding of value-added tax (FW-VAT) for taxable year 2005 in the aggregate amount of Php35,101,455.74, broken down as follows:

Tax Type	Basic Tax	Interest	Total
EWT	Php 1,161,454.12	Php 694,963.23	Php 1,856,417.35
WTC	7,666,281.74	4,587,166.94	12,253,448.68
FBT	12,269,948.77	7,375,415.78	19,645,364.55
FWT	643,818.50	385,232.77	1,029,051.27
FW-VAT	198,098.00	119,075.89	317,173.89

Total	**Php 21,939,601.13**	**Php 13,161,854.61**	**Php 35,101,455.74**

However, as previously discussed, the deficiency assessments on the FWT and FW-VAT in the respective amounts of Php1,029,051.27 and Php317,173.89, which include interest, should be cancelled for being without basis.

Thus, the determination of liability for deficiency taxes shall only cover the remaining assessments on the alleged deficiency EWT, WTC and FBT for the year 2005.

I. Expanded Withholding Tax

Respondent assessed petitioner for basic deficiency EWT in the amount of Php1,161,454.12 for petitioner's failure to pay the withholding tax due on its income payments, pursuant to Section 2.57.2 of Revenue Regulations (RR) No. 2-98, as amended, as detailed below:

Income Payment	Per FS	Per Alphalist	Discrepancy	Rate	EWT Still Due
Costs and Expenses					-
Rental	36,936,196.00	30,858,481.68	6,077,714.32	5%	303,885.72
Security & Janitorial	2,184,971.00	942,498.00	1,242,473.00	2%	24,849.46
Sub-con works	22,780,672.65		22,780,672.65	2%	455,613.45
Professional Fees	1,913,295.95	1,776,335.51	136,960.44	10%	13,696.04
Professional Fees	1,385,085.00	700,059.89	685,025.11	15%	102,753.77
Trainee Pay	3,258,196.05		3,258,196.05	8%	260,655.68
Total	**68,458,416.65**	**34,277,375.08**	**34,181,041.57**		**1,161,454.12**

As earlier discussed, only the assessment for deficiency EWT covering the month of December 2005 has not yet prescribed. However, since petitioner was not able to show which portion of the income payments subject of the deficiency EWT assessment for the entire taxable year 2005 pertain to the prescribed months of January to November 2005, all of the subject income payments shall be considered as referring to the month of December 2005.

A. Rental

Based on the balances provided in the General Ledger,[55] the Rental as categorized by respondent is composed of the following:

Account Code	Account Name	Amount	
52110	Facility - Rent: FAC	17,274,799.00	
52210	Staff House - Rent	936,142.00	18,210,941.00
52121	Facility - HVAC: FAC	13,629,178.00	
52221	Staff House - HVAC	93,744.00	13,722,922.00
54111	Lodging	2,944,663.00	
64111	Lodging	603,300.00	
74111	Lodging	1,454,370.00	5,002,333.00
	Total		**36,936,196.00**

Contrary to the findings of respondent, the Rental per alphalist amounts to Php31,581,881.74,[56] and not Php30,858,481.68, which was subjected to the appropriate withholding tax at the rate of 5%. Such withholding tax was duly remitted and reported to the BIR.[57]

Examination of the GL Listings on the Rental account[58] would show that out of the total rent expense of Php36,936,196.00 being assessed by respondent, the amount of Php13,629,177.78, booked as Facility-HVAC:FAC (Heat, Ventilation and Air-conditioning), pertains to mere reimbursements made to the lessor as payment for utilities and other maintenance expenses of the leased areas.

However, upon further scrutiny of the documents[59] related thereto, out of the total amount of Php13,629,177.78, only the amount of Php7,253,085.77[60] was properly supported by statement of accounts and official receipts that clearly indicated that such transactions pertain to mere reimbursements without any mark-up or profit element to the lessor. As such, it should not be considered as part of gross receipts for purposes of the EWT.

[55] Exhibit "HH."
[56] Exhibit "R"; Annex 1 of Exhibit "Q."
[57] Exhibits "BBBB," "CCCC;" "DDDD."
[58] Exhibit "HH."
[59] Exhibits "YY-1" to "YY-113."
[60] Exhibit "S."

Also, further scrutiny of the related documents[61] revealed that the portion of the amount comprising Staffhouse-HVAC, which is included in the amount assessed by respondent on the Rental, should not be subjected to withholding tax. Such amount pertains to payments to PLDT for telephone line charges amounting to Php7,628.89.[62] Since payments for telephone charges are not among those enumerated as subject to expanded withholding tax under Revenue Regulations (RR) No. 2-98, as amended, respondent's deficiency expanded withholding tax assessment corresponding to this income payment in as much as the amount of Php7,628.89 should be cancelled.

As to the Lodging accounts, the same represent payments made by petitioner for the room and hotel accommodations and other incidental expenses, such as telephone charges and taxi services, of its guests which are not subject to expanded withholding tax. To support such payments, petitioner submitted various official receipts, invoices, statement of accounts and e-mail correspondences.[63] However, only the amount of Php1,947,860.49[64] was duly substantiated.

No additional supporting documents were presented to account for the remaining Rental expense of Php27,727,620.85, thus the same shall be subjected to 5% EWT.

Nevertheless, the present assessment on deficiency expanded withholding tax on rental should be cancelled due to the fact that petitioner actually made an overpayment in the amount of Php192,713.04, as computed below:

Rental (FAN)		Php 36,936,196.00
Less: Facility - HVAC: FAC (per verification)	Php 7,253,085.77	
Staffhouse - HVAC (per verification)	7,628.89	
Lodging	1,947,860.49	9,208,575.15
Rental subject to 5% EWT		Php 27,727,620.85
Less: Rental subjected to 5% EWT per Alphalist		31,581,881.74
Difference		Php (3,854,260.89)
Tax Rate		5%
EWT Overpayment		**Php (192,713.04)**

[61] Exhibits "ZZ-1" to "ZZ-18."
[62] Exhibit "T."
[63] Exhibit "GGG-1" to "GGG-3062."
[64] Exhibit "EE."

