REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

CASAS + ARCHITECTS,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9705

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
MAR 09 2021
8:40 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review,[1] filed on 26 October 2017, with an Amended Petition for Review,[2] by petitioner Casas + Architects, against respondent Commissioner of Internal Revenue ("CIR"), praying for the cancellation of the assessment issued against it covering taxable year 2011 for alleged deficiency Value Added Tax (VAT) and withholding tax on compensation (WTC) in the total amount of Nine Million Eight Hundred Thirty Five Eight Hundred Eighty-Eight Pesos and 23/100 (₱9,835,888.23).[3]

The Parties

Petitioner is a general professional partnership duly organized and existing under the laws of the Republic of the Philippines and registered with the Securities and Exchange Commission ("SEC") with principal office at the

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[1] *See* Petition for Review, Records, Vol. 1, pp. 10-207, with annexes.
[2] *See* Compliance (Re: Resolution dated December 12, 2017) with attached Amended Petition for Review, Records, Vols. 1-2., pp. 418-574, with annexes. .
[3] *See* Pre-Trial Order, Records Vol. 2, p. 872.

Penthouse, Paseo Center, 8757 Paseo de Roxas Avenue cor. Sedeño Street, Salcedo Village, Makati City.[4]

Petitioner was formed primarily to provide architectural services requiring application of the science, art, or profession of planning sites, planning or designing buildings or architectural structures and their related facilities, interior design and decoration, landscaping, land development by and under the direct supervision of certified architects and other licensed personnel, and do anything and all things which a partnership of this kind may lawfully do, including, without limitations, consultation, investigation, evaluation, planning, design, preparation of instruments of services such as drawings and specifications, and the supervision of construction insofar as customarily performed by architects.[5]

It is registered with the Bureau of Internal Revenue ("BIR") with TIN 005-180-743-000 and was issued Certificate of Registration (BIR Form No. 2303) with OCN 9RC0000243755.[6]

Meanwhile, respondent is the duly appointed CIR empowered to perform the duties of his office, including among others, the power to decide disputed assessments, approve, and grant refunds or tax credits of erroneously paid taxes, as provided by law.[7]

The Facts

On 3 September 2012, a Letter of Authority (LOA) (LOA-050-2012-00000238) with SN: eLA201000078291[8] was issued by Regional Director Nestor S. Valeroso authorizing Revenue Officer (RO) Michael Felipe and Group Supervisor (GS) Roderick Cantillana to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from 1 January 2011 to 31 December 2011, pursuant to Audit Criteria for Taxable Years 2009 and 2010.

Subsequently, on 7 July 2015, petitioner received a Preliminary Assessment Notice ("PAN"), dated 6 July 2015,[9] stating that, after investigation, petitioner had been found liable for the following deficiency taxes:

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[4] *See* Exhibit "P-1," Records, Vol. 3, pp. 1171-1185.
[5] *Ibid.*
[6] *See id.*, p. 134.
[7] *See* Admitted Facts, Pre-Trial Order, Records Vol. 2, p. 872.
[8] *See* Exhibit "P-2," BIR Records, p. 3.
[9] *See* Exhibit "P-3," *id.*, pp. 391-394.

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Tax Type	Basic Tax	Interest	Total
VAT	₱ 7,499,516.73	₱ 5,325,684.21	₱ 12,825,200.94
WTC	1,338,114.26	957,576.56	2,295,690.82
EWT	1,341,223.02	959,801.24	2,301,024.26
TOTAL	₱ 10,178,854.01	₱ 7,243,062.01	**₱ 17,421,916.02**

On 20 July 2015, respondent received a Reply to the PAN[10] from petitioner praying for reduction of the amount assessed to the following amounts on the ground that petitioner had substantiated respondent's deficiency assessment:

Tax Type	Per BIR	Per Petitioner	Reduction
VAT	₱ 7,499,516.73	₱ 32,268.74	₱ 7,467,247.99
WTC	1,338,114.26	821,297.89	516,816.37
EWT	1,341,223.02	362,166.32	979,056.70
TOTAL TAX DUE	**₱10,178,854.01**	**₱1,215,732.95**	₱ 8,963,121.06

Thereafter, on 27 July 2015, petitioner received a Formal Assessment Notice ("FAN"), dated 27 July 2015, with attached Assessment Notices for the following deficiency taxes to be paid on or before 27 August 2015:[11]

Tax Type	Basic Tax	Interest	Total
VAT	₱ 7,499,516.73	₱ 5,469,510.56	₱ 12,969,027.29
WTC	1,338,114.26	983,239.03	2,321,353.29
EWT	1,341,223.02	985,523.33	2,326,746.35
TOTAL	₱ 10,178,854.01	₱ 7,438,272.92	**₱ 17,617,126.93**

On 26 August 2015, petitioner filed a Protest requesting for a reinvestigation[12] of the alleged deficiency taxes for lack of factual and/or legal bases. Petitioner attached to the Protest an intent to pay a portion of the alleged deficiency taxes in the amount of ₱1,183,464.21 representing deficiency WTC and EWT and in fact paid said amount per Payment Form (BIR Form No. 0605) and EFPS payment confirmation.[13] Petitioner also attached supporting documents to its request for reinvestigation.

In respondent's letter, dated 18 September 2015, which petitioner received on 23 September 2015, respondent, through Regional Director Jonas DP Amora, informed petitioner that the entire docket and Protest Letter had been forwarded to Revenue District Office No. 50- South Makati for evaluation and other appropriate action. In the same letter, respondent

[10] *See* Exhibit "P-4," *id.*, pp. 621-635
[11] *See* Exhibit "P-5,", *id.*, pp. 578-585.
[12] *See* Exhibit "P-6," Records Vol. 3, pp. 1214-1232.
[13] *See* Exhibit "P-126-a," Records Vol. 4, pp. 1576-1579; *See* Exhibit "P-126-b," *id.*, p. 1580.

recognized petitioner's payment on 26 August 2015 of the EWT and WTC amounting to ₱362,166.32 and ₱821,297.89, respectively, or in the aggregate amount of ₱1,183,464.21.

