REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

SOLID VIDEO CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9051

Members:

FABON-VICTORINO, *and*
RINGPIS-LIBAN, JJ.

Promulgated:

OCT 25 2018
2:10 p.m.

x--x

DECISION

RINGPIS-LIBAN, J.

THE CASE

The case involves the Petition for Review[1] filed by Solid Video Corporation on May 15, 2015 to seek the cancellation and withdrawal of the issued deficiency income tax and value-added tax (VAT) assessments in the aggregate amount of ₱23,021,541.46, inclusive of interest, for calendar year (CY) 2010.

THE FACTS

Petitioner Solid Video Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Units 6 and 7, La Fuerza Plaza 2, Don Chino Roces Avenue cor.

[1] Docket, vol. 1, pp. 10-23.

Sabio Street, Makati City.[2] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 8, Revenue District Office (RDO) No. 48, as shown by its Certificate of Registration issued on May 6, 2014, bearing Taxpayer Identification No. 000-344-537-000.[3]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 26, 2011, petitioner received a copy of the Letter of Authority (LOA) No. 048-2011-00000445[4] dated October 24, 2011, authorizing Revenue Officer Nonito SR Divino and Group Supervisor Arthur Benjamin Padilla of RDO No. 48-West Makati to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period covering January 1, 2010 to December 31, 2010.[5]

Petitioner received the Preliminary Assessment Notice[6] (PAN) dated February 28, 2013 on March 1, 2013, informing petitioner of the BIR's proposed assessments for deficiency income tax and VAT for CY 2010 in the aggregate amount of ₱17,704,653.20.[7]

Subsequently, petitioner received the Formal Assessment Notice[8] (FAN) dated April 2, 2013 on April 3, 2013, with attached Details of Discrepancies, assessing petitioner for alleged deficiency income tax and VAT for CY 2010 in the aggregate amount of ₱18,093,355.21.[9]

On May 2, 2013, petitioner filed with respondent an administrative protest[10] against the FAN, wherein petitioner requested the cancellation and withdrawal of the deficiency income tax and VAT assessments for CY 2010 for being without legal or factual basis.[11]

[2] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 1, p. 386; Exhibit "P-1", docket, vol. 2, pp. 798-809.
[3] Par. 2, Admitted Facts, JSFI, docket, vol. 1, p. 386; Exhibit "P-2", docket, vol. 2, p. 810.
[4] Exhibit "P-3", docket, vol. 2, pp. 811-812; Exhibit "R-1", BIR Records, p. 181.
[5] Par. 4, Admitted Facts, JSFI, docket, vol. 1, p. 387.
[6] Exhibit "P-4", docket, vol. 2, pp. 813-816; Exhibit "R-8", BIR Records, pp. 368-371.
[7] Par. 5, Admitted Facts, JSFI, docket, vol. 1, p. 387.
[8] Exhibit "P-5", docket, vol. 2, pp. 817-822; Exhibit 'R-9", BIR Records, pp. 378-383.
[9] Par. 6, Admitted Facts, JSFI, docket, vol. 1, p. 387.
[10] Exhibit "P-6", docket, vol. 2, pp. 823-827.
[11] Par. 7, Admitted Facts, JSFI, docket, vol. 1, p. 387.

On July 1, 2013, petitioner submitted to the BIR RDO No. 48 supporting documents in connection with its protest letter.[12]

On April 17, 2015, petitioner received the Final Decision on Disputed Assessment [13] (FDDA) dated April 15, 2015, with attached Details of Discrepancies. In the FDDA, respondent reiterated the demand for payment of petitioner's deficiency income tax and VAT for CY 2010 in the aggregate amount of ₱23,021,541.46, which was computed as follows:[14]

I. Income Tax			
Taxable Income (Loss) per ITR			₱ 18,265,923.00
Add:	Adjustments/Disallowance		
	Disallowed Purchases	₱13,203,372.22	
	Undeclared Service Income	17,970,985.52	₱ 31,174,357.74
Total			₱ 49,440,280.74
Tax Due 30%			₱ 14,832,084.22
Less:	Payments/Credits		
	Prior Year's Excess Credits		
	Tax paid per return	₱ 4,302,734.00	
	Creditable Withholding Tax	1,177,043.00	
	Total	₱ 5,479,777.00	
Less:	Disallowed Creditable Withholding Tax	₱ 196,507.31	₱ 5,283,269.69
Basic Tax Due			₱ 9,548,814.53
Add:	Interest (04.16.11 to 04.27.15)		₱ 7,701,838.35
Total Amount Due			**₱17,250,652.88**

II. Value Added Tax			
VATable Sales			₱116,874,744.09
Add:	Undeclared Sales/Receipts		12,370,985.52
Total			129,245,729.61
Output Tax			₱ 15,509,487.55
Less:	Creditable Input VAT		
	Input Tax carry over	₱ 2,291,168.83	
	Creditable VAT Withheld	73,148.14	
	Input tax claimed per return	11,259,943.75	
	Total	₱13,624,260.72	
Less:	Disallowed input tax	₱ 1,589,404.67	

[12] Par. 8, Admitted Facts, JSFI, docket, vol. 1, p. 387; Exhibit "P-7", docket vol. 2, pp. 828-846.
[13] Exhibit "P-8", docket, vol. 2, pp. 847-850; Exhibit "R-13", BIR Records, pp. 431-435.
[14] Par. 9, Admitted Facts, JSFI, docket, vol. 1, p. 388.

	Overclaimed input tax credit	119,568.11	
	Input tax on sale to government	60,415.38	
	Unsupported Creditable VAT Withheld	24,832.20	
		₱ 1,789,220.36	11,835,040.36
VAT Payable			₱ 3,674,447.19
Less	VAT Payments		555,740.75
Basic Tax Due			₱ 3,118,706.44
Add:	Interest (01.26.11 to 04.27.15)		2,652,182.14
Total Amount Due			**₱5,770,888.58**

Thereafter, petitioner filed the instant Petition for Review[15] before this Court on May 15, 2015.

Within the extended time granted by the Court,[16] respondent filed his Answer[17] through registered mail on July 15, 2015, which was received by the Court on July 24, 2015. Respondent interposed the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses;

5. Petitioner was assessed for deficiency income tax and value-added tax for taxable year 2010, for the reason that during the administrative investigation of its tax case by the Bureau of Internal Revenue (BIR), petitioner failed to substantiate or submit supporting evidence against the BIR findings, more specifically shown under the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN) dated February 28, 2013, Formal Assessment Notice (FAN) dated April 2, 2013 and FDDA dated April 15, 2015, which are briefly discussed hereunder, viz:

INCOME TAX:

A.) Overstated Purchases on Goods amounting to P13,203,372.22:

- Investigation disclosed that there was an overstatement of purchases of goods per audit which resulted to the

[15] Docket, vol. 1, pp. 10-23.
[16] Resolution dated June 23, 2015, docket, vol. 1, p. 110.
[17] Docket, vol. 1, pp. 111-114.

overstatement of the cost of the sales, consequently understated the gross profit and taxable income by the same amount. The said income was then assessed in accordance with the provision of Section 32 of National Internal Revenue Code, as amended.

B.) Undeclared Service Income amounting to P17,970,985.52:

- Investigation disclosed that the comparison of Service Income per 2307 of P29,348,827.52 (including service income and commission income from STL of P966,159.03 and P5,600,000.00) and Service Income per ITR revealed an undeclared income of P17,970,985.52, which is assessed to income tax pursuant to Section 32 of the Tax Code.

C.) Disallowed Creditable Withholding Tax amounting to P196,507.31:

- Verification disclosed that the creditable withholding tax claimed by petitioner per income tax return amounting to P194,577.07 were not supported with copies of withholding tax certificates (BIR Form 2307) and creditable withholding tax claimed per income tax return amounting to P1,930.24 on Income from Leyte Normal University was claimed as tax credit twice. Hence, the total amount of P196,507.31 creditable withholding tax was disallowed pursuant to Section 2.58.3 (B) of Revenue Regulations No. 2-98, as amended.

<u>VALUE ADDED TAX (VAT);</u>

D.) Undeclared Income not subjected to VAT amounting to P12,370,985.52:

- As previously discussed above on income tax the undeclared income in the partial tally are also subject to VAT excluding commission income of P5,600,000.00 which is exempt from VAT under Title IV, Section 105 and 106 of the NIRC in relation to RR 16-2015.