B. Security and Janitorial

Respondent assessed petitioner for deficiency EWT on Security and Janitorial in the amount of ₱24,849.46, as presented below:

Per Trial Balance		
52132 - Security FAC	Php 1,005,082.00	
52133 - Cleaning	1,179,889.00	Php 2,184,971.00
Per Alphalist		
Alarm Security Svcs.	914,498.00	
Eyespy Detectives & Investigation	28,000.00	942,498.00
Difference		Php 1,242,473.00
Multiply by EWT Rate		2%
Basic Tax Due		Php **24,849.46**

The security and janitorial per trial balance in the amount of Php2,184,971.00 represents payments made to the following:

Security	
Alarm Security Services, Inc.	Php 1,005,082.02
Janitorial	
Tri-Q Responsible Services, Inc.	919,362.52
Cleaning	
Dinlys Industrial Sales	67,702.92
INCA Plastics Philippines, Inc.	27,937.50
J. Tancio Enterprises Inc.	148,967.11
Union Electrical Supply	5,400.00
Employee's Reimbursement	2,182.50
Cash Advance Liquidation	8,336.00
Sub-total	260,526.03
TOTAL	**Php 2,184,970.57**

Petitioner avers that payment made to Dinlys Industrial Sales; INCA Plastics Philippines, Inc.; J. Tancio Enterprises, Inc.; Union Electrical Supply, in the aggregate amount of Php250,007.53 are not subject to 2% EWT since petitioner is not included in the list of Top 10,000 Corporations during taxable year 2005. On the other hand, the amount of Php10,518.50 pertains to mere advances made to its employees subject to liquidation. Since these are mere reimbursements, the same should not be subjected to withholding tax.

After verifying the documents, the Court confirms that petitioner is not among the Top 10,000 Corporations during taxable year 2005. In fact, the Withholding Tax Division of the BIR issued a Certification stating that petitioner is not included in the list of Top 10,000 Corporations.[65]

Thus, as provided under Section 3 of RR No. 17-03,[66] a corporation shall not be considered a withholding agent for purposes of the said Section, unless such corporation has been determined and duly notified, in writing, by the Commissioner that it has been selected as one of the top ten thousand (10,000) private corporations.

Considering that respondent did not present any evidence showing that it has selected and duly notified petitioner as one of the Top 10,000 private corporation, petitioner is not required to withhold 2% on its purchase of services and 1% on its purchases of goods.

With regard to the employees' reimbursements and cash advance liquidation, the Court confirms that the said amounts only pertains to advances made to its employees subject to liquidation for the purchase of various goods for office use. However, upon examination of the documents related to these transactions, only the amount of Php200,787.92 was duly substantiated.

Vendor Name	Exhibit No.	Amount
Dinlys Industrial Sales	AAA-97 & AAA-98	Php 5,005.43
Dinlys Industrial Sales	AAA-99 & AAA-100	544.00
Dinlys Industrial Sales	AAA-101 & AAA-102	4,604.52
Dinlys Industrial Sales	AAA-103 & AAA-104	2,520.00
Dinlys Industrial Sales	AAA-105 & AAA-106	3,190.94
Dinlys Industrial Sales	AAA-107 & AAA-108	2,818.25
Dinlys Industrial Sales	AAA-109 & AAA-110	2,307.00
Dinlys Industrial Sales	AAA-111 & AAA-112	5,824.84
Dinlys Industrial Sales	AAA-113 & AAA-114	1,036.35
Dinlys Industrial Sales	AAA-115 & AAA-116	1,227.00
Dinlys Industrial Sales	AAA-117 & AAA-118	3,588.60
Dinlys Industrial Sales	AAA-119 & AAA-120	3,190.91

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[65] Exhibit "LLL."

[66] Section 3. *Income Payments Subject to Creditable Withholding Tax.* – Sec. 2.57.2 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:

xxx xxx xxx

A corporation shall not be considered a withholding agent for purposes of this Section, unless such corporation has been determined and duly notified, in writing, by the Commissioner that it has been selected as one of the top ten thousand (10,000) private corporations.

Dinlys Industrial Sales	AAA-121 & AAA-122	3,559.08
Dinlys Industrial Sales	AAA-121 & AAA-123	5,787.20
Dinlys Industrial Sales	AAA-124 & AAA-125	5,638.16
Dinlys Industrial Sales	AAA-126 & AAA-127	1,820.00
Sub-total		**52,662.28**
INCA Plastics Phils., Inc.	AAA-128 & AAA-129	27,937.50
Sub-total		***27,937.50***
J. Tancio Enterprises Inc.	AAA-130 & AAA-131	4,224.00
J. Tancio Enterprises Inc.	AAA-130 & AAA-132	4,599.36
J. Tancio Enterprises Inc.	AAA-133 & AAA-134	6,240.00
J. Tancio Enterprises Inc.	AAA-135 & AAA-136	8,352.00
J. Tancio Enterprises Inc.	AAA-137 & AAA-138	9,198.75
J. Tancio Enterprises Inc.	AAA-139 & AAA-140	5,280.00
J. Tancio Enterprises Inc.	AAA-141 & AAA-142	6,274.00
J. Tancio Enterprises Inc.	AAA-143 & AAA-144	4,560.00
J. Tancio Enterprises Inc.	AAA-145 & AAA-146	9,819.60
J. Tancio Enterprises Inc.	AAA-147 & AAA-148	24,761.86
J. Tancio Enterprises Inc.	AAA-149 & AAA-150	5,970.00
J. Tancio Enterprises Inc.	AAA-151 & AAA-152	11,702.02
J. Tancio Enterprises Inc.	AAA-153 & AAA-154	6,912.00
J. Tancio Enterprises Inc.	AAA-155 & AAA-156	6,894.55
Sub-total		***114,788.14***
Union Electrical Supply, Inc.	AAA-157 & AAA-158	5,400.00
Sub-total		***5,400.00***
TOTAL		**Php 200,787.92**

Thus, the unsubstantiated amount of Php59,738.11, the nature of the related payments and the recipient of the same cannot be ascertained, is subject to 2% EWT.

As to the payments made in the aggregate amount of Php1,924,444.54 to Alarm Security Services, Inc. and Tri-Q Responsible Services, Inc. for the security and janitorial services, records reveal that the same should be subjected to expanded withholding tax at the rate of 2% pursuant to Section 2.57.2(E)(3)(g) of Revenue Regulation No. 2-98.[67] Thus, there is a deficiency liability for EWT due in the amount of Php38,488.89.

A study of the Alphalist of payees subject to EWT[68] and the Monthly Remittance Returns of Creditable Income Taxes Withheld

[67] 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, issued on May 17, 1998.
[68] Exhibit "DDDD."

(Expanded) for 2005[69] show that petitioner did withhold and remit the EWT due from its payment to Alarm Security Services, Inc. and Tri-Q Responsible Services, Inc., amounting to Php37,085.54 only. Thus, petitioner is still liable for a deficiency EWT of Php1,403.35.