Subsequently, on 7 October 2015, petitioner filed a letter, dated 6 October 2016, with respondent, informing the latter of its submission of all relevant supporting documents on or before 25 October 2015.[14] On 20 October 2015, petitioner submitted additional documents in support of its request for reinvestigation.[15]

On 13 October 2016, petitioner requested that the docket be pulled out from Revenue Region No. 8 and returned to Revenue District Office No. 50 for further evaluation. According to petitioner, the dockets were forwarded to RR 8 without informing it of the results of the reinvestigation.[16]

On 26 April 2017, petitioner transmitted additional supporting documents to RDO 50 in support of its request for reinvestigation, which respondent received on even date.[17]

On 26 September 2017, petitioner received a Final Decision on Disputed Assessment ("FDDA"), dated 22 September 2017, issued by respondent for the following deficiency taxes:[18]

Tax Type	Basic Tax	Interest	Total
VAT	₱ 3,229,662.71	₱ 3,719,863.57	₱ 6,949,526.28
WTC	1,337,975.76	1,548,386.19	2,886,361.95
TOTAL	₱ 4,567,638.47	₱ 5,268,249.76	**₱ 9,835,888.23**

The FDDA required payment of the deficiency taxes on or before 23 October 2017.[19]

Thereafter, petitioner filed the instant Petition for Review on 26 October 2017, assailing the FDDA. Petitioner then filed an Amended Petition for Review, dated 28 December 2017.[20]

[14] *See* Exhibit "P-8," *id.*, pp. 1234- 1241.
[15] *See* Exhibit "P-9," *id.*, pp. 669-688.
[16] *See* Exhibit "P-10," *id.*, pp.1262-1263.
[17] *See* Exhibit "P-11," *id.*, pp. 1264-1287.
[18] *See* Exhibits "P-12," and "P-12-a," BIR Records, pp. 771-779
[19] *Ibid.*
[20] *See* Amended Petition for Review, Records Vols. 1-2, pp. 421-574, with annexes.

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On 2 March 2018, and within the extended period granted by the Court,[21] respondent filed its Answer through registered mail, which was received by this Court on 15 March 2018. In its Answer, respondent interposed the following defenses:[22]

> **"SPECIAL AND AFFIRMATIVE DEFENSES**
>
> Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to his defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
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> 4. A revenue regulation, the issuance of which is authorized by statute, has the force and effect of law (*Vitug & Acosta, Tax Law and Jurisprudence, 3rd Edition, p. 55*);
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> 5. 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 duties, an assessment will not be disturbed. (*Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109*);
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> 6. At the outset, Final Decision on Disputed Assessment dated September 22, 2017 reflects the internal revenue tax liabilities of the petitioner for the taxable year 2011 representing Deficiency Value Added Tax and Withholding Tax on Compensation.
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> ...
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> 7. Over and above all, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, hus, no one is considered entitled to recover that which he must give up to another.-**Non videtur quisquam id capere quod ei necesse est alii restitutere.**"

In petitioner's Reply to respondent's Answer, filed through registered mail on 28 March 2018,[23] petitioner countered that, *first,* petitioner is not questioning the validity of any revenue regulation; *second,* petitioner presents enough proof to rebut the presumption of correctness of the assessment; and *third,* respondent ineffectively denied the allegations in the petition filed by petitioner, and in effect, admitted the same.

On 17 May 2018, respondent filed, through registered mail, his Pre-Trial Brief,[24] while petitioner filed its Pre-Trial Brief With Motion for Commissioning of Independent Certified Public Accountant on 31 May

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[21] *See* Resolution promulgated 8 February 2018, Records Vol. 2, p. 584
[22] Answer, *id.*, pp. 586-587.
[23] *See* Reply, Records Vol. 1, pp. 598-607.
[24] *See* Pre-Trial Brief (for the Respondent), Records Vol. 2, pp. 615-618.

2018.[25] The Court granted[26] the commissioning of ICPA Ma. Teresita Socorro Z. Dimaculangan, who thereafter submitted her report[27] within the extended period granted by the Court.[28] Following the filing of both parties' Pre-Trial Briefs, the Pre-Trial Conference proceeded on 5 June 2018.[29] Subsequently, the Court issued a Pre-Trial Order on 21 June 2018.[30]

In the meantime, respondent transmitted the entire BIR Records on 19 June 2018.[31]

Petitioner presented the following witnesses: (1) Bernadith Bersabe Nañaga, its Head of Finance and Accounting, who testified and identified her Judicial Affidavit during the hearing on 10 September 2018;[32] and (2) Ma. Teresita Socorro Z. Dimaculangan, the court-commissioned ICPA, who testified and identified her Judicial Affidavit during the hearing on 15 January 2019.[33]

Thereafter, petitioner filed its Formal Offer of Documentary Evidence on 6 February 2019.[34] The Court admitted all of petitioner's formally-offered documentary evidence except for Exhibit "P-22" for failure to identify the same.[35]

For his defense, respondent presented Revenue Officer Michael T. Felipe as his lone witness, who testified and identified his Judicial Affidavit during the hearing on 23 July 2019.[36]

[25] *See* Pre-Trial Brief With Motion for Commissioning of Independent Certified Public Accountant, *id.*, pp.619- 857.

[26] *See* Minutes of the Hearing dated 10 September 2018, *id.*, p. 894; *See also* Order dated 10 September 2018, *id.*, p. 896.

[27] *See* ICPA Report dated 10 October 2018, *id.*, pp. 933-943.

[28] *See* Order dated 10 September 2018, *id.*, p. 896; *See also* Resolution promulgated 19 October 2018, *id.*, p. 926.

[29] *See* Minutes of the Hearing dated 5 June 2018, *id.*, p. 858.

[30] *See* Pre-Trial Order promulgated 21 June 2018, *id.*, pp. 872-879; *See also* Minutes of the Hearing dated 5 June 2018, *id.*, p. 858.

[31] *See* Compliance dated 18 June 2018, *id.*, pp. 865-867; *See also* Resolution promulgated 8 February 2018, *id.*, pp. 583-584; Records Verification Report dated 22 March 2018, *id.*, p. 594; Resolution promulgated 12 April 2018, *id.*, pp. 609-610; Records Verification Report dated 4 May 2018, *id.*, p. 611; *and* Resolution promulgated 21 May 2018, *id.*, pp. 612-614.

[32] *See* Exhibits "P-25" and "P-25a," *id.*, pp. 843-857; *See also* Minutes of the Hearing dated 10 September 2018, *id.*, p. 894 *and* Order dated 10 September 2018, *id.*, p. 896.

[33] *See* Exhibits "P-26a" and "P-26b," Records Vol. 3, pp. 1116-1125; *See also* Minutes of the Hearing dated 15 January 2019, *id.*, p. 1146 *and* Order dated 15 January 2019, *id.*, pp. 1147-1148.

[34] *See* Petitioner's Formal Offer of Documentary Exhibits, Records Vols. 3-4, pp. 1161-1580.

[35] *See* Resolution dated 1 August 2019, *id.*, pp. 428-434; *See also* Motion for Partial Reconsideration and Motion to Defer Submission of Memorandum (of the Resolution dated August 1, 2019), *id.*, pp. 444- 452; *See also* Resolution dated 10 January 2020, *id.*, pp. 457- 459.

[36] *See* Exhibits "R-10" and "R-10-a," Records Vol. 4, pp. 1596- 1625; *See also* Minutes of the Hearing dated 23 July 2019, *id.*, p. 1627 *and* Order dated 23 July 2019, *id.*, pp. 1628-1629.