E.) Disallowed input taxes amounting to P1,584,404.67:

- This amount pertains to the input tax on the disallowed purchases mentioned above which is likewise disallowed as a creditable input tax in accordance with the provision of Section 110 of the NIRC, in relation to Section 113 and 237 of the same code.

F.) Overclaimed Input Tax Credit amounting to P119,568.25:

- Comparison of the correct excess input tax carry over and the amount of input tax carried over to the succeeding quarters resulted to an overstatement of P119,568.11. Hence, the said amount was adjusted by deducting it from the input tax credit to reflect the correct/adjusted amount.

G.) Input Tax on sale to Government closed to Expense amounting to P60,415.38:

- The input tax on sales to government to other income/expenses is closed to expense pursuant to Section 4.114-2 of Revenue Regulations No. 16-2005 as amended by RR 4-2007 which states that, 'xxx if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost.'

H.) Unsupported Creditable VAT withheld amounting to P24,832.02:

- Verification disclosed that petitioner failed to present Certificate of Creditable VAT Withheld at Source (BIR Form 2306) to substantiate the VAT credits they are claiming hence disallowed pursuant to the provision of Revenue Regulations No. 16-2005 in relation to Section 114 (C) of the NIRC as amended.

6. Petitioner was assessed by the respondent for deficiency income tax and value-added tax for taxable year 2010 within the prescriptive period under Section 203 of the 1997 Tax Code;

7. The assessments issued against petitioner for deficiency income tax and value-added tax for taxable year 2010 were made in accordance with law and regulations.

8. Assessment are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official dudes, an assessment will not be disturbed ***(Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109).***"

The pre-trial conference was set on September 22, 2015.[18]

On September 18, 2015, petitioner filed a Motion to Reset Pre-Trial Conference[19]. The Court found no merit in petitioner's motion and considering petitioner's failure to file the Pre-Trial Brief despite notice, the instant case was dismissed pursuant to Section 6 of Rule 18 of the Rules of Court.[20]

The Respondent's Pre-Trial Brief[21] was filed through registered mail on September 16, 2015 and was received by the Court on October 1, 2015.

Petitioner filed a Motion for Reconsideration (Re: Resolution dated September 22, 2015)[22] on October 7, 2015, praying that the resolution dismissing the case be reconsidered and set aside and for the Court to issue a resolution setting the case for pre-trial conference. This was granted by the Court in the Resolution[23] dated January 18, 2016 and the Order of Dismissal issued in open court on September 22, 2015 was reconsidered and set aside. Thereafter, petitioner's Pre-Trial Brief[24] was filed on April 7, 2016.

The parties filed their Joint Stipulation of Facts and Issue[25] on April 27, 2016. This was adopted by the Court in the Pre-Trial Order[26] dated May 16, 2016, which also terminated the pre-trial conference.

[18] Notice of Pre-Trial Conference, docket, vol. 1, pp. 116-117.
[19] Docket, vol. 1, pp. 125-128.
[20] Minutes of the Hearing dated September 22, 2015, docket, vol. 1, p. 130; Resolution dated October 6, 2015, docket, vol. 1, p. 206.
[21] Docket, vol. 1, pp. 136-139.
[22] Docket, vol. 1, pp. 207-213.
[23] Docket, vol. 1, pp. 229-231.
[24] Docket, vol. 1, pp. 232-245.
[25] Docket, vol. 1, pp. 386-395.
[26] Docket, vol. 1, pp. 404-412.

Upon motion[27] of petitioner, the Court commissioned Ms. Ma. Milagros F. Padernal as the Independent Certified Public Accountant (ICPA) for the case.[28]

During trial, petitioner presented the following witnesses: Ms. Irenea Caisip-Torres[29], its Finance and Administrative Manager, and Ms. Ma. Milagros F. Padernal[30], the Court-commissioned ICPA.

Petitioner filed its Formal Offer of Evidence[31] on December 19, 2016. In the Resolution[32] dated February 6, 2017, the Court admitted all of petitioner's formally offered exhibits, consisting of Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-9-1", "P-9-2", "P-10", "P-11", "P-12", "P-13", "P-14", "P-14-1", "P-15", "P-15-1", " P-15-2", "P-15-3", "P-15-4", "P-15-5", "P-16", "P-16-1", "P-16-2", "P-16-3", "P-17", "P-17-1", "P-17-2", "P-17-3", "P-18", "P-19", "P-19-1" to "P-19-9", "P-19-10" to "P-19-22", "P-19-23" to "P-19-30", "P-20", "P-20-1" to "P-20-12", "P-21", "P-21-1" to "P-21-13", "P-21-14" to "P-21-23", "P-21-24" to "P-21-26", "P-22", "P-22-1" to "P-22-9", "P-22-10" to "P-22-15", "P-22-18" to "P-22-22", "P-22-24", "P-22-26" to "P-22-29", "P-22-32" to "P-22-33", "P-22-36" to "P-22-37", "P-22-40", "P-22-42", "P-22-44" to "P-22-45", "P-22-50" to "P-22-51", "P-22-55", "P-22-59", "P-22-61", "P-22-63" to "P-22-67", "P-22-41", "P-22-52", "P-22-57", "P-22-53", "P-22-56", "P-22-35", "P-22-47" to "P-22-49", "P-22-60", "P-22-16" to "P-22-17", "P-22-23", "P-22-25", "P-22-30" to "P-22-31", "P-22-34", "P-22-38" to "P-22-39", "P-22-43", "P-22-46", "P-22-54", "P-22-58", "P-22-62", "P-22-68" to "P-22-70", "P-23", "P-23-1", "P-23-2", "P-23-3", "P-23-4", "P-23-5", "P-23-6", "P-23-7", "P-23-8", "P-23-9", "P-23-10", "P-23-11", "P-23-12", "P-23-13", "P-23-14", "P-23-15", "P-23-16", "P-24-1", "P-24-2", "P-24-2-1" to "P-24-2-234", "P-24-2-971" to "P-24-2-975", "P-24-2-235" to "P-24-2-448", "P-24-2-976" to "P-24-2-987", "P-24-2-449" to "P-24-2-970", "P-24-2-988" to "P-24-2-1054", "P-25", "P-25-1", "P-26", "P-26-1" to "P-26-2", "P-26-3" to "P-26-25", "P-26-26" to "P-26-57", "P-26-58", "P-27", "P-27-1", "P-28", "P-28-1" to "P-28-2", "P-28-3", "P-28-4", "P-29", "P-29-1" to "P-29-3", "P-29-4" to "P-29-5", "P-29-6" to "P-29-11", "P-30", "P-30-1", "P-31", "P-31-1" to "P-31-2", "P-32", "P-32-1", "P-33", "P-33-1" to "P-33-2", "P-33-3", "P-33-4", "P-33-5", "P-33-6", "P-34", "P-34-1" to "P-34-61", "P-35", "P-35-1" to "P-35-2", "P-36", "P-36-1" to "P-36-93", "P-37", "P-38", "P-38-1" to "P-38-39", "P-38-41" to "P-38-103", "P-38-105" to "P-38-122", "P-38-126" to "P-38-135", "P-38-137" to "P-38-165", "P-38-40", "P-38-104", "P-38-123" to

[27] Motion to Commission Independent Certified Public Accountant, docket, vol. 1, pp. 413-416.
[28] Docket, vol. 1, pp. 434-436.
[29] Exhibit "P-14", Sworn Statement of Ms. Irenea Caisip-Torres to Questions Propounded by Atty. Mardomeo N. Raymundo, Jr., docket, vol. 1, pp. 366-381; Minutes of the Hearing dated September 27, 2016, docket, vol. 2, p. 602.
[30] Exhibit "P-47", Sworn Statement of Ms. Ma. Milagros F. Padernal to Questions Propounded by Atty. Mardomeo N. Raymundo, Jr., docket, vol. 2, pp. 755-771; Minutes of the Hearing dated November 29, 2016, docket, vol. 2, p. 772.
[31] Docket, vol. 2, pp. 775-797.
[32] Docket, vol. 2, pp. 945-946.