In as far as the Security and Janitorial accounts being assessed by respondent, petitioner is still liable to pay the basic deficiency EWT on security and janitorial expenses in the total amount of Php2,598.11, as computed below:

EWT Due on Unsubstantiated Janitorial (Cleaning)	Php 1,194.76
Deficiency EWT due on payments to Alarm Security Services, Inc. and Tri-Q Responsible Services, Inc.	1,403.35
Total deficiency EWT on Security and Janitorial Expenses	**Php 2,598.11**

C. Sub-con Works

Respondent assessed petitioner for deficiency EWT on Sub-con Works in the amount of Php455,613.45.

Petitioner argues that respondent failed to detail what fell under the said account, which amounted to Php22,780,672.65, from which the assessment was based upon.

However, the said amount was derived from the "Monthly Breakdown of P & L & BS Account" for the Year 2005,[70] which was comprised of the following:

Increase in Leasehold Improvements	Php	5,138,891.56
Increase in Computer Software		5,958,374.09
Internet, Cable, DSL		5,568,818.00
Technology Protection Agreement		6,114,589.00
Total	**Php**	**22,780,672.65**

Needless to say, petitioner did not offer any documentary evidence to support the foregoing amounts, thus, the assessment on the same shall be sustained.

[69] Exhibit "BBBB."
[70] BIR Records, pp. 258-265.

D. Professional Fees

Petitioner is being assessed by respondent for deficiency taxes on its income payments to professionals amounting to Php821,985.55, computed as follows:

Income Payment	Per FS	Per Alphalist	Discrepancy
Professional Fees (10%)	Php 1,913,295.95	Php 1,776,335.51	Php 136,960.44
Professional Fees (15%)	1,385,085.00	700,059.89	685,025.11
Total	**Php 3,298,380.95**	**Php 2,476,395.40**	**Php 821,985.55**

However, upon review of the duly filed Alphalist for 2005, it showed that there were inaccuracies under "Per Alphalist" amount in the BIR's assessment as reflected in the issued FAN. As reflected in the Alphalist, the Professional Fees amount to Php2,977,753.74, to wit:

	Income Payments	EWT
Professional Fees (10%)	Php 2,026,418.85	Php 202,641.88
Professional Fees (15%)	951,334.89	142,700.23
Total	**Php 2,977,753.74**	**Php 345,342.11**

Records show that the corresponding expanded withholding taxes due from the foregoing professional fees, totaling to Php345,342.11, were duly remitted by petitioner to the BIR.

Upon further verification of the Alphalist and available Company records, it was found that included therein were payments made to E Croatian Technologies, Inc. and Guthrie Jensen Consultants, Inc., which were booked under the GL Listings on Training and Conference and not part of the Professional Fees per GL.[71]

Thus, the income payments and the corresponding EWT pertaining to professional fees which were subjected to 10% and 15% per Alphalist amounted to Php2,843,753.74, to wit:

	Income Payments	EWT
Professional Fees (10%)	Php 2,026,418.85	Php 202,641.88
Less: Income Payments booked		

[71] Exhibit "LL."

under Training and Conference				
E Croatian Technologies, Inc.		(70,000.00)		(7,000.00)
Guthrie-Jensen Consultants, Inc.		(64,000.00)		(6,400.00)
Subtotal	Php	1,892,418.85	Php	189,241.88
Professional Fees (15%)		951,334.89		142,700.23
Total Professional Fees	**Php**	**2,843,753.74**	**Php**	**331,942.11**

On the other hand, the Professional Fees per "Monthly Breakdown of P & L & BS Account"[72] reflect the following professional fees:

	Per P&L	
Professional Fees (10%)		
Recruitment (57413)	Php 1,627,780.00	
Recruitment (67413)	153,148.00	Php 1,780,928.00
Professional Fees (15%)		
Consultants (57117)	685,169.00	
Consultants (67117)	35,556.00	
Professional Fees (77115)	127,860.00	
Consultants (77117)	736,500.00	1,585,085.00
General Professional Partnership		
Audit (77112)	212,980.00	
Legal Fees (77114)	297,725.00	510,705.00
TOTAL		**Php 3,876,718.00**

Of the foregoing, the amount of Php483,215.25 was verified through invoices and official receipts issued by its auditors and lawyers for payments made to general professional partnership which were exempt from withholding tax pursuant to Section 2.57.5 of Revenue Regulations No. 2-98, as amended,[73] which provides:

> "*Sec. 2.57.5. Exemption from Withholding* – The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> (A) xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law,

[72] BIR Records, pp. 258-265.
[73] Exhibits "V"; "BBB-1" to "BBB-33"

general or special, such as but not limited to the following:

xxx xxx xxx

(4) <u>General professional partnerships</u>

xxx xxx xxx"

Thus, the professional fees made to general professional partnership in the amount of Php483,215.25 is not subject to expanded withholding tax.

However, no additional supporting documents were presented by petitioner to support the other professional fees amounting to Php3,393,502.75, thus the assessment on the same cannot be cancelled.

Consequently, petitioner is liable for deficiency expanded withholding tax on professional fees in the amount of Php88,036.90, as computed below:

	Amount of Income Payment		**EWT**
Professional Fees (10%)		Php 1,780,928.00	Php 178,092.80
Professional Fees (15%)		1,585,085.00	237,762.75
General Professional Partnership	Php 510,705.00		
Less: Substantiated payments made to GPP	(483,215.25)	27,489.75	4,123.46
Total		**Php 3,393,502.75**	**Php 419,979.01**
Less: EWT remitted			331,942.11
Basic EWT Due			**Php 88,036.90**

E. Trainee Pay

Petitioner is being assessed on its expenses booked under the account "Trainee's Pay" amounting to Php3,258,196.05, which were subjected to withholding tax of 2%. Respondent claims that the said income payments should have been subjected to 10% EWT, thus the deficiency of 8%, totaling to Php260,655.68.

Other than its Memorandum of Agreements[74] and Training Contracts,[75] no other supporting documents were presented by

[74] Exhibits "NNN-1" to "NNN-205."
[75] Exhibits "MMM 1" to "MMM 120."

petitioner to justify its claim that the subject trainee pay should only be subjected to 2%, instead of the 10% rate. In the absence of any other documentary evidence disclosing the nature of the actual payments made by petitioner, the findings of respondent for deficiency EWT on the same must be sustained.

Thus, petitioner is liable to pay the basic deficiency expanded withholding tax of Php806,904.14, as summarized below:

Income Payments	EWT Due	
Security and Janitorial	Php	2,598.11
Sub-con works		455,613.45
Professional Fees		88,036.90
Trainee Pay		260,655.68
Total Basic EWT Due	**Php**	**806,904.14**

II. Withholding Tax on Compensation

Respondent alleges that upon verification of the salaries and wages claimed per income statement as against the total amount shown in the Alphalist, the total shown in the latter was smaller than the former by Php36,506,103.53.