Respondent filed his Formal Offer of Evidence through registered mail on 7 August 2019.[37] Meanwhile, petitioner filed a Comment/Opposition (Re: Respondent's Formal Offer of Evidence) through registered mail on 27 August 2019.[38] Except for Exhibits "R-10" and "R-10-a," all of respondent's exhibits were denied for failure to mark the same.[39]

On 18 November 2019, petitioner filed its Memorandum,[40] but respondent did not file his Memorandum.[41] Thereafter, on 9 March 2020, the case was submitted for decision, in view of petitioner's filing of its Memorandum, sans respondent's memorandum.[42]

The Issue[43]

The sole issue for this Court's resolution is:

> Whether petitioner is liable to pay the deficiency value added tax (VAT) and withholding tax on compensation (WTC) for taxable year 2011, in the aggregate amount of ₱9,835,888.23, inclusive of statutory increments.

Arguments of the Parties

Petitioner's Arguments[44]

Petitioner argues that it is not liable for deficiency VAT for taxable year 2011. Petitioner maintains that it has remitted the 12% VAT component of its 2011 receipts of designer fees, as shown in its VAT returns for the third quarter of 2012. Thus, according to petitioner, it cannot be assessed for basic VAT deficiency of ₱3,229,662.71 and surcharge of ₱3,719,863.57, which were attributable to erroneous VAT deficiency liability because these have already been paid prior to the issuance of the questioned assessments. With respect to the reduction of accounts receivable, petitioner explains that this is attributable to writing off uncollectible accounts and is not under declared receipts subject to VAT.

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[37] *See* Respondent's Formal Offer of Evidence, *id.*, pp. 1630-1633.
[38] *See* Comment/ Opposition (Re: Respondent's Formal Offer of Evidence), *id.*, pp. 1635-1640.
[39] *See* Resolution promulgated 16 September 2019, *id.*, pp. 1645-1647; *See also* Motion for Reconsideration, *id.*, pp. 1648-1651; Comment on Motion for Reconsideration, *id.*, pp. 1660-1669; *and* Resolution promulgated 5 December 2019, *id.*, pp. 1706-1709.
[40] *See* Petitioner's Memorandum, *id.*, pp. 1674-1704.
[41] Records Verification Report dated 18 February 2020, *id.*, p. 1712.
[42] *See* Resolution promulgated 9 March 2020, *id.*, pp. 1713-1714.
[43] Issue, Pre-Trial Order, Records Vol. 2, p. 873.
[44] *See* Petitioner's Memorandum, Records Vol. 4, pp. 1682-1699.

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Petitioner also claims that it is not liable for failure to withhold on compensation income in the amount of ₱2,886,361.95 because, *first,* there is no factual and/or legal basis for the use of average withholding tax rate of 16.29873905%; *second,* the apprentices hired by petitioner are not employees, as defined under the Labor Code, and, thus, petitioner has no duty to withhold tax on the amounts given as allowances; *third,* meal allowances paid to petitioner's employees are de minimis benefits, given for the convenience of the employer, and *fourth,* petitioner paid its employees 13th month pay and reported the excess amount under taxable portion of 13th month pay and other benefits.

Respondent's Arguments[45]

Meanwhile, respondent insists that assessments are *prima facie* presumed correct and made in good faith and that the taxpayer has the duty of proving otherwise.

The Ruling of the Court

The instant Petition for Review is partially granted.

At the onset, this Court establishes that the presumption of correctness of assessments does not apply when the assessment is utterly without foundation. Notably in *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.,*[46] the Supreme Court discussed the interplay of the presumption in favor of the correctness of assessments and the presence of sufficient evidence in this wise:

> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
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> However, the **prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious**. Where the BIR has come out with

[45] *See* Answer, Records Vol 2, pp. 586-587.
[46] G.R. No. 136975, 31 March 2005.

> a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. Hence, the determination by the CTA must rest on all evidence introduced and its ultimate determination must find support in credible evidence.
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> ...
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> The petitioner cannot rely on the presumption that she and other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo*, **in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.**
> (Emphasis, Ours)

We shall now proceed to examine the items of deficiency assessment issued by respondent against petitioner and the latter's evidence to contest the assessments.

I. DEFICIENCY VALUE ADDED TAX

Respondent assessed petitioner of deficiency VAT amounting to ₱6,949,526.28, inclusive of interest, computed as follows:[47]

Service Fees per Financial Statements		169,224,332.00
Add: Accounts Receivable, beg (net of VAT)	P 50,720,073/1.12	45,285,779.46
Total		214,510,111.46
Less: Accounts Receivable, end (net of VAT)	P 26,176,826.00/1.12	23,372,166.07
Total Collections		191,137,945.39
Less: Zero-rated design fees		
Zero-rated design fees per VAT Returns	47,243,992.48	
Less: Design fees rendered to D.M. Consunji subject to VAT	26,925,000.00	20,318,992.48
Receipts not subject to VAT		170,818,952.91
Add: Design fees of one eastwood offsetted from rental expenses	3,964,495.34	
Design fees offsetted for a residential lot in Portofino Courtyard	549,107.14	
Other Income	195,112.00	
Miscellaneous income	15,202.00	4,723,916.48
Total receipts subject to VAT per audit		175,542,869.39
Less: Vatable receipts per VAT returns		116,801,171.17
Receipts not subject to VAT		**58,741,698.22**
Vatable receipts per return		116,801,171.17
Add: Receipts not subjected to VAT		58,741,700.22
Adjusted vatable receipts		175,542,871.39

[47] *See* Exhibit "P-12," BIR Records, pp. 771-779.

Output Tax (12%)		21,065,144.57
Less: Tax Credits/ Payments		
Input Tax Carried Over From Previous Quarter	26,180.35	
Input Tax Claimed per Return	5,126,727.73	
Total	5,152,908.08	
Less: Excess Input Tax Carried Over to Succeeding Period	331,599.42	4,821,308.66
Output VAT payable		16,243,835.91
Less: Payment per returns		13,014,173.20
Basic tax due		3,229,662.71
Add: Interest (01/26/2012 to 10/27/2017)		3,719,863.57
TOTAL AMOUNT DUE		**6,949,526.28**

The following items of VAT deficiency assessment were disputed by petitioner:

A. Designer fees received from D.M. Consunji in the amount of ₱26,925,000.00 erroneously classified as zero-rated but allegedly already subjected to VAT.	₱26,925,000.00
B. Reduction in the balance of Accounts Receivable in the amount of ₱27,767415.04 attributable to writing off of uncollectible accounts.	₱27,767415.04

The ICPA found[48] that under declared income for VAT purposes stands at ₱8,810,079.65, computed as follows:

Service fee for the year		169,224,332.00
Accounts receivable, beginning (net of VAT)	50,720,073.00	45,285,779.46
Accounts receivable, ending (net of VAT)	26,176,826.00	23,372,166.07
Should be collections for the year		191,137,945.39
Less write-off of uncollectible accounts	24,767,415.04	22,113,763.43
Actual collections for the year		169,024,181.96
Less Zero-rated collections (see Summary 1)	47,243,992.48	
Erroneous classification of DMCI under Zero-rated transactions (per SLS see Summary 2)	19,575,892.86	27,668,099.62
Receipts subject to VAT		141,356,082.34
Add: Design fees offset with rental	3,964,495.34	
Design fees Portofino	549,107.14	
Other income	195,114.00	
Miscellaneous income	15,202.00	4,723,918.48

[48] *See* Exhibit "P-26c," Records Vol. 2, p. 938.