"P-38-125", "P-38-136", "P-39", "P-40", "P-40-1" to "P-40-12", "P-41", "P-42", "P-42-1" to "P-42-105", "P-43", "P-44", "P-45", "P-45-1" to "P-45-12", "P-46", "P-46-a", "P-47", and "P-47-a".

Thereafter, respondent presented Revenue Officers Joel I. Piansay[33] and Arthur Benjamin Padilla[34] as his witnesses.

Respondent's Formal Offer of Evidence[35] was filed through registered mail on July 18, 2017 and received by this Court on July 26, 2017. In the Resolution[36] dated August 30, 2017, the Court admitted all of respondent's formally offered exhibits, consisting of Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-14-a", "R-15", and "R-15-a".

Respondent filed through registered mail a Manifestation[37] on October 6, 2017, stating that respondent would be adopting all his pleadings filed in this case, *sans* Memorandum. Meanwhile, petitioner filed its Memorandum[38] on October 26, 2017. Thus, in the Resolution[39] dated November 8, 2017, the instant case was declared submitted for decision.

THE ISSUES

The parties submitted the following issues to be resolved by this Court:[40]

> "WHETHER OR NOT RESPONDENT'S DEFICIENCY INCOME TAX AND VAT ASSESSMENTS AGAINST PETITIONER FOR CY 2010 IN THE TOTAL AMOUNT OF ₱23,021,541.46 ARE VALID."

This issue may be broken down into the following sub-issues:

"INCOME TAX

A. Whether or not there is basis for respondent's finding that petitioner overstated its purchases of goods, which resulted

[33] Exhibit "R-15", Judicial Affidavit of Joel I Piansay, docket, vol. 1, pp. 142-146; Minutes of the Hearing dated February 6, 2017, docket, vol. 2, p. 947.
[34] Exhibit "R-15", Judicial Affidavit of Arthur Benjamin Padilla, docket, vol. 1, pp. 155-161; Minutes of the Hearing dated July 10, 2017, docket, vol. 2, p. 953.
[35] Docket, vol. 2, pp. 956-960.
[36] Docket, vol. 2, pp. 979-980.
[37] Docket, vol. 2, pp. 985-986.
[38] Docket, vol. 2, pp. 991-1019.
[39] Docket, vol. 2, p. 1021.
[40] Issues, JSFI, docket, vol. 1, pp. 389-390.

to the overstatement of cost of sales and the understatement of its gross profit and taxable income for CY 2010, by ₱13,203,372.22.

B. Whether or not there is basis for respondent's finding that petitioner had undeclared service income in CY 2010 in the amount of ₱17,970,985.52.

C. Whether or not there is basis for the disallowance of petitioner's creditable withholding taxes for CY 2010 in the amount of ₱196,507.31.

<u>VAT</u>

(a) Whether or not there is basis for respondent's finding that petitioner had undeclared income in the amount of ₱12,370,985.52 that was not subjected to VAT in CY 2010.

(b) Whether or not there is basis for the disallowance of petitioner's input taxes for CY 2010 in the amount of ₱1,584,404.67.

(c) Whether or not there is basis for respondent's finding that petitioner overstated/overclaimed its input tax credits for CY 2010 by ₱119,568.25.

(d) Whether or not respondent erred in deducting the amount of ₱60,415.38, representing "input tax on sale to government closed to expense", from petitioner's available input tax pursuant to Section 4.114-2, Revenue Regulations (Rev. Regs.) No. 16-2005.

(e) Whether or not there is basis for the disallowance of petitioner's creditable VAT withheld for CY 2010 in the amount of ₱24,832.02."

THE RULING OF THE COURT

Before proceeding to the main issue, the Court shall determine first the timeliness of the filing of this Petition for Review.

pv

Section 228 of the National Internal Revenue Code of 1997, as amended, provides:

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

Based on the foregoing provision, petitioner had thirty (30) days from April 17, 2015[41], the date of receipt of the FDDA, or until May 17, 2015 within which to appeal the said decision before this Court. Considering that petitioner

[41] Exhibit "P-8", docket, vol. 2, pp. 847-850; Par. 9, Admitted Facts, JSFI, docket, vol. 1, 388.

filed this Petition for Review on May 15, 2015[42], the instant Petition for Review was timely filed.

Since the Petition for Review was filed on time, this Court has jurisdiction to take cognizance of the same pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by Section 7 of RA No. 9282.[43]

The Court shall now proceed to resolve the validity of the assessments against petitioner.

On April 17, 2015, petitioner received respondent's Final Decision on Disputed Assessment [44] dated April 15, 2015, with attached Details of Discrepancies, assessing petitioner for deficiency income tax and VAT for CY 2010 in the aggregate amount of ₱23,021,541.46, including interest, summarized as follows:

Tax Type	Basic	Interest	Total
Income Tax	₱ 9,548,814.53	₱ 7,701,838.35	₱ 17,250,652.88
VAT	3,118,706.44	2,652,182.14	5,770,888.58
Total	**₱12,667,520.97**	**₱10,354,020.49**	**₱23,021,541.46**

I. Deficiency Income Tax

Respondent found petitioner liable for deficiency income tax for CY 2010 in the amount of ₱17,250,652.88, computed as follows:[45]

Taxable Income (Loss) per ITR		₱ 18,265,923.00
Add: Adjustments/Disallowance		
a. Disallowed Purchases/Expenses	₱13,203,372.22	
b. Undeclared Service Income	17,970,985.52	31,174,357.74
Total		₱ 49,440,280.74
Tax Due (30%)		₱ 14,832,084.22
Less: Payments/credits		
Prior Year's Excess Credit		
Tax paid per return	₱ 4,302,734.00	

[42] Docket, vol. 1, pp. 10-23.
[43] SEC. 7. *Jurisdiction*. - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
xxx
[44] Exhibit "P-8", docket, vol. 2, pp. 847-850.
[45] Exhibit "P-8", docket, vol. 2, p. 847.

Creditable Withholding Tax	1,177,043.00	
Total	₱ 5,479,777.00	
Less: Disallowed Creditable Withholding Tax	196,507.31	5,283,269.69
Basic Tax Due		₱ 9,548,814.53
Add: Interest (4.16.11 to 4.27.15)		7,701,838.35
TOTAL AMOUNT DUE		**₱17,250,652.88**

In order to determine whether or not the assessment is correct, the Court shall look into the propriety of each of the following items:

1. Disallowed Purchases/Expenses	₱13,203,372.22
2. Undeclared Service Income	₱17,970,985.52
3. Disallowed Creditable Withholding Tax	₱ 196,507.31

1. Disallowed Purchases/Expenses – ₱13,203,372.22

Respondent's investigation disclosed that there was an overstatement of purchases of goods per petitioner's Income Tax Return (ITR) in the amount of ₱13,203,372.22 which resulted in the overstatement of the cost of sales, and consequently understatement of the gross profit and taxable income of petitioner by the same amount:[46]

Petitioner submits that there is no basis for respondent's conclusion that the discrepancy between the purchases of goods per ITR and purchases of goods per VAT returns pertains to overstated or "fabricated" purchases. Based on the evidence submitted, the discrepancy in the amounts of purchases reported in its ITR and VAT returns allegedly pertains, *inter alia,* to (a) purchases of goods that were reported as part of purchases of services in its VAT returns, and (b) duly substantiated local purchases of goods but the related input taxes were not claimed in its VAT returns.

Below is petitioner's reconciliation of the assessed overstatement on purchases of goods:[47]

Domestic purchases shown in the AITR but not reflected as domestic purchases in the quarterly VAT returns:		
a. Local purchases reported under purchases of services per VAT returns		₱ 4,461,932.69
b. Local purchases for which input taxes were not claimed		6,279,939.11
c. Non-VAT local purchases		5,082.28
Importations:		
d. Importations of goods other than capital goods:		

[46] Exhibit "P-8", Annex A, Details of Discrepancies, docket, vol. 2, p. 849.
[47] Petitioner's Memorandum, pp. 8 and 9, docket, vol. 2, pp. 998 and 999.