Respondent alleges that this amount was allegedly not subjected to withholding tax on compensation in violation of Section 2.78 of RR No. 2-98,[76] as amended by RR No. 6-2001.[77] The deficiency withholding tax on compensation was computed using the ratio of the total withholding tax on compensation remitted versus the total salaries and wages per Alphalist. Since the discrepancy was not subjected to tax, the rate of 21% was used to arrive at the basic deficiency tax on compensation. Presented below is the computation made by respondent:

Income Payment	Per FS	Per Alphalist	Discrepancy	Rate	EWT Still Due
Salaries and Wages					-
Cost of Service					-
Salaries, allowances & bonuses	134,693,733.93				-

[76] Section 2.78. *Withholding Tax on Compensation.*
[77] Amending Pertinent Provisions of Revenue Regulations Nos. 1-98, 2-98, as Amended, and 7-95, as Amended, and Revenue Memorandum Circular No. 1-98 Relative to the Inclusion of Additional Taxpayers to be Subject to Final Withholding Tax, Revision of the Withholding Tax Rates on Certain Income Payments Subject to Creditable Withholding Tax, Time for the Filing of Various Tax Returns and Payment of the Taxes Due Thereon And Others issued July 31, 2001.

Employee welfare & benefits	35,874,970.79				-
General and Admin					-
Salaries, allowances & bonuses	36,281,011.15				-
Employee welfare & benefits	3,657,466.58				-
Total	210,507,182.45	178,765,490.22	31,741,692.23	21%	6,665,755.37
Transportation & Travel	8,575,019.00	3,810,607.70	4,764,411.30	21%	1,000,526.37
Total	**219,082,201.45**	**182,576,097.92**	**36,506,103.53**		**7,666,281.74**

As previously discussed, only the assessment for deficiency withholding tax on compensation (WTC) covering the month of December 2005 has not yet prescribed. However, since petitioner was unable to show which portion of the salaries and wages subject of the deficiency WTC assessment for the entire taxable year 2005 pertain to the prescribed months of January to November 2005, all of the subject salaries and wages shall be considered as referring to the month of December 2005.

From the assessment made by respondent, the basis for the deficiency tax alleged for withholding taxes on compensation is petitioner's Financial Statement and the Alphalist. However, upon verification of the breakdown of the P & L Accounts, the items lodged under the descriptive title "Salaries and Wages" actually have an aggregate amount of Php209,875,197.00 instead of Php210,507,182.45, as shown below:

ACCOUNT CODE	ACCOUNT NAME	COS	OPEX	TOTAL
-	***Salaries & Wages***			
51111	R & F Pay - RT	34,393,869.00		34,393,869.00
51112	R & F Pay - OT	1,238,390.00		1,238,390.00
51113	R & F Pay - 13th Mo.	3,181,499.00		3,181,499.00
51114	R & F Pay - Vacation	2,935,439.00		2,935,439.00
51115	R & F Pay - Holiday	1,564,662.00		1,564,662.00
51116	R & F Pay - Other Pay	2,966,517.00		2,966,517.00
51211	Mgmt Pay - RT	66,231,789.00		66,231,789.00
51212	Mgmt Pay - OT	918,562.00		918,562.00
51213	Mgmt Pay - 13th Mo.	4,190,286.00		4,190,286.00
51214	Mgmt Pay - Vacation	4,689,219.00		4,689,219.00
51215	Mgmt Pay - Holiday	2,034,013.00		2,034,013.00
51216	Mgmt Pay - Other Pay	378,268.00		378,268.00
51221	Mgmt - Bonus	5,703,841.00		5,703,841.00
51311	Trainee/Temp Pay	3,390,564.00		3,390,564.00
57412	Temp Agency	69,761.00		69,761.00
57560	Work in Process	405,948.00		405,948.00

61111	R & F Pay - RT		360,882.00	360,882.00
61112	R & F Pay - OT		29,198.00	29,198.00
61113	R & F Pay - 13th Mo.		35,208.00	35,208.00
61114	R & F Pay - Vacation		27,965.00	27,965.00
61115	R & F Pay - Holiday		26,283.00	26,283.00
61116	R & F Pay - Other Pay		3,715.00	3,715.00
61211	Mgmt Pay - RT		9,824,019.00	9,824,019.00
61212	Mgmt Pay - OT		869,482.00	869,482.00
61213	Mgmt Pay - 13th Mo.		903,905.00	903,905.00
61214	Mgmt Pay - Vacation		1,140,141.00	1,140,141.00
61215	Mgmt Pay - Holiday		723,016.00	723,016.00
61216	Mgmt Pay - Other Pay		713,098.00	713,098.00
61221	Mgmt - Bonus		1,083,976.00	1,083,976.00
71111	R & F Pay - RT		4,314,317.00	4,314,317.00
71112	R & F Pay - OT		1,257,105.00	1,257,105.00
71113	R & F Pay - 13th Mo.		410,434.00	410,434.00
71114	R & F Pay - Vacation		428,274.00	428,274.00
71115	R & F Pay - Holiday		319,363.00	319,363.00
71116	R & F Pay - Other Pay		82,713.00	82,713.00
71211	Mgmt Pay - RT		9,494,681.00	9,494,681.00
71212	Mgmt Pay - OT		509,594.00	509,594.00
71213	Mgmt Pay - 13th Mo.		889,453.00	889,453.00
71214	Mgmt Pay - Vacation		919,546.00	919,546.00
71215	Mgmt Pay - Holiday		685,228.00	685,228.00
71216	Mgmt Pay - Other Pay		105,800.00	105,800.00
71121	R & F - Bonus		63,608.00	63,608.00
71221	Mgmt - Bonus		973,724.00	973,724.00
	Sub-total	***134,292,627.00***	***36,194,728.00***	***170,487,355.00***
	Employee Benefits			
51116	R & F - Incentive	5,378,803.00		5,378,803.00
51131	R & F - SSS	1,937,519.00		1,937,519.00
51132	R & F - Medicare	442,075.00		442,075.00
51133	R & F - ECC	24,230.00		24,230.00
51134	R & F - Pagibig	241,044.00		241,044.00
51151	R & F - Medical Insurance	625,802.00		625,802.00
51152	R & F - Rice	455,236.00		455,236.00
51153	R & F - Uniforms	247,625.00		247,625.00
51157	R & F - Retirement Pay 401K	156,600.00		156,600.00
51158	R & F - Other Benefit	63,257.00		63,257.00
51162	R & F - Medical Reimbursement	8,092.00		8,092.00
51222	Mgmt - Incentive	794,112.00		794,112.00
51231	Mgmt - SSS	853,271.00		853,271.00
51232	Mgmt - Medicare	231,553.00		231,553.00
51233	Mgmt - ECC	9,390.00		9,390.00
51234	Mgmt - Pagibig	94,700.00		94,700.00
51236	Mgmt - FBT	424,414.00		424,414.00
51251	Mgmt - Med Insurance	729,817.00		729,817.00
51252	Mgmt - Rice	908,310.00		908,310.00
51253	Mgmt - Uniforms	223,000.00		223,000.00
51254	Mgmt - Gift Check	373,133.00		373,133.00