Total Receipts subject to VAT for 2011 declaration	146,080,000.82
Collections from DMCI deferred declaration to 2012 (per OR see Summary 2)	20,468,750.00
Total Receipts Should be subjected to VAT after DMCI collections	125,611,250.82
Vatable receipts declared per VAT returns in 2011 (see summary 1)	116,801,171.17
Under declared income for VAT computation for December 31, 2011	**8,810,079.65**

However, the ICPA concluded that, notwithstanding the underdeclared income of ₱8,810,079.65, there is still a refundable VAT of ₱717,232.87, computed as follows:

Balance as per undersigned's revised computation	**8,810,079.65**
VAT rate	**12%**
Vat due	**1,057,209.56**
Less VAT refundable as of December 31, 2011 (see Summary 1.1)	**1,774,442.43**
VAT refundable after analysis	**717,232.87**

Preliminarily, we disagree with the ICPA's findings that petitioner is entitled to the refund of ₱717,232.87. It must be noted that the instant case seeks the cancellation of the assessment for taxable year 2011 issued against petitioner. Petitioner did not seek any refund nor substantiate its VAT refund claim in the instant Petition nor in its Amended Petition for Review.

We shall now discuss the two items disputed by petitioner: (A) designer fees rendered to D.M. Consunji subject to VAT in the amount of ₱26,925,000.00; and (B) reduction in accounts receivable allegedly attributable to write-off of uncollectible accounts amounting to ₱24,767,415.04.

A. Designer Fees received from DMCI - ₱26,925,000.00

Petitioner claims that it erroneously treated its receipts from DMCI as zero-rated for VAT purposes due to an innocuous misreading of ***Republic Act No. 7916 or the Special Economic Zone Act of 1995*** in relation to ***Revenue Memorandum Circular No. 74-99***, which provides that services rendered to Ecozone-registered enterprise as zero-rated for VAT purposes.[49] According to petitioner, it erroneously assumed that by virtue of its subcontractor

[49] *See* Petitioner's Memorandum, Records Vol. 4, p. 1683.

agreement with DMCI, the incentive due to DMCI would also redound to its benefit.[50]

When petitioner became aware of its error, it allegedly remitted to respondent the 12% VAT component of its designer fees from DMCI. Petitioner presented its monthly VAT return for November 2012, showing payment in the amount of ₱5,204,941.72,[51] purportedly pertaining to the 2011 deficiency VAT due on the DMCI designer fees.

While petitioner presented its monthly VAT return for November 2012, it failed to present the related Summary List of Sales ("SLS") and other documents in which the remittance of the subject output VAT can be traced or verified. The ICPA claims to have reviewed the SLS,[52] but the same was not offered and cannot be found in the records of the case. Thus, this Court cannot ascertain, trace, and verify whether the alleged VAT payment in November 2012 pertains to the DMCI designer fees received in 2011.

For lack of proof of payment in 2012 of DMCI designer fees received in 2011, this Court is constrained to retain respondent's VAT deficiency assessment arising from DMCI designer fees.

B. Reduction in Accounts Receivable attributable to writing off of uncollectible accounts - ₱24,767,415.00

Respondent compared the beginning and ending balance of petitioner's Accounts Receivable for the taxable year 2011 and treated the decrease in the balance as collections subject to VAT.

The Court does not agree.

As found by the ICPA, the accounts were correctly written-off from the books for being uncollectible from 2007 up to 2011 and the write-off was against Partner's Capital.[53]

Respondent failed to present proof of actual sales and relies on the presumption that the decrease in accounts receivable is attributable to receipts subject to VAT. A change in the balance of Accounts Receivable, however, does not necessarily translate to collections subject to VAT, more so when petitioner is able to explain the nature of the reduction in the account as well

[50] *Ibid.*
[51] *See* Exhibit "P-15," Records Vol. 3, p. 1312.
[52] *See* ICPA Report, Records Vol. 2, p. 934.
[53] *See* ICPA Report, *id.*, p. 935.

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as provide the necessary supporting documents thereto. Respondent is mistaken in insisting that there are taxable sales when there are none.

A perusal of the records reveals that the write- off of the ₱24,767,415.00 uncollectible accounts was authorized by the partners in a meeting held on 1 December 2011,[54] with a corresponding journal entry on even date to reduce the balance Accounts Receivable and Partners' Contribution.[55]

We summarize the supporting documents of accounts identified to be written off during the partners' meeting below:

	Client's Name	Invoice No.	Invoice Date	Total Invoice Amount (VAT inclusive)	Date of Collection Letter	Date of Receipt of Collection Letter	Remaining Balance to be Written Off (VAT inclusive)
1.	Landev Corporation	1854[56]	Mar. 14, 2007	850,000.00	Apr. 20, 2007[57] Jun. 22, 2007[58]	Apr. 24, 2007 Apr. 26, 2007	**850,000.00**
2.	CJH Development Corp.	1863[59]	Apr. 02, 2007	610,909.09	May 11, 2007[60] Jul. 20, 2007[61]	May 13, 2007 Jul. 23, 2007	**610,909.09**
3.	CJH Development Corp.	1864[62]	Apr. 02, 2007	152,727.27	May 11, 2007[63] Jul. 20, 2007[64]	May 13, 2007 Jul. 23, 2007	**152,727.27**
4.	Megaworld Corporation	2107[65]	Feb. 20, 2008	4,072,727.28	Mar. 28, 2008[66] May 23, 2008[67]	Mar. 31, 2008 May 27, 2008	**4,072,727.28**
5.	MESA Development Corp.	2187[68]	May 22, 2008	2,200,000.00	Jun. 27, 2008[69] Aug. 29, 2008[70]	Jun. 30, 2008 Sep. 2, 2008	**2,200,000.00**
6.	MESA Development Corp.	2188[71]	May 22, 2008	25,803.20	Jun. 27, 2008[72] Aug. 29, 2008[73]	Jun. 30, 2008 Sep. 02, 2008	**25,803.20**
7.		2273[74]	Sep. 18, 2008	170,000.00	Oct. 24, 2008[75]	Oct. 28, 2008	**170,000.00**