Per AITR	₱55,262,016.29	
Per BIR audit (per VAT returns)	50,153,332.93	5,108,683.36
Domestic purchases of goods other than capital goods per VAT returns but were not classified as purchases of goods per AITR:		
e. Operating expenses and equipment		(1,371,018.22)
f. Cost of services-integration		(1,164,149.52)
g. Deferred cost and expenses		(68,035.71)
h. Cost of sales-equipment		(12,142.58)
Cost of sales not included as purchases of goods in AITR		
i. Cost of sales		(36,918.29)
Alleged overstatement of purchases of goods		**₱13,203,373.12**

The Court finds the assessment without merit.

As disclosed in petitioner's Notes[48] to Financial Statements (FS), petitioner's revenue from sale of goods is recognized when the risks and rewards of ownership of the goods have passed to the buyer. This is generally when the customer has taken undisputed delivery of goods. On the other hand, cost and expenses are recognized in profit or loss upon utilization of goods or services or at the date they are incurred. Expenditure for warranties is recognized and charged against the associated provision when the related revenue is recognized. This means that petitioner, in recording and reporting its sales and the related cost and expenses, adopts the accrual method of accounting. The employment of such method of accounting or any method for that matter, as long as it clearly reflects income, is recognized in Section 43 of the National Internal Revenue Code of 1997, as amended, which provides:

> "SEC. 43. *General Rule.* – The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) **in accordance with the method of accounting regularly employed in keeping the books of such taxpayer,** but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income. If the taxpayer's annual accounting period is other than a fiscal year, as defined in Section 22(Q), or if the taxpayer has no annual accounting period, or does not keep books, or if the taxpayer is an individual, the taxable income shall be computed on the basis of the calendar year." *(Emphasis supplied)*

[48] Exhibit "P-9-2", under Note 2.8 Revenue and Expense Recognition, pp. 9-10, docket, vol. 2, pp. 885 and 886.

Respondent computed the alleged overstatement on petitioner's purchases of goods as follows:[49]

Total Goods purchased per ITR			₱ 92,039,941.00
Total goods per audit			
Importation		₱50,153,332.93	
Domestic purchases-other than capital goods	₱29,325,007.15		
Less: Goods not for sale per protest	641,771.30	28,683,235.85	78,836,568.78
Overstated Purchases on Goods			**₱13,203,372.22**

However, the above computation cannot be used as basis to support petitioner's claimed deduction in its income tax return.

It must be stressed that petitioner, in following the accrual basis of accounting, must only be taxed on its income earned during the taxable period with allowed deduction for costs/expenses incurred necessary to generate such income, regardless of when collected or paid, as the case may be.

In this case, respondent attempted to disallow deductions from petitioner's gross income based on the total value of its purchases during the period. However, such purchases during the period may not have been sold in the same period in order to generate the income as reported in the FS/ITR. In fact, petitioner's audited FS reflected the following inventories as of December 31, 2010:[50]

	2010
Equipment and accessories	₱ 11,674,034.00
Professional tapes	6,063,311.00
Spare parts	266,245.00
Total Inventories	**₱18,003,590.00**
Allowance for inventory obsolescence	(1,255,493.00)
	₱ 16,748,097.00
Service supplies	10,232.00
Inventories, Net	₱ 16,758,329.00

The total inventories of ₱18,003,590.00 tie-up with that shown in the computation of petitioner's cost of sales per ITR, thus:[51]

Merchandise/Finished Goods Inventory Beginning	₱ 10,725,469.00

[49] Exhibit "P-8", Annex A, Details of Discrepancies, docket, vol. 2, p. 849.
[50] Exhibit "P-9-2, Notes to Financial Statements, Note 6 and Statement of Financial Position, December 31, 2010, 2009 and 2008, docket, vol. 2, pp. 893 and 873.
[51] Exhibit "P-9-1", Section A, Schedule 2, docket, vol. 2, p. 865.

Add: Purchases of Merchandise	92,039,941.00
Total Goods Available for Sale	₱102,765,410.00
Less: Merchandise/Finished Goods Inventory End	**18,003,590.00**
Cost of Sales	₱ 84,761,820.00

In arriving at the amount allegedly overstated to warrant disallowance of deduction for income tax purposes, respondent must have focused his investigation on the cost of goods actually sold during the period as the same may be attributable to the income earned by petitioner for the period.

Thus, for lack of factual basis, the deficiency income tax assessment on the alleged overstatement in petitioner's purchases of goods is cancelled.

2. Undeclared Service Income – ₱17,970,985.52

Invoking Section 32 of the NIRC of 1997, as amended, respondent imputed against petitioner an undeclared service income in the amount of ₱17,970,985.52, computed as follows:[52]

Service Income per 2307		₱ 23,023,019.78
Add: Service Income	₱ 996,159.03	
Posted twice-Leyte Normal University	(96,512.00)	
Goods misclassified as service-EDL	(173,839.29)	725,807.74
Service Income as adjusted		₱ 23,748,827.52
Add: Commission income from STL		5,600,000.00
Total		₱ 29,348,827.52
Less: Service Income per ITR		11,377,842.00
Undeclared Income		**₱17,970,985.52**

Petitioner submits that it has no undeclared service income in CY 2010, and that the ₱17,970,985.52 discrepancy between the amounts of service income per BIR audit and service income per ITR may be reconciled as follows:[53]

Undeclared service income per BIR audit	₱17,970,985.52
Less items that should not be considered as service income:	
a. Sales of goods erroneously considered by petitioner's customer as sales of services	8,547,346.30
b. Advances from customer received in 2010 for services rendered in 2011	6,732,890.31
c. Sales of goods erroneously considered as sales of services by BIR	1,967,312.89
d. Service income without details included in BIR's computation	996,159.03
e. Double posting by BIR of service income - Leyte National University	96,512.00
f. Difference between actual commission income from Solid Trading Limited and	10,050.39

[52] Exhibit "P-8", Details of Discrepancies, docket, vol. 2, p. 849.
[53] Petitioner's Memorandum, p. 12, docket, vol. 2, p. 1002.

amount computed by BIR	
g. Other service income without BIR Form No. 2307	(379,285.79)
Rounding off difference	0.39
	₱ **(0.00)**

a. Sales of goods erroneously considered by customer as sales of services

Petitioner alleges that there were sales of goods erroneously considered by its customer, Far Eastern University (FEU), as sales of services, which were subjected to two percent (2%) expanded withholding taxes.[54]

The supporting invoices[55] and GL-Sales[56] submitted by petitioner show that the subject sales to FEU pertain to Construction (Civil Works), TV Broadcast Production Equipment, TV Studio Lightings and for Project On-Air Campus Radio Broadcast Automation Turnkey System. Of the said sales, the ICPA confirmed that the amount of ₱8,547,346.30, broken down below, pertains to sales of goods that were reported in petitioner's ITR:[57]

PARTICULARS	AMOUNT
90% collection of sales of goods **(Exhibit No. P-31-1)**	6,330,801.41
100% collection of sales of goods **(Exhibit No. P-31-2)**	2,455,130.72
Total collections pertaining to sales	8,785,932.13
10% retention fee of service income	(345,362.44)
Advance payment	106,777.00
Total	8,547,346.69
Per Assessment	8,547,346.30
Difference	**0.39**

However, even if it was established that the aforesaid amount of ₱8,547,346.30 actually refers to sales of goods and not services, the same does not tally with any of the following sales of services to FEU per BIR Forms No. 2307 considered by respondent in his computation:[58]

Withholding Agent	Period Covered	Sales of Services
FEU	2nd Quarter	₱ 1,875,000.00
FEU	3rd Quarter	5,243,924.00
FEU	4th Quarter	6,176,916.00
	Total	**₱13,295,840.00**

[54] Exhibit "P-46", p. 12.
[55] Exhibits "P-31-1" and "P-31-2".
[56] Exhibit "P-30-1".
[57] Exhibit "P-31".
[58] BIR Records, p. 193, in relation to pp. 90-92.

Without the related invoices and official receipts supporting the amount of ₱13,295,840.00, the Court cannot ascertain the inclusion of the ₱8,547,346.30 sales of goods in respondent's assessment. Thus, the Court upholds the assessed service income of ₱8,547,346.30.

b. Advances from customer received in 2010 for services rendered in 2011

According to petitioner, the amount of ₱6,732,890.31 refers to advances from its customer Ateneo de Manila University (ADMU), representing the downpayment made by ADMU in December 2010 for the goods and services that were scheduled to be delivered and completed by petitioner in 2011.[59]

The Court finds the assessment unmeritorious.