51257	Mgmt - Retirement Pay 401K	492,202.00		492,202.00
51258	Mgmt - Other Benefit	906,850.00		906,850.00
51261	Mgmt - Relocation Allowance	128,346.00		128,346.00
51262	Mgmt - Medical Reimbursement	157,333.00		157,333.00
51631	Exec - SSS	17,290.00		17,290.00
51632	Exec - Medicare	7,750.00		7,750.00
51633	Exec - ECC	190.00		190.00
51634	Exec - Pagibig	2,000.00		2,000.00
51658	Exec - Other Benefit	130,000.00		130,000.00
57411	Train & Conf	1,167,443.00		1,167,443.00
71300	Employee Benefits - share based	18,503,636.00		18,503,636.00
61131	R & F - SSS		27,452.00	27,452.00
61132	R & F - Medicare		5,488.00	5,488.00
61133	R & F - ECC		400.00	400.00
61134	R & F - Pagibig		3,985.00	3,985.00
61151	R & F - Medical Insurance		10,563.00	10,563.00
61152	R & F - Rice		8,400.00	8,400.00
61153	R & F - Uniforms		9,000.00	9,000.00
61157	R & F - Retirement Pay 401K		2,288.00	2,288.00
61231	Mgmt - SSS		290,547.00	290,547.00
61232	Mgmt - Medicare		77,675.00	77,675.00
61233	Mgmt - ECC		3,220.00	3,220.00
61234	Mgmt - Pagibig		32,700.00	32,700.00
61251	Mgmt - Med Insurance		204,138.00	204,138.00
61252	Mgmt - Rice		276,000.00	276,000.00
61253	Mgmt - Uniforms		81,000.00	81,000.00
61254	Mgmt - Gift Check		102,650.00	102,650.00
61255	Mgmt - Severance Pay		306,075.00	306,075.00
61257	Mgmt - Retirement Pay 401K		162,494.00	162,494.00
61258	Mgmt - Other Benefits		34,500.00	34,500.00
61262	Mgmt - Medical Reimbursement		50,833.00	50,833.00
71131	R & F - SSS		296,235.00	296,235.00
71132	R & F - Medicare		69,075.00	69,075.00
71133	R & F - ECC		3,600.00	3,600.00
71134	R & F - Pagibig		35,600.00	35,600.00
71151	R & F - Medical Insurance		116,518.00	116,518.00
71152	R & F - Rice		109,620.00	109,620.00
71153	R & F - Uniforms		65,250.00	65,250.00
71157	R & F - Retirement Pay 401K		68,899.00	68,899.00
71231	Mgmt - SSS		264,173.00	264,173.00
71232	Mgmt - Medicare		72,363.00	72,363.00
71233	Mgmt - ECC		2,910.00	2,910.00
71234	Mgmt - Pagibig		29,888.00	29,888.00
71251	Mgmt - Med Insurance		176,250.00	176,250.00
71252	Mgmt - Rice		246,500.00	246,500.00
71253	Mgmt - Uniforms		62,250.00	62,250.00
71254	Mgmt - Gift Check		113,717.00	113,717.00
71257	Mgmt - Retirement Pay 401K		152,916.00	152,916.00
71258	Mgmt - Other Benefits		30,813.00	30,813.00
71262	Mgmt - Medical Reimbursement		46,834.00	46,834.00

Sub-total	35,735,023.00	3,652,819.00	39,387,842.00
GRAND TOTAL	170,027,650.00	39,847,547.00	209,875,197.00

Petitioner asserts that the appropriate withholding tax on compensation was duly withheld and reported in the Company's monthly tax returns together with the Alphalist. Moreover, it claims that Employee Welfare and Benefits amounting to Php20,978,004.07 constitute non-taxable benefits and are considered as *de minimis* benefits under Revenue Regulation No. 3-98,[78] as amended by Revenue Regulation No. 8-00.[79] These *de minimis* benefits include Medical Cash Allowance to Dependents, Rice Subsidy, Medical Benefits, Gift Checks, Employees Achievement Awards, and Special Circumstances as defined by the provisions of the aforesaid revenue regulations. It also included SSS, Pagibig and Philhealth Contribtions, Retirement Benefits, Severance Pay, which are excluded from withholding tax pursuant to Section 32(B)(7)(f)[80] and B(6)(a)[81] and (b)[82] of the NIRC of 1997.

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[78] Implementing Section 33 of the National Internal Revenue Code, as Amended by Republic Act No. 8424 Relative to the Special Treatment of Fringe Benefits, issued on May 21, 1998.

[79] Amending Sections 2.78.1(A)(1), (A)(3), (A)(6), (A)(7), and (B)(11)(b) of Revenue Regulations No. 2-98, asAmended , and Section 2.33(C) of Revenue Regulations No. 3-98 , with Respect to "De Minimis" Benefits, Additional Compensation Allowance (ACA), Representation and Transportation Allowance (RATA) and Personal Economic Relief Allowance(PERA), issued August 21, 2000.

[80] Section 32. *Gross Income*. –

xxx xxx xxx

(B) Exclusions from Gross Income. - The following items shall not be included in gross income and shall be exempt from taxation under this title:

xxx xxx xxx

(7) Miscellaneous Items.

xxx xxx xxx

(f) GSIS, SSS, Medicare and Other Contributions. - GSIS, SSS, Medicare and Pag-ibig contributions, and union dues of individuals. xxx

[81] Section 32. *Gross Income*. –

xxx xxx xxx

(B) Exclusions from Gross Income. - The following items shall not be included in gross income and shall be exempt from taxation under this title:

xxx xxx xxx

(6) Retirement Benefits, Pensions, Gratuities, etc. -

(a) Retirement benefits received under Republic Act No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: Provided, That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: Provided, further, That the benefits granted under this subparagraph shall be availed of by an official or employee only once.

For purposes of this Subsection, the term 'reasonable private benefit plan' means a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials or employees, wherein contributions are made by such employer for the officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein its is provided in said plan that at no time shall any part of the corpus or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the said officials and employees.