54 ICPA Exhibit "P-49," *id.*, pp. 987-989.
55 ICPA Exhibit "P-51," *id.*, p. 992.
56 ICPA Exhibit "P-53," Records Vol. 2, pp. 994-995.
57 ICPA Exhibit "P-74," Records Vol. 3., p. 1016.
58 ICPA Exhibit "P-75," *id.*, p. 1017.
59 ICPA Exhibit "P-54," Records Vol. 2., p. 996.
60 ICPA Exhibit "P-77," Records Vol. 3., p. 1019.
61 ICPA Exhibit "P-76," *id.*, p. 1018.
62 ICPA Exhibit "P-55," Records Vol. 2, p. 997.
63 ICPA Exhibit "P-79," Records Vol. 3, p. 1021.
64 ICPA Exhibit "P-78," *id.*, p. 1020.
65 ICPA Exhibit "P-56," Records Vol. 2, p. 998.
66 ICPA Exhibit "P-80," Records Vol. 3, p. 1022.
67 ICPA Exhibit "P-81," *id.*, p. 1023.
68 ICPA Exhibit "P-57," Records Vol. 2, p. 999.
69 ICPA Exhibit "P-82," Records Vol. 3, p. 1024.
70 ICPA Exhibit "P-83," *id.*, p. 1025.
71 ICPA Exhibit, "P-58," Records Vol. 2, p. 1000.
72 ICPA Exhibit "P-84," Records Vol. 3, p. 1026.
73 ICPA Exhibit "P-85," *id.*, p. 1027.
74 ICPA Exhibit "P-59," *id.*, p. 1001.
75 ICPA Exhibit "P-87," *id.*, p. 1029.

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	Cliveden Corporation				Dec. 19, 2008[76]	Dec. 19, 2008	
8.	Sta. Lucia Realty Development Corp.	2301[77]	Nov, 12, 2008	1,875,000.00	Dec. 19, 2008[78] Feb. 27, 2009[79]	Dec. 22, 2008 Mar. 03, 2009	**1,875,000.00**
9.	Megaworld Corporation	2336[80]	Mar. 04, 2009	279,050.75	Apr. 10, 2009[81] Jun. 12, 2009[82]	Apr. 14, 2009 Jun. 16, 2009	**62,468.62**
10.	Auto Asia Holdings Inc.	2349[83]	Apr. 20, 2009	1,200,000.00	May 29, 2009[84] Jul. 24, 2009[85]	Jun. 02, 2009 Jul. 27, 2009	**514,623.69**
11.	West Beach Inc.	2380[86]	Jul. 06, 2009	2,100,000.00	Aug. 28, 2009[87] Oct. 30, 2009[88]	(received but undated) (received but undated)	**2,100,000.00**
12.	Travellers International Hotels Group Inc.	2392[89]	Aug. 14, 2009	457,520.00	Sep. 25, 2009[90] Nov. 20, 2009[91]	Sep. 28, 2009 Nov. 28, 2009	**457,520.00**
13.	Brittany Corporation	2425[92]	Nov. 12, 2009	1,720,000.00	Dec. 18, 2009[93] Feb. 19, 2010[94]	Feb. 19, 2010 Feb. 22, 2010	**1,720,000.00**
14.	Northpine Land Inc.	2431[95]	Nov. 24, 2009	3,500,000.00	Jan. 08, 2010[96] Mar. 26, 2010[97]	Jan. 11, 2010 Mar. 29, 2010	**3,500,000.00**
15.	CJH Development Corp.	2460[98]	Jan. 27, 2010	94,282.71	Mar. 05, 2010[99] May 07, 2010[100]	Mar. 09, 2010 May 10, 2010	**94,282.71**
16.	Premier Central Inc	2458[101]	Jan. 27, 2010	25,000.00	Mar. 05, 2010[102] May 07, 2010[103]	(received but undated) (received but undated)	**25,000.00**

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[76] ICPA Exhibit "P-86," *id.*, p. 1028.
[77] ICPA Exhibit, "P-60," *id.*, p. 1002.
[78] ICPA Exhibit "P-88," *id.*, p. 1030.
[79] ICPA Exhibit "P-89," *id.*, p. 1031.
[80] ICPA Exhibit "P-61," *id.*, p. 1003.
[81] ICPA Exhibit "P-90," *id.*, p. 1032.
[82] ICPA Exhibit "P-91," *id.*, p. 1033.
[83] ICPA Exhibit "P-62," *id.*, p. 1004.
[84] ICPA Exhibit "P-93," *id.*, p. 1035.
[85] ICPA Exhibit "P-92," *id.*, p. 1034.
[86] ICPA Exhibit "P-63," *id.*, p. 1005.
[87] ICPA Exhibit "P-95," *id.*, p. 1037.
[88] ICPA Exhibit "P-94," *id.*, p. 1036.
[89] ICPA Exhibit "P-64," *id.*, p. 1006.
[90] ICPA Exhibit "P97," *id.*, p. 1039.
[91] ICPA Exhibit "P-96," *id.*, p. 1038.
[92] ICPA Exhibit "P-65," *id.*, p. 1007.
[93] ICPA Exhibit "P-99," *id.*, p. 1041.
[94] ICPA Exhibit "P-98," *id.*, p. 1040.
[95] ICPA Exhibit "P-66," *id.*, p. 1008.
[96] ICPA Exhibit "P-100," *id.*, p. 1042.
[97] ICPA Exhibit "P-101," *id.*, p. 1043.
[98] ICPA Exhibit "P-67," *id.*, p. 1009.
[99] ICPA Exhibit "P-103," *id.*, p. 1045.
[100] ICPA Exhibit "P-102," *id.*, p. 1044.
[101] ICPA Exhibit "P-69," *id.*, p. 1011.
[102] ICPA Exhibit "P-105," *id.*, p. 1047.
[103] ICPA Exhibit "P-104," *id.*, p. 1046.