A certification[60] dated October 9, 2012 was issued by ADMU confirming that two (2) certain invoices refer to goods and services which were contracted in December 2010 for the Eugenio Lopez, Jr. Center for Mass Communication (ELJCMC) Project and such goods and services were delivered and completed in 2011. As summarized by the ICPA in Exhibit "P-33", these invoices amounted to ₱3,582,674.02[61] and ₱10,599,641.44[62], net of VAT. Out of these billed amounts, ADMU made downpayments in the aggregate amount of ₱6,732,890.33, which were recorded as part of Advances from Customers[63] as of the end of CY 2010. Upon completion of the sales in 2011, petitioner recognized the amounts as revenue in 2011[64] and consequently reversed the same amounts under Advances from Customers in 2011[65].

c. Sales of goods erroneously considered as sales of services by BIR

Allegedly, sales of goods in the amount of ₱1,967,312.89 were erroneously considered as sales of services by respondent in his computation of the assessment.[66]

[59] Exhibit "P-46", p. 13, docket, vol. 2, p. 619.
[60] Exhibit "P-33-6".
[61] Exhibit "P-33-1".
[62] Exhibit "P-33-2".
[63] Exhibit "P-32-1".
[64] Exhibit "P-33-4".
[65] Exhibit "P-33-5".
[66] Exhibit "P-46", p. 14, docket, vol. 2, p. 620.

The ICPA was able to trace the sales transactions composing the said amount to the related individual entries in the GL-Sales for CY 2010[67] and found the same to be properly supported by invoices[68]. However, per the Summary of Sales of Goods Erroneously Considered as Sales of Services by the BIR for CY 2010[69], the ICPA determined that out of the subject sales of ₱1,967,312.89, the amount of ₱316,249.94 refers to sales of services and only the amount of ₱1,651,156.49 refers to sales of goods.

Based on this Court's review and validation of the ₱1,651,156.49 sales of goods, only the amount of ₱325,004.35 was verified to have been included in the service income reflected per BIR Forms No. 2307 upon which respondent's assessment was based, as shown below:

		Per ICPA (Exh. P-34)			
Name of Customer	**Per Assessment (BIR Forms No. 2307)[70]**	**Total Sales of Goods and Services**	**Sales of Goods**	**Amounts not ascertained as part of BIR Forms No. 2307**	**Sales of goods erroneously considered as service**
ABS-CBN Broadcasting	₱1,472,763.84	₱1,146,084.04	₱ 939,476.92	₱ 939,476.92	
Breakthrough & Miles	76,371.00	152,741.96	152,741.96	152,741.96	
Cardinal Santos Medical Center	-	34,791.61	31,577.32	(no BIR Form No. 2307)	
De La Salle University	60,290.18	60,291.97	34,577.68		₱ 34,577.68
Engine Room Inc	29,099.12	64,001.79	58,198.21	58,198.21	
Metropolitan Manila Dev't Authority	6,399.11	6,399.11	595.54		595.54
Office of Press Secretary	8,433.00	7,529.46	3,958.03	3,958.03	
Philhealth Care	18,996.92	18,996.92	16,496.92		16,496.92
Philippine Multi Media Systems Inc	96,610.17	15,074.91	11,503.46	11,503.46	
Science & Tech Infor	9,952.00	8,885.71	3,082.14	3,082.14	
Telesuccess Production	470,742.03	434,581.34	386,724.21	113,390.00	273,334.21[71]
The Associated Press	28,341.43	18,027.67	12,224.10	12,224.10	
Total	₱2,277,998.80	₱1,967,406.49	₱1,651,156.49	₱ 1,294,574.82	**₱ 325,004.35**

The Court observed that the ₱31,577.32 sale to Cardinal Santos Medical Center has no corresponding BIR Form No. 2307 and was not included in respondent's computation. Moreover, the remaining ₱1,294,574.82 (₱1,651,156.49 less ₱325,004.35 and ₱31,577.32) sales of goods cannot be ascertained as forming part of the amounts indicated in the BIR Forms No. 2307; hence, it cannot be determined whether the same were actually part of the assessed income.

[67] Exhibit "P-30-1".
[68] Exhibits "P-34-1" to "P-34-61".
[69] Exhibit "P-34".
[70] BIR Records, pp. 192-193 and 1 to 119.
[71] Total of ₱33,052.86, ₱4,360.81, ₱4,388.13, ₱167,314.15, and ₱64,218.26.

In fine, the Court cancels the deficiency income tax assessment only in the amount of ₱325,004.35, representing sales of goods erroneously considered as sales of services per BIR Form No. 2307.

d. Service income without details included in BIR's computation

The amount of ₱996,159.03 allegedly pertains to petitioner's service income from ABC5, PTV4/NBN and Philippine Information Agency, which respondent considered in his computation as it was included in petitioner's Summary Alphalist of Withholding Taxes (SAWT) although not supported by BIR Form No. 2307.[72]

Of the assessed amount of ₱996,159.03, the ICPA was able to verify that the amount of ₱934,439.62 pertains to sales of goods and only the remaining amount of ₱5,357.14 refers to sales of services.[73]

A scrutiny of the supporting invoices[74] shows that indeed the amount of ₱934,439.62 represents petitioner's sales of goods erroneously considered by respondent as sales of services. Hence, respondent's assessment thereon must be removed.

e. Double posting by BIR of service income – Leyte National University

As can be gleaned from the assessment, the sale of ₱96,512.00 was deducted from the service income as it was entered twice in respondent's computation.[75]

Petitioner now asserts that said service income pertains to CY 2011 and should not be included in the CY 2010 service income.

As aptly found by the ICPA, the ₱96,512.00[76] sales to Leyte National University were not reported in petitioner's GL-Sales for CY 2010[77] and were supported by invoices[78] dated in the year 2011. Moreover, based on the

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[72] Exhibit "R-6" for Respondent, BIR Records, p. 335.
[73] Exhibit "P-40".
[74] Exhibits "P-40-1" to "P-40-12".
[75] Exhibit "P-8", Annex A, Details of Discrepancies, docket, vol. 2, p. 849 and BIR Records, p. 193.
[76] Exhibit "P-35".
[77] Exhibit "P-30-1".
[78] Exhibits "P-35-1" to "P-35-2".

invoices, such transactions were for sales of goods and not services. Hence, the amount of ₱96,512.00 should be excluded in respondent's computation of the assessed service income.

f. Difference between actual commission income from Solid Trading Limited and amount computed by the BIR

The amount of ₱10,050.39 allegedly refers to the difference between the recorded commission income and the BIR computation that was rounded off, as shown below:[79]

Per BIR computation	₱5,600,000.00
Per recorded amount in the GL	5,589,949.61
Difference	**₱ 10,050.39**

The Court finds the assessment without merit.

Respondent picked up the amount of commission income in Note 17.1[80] of the Notes to FS, which stated that "Commission revenue amounted to ₱5.6 million and ₱2.5 million in 2010 and 2009, respectively xxx."

However, a perusal of the GL-Sales under Commission Income[81], petitioner's commission income from Solid Trading Ltd. actually amounted to ₱5,589,949.61. Thus, the difference of ₱10,050.39 resulted from the rounding off of the amount stated per the Notes to FS.

g. Other service income without BIR Form No. 2307

According to petitioner, this pertains to service income of ₱379,285.79 which was not subjected to creditable withholding tax and therefore, was deducted by petitioner from its reconciling items.[82]

As correctly found by the ICPA, only the amount of ₱379,249.92 represents petitioner's other income without BIR Form No. 2307, which was properly supported by invoices[83]. The breakdown of the amount of

[79] Exhibit "P-46", docket, vol. 2, p. 622.
[80] Exhibit "P-9-2", docket, vol. 2, p. 903.
[81] Exhibit "P-30-1 (59/59)".
[82] Exhibit "P-46", p. 17, docket, vol. 2, p. 623.
[83] Exhibits "P-36-1" to "P-36-93".

₱379,249.92 is presented in the Summary of Other Service Income without BIR Form No. 2307 for CY 2010[84].

Since the amount of ₱379,249.92 formed part of the ₱11,377,842.00 service income reported per petitioner's ITR, the same had already been deducted by respondent in arriving at the assessed undeclared service income of ₱17,970,985.52.