[82] Section 32. *Gross Income*. –

xxx xxx xxx

(B) Exclusions from Gross Income. - The following items shall not be included in gross income and shall be exempt from taxation under this title:

xxx xxx xxx

(6) Retirement Benefits, Pensions, Gratuities, etc. -

(b) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death sickness or other physical disability or for any cause beyond the control of the said official or employee.

However, the Court finds that the expenses mentioned cannot be considered as *de minimis* benefits. Petitioner did not provide detailed schedules showing the breakdown of the supposed *de minimis* benefits given to its employees. It must be noted that Section 2 of RR No. 10-2000,[83] as amended, provides for a limit in the amount of each *de minimis* benefit. If the employer gives more than the limit prescribed, the excess of the limit shall be taxable to the employee receiving the benefits – if such excess is beyond the Php30,000.00 ceiling of "Other Benefits" provided under Section 2.78.1(B)(11)[84] of RR 2-98, as amended, in relation to Section 32(B)(7)(e)[85] of the NIRC of 1997. Accordingly, only the following accounts, upon verification, shall be excluded from salaries and wages account subject to withholding tax on compensation:

1. Payments for SSS, ECC, HDMF, and Philhealth Contributions in the aggregate amount of Php5,032,176.06 pursuant to Section 32(B)(7)(f) of the NIRC of 1997, as amended;[86]

2. Trainee/Temp Pay in the amount of Php3,390,564.00, which had already been subjected to 10% EWT;

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[83] Amends further RR Nos. 2-98, 3-98 and 8-98 with respect to the exemption of monetized leave credits of government officials and employees and the enumeration of "de minimis" benefits which are exempt from income tax on compensation and from fringe benefits tax, issued December 29, 2000.

[84] Section 2.78.1. Withholding of Income Tax on Compensation Income. –

xxx xxx xxx

(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 (P30,000.00) which may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

[85] Section 32. *Gross Income*. –

xxx xxx xxx

(B) Exclusions from Gross Income. - The following items shall not be included in gross income and shall be exempt from taxation under this title:

xxx xxx xxx

(7) Miscellaneous Items.

xxx xxx xxx

> (e) 13th Month Pay and Other Benefits. - Gross benefits received by officials and employees of public and private entities: Provided, however, That the total exclusion under this subparagraph shall not exceed Thirty thousand pesos (P30,000) which shall cover: (i) Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6686; (ii) Benefits received by employees pursuant to Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; (iii) Benefits received by officials and employees not covered by Presidential decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; and (iv) Other benefits such as productivity incentives and Christmas bonus: Provided, further, That the ceiling of Thirty thousand pesos (P30,000) may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering among others, the effect on the same of the inflation rate at the end of the taxable year.

[86] Exhibit "Z."

3. Training and Conference in the amount of Php737,842.58 out of the total amount of Php1,167,443.00, which pertains to training related expenses, such as payments to companies that conducted trainings, payments for training venues, purchase of training materials, and meals during trainings. The training expenses are necessary to the employees' nature of work and responsibilities, furnished for the benefit and convenience of the Company as the employer. Below is a schedule of substantiated training and conference expenses:

Vendor	Exhibit No.	Amount
ABS-CBN CCAI	DDD-1 to DDD-5	45,000.00
Certrain Inc.	DDD-7 to DDD-8	27,000.00
DB Wizards, inc.	DDD-10 to DDD-14	60,000.00
DB Wizards, inc.	DDD-15 to DDD-18	80,000.00
Ecommsite Solutions, Inc.	DDD-19 to DDD-26	35,000.00
Ecostar Industries	DDD-27 to DDD-28	3,000.00
Ecostar Industries	DDD-29 to DDD-30	1,500.00
E-Croatian Technologies, Inc.	DDD-31 to DDD-32	70,000.00
Guthrie-Jensen Consultants, Inc.	DDD-33 to DDD-35	32,000.00
INAEC Development Corp.	DDD-37 to DDD-38	136,698.18
Misnet Education, Inc.	DDD-39 to DDD-40	21,980.00
Nesic Philippines, Inc.	DDD-41 to DDD-42	45,000.00
Neville-Clarke Philippines, Inc.	DDD-43 to DDD-45	24,000.00
Newport Learning Center, Inc.	DDD-46 to DDD-47	8,000.00
Oracle Philippines Corporation	DDD-48 to DDD-49	135,464.40
Personnel Management Association of thePhi ls.	DDD-50 to DDD-51	13,200.00
TOTAL		**737,842.58**

4. Management-FBT amounting to Php424,414.00, which represents petitioner's remittance of its fringe benefit tax due for the year 2005;

5. The amount of Php18,503,636.00, which pertains to the accrual of Share-Based Payment Transactions wherein share options are granted to employees in consideration for the services rendered; the said amount is a mere accrual and the option has not been exercised by the employee;

6. The Severance Pay in the amount of Php121,075.00 out of the total amount of Php305,075.00, which represents the amount received by certain employees of petitioner as a

consequence of their separation from service which were beyond their control, pursuant to Section 32(B)(6) of the NIRC of 1997, as amended, and Section 78 of the same Code. The table below shows the breakdown:

Employee Name	Amount
Katherine Angco	15,750.00
Maria Imelda del Valle	15,750.00
Elaine Masangya	25,200.00
Sharon Reboya	7,875.00
Maureen Lalangan	7,875.00
Cheryl Ann Cortes	8,625.00
Benedict Ferrer	19,800.00
John Paul Abanilla	20,200.00
Total	**121,075.00**

7. The Management-Medical Reimbursement in the amount of Php124,000.00,[87] out of the aggregate amount of Php255,000.00, representing the medical allowance for petitioner's regular management employees considered as *de minimis* benefits.

In addition, the discrepancy in the amount of Php4,764,411.30 pertaining to Transportation and Travel was subjected by respondent to 21% WTC or Php1,000,526.37 deficiency WTC. The amount of Php4,764,411.30 was arrived at by comparing the amounts per FS and per Alphalist, as herein presented:

Account Code	Account Name	Amount	
Per FS			
54112	Air/Train	Php 7,170,910.00	
54252	Travel-Local	148,822.00	
64112	Air/Train	1,241,457.00	
64252	Travel-Local	13,830.00	Php 8,575,019.00
Per Alphalist			
	Airborne 7 Travel & Tours, Inc.	213,321.00	
	Blue Horizons Travel & Tours, Inc.	396,620.70	
	Budget Travel and Tours	875,575.50	
	Universal Holidays, Inc.	2,325,090.50	3,810,607.70
Discrepancy			**Php 4,764,411.30**

[87] Exhibit "GG."

x Rate	21%
EWT Still Due	**Php 1,000,526.37**

Petitioner claims that the transportation and travel amounting to Php8,575,019.00 should not be subjected to withholding tax as these are ordinary and necessary expenses of the Company which are directly attributable to the development, management, operation and/or conduct of its trade or business. This treatment is allowed by the Bureau under Section 34(A)(1)(a)(ii)[88] of the NIRC of 1997, as amended, which defines said cost as "a reasonable allowance for travel expenses, here and abroad, while away from home in pursuit of trade, business or profession."