17.	CJH Development Corp.	2469[104]	Mar. 02, 2010	4,596,553.18	Apr. 07, 2010[105] Jun. 11, 2010[106]	Apr. 09, 2010 Jun. 14, 2010	**4,596,553.18**
18.	St. Michael The Archangel Parish Church	2479[107]	Mar. 25, 2010	3,300,000.00	Apr. 30, 2010[108] Jun. 25, 2010[109]	(received but undated) (received but undated)	**300,000.00**
19.	Nuvoland Philippines Inc.	2488[110]	Apr. 23, 2010	2,935,300.00	May 28, 2010[111] Jul. 30, 2010[112]	Jun. 01, 2010 Aug. 03, 2010	**880,600.00**
20.	CJH Development Corp.	2498[113]	Jun. 24, 2010	320,000.00	Jul. 30, 2010[114] Sep. 24, 2010[115]	Aug. 03, 2010 Sep. 27, 2010	**163,200.00**
21.	Travellers International Hotels Group Inc.	0054[116]	Oct. 06, 2010	396,000.00	Nov. 12, 2010[117] Feb. 11, 2011[118]	Nov. 16, 2010 Feb. 14, 2011	**396,000.00**
					Total Uncollectible Accounts Receivable (inclusive of VAT)		**24,767,415.04**

With the writing off of the ₱24,767,415.00 uncollectible accounts against Partners' Capital, a Partners' Capital deficiency resulted. The partners thereafter decided to replenish the firm capital with the same amount through the conversion of Advances from Partners to Partners' Capital account.[119] This is reflected in the Minutes of the Partners' Meeting, held on 20 December 2011,[120] and the Journal Voucher entry, dated 20 December 2011.[121]

This Court is convinced that, based on the supporting documents presented by petitioner, the decrease in balance of its Accounts Receivable is, indeed, due to a legitimate writing off of uncollectible accounts. Consequently, the reduction of accounts receivable in the amount ₱24,767,415.00 should not be classified as under declared receipts and should not lead to a VAT deficiency assessment.

[104] ICPA Exhibit "P-68," *id.*, p. 1010.
[105] ICPA Exhibit "P-107," *id.*, p. 1049.
[106] ICPA Exhibit "P-106," *id.*, p. 1048.
[107] ICPA Exhibit "P-70," *id.*, p. 1012.
[108] ICPA Exhibit "P-109," *id.*, p. 1051.
[109] ICPA Exhibit "P-108," *id.*, p. 1050.
[110] ICPA Exhibit "P-71," *id.*, p. 1013.
[111] ICPA Exhibit "P-111," *id.*, p. 1053.
[112] ICPA Exhibit "P-110," *id.*, p. 1052.
[113] ICPA Exhibit "P-72," *id.*, p. 1014.
[114] ICPA Exhibit "P-113," *id.*, p. 1055.
[115] ICPA Exhibit "P-112," *id* P. 1054.
[116] ICPA Exhibit "P-73," *id.*, p. 1015.
[117] ICPA Exhibit, "P-115," *id.*, p. 1057.
[118] ICPA Exhibit "P-114," *id.*, p. 1056.
[119] *See* ICPA Report, Records Vol. 2, p. 935.
[120] *See* ICPA Exhibit "P-50" *id.*, pp. 990-991.
[121] *See* ICPA Exhibit "P-52," *id.*, p. 993.

To summarize, this Court retains the VAT deficiency assessment with respect to DMCI designer fees in the amount of ₱26,925,000.00 and cancels the reduction in accounts receivable attributable to writing off of uncollectible accounts in the amount of ₱24,767,415.00. After this Court's scrutiny of the supporting documents, testimonies, and findings of the ICPA, the VAT deficiency assessment then becomes as follows:

Service Fees per Financial Statements		169,224,332.00
Add: Accounts Receivable, beg (net of VAT)	P 50,720,073/1.12	45,285,779.46
Total		214,510,111.46
Less: Accounts Receivable, end (net of VAT)	P 26,176,826.00/1.12	23,372,166.07
Should be collections for the year		191,137,945.39
Less: Decrease in AR due to Writing Off of Uncollectible Accounts		22,113,763.43
Less: Zero-rated design fees		
Zero-rated design fees per VAT Returns	47,243,992.48	
Less: Design fees rendered to D.M. Consunji subject to VAT	26,925,000.00	20,318,992.48
Receipts not subject to VAT		148,705,189.48
Add: Design fees of one eastwood offsetted from rental expenses	3,964,495.34	
Design fees offsetted for a residential lot in Portofino Courtyard	549,107.14	
Other Income	195,112.00	
Miscellaneous income	15,202.00	4,723,916.48
Total receipts subject to VAT per audit		153,429,105.96
Less: Vatable receipts per VAT returns		116,801,171.17
Receipts not subject to VAT		**36,627,934.79**
Vatable receipts per return		116,801,171.17
Add: Receipts not subjected to VAT		36,627,934.79
Adjusted vatable receipts		153,429,105.96
Output Tax (12%)		18,411,492.72
Less: Tax Credits/ Payments		
Input Tax Carried Over From Previous Quarter	26,180.35	
Input Tax Claimed per Return	5,126,727.73	
Total	5,152,908.08	
Less: Excess Input Tax Carried Over to Succeeding Period	331,599.42	4,821,308.66
Output VAT payable		13,590,184.06
Less: Payment per returns		13,014,173.20
BASIC VAT STILL DUE		**576,010.86**

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II. Deficiency Withholding Tax on Compensation - ₱2,886,361.95

Respondent assessed petitioner of deficiency WTC amounting to ₱2,886,361.95, inclusive of interest, computed as follows:[122]

Salaries and wages per FS/ ITR		
Direct staff cost-cost of services	20,377,426.00	
Salaries and wages- administrative expenses	12,401,182.00	
Other allowance & benefits	4,753,138.50	37,531,746.50
Less: Salaries subjected to withholding tax per alphalist		29,839,163.93
Salaries and Wages not subjected to withholding tax		7,692,582.57
Multiplied by: Average Withholding Tax Rate		
Tax Due per Alphalist	4,771,342.84	
Divided by: Taxable Salaries per Alphalist	29,274,306.59	16.29873905%
Basic Deficiency Withholding Tax Due		1,253,793.96
Add: Interest (01/16/12 to 08/26/15)		905,479.69
Total		2,159,273.65
Less: Payment (08/26/2015)		821,297.89
Basic Deficiency Withholding Tax Still Due		1,337,975.76
Add: Interest (01/16/12 to 10/27/17)		1,548,386.19
TOTAL AMOUNT DUE		**2,886,361.95**

Petitioner contests the following:

A. Use of Average Withholding Tax Rate	16.29873905%
B. Failure to consider Allowances to Apprentices which are not subject to WTC	₱309,724.41
C. Failure to consider meal allowance paid to employees for the convenience of the employer which are not subject to WTC	₱207,620.00
D. Failure to consider 13th month pay classified as non-taxable in the alphalist	₱2,653,555.00

A. Use of Average Withholding Tax Rate- 16.29873905%

Respondent used the "Average Withholding Tax Rate" of 16. 29873905% in assessing deficiency creditable withholding tax on petitioner. Respondent arrived at this Average Withholding Tax Rate by dividing the Tax Due per Alphalist and Taxable Salaries per Alphalist.