In sum, the assessed undeclared service income is reduced to ₱9,872,088.83, computed as follows:

Undeclared service income per BIR audit	₱ 17,970,985.52
Less: Adjustments	
Advances from customer received in 2010 for services rendered in 2011	₱ 6,732,890.33
Sales of goods erroneously considered as sales of services by BIR	325,004.35
Sales of goods erroneously considered as sales of services - ABC5, PTV4/NBN and Phil. Info Agency	934,439.62
Double posting by BIR of service income - Leyte National University	96,512.00
Difference between actual commission income from Solid Trading Limited and amount computed by BIR	10,050.39
Total Adjustments	₱ 8,098,896.69
Undeclared Service Income as Adjusted	**₱ 9,872,088.83**

3. Disallowed Creditable Withholding Tax – ₱196,507.31

Respondent's verification disclosed that petitioner's creditable withholding taxes (CWTs) claimed per ITR amounting to ₱194,577.07 were not supported with copies of the withholding tax certificates (BIR Form No. 2307) and CWT amounting to ₱1,930.24 on income from Leyte Normal University was claimed as tax credit twice. Hence, the total amount of ₱196,507.31 CWTs was disallowed pursuant to Section 2.58.3(B) of Revenue Regulations (RR) No. 02-98, as amended.[85]

To support its ₱1,177,043.00[86] CWTs claimed per ITR, petitioner submitted Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307)[87]. Upon examination of these documents, the ICPA was able to account substantiated CWTs in the amounts of ₱474.44 and ₱1,006,365.60 for CYs 2009 and 2010, respectively, as presented in the Summary of CWTs Supported

[84] Exhibit "P-36".
[85] Exhibit "P-8", docket, vol. 2, p. 849.
[86] Exhibit "P-9", Line 30H, docket, vol. 2, p. 856.
[87] Exhibits "P-42-1" to "P-42-105".

by Original Certificate of Creditable Tax Withheld at Source[88] and found the CWTs in the amount of ₱170,202.96 (₱1,177,043.00 less ₱474.44 and ₱1,006,365.60) to be unsupported.

However, a comparison of the Summary of CWTs Supported by Original Certificate of Creditable Tax Withheld at Source and the Schedule of CWTs for CY 2010[89] shows that the following CWTs, in the amount of ₱23,265.88, out of the ₱1,006,365.60 substantiated CWTs, were not part of the CWTs claimed by petitioner in its ITR:

Exhibit No.	Payor's Name	TIN	Taxes Withheld		
			Per Sum. of CWTs w/BIR Form 2307	Per Schedule of CWTs claimed	W/ BIR Form 2307 but not part of claim
P-42-10 to P-42-11	Colinas Verdes Hospital Managers	007-095-511-000	₱ 695.84	-	₱ 695.84
P-42-13 to P-42-15	Destiny Cable Inc	004-476-480-000	3,150.68	₱1,156.37	1,994.31
P-42-16	Delgado Clinic, Inc.	000-389-772-000	119.96	-	119.96
P-42-19 to P-42-20	Edl General Merchandising	155-174-174-000	54,855.90	52,561.70	2,294.20
P-42-24 to P-42-27	Far Eastern University	000-225-442-000	280,470.37	278,629.37	1,841.00
P-42-29 to P-42-32	GMA Network Inc	000-917-916-000	64,731.78	58,926.83	5,804.95
P-42-46 to P-42-54	La Sallian Educational Innovators	001-399-066-000	10,347.00	2,633.47	7,713.53
P-42-60 to P-42-62	Movie and Television Review and Classification Board	001-924-044-000	310.69	194.66	116.03
P-42-64	Patron Jr Antonio Guzman/Cytel Phil	100-186-212-000	370.54	-	370.54
P-42-67 to P-42-70	Philippine Medical Systems Inc	004-657-754-000	3,755.36	2,630.36	1,125.00
P-42-84 to P-42-85	Shimadzu Philippines Corporation	005-301-346-000	794.64	26.78	767.86
P-42-87 to P-42-89	Solid Broadband Corporation	208-014-182-000	34,989.70	34,567.04	422.66
Total			**₱454,592.46**	**₱431,326.58**	**₱23,265.88**

Accordingly, only ₱983,574.16[90] of the claimed CWTs was duly supported by BIR Forms No. 2307 and may be allowed as tax credit.

Meanwhile, as to the ₱1,930.24 CWT on income from Leyte Normal University, it cannot be determined as to where respondent picked up the said

[88] Exhibit "P-42".
[89] Exhibit "P-41".
[90] ₱983,574.16 = ₱474.44 + (₱1,006,365.60 - ₱23,265.88).

amount. The taxes withheld per BIR Forms No. 2307 from Leyte Normal University per BIR Records[91] reflect only the amounts of ₱861.71 and ₱4,308.57. Moreover, no CWT from Leyte Normal University was included in the CWTs claimed by petitioner for CY 2010. Hence, the disallowance of ₱1,930.24 is improper.

Consequently, for being unsupported, petitioner's claimed CWTs in the amount of ₱193,468.84 (₱170,202.96 plus ₱23,265.88) shall be disallowed.

In fine, petitioner is still liable to pay basic deficiency income tax in the amount of ₱3,155,095.39, computed as follows:

Taxable Income (Loss) per ITR		₱ 18,265,923.00
Add: Undeclared Service Income		9,872,088.83
Total		₱ 28,138,011.83
Tax Due (30%)		₱ 8,441,403.55
Less: Payments/credits		
Prior Year's Excess Credit		
Tax paid per return	₱4,302,734.00	
Creditable Withholding Tax	1,177,043.00	
Total	₱5,479,777.00	
Less: Disallowed Creditable Withholding Tax	193,468.84	5,286,308.16
Basic Deficiency Income Tax Still Due		**₱ 3,155,095.39**

II. Deficiency VAT

Respondent's computation of the deficiency VAT assessment for CY 2010 in the amount of ₱5,770,888.58 is reproduced hereunder:

Vatable Sales			₱116,874,744.09
Add: Undeclared sales/receipts			12,370,985.52
Total			₱129,245,729.61
Output Tax			₱ 15,509,487.55
Less: Creditable Input Tax			
Input Tax Carry over		₱ 2,291,168.83	
Creditable VAT Withheld		73,148.14	
Input tax claimed per return		11,259,943.75	
Total		₱13,624,260.72	
Less: Disallowed input tax	₱1,584,404.67		
Overclaimed input tax credit	119,568.11		
Input tax on sale to gov't closed to Expense	60,415.38		
Unsupported Creditable VAT Withheld	24,832.20	1,789,220.36	11,835,040.36

[91] BIR Records, p. 58.

/r

VAT Payable			₱ 3,674,447.19
Less: VAT Payments			555,740.75
Basic Tax Due			₱ 3,118,706.44
Add: Interest (1.26.11 to 4.27.15)			2,652,182.14
TOTAL AMOUNT DUE			**₱5,770,888.58**

The Court shall discuss each of the following components of the deficiency VAT assessment:

1. Undeclared sales/receipts	₱12,370,985.52
2. Disallowed input tax	1,584,404.67
3. Overclaimed input tax credit	119,568.11
4. Input tax on sale to gov't closed to expense	60,415.38
5. Unsupported Creditable VAT withheld	₱ 24,832.20

1. Undeclared sales/receipts – ₱12,370,985.52

Based on the similar finding under the deficiency income tax assessment[92] that petitioner had undeclared service income of ₱17,970,985.52, respondent imposed twelve percent (12%) VAT thereon, excluding the commission income of ₱5,600,000.00, computed as follows:[93]

Undeclared Income (sched. 2)	₱ 17,970,985.52
Less: Commission Income	5,600,000.00
Undeclared Income not subjected to VAT	**₱12,370,985.52**

As discussed earlier, petitioner was able to prove that the assessed undeclared income of ₱17,970,985.52 was erroneous to the extent of ₱8,098,896.69. Consequently, only the amount of ₱9,872,088.83 was left of the said assessment.