Pursuant to RR No. 2-98,[89] as amended, in general, fixed or variable transportation, representation and other allowances which are received by a public officer or employee or officer or employee of a private entity, in addition to the regular compensation fixed for his position or office, is compensation subject to withholding. However, if it is for ordinary and necessary travelling and representation or entertainment expenses paid or incurred by the employee in the pursuit of trade, business or profession, and the said employee was able to account/liquidate the said expenses in accordance with the specific requirements of substantiation for each category of expenses pursuant to Section 34 of the Code,[90] the same are not compensation subject to withholding.

In the present case, petitioner did not provide the breakdown of the exact amount reflected in the BIR's assessment of Php8,575,019.00 and Php3,810,607.70 per FS and per Alphalist, respectively, as items related to Transportation and Travel, as well as the corresponding supporting documents so as to determine which amount in the Transportation and Travel account is to be subjected or not to

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[88] Section 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, management, operation and/or conduct of the trade, business or exercise of a profession, including:
xxx xxx xxx
(ii) A reasonable allowance for travel expenses, here and abroad, while away from home in the pursuit of trade, business or profession xxx.
[89] 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, issued on May 17, 1998.
[90] Section 34. Deductions from Gross Income.

withholding tax on compensation. Consequently, the assessment for deficiency withholding tax on compensation with regards to Transportation and Travel must be sustained.

In view of the foregoing, petitioner is liable to pay the basic deficiency withholding tax on compensation in the amount of Php566,609.19, as computed below:

Salaries & Wages per FS		Php 209,875,197.00
Less: Salaries & Wages not subject to withholding tax on compensation		
SSS, ECC, HDMF, Philhealth Contributions	Php 5,032,176.06	
Trainee/Temp Pay	3,390,564.00	
Training & Conference	815,702.58	
Mgmt - FBT	424,414.00	
Employee Benefits - Share Based Payment Transactions	18,503,636.00	
Mgmt – Severance Pay	121,075.00	
Mgmt - Medical Reimbursement	124,000.00	28,411,567.64
Salaries & Wages subject to withholding tax on compensation		Php 181,463,629.64
Less: Salaries & Wages per Alphalist		178,765,490.22
Discrepancy		Php 2,698,139.14
x Rate		21%
Basic Deficiency WTC		**Php 566,609.22**

III. Fringe Benefits Tax

Respondent assessed petitioner for deficiency fringe benefits tax for its alleged failure to pay the appropriate fringe benefits tax due on fringe benefits expense granted to employees handling managerial positions in violation of Section 33[91] of the NIRC, as amended, as implemented by RR No. 3-98,[92] in the amount of 12,269,948.77, as determined below:

Account Code	Account Name	Per FS
51251	Mgmt-Med Insurance	Php 729,817.00
51252	Mgmt-Rice	908,310.00
51254	Mgmt-Gift Check	373,133.00
51258	Mgmt-Other Benefits	906,850.00
51261	Mgmt-Relocation All	128,346.00
51262	Mgmt-Medical Reimbursement	157,333.00

[91] Section 33. Special Treatment of Fringe Benefits.
[92] Implementing Section 33 of the National Internal Revenue Code, as Amended by Republic Act No. 8424 Relative to the Special Treatment of Fringe Benefits, issued on May 21, 1998.

55240	Cell-Home Phone	1,407,463.00
61251	Mgmt-Med Insurance	204,138.00
61252	Mgmt-Rice	276,000.00
61254	Mgmt-Gift Check	102,650.00
61255	Mgmt-Severance Pay	306,075.00
61258	Mgmt-Other Benefits	34,500.00
61262	Mgmt-Medical Reimbursement	50,833.00
64111	Lodging	603,300.00
65240	Cell-Home Phone	61,353.00
71251	Mgmt-Med Insurance	178,250.00
71252	Mgmt-Rice	246,500.00
71254	Mgmt-Gift Check	113,717.00
71258	Mgmt-Other Benefits	30,813.00
71282	Mgmt-Medical Reimbursement	46,834.00
71300	Mgmt Benefit (Share)	18,503,636.00
74111	Lodging	1,454,370.00
75240	Cell-Home Phone	151,300.00
Total Amount of Fringe Benefits		Php 26,975,521.00
Divided by Gross Up Divisor		68%
Grossed Up Monetary Value		Php 39,669,883.82
FBT Rate		32%
Basic Fringe Benefits Tax Due		Php 12,694,362.82
Less: FBT paid		424,414.05
Fringe Benefits Tax Due		**Php 12,269,948.77**

Of the total fringe benefits of Php26,975,521.00, the amount of Php25,355,405.00, as determined below, shall not be subjected to fringe benefit tax considering that the same had already been included as employees' accommodation expense and gross compensation under the respective accounts "Rental" and "Salaries and Wages," and were already subjected by respondent to expanded withholding tax and deficiency withholding tax on compensation, respectively, as earlier discussed:

Account Code	Account Name	Amount
Part of assessment for deficiency EWT (Rent)		
64111	Lodging	Php 603,300.00
74111	Lodging	1,454,370.00
Part of assessment for deficiency WTC (alleged de minimis benefits)		
51251	Mgmt-Medical Insurance	Php 729,817.00
51252	Mgmt-Rice	908,310.00

51254	Mgmt-Gift Check	373,133.00
51258	Mgmt-Other Benefits	906,850.00
51261	Mgmt-Relocation All	128,346.00
51262	Mgmt-Medical Reimbursement	157,333.00
61251	Mgmt-Medical Insurance	204,138.00
61252	Mgmt-Rice	276,000.00
61254	Mgmt-Gift Check	102,650.00
61255	Mgmt-Severance Pay	306,075.00
61258	Mgmt-Other Benefits	34,500.00
61262	Mgmt-Medical Reimbursement	50,833.00
71251	Mgmt-Medical Insurance	178,250.00
71252	Mgmt-Rice	246,500.00
71254	Mgmt-Gift Check	113,717.00
71258	Mgmt-Other Benefits	30,813.00
71282	Mgmt-Medical Reimbursement	46,834.00
71300	Mgmt Benefit (Share)	18,503,636.00
Total Amount of Fringe Benefits		**Php 25,355,405.00**

Thus, only the following cell phone allowances shall be considered in the assessment for deficiency fringe benefit tax:

75240	Cell-Home Phone	Php 151,300.00
55240	Cell-Home Phone	1,407,463.00
65240	Cell-Home Phone	61,353.00
TOTAL		**Php 1,620,116.00**

Petitioner grants cellphones to its employees on the basis of (a) the rank/position of the employee in the company; (b) the need based on the nature of the employee's work; (c) ad hoc/temporary assignment. Petitioner provides cellphones to employees to maintain an open line communication in and out of the building premises, particularly on important, urgent and pressing concerns, which may be detrimental to the company operations if not properly addressed on a timely manner. All call charges within the consumable limit shall be paid by the Company and there shall be no need for verification of charges. In cases when the consumable amount limit is exceeded, the employee shall identify all personal calls. All personal calls as certified by the employee shall be paid by him/her. If all excess calls are business in nature, these shall be paid for by the Company.[93]

[93] Exhibit "SSS."

Section 33(B)[94] of the NIRC of 1997 and Section 2.33(B)[95] of Revenue Regulations No. 3-98, as amended, define the term "Fringe Benefit Tax" as "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). Section 33(a)[96] of the NIRC of 1997 stipulates that fringe benefits which are '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" are not subject to the fringe benefit tax.

Upon examination of related supporting documents,[97] out of the alleged cellphone allowance of Php1,620,116.00, only the amount of Php1,272,275.77[98] met the guidelines as specifically provided under petitioner's policy, in consonance with the provision of Section 33 of the NIRC of 1997, as amended. Considering that the same redounds to the benefit and convenience of the petitioner, it shall not be included as part of compensation income of the employee subject to withholding, neither will it be subject to the fringe benefits tax under Section 33 of the NIRC of 1997 as implemented by Revenue Regulations No. 3-98, as amended.

Consequently, only the grossed up monetary value of the unsupported claim of Php347,840.23 shall be subjected to deficiency fringe benefits tax due of Php163,689.52, as computed below:

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[94] Section. 33. *Special Treatment of Fringe Benefit*. -

xxx xxx xxx

(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 xxx.

[95] Section 2.33. Special Treatment of Fringe Benefits.

xxx xxx xxx

(B) Definition of Fringe Benefit — In general, except as otherwise provided under these regulations, for purposes of this Section, the term "FRINGE BENEFIT" means any good, service, or other benefit furnished or granted by an employer in cash or in kind, in addition to basic salaries, to an individual employee (except rank and file employee as defined in these regulations) such as, but not limited to the following xxx.

[96] Section 33. *Special Treatment of Fringe Benefit*. -

(A) *Imposition of Tax*.- A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer).

The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57 (A) of this Code.

The grossed-up monetary value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by sixty-six percent (66%) effective January 1, 1998; sixty-seven percent (67%) effective January 1, 1999; and sixty-eight percent (68%) effective January 1, 2000 and thereafter: Provided, however, That fringe benefit furnished to employees and taxable under Subsections (B), (C), (D) and (E) of Section 25 shall be taxed at the applicable rates imposed thereat: Provided, further, That the grossed -Up value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by the difference between one hundred percent (100%) and the applicable rates of income tax under Subsections (B), (C), (D), and (E) of Section 25.

[97] Exhibits "RR," "HHH."

[98] Exhibit "DD."

Cell-Home Phone per FAN	Php	1,620,116.00
Cell-Home Phone per verification		1,272,275.77
Unsupported claim	Php	347,840.23
Divided by Gross Up Divisor		68%
Grossed Up Monetary Value	Php	511,529.75
FBT Rate		32%
Basic Fringe Benefits Tax Due	Php	**163,689.52**

In sum the Court finds that the Letter of Authority issued by BIR is valid as the said erasure on the Letter of Authority issued by BIR was merely a clerical/typographical error which would not affect the substantial rights of the taxpayer. In addition, petitioner was afforded due process, as the figures and bases for the assessments found in the Details of Discrepancy were already sufficient to afford petitioner to answer the assessment.

In addition, the returns filed by petitioner could not be classified as "false" under the Tax Code to merit the imposition of the ten (10)-year prescriptive period. Thus, as applied to the Expanded Withholding Tax And Withholding Tax on Compensation, only the assessment covering the month of December remains valid. As for the Fringe Benefit Tax, only the last quarter can be considered, as the first three quarters have already prescribed.

The Final Withholding Tax and Final Withholding of VAT are not required when the supplier of goods and services are domestic corporations, thus there was no basis for the deficiency assessment in the first place.

The assessments for taxable year 2005 have not become final and executory, thus the Court has jurisdiction over the present petition, as petitioner was able to comply with the periods provided under Section 228 of the Tax Code.

While petitioner is still liable for assessed deficiency expanded withholding tax, withholding tax on compensation, and fringe benefits tax, it is for the reduced total amount of Php1,921,503.60, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as discussed extensively above.

WHEREFORE, premises considered, the Petition for Review filed by petitioner ESS Manufacturing Company, Inc. is hereby

PARTIALLY GRANTED. The deficiency Final Withholding Tax and Final Withholding of VAT assessment issued by respondent against petitioner covering taxable year 2005 in the amount of Php1,029,051.27 and Php317,173.89, which include interests, are hereby **CANCELLED**, for having no basis.

On the other hand, petitioner is hereby **ORDERED TO PAY** the deficiency Expanded Withholding Tax, Withholding Tax on Compensation and Fringe Benefits Tax for the taxable year 2005, in the modified amount of Php1,921,503.60, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
EWT	Php 806,904.14	Php 201,726.04	Php 1,008,630.18
WTC	566,609.22	141,652.31	708,261.53
FBT	163,689.52	40,922.38	204,611.90
Total	Php **1,537,202.88**	Php **384,300.72**	Php **1,921,503.60**

In addition, petitioner is liable to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(C) of the NIRC of 1997:

i. On the basic deficiency EWT of Php806,904.14 computed from January 11, 2006 until full payment thereof;

ii. On the basic deficiency WTC of Php566,609.22 computed from January 11, 2006 until full payment thereof; and

iii. On the basic deficiency FBT of Php163,689.52 computed from January 16, 2006 until full payment thereof.

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of Php1,921,503.60 representing deficiency Expanded Withholding Tax, Withholding Tax on Compensation and Fringe Benefits Tax and on the 20% deficiency interest which have accrued as aforestated in (a), computed from January 12, 2009 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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