He claims that ***Section 79(E) of the National Internal Revenue Code of 1997 ("Tax Code")***, as implemented by ***Section 2.78 of RR. 2-98*** allows the use of Average Withholding Tax Rate.

[122] *See* Exhibit "P-12," BIR Records, pp. 771-779.

Section 79(E) of the Tax Code refers to withholding on basis of average wages, to wit:

> "Section 79. Income Tax Collected at Source.-
>
> ...
>
> (E) Withholding on Basis of Average Wages. - The Commissioner may, under rules and regulations promulgated by the Secretary of Finance, authorize employers to:
>
> (1) estimate the wages which will be paid to an employee in any quarter of the calendar year;
>
> (2) determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid; and
>
> (3) deduct and withhold upon any payment of wages to such employee during; such quarter such amount as may be required to be deducted and withheld during such quarter without regard to this Subsection."

Nowhere in ***Section 79(E) of the Tax Code*** nor ***Revenue Regulations No. 2-98*** is there any guideline on the use of average withholding tax rate. Thus, this Court finds no basis for the use of the average withholding tax rate of 16.29873905%.

On the other hand, the highest withholding tax rate for professional fees, talent fees, or any other form of remuneration for services rendered is 15% (previously 10%), as provided in ***Section 2.57.2 (A) of Revenue Regulations No. 2-98***, as amended by ***Revenue Regulations No. 14-02, Revenue Regulations No. 11-18,*** and ***Revenue Regulations No. 01-06***. ***Section 2.57.2(A)*** pertinently provides:

> "SECTION 2.57.2. Income Payments Subject to Creditable Withholding Tax and Rates Prescribed Thereon. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> (A) Professional fees, talent fees, etc. for services rendered — On the gross professional, promotional, and talent fees or any other form of remuneration for the services rendered by the following:
>
> Individual payee:
>
> | | |
> |---|---|
> | If gross income for the current year did not exceed P3M | Five percent (5%) |
> | If gross income is more than P3M | Ten percent (10%) |
>
> Non-individual payee: *l*

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If gross income for the current year did not exceed P720,000	Ten percent (10%)
If gross income exceeds P720,000	Fifteen percent (15%)

As testified to by the ICPA, she applied the 15% WTC rate, as this is the highest rate that could be applied to professional, talent and consultancy fees, and other similar activities, to wit:[123]

Question: Why did you apply the rate of 15% on the discrepancy between the total amount of compensation declared in the AFS and in the Alphalist?

Answer: I applied the 15% rate because this is the highest rate that could be applied to professional talent and consultancy fees, and other similar activities. I decided to use the highest rate that can be imposed in order to arrive at a conservative estimate of alleged tax due.

Proceeding from the foregoing, we deem it proper to use the 15% tax withholding tax rate.

B. Allowances to Apprentices - ₱309,724.41

Petitioner posits that its apprentices are not employees. Thus, it has no duty to withhold from allowances given for tax purposes.[124] Petitioner further claims that it engages architecture graduates of selected universities under a valid apprenticeship program sanctioned by the Department of Labor and Employment ("DOLE"). Petitioner argues that, even assuming that the apprentices are employees, the allowances paid to the apprentices as wages are below the statutory minimum wage and are thus exempt from WTC.[125]

Compensation income for purposes of withholding means all remuneration for services performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the ***Tax Code***.[126] It thus becomes crucial to determine the existence of an employer-employee relationship.

A perusal of petitioner's Apprenticeship Agreement[127] discloses that petitioner's apprentices are not under its employ. We summarize salient provisions of petitioner's Apprenticeship Agreement as follows:

[123] Exhibit "P-26," Records Vol 3, p. 1122.
[124] *See* Petitioner's Memorandum, Records Vol. 4, p. 1694.
[125] *Id.*, at pp. 1694-1695.
[126] Section 2.78.1, Revenue Regulations No. 2-98.
[127] *See* Exhibit "P-118," Records Vol. 3, pp. 1095-1100.

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i. The Apprenticeship Program is for a fixed period of six months, counting 5 days a week in 24 weeks;
ii. The nature of the job includes Archiving, Specifications, Project Development, and Site Visit;
iii. The allowance is ₱340.80/day (80% of the minimum wage);
iv. Adherance to office procedures during the duration of the apprenticeship is required; and
v. Management reserves the right to terminate the apprentice's services anytime in case compliance with office procedures are not met.

However, an apprenticeship program must be approved by the DOLE before an apprentice may be hired. Otherwise, the person hired will be considered a regular employee.[128] While petitioner claims that its apprenticeship program was sanctioned by the DOLE, the records are bereft of proof of such DOLE approval.

Nonetheless, it has been demonstrated that the allowances given to the apprentices are below the minimum wage and are, thus, exempt from withholding, as provided in ***Section 2.78.1 of Revenue Regulations No. 2-98, as amended***, to wit:

> "SECTION 2.78.1. Withholding of Income Tax on Compensation Income.
>
> ...
>
> (B) Exemptions from withholding tax on compensation. — The following income payments are exempted from the requirement of withholding tax on compensation:
>
> ...
>
> (13) Compensation income of individuals that do not exceed the statutory minimum wage or five thousand pesos (₱5,000.00) per month (sixty thousand pesos [₱60,000.00] a year), whichever is higher."

In view of the foregoing, We find that the allowances given to petitioner's apprentices are exempt from withholding.

C. Meal allowances - ₱207,620.00.

Petitioner claims that meal allowances paid to its employees are benefits given for the convenience of the employer and, thus, not subject to withholding.[129]

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[128] Century Canning Corp. v. Court of Appeals, G.R. No. 152894, 17 August 2007 *citing* Nitto Enterprises v. National Labor Relations Commission, G.R. G.R. No. 114337, 29 September 1995.
[129] *See* Petitioner's Memorandum, Records Vol. 4, p. 1695.

Section 33 of the Tax Code, as amended, imposes fringe benefits tax to fringe benefits given to employees, except for fringe benefits for the convenience or advantage of the employer, to wit:

> **"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, <u>or when the fringe benefit is for the convenience or advantage of the employer</u>**). 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...."
> (Emphasis, Ours)

Section 2.78.1 of ***Revenue Regulations No. 02-98***, as amended by ***Revenue Regulation Nos. 08-00 and 10-00***, further clarifies:

> "SECTION 2.78.1. Withholding of Income Tax on Compensation Income. — The withholding of tax on compensation income is a method of collecting the income at source upon receipt of the income. It applies to all employed individuals whether citizens or aliens, deriving income from compensation for services rendered in the Philippines. The employer is constituted as the withholding agent.
>
> (A) Compensation Income Defined. — In general, the term 'compensation' means all remuneration for services performed by an employee for his employer under an employer — employee relationship, unless specifically excluded by the Code.
>
> (1) Compensation in kind. –...
>
> (2) Living quarters or meals. — If a person receives a salary as remuneration for services rendered, and in addition thereto, living quarters are provided, the value to such person of the quarters and meals so furnished shall be added to the remuneration paid for the purpose of determining the amount of compensation subject to withholding. However, **if living quarters or meals are furnished to an employee for the convenience of the employer, the value thereof <u>need not be included as part of compensation income</u>**.
>
> (3) Facilities and privileges of relatively small value. — Ordinarily, facilities and privileges (such as entertainment, medical services, or so-called "courtesy discounts" on purchases), otherwise known as "de minimis benefits," furnished or offered by an employer to his employees, are not considered as compensation subject to income tax and consequently to withholding tax, if such facilities are offered or furnished by the employer merely as means of promoting the health, goodwill, contentment, or efficiency of his employees.