The commission income included in the remaining assessment of ₱9,872,088.83 was only ₱5,589,949.61 [94] and not ₱5,600,000.00 as per respondent's assessment. Thus, petitioner's undeclared sales/receipts on service income not subjected to VAT amount to ₱4,282,139.22, computed as follows:

Undeclared Service Income	₱ 9,872,088.83

[92] See item I.2 discussion.
[93] Exhibit "P-8", Annex A, Details of Discrepancies, docket, vol. 2, p. 849.
[94] See item I.2.f discussion.

Less: Commission Income	5,589,949.61
Undeclared Service Income not subjected to VAT	**₱4,282,139.22**

2. Disallowed input tax – ₱1,584,404.67

Citing Section 110 of the NIRC of 1997, as amended, in relation to Sections 113 and 237 of the same Code, respondent disallowed from petitioner's reported input tax the amount of ₱1,584,404.67, representing 12% of the alleged ₱13,203,373.22 overstatement on petitioner's purchases of goods[95].[96]

The Court finds the assessment without merit.

In finding that petitioner had allegedly overstated its purchases of goods per ITR by ₱13,203,373.22, respondent compared petitioner's declared purchases of goods per ITR of ₱92,039,941.00 with that reflected per petitioner's VAT returns of ₱78,836,568.78. Respondent thus admits that petitioner's declared amount of purchases of goods per VAT returns is the lower figure of ₱78,836,568.78. Consequently, petitioner did not claim any input VAT on the alleged overstatement of ₱13,203,373.22. Hence, it was erroneous on the part of respondent to disallow the amount of ₱1,584,404.67 which was not claimed at all by petitioner as input tax credit.

3. Overclaimed input tax credit – ₱119,568.11 and
4. Input tax on sale to govt. closed to expense – ₱60,415.38

Per the Details of Discrepancies [97] attached to the FDDA, the overclaimed input tax credit of ₱119,568.25 resulted from the comparison of the correct input tax carry-over as determined by respondent and the amount of input tax actually carried over by petitioner to the succeeding quarters, as shown below:

	Excess Input Tax Carry-Over	Amount Carried Over	Overclaimed Input Tax Credit
1st Quarter	₱ 1,225,206.22	₱1,281,320.60	₱ 56,114.38
2nd Quarter	377,701.99	407,636.14	29,934.15
3rd Quarter	116,638.63	150,158.35	33,519.72
	₱1,719,546.8 4	₱1,839,115.09	**₱119,568.25**

[95] See item I.1 discussion.
[96] Exhibit "P-8", Annex A, Details of Discrepancies, docket, vol. 2, p. 850.
[97] Exhibit "P-8", Annex A, docket, vol. 2, p. 850.

A perusal of petitioner's Quarterly VAT Returns[98] shows that the "Total Overpayment" or the "excess input tax to be carried-over to the succeeding quarter" was arrived at by *adding* the "Input Tax on Sale to Gov't closed to expense" to the "Total Available Input Tax". On the other hand, respondent computed the "excess input tax to be carried-over to the succeeding quarter" by *deducting* the "Input Tax on Sale to Gov't closed to expense" from the "Total Available Input Tax". Simply put, the overclaimed input tax credit of ₱119,568.25 arose from the different treatment of the reported "Input Tax on Sale to Gov't closed to expense" for the first three quarters of CY 2010 in the total amount of ₱59,634.13[99] (₱119,268.26[100] when doubled).

Meanwhile, the ₱60,415.38 "Input Tax on Sale to Gov't closed to expense" reported by petitioner for CY 2010 was also disallowed by respondent pursuant to Section 4.114-2 of RR No. 16-05 as amended by RR No. 04-07, which states that "xxx if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost".[101]

In the Fourth Post Reposting Notice[102] dated August 24, 2012, issued by respondent to petitioner, it is quite clear that the "Input Tax on Sale to Gov't closed to expense" reported by petitioner was disallowed as the same should be treated as cost or expense and not as tax credit against the output tax, to wit:

> "2.3-Disallowed input tax on sales to government (₱120,830.76) – The input tax attributable to government sales of ₱60,415.38 was erroneously added to input tax instead of deduction, this resulted to the overstatement of the input tax twice that of the input tax attributable to sales to government (₱60,415.38 x 2), which **said input tax shall not be credited against the output tax, but it shall be treated as cost or expense** (Section 4.110-4 of RR 16-2005)." *(Emphasis supplied)*

Section 4.114-2(a) of RR No. 16-05, as amended by RR No. 04-07, provides for the proper treatment of the input tax on sale to government, which reads:

> "SEC. 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents. –*

[98] Exhibits "P-10" to "P-13", docket, vol. 2, pp. 915-942.
[99] The sum of ₱27,907.19, ₱14,967.07, and ₱16,759.87.
[100] With a difference of ₱300.00 when compared against ₱119,568.25 due to the incorrect output tax for the first quarter per BIR's computation (BIR Records, p. 361).
[101] Exhibit "P-8", Annex, Details of Discrepancies, docket, vol. 2, p. 850.
[102] Exhibit "R-6", BIR Records, p. 333.

(a) xxx The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. **The remaining seven percent (7%) effectively accounts for the standard input VAT** for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. xxx **Should actual input VAT attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the seller's expense or cost.** On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense." *(Emphasis supplied)*

Furthermore, Q&A No. 31 of Revenue Memorandum Circular (RMC) No. 62-05, explains and illustrates the utilization of the input tax on sale to government, to wit:

"**Q31: How much input tax on sale of goods and services to the government or any of its political subdivisions, instrumentalities or agencies, including government-owned and controlled corporations (GOCCs) can a VAT taxpayer claim?**

A31: The allowable input tax for sales of goods and services to the government shall not exceed five percent (5%) of the selling price/gross receipts. If actual input tax exceeds five percent (5%) of gross payments, the excess shall form part of the seller's cost or expense. On the other hand, if actual input VAT is less than five (5%) of gross payments, the difference shall be closed to cost or expense of the seller.

Illustration:

Assumption No. 1: Sales ₱100,000.00; Output VAT ₱10,000.00; Purchase ₱90,000.00; Input VAT ₱9,000.00.

xxx xxx xxx

Balance Sheet/Income Statement:

Output VAT Payable		₱10,000.00
Actual Input VAT	₱9,000.00	
Less: Standard Input VAT (5%)	5,000.00	5,000.00
Income & Expense Summary	₱4,000.00	
Net VAT Payable		₱5,000.00

/r

Less: Creditable Withholding	5,000.00
Input VAT	
Output Tax Payable	₱0.00

Based on the above provision, the allowable input tax on sale to government shall not exceed 7% (5% old rate) of the gross sales/receipts, which effectively accounts for the standard input VAT in lieu of the actual input VAT attributable to such sales.

The sample illustration confirms that the input tax on sale to government may be credited against the output tax but only to the extent of the 7% standard input VAT. However, no Line item for the amount of standard input VAT is specified on the VAT return. Only the amount of actual input VAT may be reflected therein. As such, the "Input Tax on Sale to Gov't closed to expense" (Line 23B) accounts for the excess of actual over standard input VAT or vice versa so that the amount of standard input VAT is incorporated in the computation of VAT due or overpayment per VAT return.

Taking into consideration the amounts reflected in petitioner's Quarterly VAT Returns[103], the actual input VAT attributable to sales to government is greater than the standard input VAT, resulting in "Input Tax on Sale to Gov't closed to expense" in the amount of ₱19,936.40, as computed below:

CY 2010	Actual Input VAT Attributable to Sales to Gov't[104] (a)	7% Standard Input VAT (b)	Input Tax on Sale to Gov't Closed to Expense (a-b)
1st Qtr	₱ 30,633.38	₱ 27,907.19	₱ 2,726.19
2nd Qtr	26,398.87	20,953.91	5,444.97
3rd Qtr	34,566.01	23,463.81	11,102.20
4th Qtr	1,756.79	1,093.75	663.04
Total	**₱ 93,355.06**	**₱ 73,418.66**	**₱ 19,936.40**

Since the amount of actual input VAT attributable to sales to government is greater than the amount of standard input VAT, the amount of "Input Tax on Sale to Gov't closed to expense" must be deducted from the

[103] Exhibits "P-10" to "P-13", docket, vol. 2, pp. 916-940.
[104] Computation of Actual input VAT attributable to sales to government:

Period	Sales to Government (a)	Total Sales (b)	Actual Input VAT (c)	Actual Input VAT Attributable to Sales to Gov't (d=a/b*c)
1st Qtr	₱ 398,674.15	₱ 25,033,951.49	₱ 1,923,562.08	₱ 30,633.38
2nd Qtr	299,341.50	28,299,857.82	2,495,759.53	26,398.87
3rd Qtr	335,197.33	32,626,753.21	3,364,515.81	34,566.01
4th Qtr	15,625.01	30,916,681.57	3,476,106.33	1,756.79
Total	**₱1,048,837.99**	**₱116,877,244.09**	**₱11,259,943.75**	**₱93,355.06**

"Total Allowable Input Tax" so that the input tax on sales to government that shall be credited against the output tax would only amount to the standard input VAT.