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> The following shall be considered as 'de minimis' benefits not subject to withholding tax on compensation income of both managerial and rank and file employees.[130]
>
> . . .
>
> j. Daily meal allowance for overtime work and night/ graveyard shift not exceeding twenty-five percent (25%) of the basic minimum wage on a per region basis;
>
> **All other benefits** given by employers which are **not included in the above enumeration <u>shall not be considered as "de minimis"</u>** benefits, and hence, shall be subject to income tax as well as withholding tax on compensation income."

(Emphasis, Ours)

Petitioner explains that the meal allowances were given to employees who were assigned to design a project for Solaire Resort and Casino, located in Aseana Avenue, Parañaque City (Entertainment City).[131] According to petitioner, during the said period, the project location was isolated and had no public transport nearby or affordable restaurants available. DMCI then provided free transport while petitioner provided daily pre-computed meal allowances to its employees.[132]

In support of its allegation, petitioner merely presented a Summary List of Employees with Meal Allowance and Validated Assignments[133] to show that the meal allowances are given for convenience of the employer. The summary contains a listing of names, taxpayers identification numbers, identification numbers, and amounts of meal allowances. The Court finds the summary insufficient to establish that the meals were furnished "for the convenience of the employer" as required by the above-quoted ***Section 2.78.1(A)(2) of Revenue Regulations No. 2- 98***, for the value thereof to be not included as part of compensation income.

There is also no showing that the meal allowances represent "daily meal allowance for overtime work and night/ graveyard shift" considered as *de minimis* benefits under ***Section 2.78.1(A)(3)(j) of Revenue Regulations No. 2-98, as amended.***

Hence, meal allowances paid to employees are subject to withholding.

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[130] As further amended by Revenue Regulations No. 5-2011.
[131] *See* Petitioner's Memorandum, Records Vol. 4, p. 1695.
[132] *Ibid.*
[133] *See* ICPA Exhibit "P-119," *id.*, p. 1569.

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D. 13th Month Pay and Other Benefits - ₱2,653,555.00

Petitioner contends that respondent did not consider the 13th month pay, *de minimis benefits*, and SSS, PHIC & PAG-IBIG contributions, which are non-taxable items in the Alphalist, when it compared 'Salaries and Wages per FS/IT' and 'Salaries subjected to withholding tax per alphalist.' Thereafter, respondent assessed deficiency withholding tax on the variance.

An analysis of petitioner's 2011 Alphalist[134] leads to the conclusion that respondent, indeed, failed to consider petitioner's 13th month pay, *de minimis benefits*, and SSS, PHIC & PAG-IBIG contributions, which were not subject to withholding.[135]

To summarize, we deem it proper to modify the WTC deficiency assessment computed as follows:

SALARIES AND WAGES PER AFS/ ITR			
Direct staff cost-cost of services		20,377,426.00	
Salaries and wages- administrative expenses		12,401,182.00	
Other allowance & benefits		5,270,481.00	38,049,089.00
LESS: SALARIES AND WAGES PER ALPHALIST			
Taxable Compensation		26,229,435.44	
Taxable 13th month pay and other benefits		3,044,871.15	
Non-Taxable Compensation per Alphalist			
Non-taxable 13th Month pay	2,653,555.42		
De minimis benefits	114,911.02		
SSS, PHIC & Pag-ibig contributions	841,262.05	3,609,728.49	32,884,035.08
DISCREPANCY			5,165,053.92
Less: Allowances and benefits not subject to withholding (not in Alphalist)			
Allowances of Apprentices			309,724.41
SALARIES AND WAGES NOT SUBJECT TO WITHHOLDING			4,855,329.51
Multiplied by: Withholding tax rate			15%
BASIC WTC DUE			728,299.43
Less: Payment made on 26 August 2015			821,297.89
BASIC WTC STILL DUE			**(92,998.46)**

WHEREFORE, premises considered, the instant Petition for Review filed by Casas + Architects is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for taxable year 2011 covering deficiency VAT is **AFFIRMED** but with modifications. Accordingly,

[134] *See* ICPA Exhibit "P-117," *id.*, pp. 1562-1561.
[135] *See* ICPA Report, Records Vol. 2, p.936.

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petitioner is **ORDERED TO PAY** the aggregate amount of **₱1,454,825.03** for taxable year 2011, inclusive of the 25% surcharge imposed under ***Section 248(A)(3) of the Tax Code, as amended***, and deficiency and delinquency interests imposed under ***Sections 249 (B) and (C) of the Tax Code, as amended***, until 31 December 2017, computed as follows:

	VAT
Basic Tax Due	₱ 576,010.86
Add: Surcharge (25%)	144,002.71
20% Deficiency Interest from 26 Jan. 2012 to 23 Oct. 2017 [576,010.86 x 20% x 2066/ 365 days]	661,860.14
Total Amount Due, 23 October 2017	1,381,873.71
Subtotal	
Add: 20% Deficiency Interest from 24 Oct. 2017 to 31 Dec. 2017 [576,010.86 x 20% * 69/365 days]	21,462.32
20% Delinquency Interest from 24 Oct. 2017 to 31 Dec. 2017 [1,381,873.71 x 20% x 69/365]	51,488.99
TOTAL	**₱ 1,454,825.03**

In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the unpaid VAT of **₱ 1,381,873.71**, representing basic deficiency tax and surcharge, as determined above, computed from 1 January 2018 until full payment, ***pursuant to Section 249 (C) of the Tax Code, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion ("TRAIN")***.

However, the partial payment made by petitioner resulting to the overpayment of **Ninety-Two Thousand Nine Hundred Ninety-Eight Pesos and 46/100 (₱ 92,998.46),** shall be have to be deducted in the final settlement of the above deficiency taxes including surcharge, deficiency interest, and delinquency interest.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MMO

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

A T T E S T A T I O N

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.

ERLINDA P. UY
Associate Justice
Chairperson

C E R T I F I C A T I O N

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

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA
Acting Presiding Justice

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