Thus, using the correct amount of "Input Tax on Sale to Gov't closed to expense" petitioner's "Total Allowable Input Tax" for the 1st to 4th quarters of CY 2010 should be as follows:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Input Tax Carried Over from Previous Period	₱ 2,291,168.83	₱ 1,250,387.22	₱ 356,290.71	₱ 70,950.86
Current Input Taxes	1,923,562.08	2,495,759.53	3,364,515.81	3,476,106.33
Total Available Input Tax	₱ 4,214,730.91	₱ 3,746,146.75	₱ 3,720,806.52	₱ 3,547,057.19
Less: Input Tax on Sale to Gov't closed to expense	2,726.19	5,444.97	11,102.20	663.04
Total Allowable Input Tax	**₱4,212,004.72**	**₱3,740,701.78**	**₱3,709,704.32**	**₱3,546,394.15**

A comparison between the 3rd quarter "Total Allowable Input Tax" of ₱3,709,704.32 per above computation and the 3rd quarter "Total Allowable Input Tax" of ₱3,788,911.82[105] per petitioner's 3rd Quarterly VAT Return reveals a difference of ₱79,207.50. This amount represents the overclaimed input tax credit for the first to third quarters of CY 2010 due to the erroneous addition of the "Input Tax on Sale to Gov't closed to expense".

With regard to the disallowed "Input Tax on Sale to Gov't closed to expense", petitioner apparently erred in computing the same as it reported a total amount of ₱60,415.38[106], instead of ₱19,936.40 as computed above. But since the effect of the addition of the "Input Tax on Sale to Gov't closed to expense" for the first to third quarters of CY 2010 was already incorporated in the overclaimed input tax credit of ₱79,207.50, the disallowed "Input Tax on Sale to Gov't closed to expense" shall pertain to the fourth quarter of CY 2010.

Per its Quarterly VAT Return for the 4th quarter of CY 2010[107], petitioner mistakenly added the amount of ₱781.25 as "Input Tax on Sale to Gov't closed to expense", instead of deducting the correct amount of ₱663.04 from the "Total Available Input Tax", thereby increasing the "Total Allowable Input Tax" by ₱1,444.29 (₱781.25 plus ₱663.04). Thus, the overclaimed input tax of ₱1,444.29 shall be disallowed.

[105] Exhibit "P-12", Line 24, docket, vol. 2, p. 932.
[106] Line 23B of Exhibits "P-10" to "P-13", docket, vol. 2, pp. 917, 924, 931, and 939.
[107] Exhibit "P-13", Line 23B, docket, vol. 2, p. 939.

In sum, the Court upholds respondent's disallowance of petitioner's overclaimed input tax credit and input tax on sale to government closed to expense but only in the respective amounts of ₱79,207.50, and ₱1,444.29.

5. Unsupported Creditable VAT withheld – ₱24,832.20

Pursuant to RR No. 16-05 in relation to Section 114(C) of the NIRC of 1997, as amended, respondent disallowed petitioner's claimed creditable VAT withheld in the amount of ₱24,832.20 due to the latter's failure to present the corresponding Certificates of Creditable VAT Withheld at Source (BIR Form No. 2306).

An examination of the BIR Forms No. 2306[108] supporting petitioner's claimed creditable VAT withheld of ₱73,148.14[109] shows that petitioner was able to substantiate only the amount of ₱69,765.53[110]. Hence, the remaining claimed creditable VAT withheld of ₱3,382.61 (₱73,148.14 less ₱69,765.53) without corresponding BIR Forms No. 2306 shall be disallowed, to wit:

Payor's Name	TIN	Taxes Withheld Per claim	 Supported by BIR Form No. 2306	 Unsupported
Metropolitan Manila Dev't Authority	000-662-594-000	₱ 319.95	-	₱ 319.95
Movie & Television Review & Class. Board	001-924-004-000	973.30	₱ 486.65	486.65
Philippine Information Agency	000-803-957-000	1,285.09	-	1,285.09
Presidential Broadcast Staff (RTVM)	240-490-658-000	29,506.12	28,215.20	1,290.92
Total		**₱32,084.46**	**₱ 28,701.85**	**₱ 3,382.61**

In fine, petitioner is liable for basic deficiency VAT for CY 2010 in the reduced amount of ₱442,921.25, computed as follows:

Vatable Sales/Receipts per VAT Returns			₱116,874,744.09
Add: Undeclared Sales/Receipts			4,282,139.22
Total Vatable Sales/Receipts, as Adjusted			₱121,156,883.31
Output Tax Due			₱ 14,538,826.00
Less: Creditable Input Tax			
Input Tax Carried Over from Previous Period		₱ 2,291,168.83	
Creditable VAT Withheld		73,148.14	
Current Input Tax		11,259,943.75	

[108] Exhibits "P-45-1" to "P-45-12".
[109] Exhibits "P-43" and "P-44".
[110] With a difference of ₱0.02 *versus* the amount of ₱69,765.55 reflected per Exhibit "P-45" due to the VAT withheld by People's Television Network, Inc. which is ₱0.02 higher than the amount claimed by petitioner.

Total		₱13,624,260.72	
Less: Overclaimed Input Tax Credit	₱79,207.50		
Input tax on Sale to Gov't closed to expense	1,444.29		
Unsupported Creditable VAT withheld	3,382.61	84,034.40	13,540,226.32
Net VAT Payable			₱ 998,599.68
Less: VAT Payments[111]			555,678.43
Basic Deficiency VAT			**₱ 442,921.25**

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax and VAT for CY 2010 are **AFFIRMED WITH MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **THIRTEEN MILLION TWO HUNDRED SEVENTY-SEVEN THOUSAND FOUR HUNDRED EIGHTY-FIVE PESOS AND TWENTY-SEVEN CENTAVOS (₱13,277,485.27)**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and deficiency and delinquency interests imposed under Sections 249(B) and (C) of the same Code, until December 31, 2017, computed as follows:

	Income Tax	VAT	Total
Basic Tax Due	₱ 3,155,095.39	₱ 442,921.25	₱ 3,598,016.64
Add: 25% Surcharge	788,773.85	110,730.31	899,504.16
20% Deficiency Interest from April 16, 2011 to May 15, 2015 *[₱3,155,095.40 x 20% x 1,491/365 days]*	2,577,669.72	-	2,577,669.72
20% Deficiency Interest from Jan. 26, 2011 to May 15, 2015 *[₱442,921.25 x 20% x 1,571/365 days]*		381,276.32	381,276.32
Total Amount Due, May 15, 2015	**₱ 6,521,538.96**	**₱ 934,927.88**	**₱ 7,456,466.84**
Add: 20% Deficiency Interest from May 16, 2015 to Dec. 31, 2017 *[₱3,155,095.40 x 20% x 961/365 days]*	1,661,395.44		1,661,395.44
[₱442,921.25 x 20% x 961/365 days]		233,231.41	233,231.41
20% Delinquency Interest from May 16, 2015 to Dec. 31, 2017 *[₱6,521,538.96 x 20% x 961/365 days]*	3,434,081.61		3,434,081.61
[₱934,927.88 x 20% x 961/365 days]		492,309.97	492,309.97
Total Amount Due, December 31, 2017	**₱11,617,016.01**	**₱1,660,469.26**	**₱13,277,485.27**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total amount due as of May 15, 2015 in the amount of **₱7,456,466.84**, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax

[111] Amount per FDDA (₱555,740.75) was reduced by ₱62.32 since the latter amount was already considered as part of the substantiated creditable VAT withheld.

Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice