REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

VIRICSON CORPORATION, Petitioner,	**CTA Case No. 8709**
- versus -	***Members:***
COMMISSIONER OF INTERNAL REVENUE ; OFFICE OF THE REGIONAL DIRECTOR, BUREAU OF INTERNAL REVENUE, REVENUE REGION NO. 8 – MAKATI CITY; BUREAU OF INTERNAL REVENUE, REVENUE DISTRICT OFFICE NO. 52, PARAÑAQUE, Respondents.	**DEL ROSARIO,** *Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.* ***Promulgated:*** JAN 24 2017 : 3:50 p.m.

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DECISION

UY, *J*.:

Before the Court is a Petition for Review filed by Viricson Corporation on September 20, 2013, praying for the cancellation and nullification of the final assessment made through respondents' Formal Letter of Demand with Assessment Notices dated December 10, 2012, for allegedly being issued without factual and legal basis.

THE FACTS

Petitioner Viricson Corporation is a corporation duly organized and registered under and by virtue of the laws of the Philippines.[1]

On the other hand, respondent Commissioner of Internal

[1] Exhibits "P-1" and "P-2", Docket, pp. 337 and 338 to 346.

Revenue (CIR) is duly appointed and empowered to interpret the provisions of the National Internal Revenue Code (NIRC) and other tax laws, as well as 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 NIRC or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR).[2]

The CIR's co-respondent BIR Revenue Region No. 8-Makati City is attached to the CIR and is tasked and empowered to audit and investigate taxpayers for possible tax deficiencies, and to assess and collect the same, if any, from taxpayers.[3] Additionally, co-respondent BIR Revenue District Office (RDO) No. 52 is attached to the CIR and directly under the supervision of respondent BIR Revenue Region No. 8. The latter is tasked and empowered to audit and investigate taxpayers for possible tax deficiencies, and to assess and collect tax deficiencies, if any, from taxpayers.[4]

Petitioner received from respondent BIR Revenue Region No. 8-Makati City the *Letter of Authority* (LA) No. 00005862 dated May 20, 2010, authorizing several Revenue Officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable period January 1 to December 31, 2009. As stated in the said LA, petitioner was to be duly informed of the results of the examination upon approval of the report submitted by the Revenue Officers.[5]

Thereafter, petitioner was invited, through the Letter dated August 10, 2009, to attend a dialogue with the Revenue District Officer of respondent BIR RDO No. 52, where relevant tax matters of its concern will be taken up.[6]

Petitioner then received the *Second Request for Presentation of Records* dated September 16, 2009. The said *Request* asked for the presentation of accounting records as listed in the first request so that the conduct of the required examination for internal revenue tax purposes may be had.[7]

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[2] Par. 1.1, Stipulations and Admissions of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 174.
[3] Par. 1.2, Stipulations and Admissions of Facts, JSFI, Docket, p. 175.
[4] Par. 1.3, Stipulations and Admissions of Facts, JSFI, Docket, p. 175.
[5] Par. 1.4, Stipulations and Admissions of Facts, JSFI, Docket, p. 175.
[6] Par. 1.5, Stipulations and Admissions of Facts, JSFI, Docket, p. 175.
[7] Par. 1.6, Stipulations and Admissions of Facts, JSFI, Docket, p. 175.

Subsequently, respondent BIR Revenue Region No. 8 sent to petitioner the *Preliminary Assessment Notice* (PAN) dated July 11, 2012, assessing it for alleged deficiency income tax in the amount of ₱311,912.97, deficiency value-added tax (VAT) of ₱220,243.05, and deficiency expanded withholding tax (EWT) of ₱8,410.01, for taxable year 2009.[8]

On December 10, 2012, BIR Revenue Region No. 8 issued a *Formal Assessment Notice* (FAN), assessing petitioner for deficiency income tax amounting to ₱352,813.04, deficiency VAT of ₱233,707.69, and deficiency EWT of ₱8,922.30, for taxable year 2009.[9]

Consequently, on January 10, 2013, petitioner filed its *Protest*[10] before the Office of the Regional Director, BIR Revenue Region No. 8, disputing the tax assessments issued against it.

In response thereto, respondent BIR Revenue Region No. 8 issued the Letter dated January 18, 2013,[11] informing petitioner that the entire tax docket together with its *Protest* shall be forwarded to respondent BIR RDO No. 52, and to submit the necessary documents within sixty (60) days from the date of filing of the said *Protest* to the latter office.

Thus, petitioner sent to respondent BIR RDO No. 52 a letter together with certain documents in support of its *Protest* on March 11, 2013.[12]

On July 3, 2013, petitioner received from respondent BIR RDO No. 52 the Letter dated June 25, 2013,[13] requiring petitioner to submit the original receipts and documents that will justify the dropping of the assessment.

On July 17, 2013, petitioner sent the Letter-Reply dated July 10, 2013 to respondent BIR RDO No. 52,[14] signifying that it has decided not to submit the original receipts and documents as requested but is instead willing to present the originals for

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[8] Par. 1.7, Stipulations and Admissions of Facts, JSFI, Docket, p. 175.
[9] Exhibit "P-8", Docket, pp. 267 to 272; BIR Records, pp. 223 to 229.
[10] Exhibit "P-4", Docket, pp. 351 to 354.
[11] BIR Records, p. 270.
[12] Exhibit "P-5", including submarkings, Docket, pp. 362 to 368.
[13] Exhibit "P-7", Docket, p. 370; Exhibit "R-11", BIR Records, p. 321.
[14] Exhibit "P-6", Docket, p. 369.

comparison, and to have the originals intact when needed for presentation before this Court, should BIR RDO No. 52 deny petitioner's *Protest*.

Petitioner received, on August 21, 2013, the *Final Decision on Disputed Assessment* (FDDA) dated August 16, 2013,[15] sustaining the subject tax assessments issued against petitioner for taxable year 2009, for its failure to submit original documents as requested. However, in view of the interests that have accrued in the *interim*, the amounts of the assessed taxes were increased as follows: the deficiency income tax totaled ₱382,919.09, the deficiency VAT amounted to ₱253,103.18, and the deficiency EWT resulted to ₱9,660.23, respectively computed as follows:

I. INCOME TAX			
Taxable Income (Loss) per Income Tax Return (ITR)			₱ (148,550.00)
Add: Adjustments/Disallowance			
Unrecorded gain on sale of motor vehicle		₱ 646,148.08	
Disallowed professional fee due to non-withholding		55,650.00	
Unaccounted rent expense		55,000.00	756,798.08
Total			₱ 608,248.08
Add: Net Operating Loss Carry-over (NOLCO)			148,550.00
Adjusted taxable income			₱ 756,798.08
Basic Income Tax due (30%)			₱ 227,039.42
Less: Tax credits/payments per return			
Prior year's excess credits	₱ 23,711.67		
Creditable Tax Withheld per return	22,000.00		
Tax paid per ITR		₱ 45,711.67	
Less: Excess Minimum Corporate Income Tax (MCIT) carried over		8,800.00	
Amount carried over to succeeding year		36,911.67	-
Basic Tax Due			₱ 227,039.42
Add: Interest (4.16.10 to 9.20.13)			155,879.67
TOTAL AMOUNT DUE			**₱ 382,919.09**

II. VALUE-ADDED TAX		
Gross Sales per VAT returns		₱ 440,000.00
Add: Income not subjected to VAT	₱904,467.00	
Unaccounted rent expense	55,000.00	959,467.00
VATable sales per audit		₱1,399,467.00
Output tax		₱ 167,936.04
Less: Input tax	₱ 31,131.63	
Less: Unsupported input tax	31,131.63	-

[15] Exhibit "P-3", Docket, pp. 347 to 350; Exhibit "R-13", BIR Records, pp. 330 to 334.

VAT due	₱ 167,936.04
Less: Payment	21,668.37
Basic tax due	₱ 146,267.67
Add: Interest (1.26.10 to 9.20.13)	106,835.51
TOTAL AMOUNT DUE	**₱253,103.18**

III. EXPANDED WITHHOLDING TAX (EWT)	
Basic Tax due	₱ 5,565.00
Add: Interest (1.16.10 to 9.20.13)	4,095.23
TOTAL AMOUNT DUE	**₱9,660.23**

Correspondingly, petitioner filed the instant *Petition for Review* before this Court on September 20, 2013.[16]

On January 24, 2014, respondents filed his *Answer*,[17] interposing the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:

5. 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)*;

6. 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)*;

7. At the outset, the Final Decision on Disputed Assessment dated August 16, 2013 which adopted the findings as laid down in the Formal Assessment Notice (FAN) and its Details of Discrepancies both dated December 10, 2012, reflect the internal revenue liabilities of the petitioner for the taxable year 2009 ended as a

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[16] Docket, pp. 6 to 23.
[17] Docket, pp. 105 to 109.

result of the failure of the petitioner to submit the original documents despite the considerable period of time given to the latter to support its protest and request for reinvestigation. Consequently, the failure of the petitioner to submit relevant supporting documents made the assessment, hereunder reproduced, against the petitioner final and executory pursuant to Section 228 of the Tax Code.

INCOME TAX

- **Unrecorded gain or sale of motor vehicle, P646,148.08**- Verification disclosed that disposed of a motor vehicle with the cost of P623,00.00, on which it failed to record/report the gain on sale amounting to P646,148.08 in the FS/ITR. Consequently, the same was assessed pursuant to Section 32 of the NIRC, as amended.

- **Disallowed professional fee due to non-withholding of tax P55,650.00**- Verification disclosed that petitioner failed to withhold and remit the correct withholding taxes on its income payments of professional fees, hence, disallowed pursuant to Section 34(K) and accordance with Section 57 of the Tax Code, as amended, which expressly provides that '*...any amount paid or payable which is otherwise deducted from, or taken into account in computing the gross income, or for which depreciation or amortization may be allowed under this Section shall be allowed as deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue.*

- **Unaccounted Rent Expense, P55,000.00**- As stated in the report, Analysis of 1601-E and Financial statement showed unaccounted payments for rental m the amount of P55,000.00. Hence, the same was considered undeclared income following the case of Perez v. CTA and CIR dated May 30, 1958 and assessed for deficiency income tax pursuant to Section 32 of the NIRC.

- **Net Operating Loss Carry-Over, P148,550.00**- Verification disclosed that petitioner's operation showed taxable income instead of net operating loss as previously claimed in its ITR. The tax benefit of this amount has already been forwarding to succeeding period as provided for under Section 34(D)(3) of the NIRC which states that '*The net operating loss of the business or enterprise for any taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as deduction from gross income for the next (3) consecutive taxable years immediately following the year of such loss.*'

- **Excess MCIT carried over to next period, P8,800.00**- Verification disclosed that petitioner's final return filed resulted to excess MCIT amounting to P8,800.00. This was excluded in the computation of deficiency income tax because this shall be carried forward and credited against petitioner's normal corporate income tax for the (3) immediately succeeding taxable year pursuant to Section 27 (E)(2) of the 1997 Tax Code.

- **Excess Credit Carried-Over to Succeeding year- P36,911.67**- The excess tax credit reflected in petitioner's Annual Income tax return cannot be credited against the deficiency income tax considering the said amount has already been forwarded to succeeding periods as provided by Section 76 (B) of the National Internal Revenue Code and Section 2.58 (C) of Revenue Regulation 2-98.

VALUE ADDED TAX

- **Income not subjected to VAT P904,467.00**- In relation to the above, the proceeds from sales of motor vehicle in the amount of P904,467.00 should also be subjected to VAT pursuant to Section 108 of the tax code.

- **Unaccounted Rent expense, P55,000.00** - In relation to the above, based on such income of P55,000.00, petitioner was assessed of value added tax pursuant to Section 110 of the Tax Code 1997, in relation to Section 113 and 237 of the same Code.

NA

EXPANDED WITHHOLDING TAX

- **Basic tax due on non-withholding P5,565.00**- Verification disclosed that petitioner failed to pay the corresponding expanded withholding tax on its income payments pursuant to 2.57.2 of Revenue Regulation 2-98, as amended.

8. 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, thus, 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**."

Petitioner filed a *Reply* on February 7, 2014[18], alleging, among others, that petitioner admits that it made an oversight mistake in Paragraph 4 of its Petition for Review when it stated that BIR RDO No. 52 is under the supervision of Revenue Region 7; that nonetheless, the paragraph immediately preceding it shows that petitioner was well aware that BIR RDO No. 52 is under the BIR Revenue Region 8's jurisdiction. More importantly, petitioner seeks to controvert respondent's allegation that it failed to submit supporting documents allegedly stated in paragraph 17 of the Petition for Review. Petitioner counter-alleges that in said paragraph, it merely stated that petitioner opted not to submit the original receipts and documents as insisted by respondents, but was more than willing to present the originals for comparison purposes with the photocopies already submitted. However, petitioner insists that by no stretch of the imagination does such allegation admit a failure on its part to submit supporting documents.

During the Pre-Trial Conference held on June 20, 2014[19], the parties were directed to submit their Joint Stipulation of Facts and Issues on the basis of the proceedings held on said date. On July 7, 2014, the parties filed their *Joint Stipulation of Facts and Issues.*[20] In the Resolution dated July 22, 2014,[21] the Court directed the parties to

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[18] Docket, pp. 111 to 118.
[19] Order dated June 20, 2014, Docket, pp. 172-173
[20] Docket, pp. 174 to 177.
[21] Docket, pp. 180 to 181.

submit a *Supplemental Joint Stipulation of Facts and Issues* stating the list of documents to be presented, the names of their witnesses, and the trial dates agreed upon by the parties. In compliance thereto, the parties filed their *Supplemental Joint Stipulation of Facts and Issues* on August 7, 2014.[22]

In the Resolution dated August 18, 2014, the parties' *Joint Stipulation of Facts and Issues* and *Supplemental Joint Stipulation of Facts and Issues* were approved by the Court.[23] Subsequently, the Court issued the Pre-Trial Order dated August 28, 2014.[24]

During trial, petitioner presented its Director, Racquel Singson-Jugo,[25] as its sole witness. For their part, respondents presented as their lone witness, Revenue Officer Arnulfo Bilason.[26]

Thereafter, the Court considered the case submitted for decision on December 14, 2015[27], taking into consideration the filing of petitioner's *Memorandum* on December 1, 2015,[28] and respondents' failure to submit their memorandum despite lapse of the given period to do so.[29]

Hence, this Decision.

THE ISSUES

The parties stipulated the following issue[30] for resolution of this Court, to wit:

> "WHETHER OR NOT PETITIONER IS LIABLE FOR THE DEFICIENCY TAXES, NAMELY, INCOME TAX, VALUE ADDED TAX AND EXPANDED WITHHOLDING TAX FOR TAXABLE YEAR 2009, AS EMBODIED IN THE FINAL DECISION ON DISPUTED ASSESSMENT DATED AUGUST 16, 2013."

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[22] Docket, pp. 185 to 189.
[23] Docket, pp. 196 to 197.
[24] Docket, pp. 199 to 207.
[25] Minutes of the Hearing dated October 7, 2014, Docket, pp. 316 to 319.
[26] Minutes of the Hearing dated July 28, 2015, Docket, pp. 467 to 468.
[27] Resolution dated December 14, 2015, Docket, p. 515.
[28] Docket, pp. 494 to 512.
[29] Records Verification dated December 4, 2015, Docket, p. 513.
[30] Joint Statement of the Issues, JSFI, Docket, p. 176.

THE COURT'S RULING

The instant *Petition for Review* is partly meritorious.

Respondent contends that the assessment against petitioner has become final, executory, and demandable, for the latter's alleged failure to submit original documents in support of its protest. Considering that this matter relates to the jurisdiction of this Court, the same shall be addressed first.

Needless to state, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[31]

This Court is endowed with jurisdiction.

Section 228 of the NIRC of 1997 read as follows:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx xxx xxx
>
> The taxpayer 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**

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[31] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

> **the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> xxx xxx xxx." *(Emphasis supplied)*

In relation thereto, Section 3.1.5 of Revenue Regulations (RR) No. 12-99[32] provides as follows, to wit:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.5 *Disputed Assessment.* – **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.** xxx.
>
> xxx xxx xxx
>
> **The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable.** The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.
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> xxx xxx xxx." *(Emphases supplied)*

Based on the foregoing provisions, petitioner is mandated to submit the required documents in support of its protest within sixty (60) days from date of filing of the protest letter, otherwise, the

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[32] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated September 6, 1999.

assessment shall become final. Such being the case, since petitioner filed its *Protest* on January 10, 2013,[33] it had until March 11, 2013 within which to submit the relevant supporting documents to its protest.

Records show that on March 11, 2013 petitioner sent to respondent BIR RDO No. 52 a letter together with certain documents in support of its *Protest*.[34] Petitioner, therefore, was able to submit relevant supporting documents within 60 days from the filing of the said *Protest*.

Moreover, the Court finds that the failure of petitioner to submit original receipts and documents in support of its protest did not render the assessments final, executory, and demandable.

Records further indicate that petitioner was not inclined to submit the original receipts and documents, but was willing to present them for purposes of comparison only as evidenced by its letter-reply dated July 10, 2013,[35] to wit:

> "July 10, 2013
>
> **Mr. ARNULFO S. BILASON**
> Revenue Officer
> **BUREAU OF INTERNAL REVENUE**
> Revenue District Office No. 52
> Paranaque City
>
> Re: **<u>Viricson Corporation FAN for 2009</u>**
>
> Dear Mr. Bilason:
>
> Thank you for your letter dated June 25, 2013, which we received on July 3, 2013.
>
> We have advised our client to comply with your request regarding the original receipts and documents. However, we are not inclined to submit them. We will accompany our client with the originals but we will not leave them with your good office. This is to ensure that should your good office deny our client's Protest, we will have the originals intact for presentation to the Court of Tax Appeals.
>
> We trust we have made our client's position clear. We look

[33] Exhibit "P-4", Docket, pp. 351 to 354.
[34] Exhibits "P-5", including submarkings, Docket, pp. 362 to 368.
[35] Exhibit "P-6", Docket, p. 369.

forward to the speedy disposition of this deficiency tax assessment.

Very truly yours,

(signed)
Rodolfo O. Reyes
Senior Partner"

Thus, the assessment against petitioner has not become final, executory, and demandable, on the ground of failure to submit original documents in support of its protest within 60 days from the filing of said protest. Such being the case, the Court has jurisdiction over the instant case.

The Court will now proceed to determine the propriety of the said assessments.

Petitioner is not liable for the subject deficiency income tax assessment in the amount of ₱382,919.09.

Respondents assessed petitioner of deficiency income tax in the amount of ₱382,919.09, computed as follows:[36]

I. INCOME TAX			
Taxable Income (Loss) per Income Tax Return (ITR)			₱ (148,550.00)
Add: Adjustments/Disallowance			
Unrecorded gain on sale of motor vehicle		₱ 646,148.08	
Disallowed professional fee due to non-withholding		55,650.00	
Unaccounted rent expense		55,000.00	756,798.08
Total			₱ 608,248.08
Add: Net Operating Loss Carry-over (NOLCO)			148,550.00
Adjusted taxable income			₱ 756,798.08
Basic Income Tax due (30%)			₱ 227,039.42
Less: Tax credits/payments per return			
Prior year's excess credits	₱ 23,711.67		
Creditable Tax Withheld per return	22,000.00		
Tax paid per ITR		₱ 45,711.67	
Less: Excess Minimum Corporate Income Tax (MCIT) carried over		8,800.00	
Amount carried over to succeeding year		36,911.67	-
Basic Tax Due			₱ 227,039.42

[36] Exhibit "P-3", Docket, pp. 347 to 350.

Add: Interest (4.16.10 to 9.20.13)	155,879.67
TOTAL AMOUNT DUE	**₱ 382,919.09**

The deficiency income tax assessment is hinged on the following items, to wit:

A.	Unrecorded gain on sale of motor vehicle	₱646,148.08
B.	Disallowed professional fee due to non-withholding	55,650.00
C.	Unaccounted rent expense	55,000.00
D.	Disallowed NOLCO	148,550.00
E.	Disallowed excess MCIT carried over	8,800.00
F.	Disallowed amount carried over to succeeding year	₱ 36,911.67

A. Unrecorded gain on the sale of motor vehicle – ₱646,148.08

Respondents' verification disclosed that there was a disposal of motor vehicle with the cost of ₱623,000.00, and that petitioner failed to record or report the gain on sale amounting to ₱646,148.08 in its Audited Financial Statements or ITR as other income; hence, it was assessed on the basis of Section 32 of the NIRC of 1997, as amended. The said amount of ₱646,148.08 is determined by respondents as follows:[37]

Schedule 1:		
Proceeds from sale of motor vehicle		₱904,467.00
Less: Book Value as of July 31, 2009		
Acquisition Cost	₱623,000.00	
Accumulated Depreciation	₱364,681.08	258,318.92
Unrecorded Gain on Sale of Motor Vehicle		₱646,148.08

Petitioner disputes the assessment for being an erroneous finding and that the basis or source as to how respondents arrived at such amount was not disclosed or made apparent in their correspondences. According to petitioner, the above-mentioned motor vehicle was a 1996 Honda Accord 2.2 A/T and was the subject of the Deed of Sale dated July 30, 2009 between the late Ricardo T. Singson and Mr. Alfredo S. Marbella.[38] Petitioner claims that only gains derived from dealings in property are considered as gross income for tax purposes pursuant to Section 32(A)(3) of the NIRC of 1997, as amended. As such, only the actual gain derived by

[37] Schedule 1, Details of Discrepancy, FDDA, Exhibit "P-3", Docket, p. 349.
[38] Exhibit "P-4A", Docket, p. 355.

petitioner from said sale amounting to ₱200,000.00 must be included in its gross income for taxable year 2009.[39]

On this score, the Court rules in favor of petitioner.

It was error for respondents to treat the amount of ₱904,467.00 as *"Proceeds from sale of motor vehicle"*, because the same actually represents the *"Cost"* of the *"Retirement/disposals"* of *"Motor Vehicle"*. This is clear in petitioner's Audited Financial Statements,[40] which reflect as follows:

	2009			
	Real Property, & Leasehold Improvements	Motor Vehicle	Furniture and Fixtures	Total
Costs				
Beginning balance	₱ 3,195,319	₱ 623,000	₱ 264,696	₱ 4,083,015
Additions		1,710,467	-	1,710,467
Retirement/disposals		*(904,467)*	-	*(904,467)*
Ending Balance	₱ 3,195,319	₱ 1,429,000	₱ 264,696	₱ 4,889,015
Accumulated Depreciation and Impairment Loss				
Beginning balance	₱ 849,603	₱ 330,575	₱ 185,815	₱ 1,365,992
Depreciation	39,795	58,468	12,588	110,850
Retirement/disposals	-	-	-	-
Ending balance	₱ 889,397	₱ 389,043	₱ 198,403	₱ 1,476,843
Net Book Value	₱ 2,305,922	₱ 1,039,957	₱ 66,294	₱ 3,412,173

Needless to state, the *"Cost"* of the *"Retirement/disposals"* of *"Motor Vehicle"* cannot be equated with the *"Proceeds from sale of motor vehicle"*, the latter being the amount received because of the said sale. The Accounting and Financial Reporting Policies of petitioner, as reflected in its Notes to Audited Financial Statements, enlighten Us as to the composition of the above-stated *"Cost"* of petitioner's *"Properties and Equipment"*, to wit:

> "**Properties and equipment, except for land, is stated at acquisition cost less accumulated depreciation and amortization and any impairment in value.** Land is stated at cost less any impairment in value.
>
> **The <u>initial cost</u> of property and equipment consists of <u>its purchase price</u>, including <u>import duties and non-refundable purchase taxes (if any) and any directly</u>**

[39] Petitioner's Memorandum, Docket, pp. 498 to 500.
[40] Petitioner's Audited Financial Statements for the year ended December 31, 2009, BIR Records, p. 7.

> **attributable cost of bringing the asset to the location and condition for its intended use. Subsequent costs that can be measured reliably are added to the carrying amount of the asset when it is probable, that future economic benefits associated with the asset will flow to the Company.** The costs of day to day servicing of an asset are recognized as an expense in the period in which they are incurred."[41] *(Emphasis and underscoring supplied)*

Thus, respondents' finding that there was *"Unrecorded Gain on Sale of Motor Vehicle"* cannot be sustained, because the same was erroneously arrived at.

In *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*,[42] the Supreme Court held:

> "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 the 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 a 'naked assessment,' *i.e.*, without any**

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[41] BIR Records, p. 18.
[42] G.R. No. 136975, March 31, 2005.

> **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 the evidence introduced and its ultimate determination must find support in credible evidence.***" *(Emphases and underscoring supplied)*

Considering the finding of *Unrecorded Gain on Sale of Motor Vehicle* in the amount of ₱646,148.08 is utterly without foundation, the same shall be cancelled.

B. Disallowed professional fee due to non-withholding of tax – ₱55,650.00

Respondents' verification disclosed that petitioner failed to withhold and remit the correct withholding taxes on its income payments of professional fees in the amount ₱55,650.00, pursuant to Section 34(K) and in accordance with Section 57 of the NIRC of 1997, as amended, which expressly provides that *"any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue."* Thus, the said amount was disallowed as a deduction from petitioner's gross income.

However, petitioner claims that the professional fee was paid to a general professional partnership (GPP) which is exempted from withholding in accordance with Section 2.57.5(B)(4) of RR No. 2-98, as amended.

The Court agrees with petitioner.

GPPs are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.[43] Section 26 of the NIRC of 1997 provides the taxation of GPPs as follows:

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[43] Section 22(B), NIRC of 1997.

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> "SEC. 26. *Tax Liability of Members of General Professional Partnerships.* — **A general professional partnership as such shall not be subject to the income tax imposed under this Chapter.** Persons engaging in business as partners in a general professional partnership shall be liable for income tax only in their separate and individual capacities.
>
> For purposes of computing the distributive share of the partners, the net income of the partnership shall be computed in the same manner as a corporation.
>
> Each partner shall report as gross income his distributive share, actually or constructive received, in the net income of the partnership." *(Emphasis supplied)*

As a consequence of the non-imposition of income tax on GPPs, Section 2.57.5 of RR No. 2-98[44], as amended by Section 4 of RR No. 14-02[45], exempts the same from withholding of creditable withholding tax, to wit:

> "Sec. 2.57.5. ***Exemption from Withholding.*** — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> (A) National government agencies and its instrumentalities including provincial, city, municipal governments *and barangays except government-owned and controlled corporations.*
>
> (B) **Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:**
>
> xxx xxx xxx
>
> (4) **General professional partnerships**

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[44] SUBJECT: Implementing Republic Act No. 8424, *"An Act Amending the National Internal Revenue Code, as amended"* relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

[45] SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended.

xxx xxx xxx." *(Emphases supplied)*

To support its claim, petitioner presented the official receipt[46] issued by Sicangco Menor Villanueva and Co., a GPP, as evidenced by its Amended Articles of Partnership[47] and Withdrawal of Partner with Amended Articles of Partnership[48]. Hence, the Court finds respondents' disallowance of petitioner's claimed deduction for professional fees in the amount of ₱55,650.00 without factual or legal basis.

Consequently, the deficiency income tax assessment arising from the disallowed professional fees shall likewise be cancelled.

C. Unaccounted rent expense – ₱55,000.00

Respondents' analysis of petitioner's BIR Form No. 1601-E and Audited Financial Statements showed unaccounted payments for rentals in the amount of ₱55,000.00. As a result, the same was considered undeclared income and was assessed deficiency income tax pursuant to Section 32 of the NIRC of 1997, as amended, computed as follows:[49]

Income Payments	Per FS/ITR	Per 1601-E	Unaccounted Expense
Rental	₱ -	₱55,000.00	₱55,000.00

Petitioner avers that as evident from the Contract of Lease[50] entered into with Mr. Hitoshi Sakamoto, the term of lease was from May 1, 2009 to April 30, 2010. According to petitioner, it reported all the rental payments made from May 1, 2009 to December 31, 2009; and the amount of ₱440,000.00 constitutes eight (8) months of rental which was duly reported in its Annual ITR for calendar year 2009. Thus, petitioner questions respondents' insistence that there are unaccounted rental payments for taxable year 2009, because the amount of ₱55,000.00 assessed by respondents represents rental payment for January 2010, which should not be included in the assessment for 2009.[51]

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[46] Exhibit "P-5-b", Docket, p. 365.
[47] Exhibit "P-10", Docket, pp. 373 to 384.
[48] Exhibit "P-9", Docket, pp. 385 to 393.
[49] Exhibit "P-3", FDDA, Details of Discrepancy, Docket, p. 349.
[50] Exhibit "P-4C", Docket, pp. 356 to 360.
[51] Petitioner's Memorandum, Docket, pp. 502 to 503.

We rule in favor of petitioner.

It must be pointed out that respondents' assessment was actually based on petitioner's remittance of the amount of ₱2,750.00 representing 5% withholding tax on the rental payment of ₱55,000.00 for the month of May 2009, as clearly indicated in petitioner's BIR Form Nos. 1601-E[52] (*Monthly Remittance Return of Creditable Income Taxes Withheld [Expanded] for May 2009)* and 1604-E[53] (*Annual Information Return of Creditable Income Taxes Withheld [Expanded]/Income Payments Exempt from Withholding Tax for 2009)*.

Verily, petitioner had rental expense in the amount of ₱55,000.00 which was not declared by petitioner as deduction from its gross income as shown in its AFS[54] and Annual ITR[55]. For the reason that the amount in petitioner's BIR Form No. 1601-E is higher than those reflected in the AFS and ITR, respondents inferred that petitioner had undeclared income.

The Court disagrees with respondents.

The three (3) elements on the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.[56] Income tax is assessed on income received from any property, activity or service.[57] Such being the case, the imposition or assessment of income tax is not based on an undeclared disbursement, but only when there was an income, and such income was received or realized by the taxpayer.

In this case, said elements are not present. The BIR merely imposed income tax on petitioner simply because there was an *"Unaccounted rent expense"*, nothing more.

Furthermore, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the

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[52] BIR Records, p. 75.
[53] BIR Records, p. 83.
[54] Note 14, AFS, BIR Records, p. 5.
[55] BIR Records, p. 34.
[56] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[57] *Supra.*

income tax law is to claim a deduction beyond the amount authorized therein.[58] Hence, even granting that there is indeed an unaccounted rent expense, the same is not prohibited by law. Notably, the imputation of alleged undeclared income is based on a mere presumption that since there was an undeclared expense, there was likewise undeclared income which corresponds to it.

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[59]

Thus, for lack of factual and bases, the deficiency income tax assessment corresponding to the alleged undeclared income from unaccounted rent expense of ₱55,000.00 shall be cancelled.

D. Disallowed NOLCO (₱148,550.00), excess MCIT carried over (₱8,800.00), and amount carried over to succeeding years (₱36,911.67)

Respondents disallowed the NOLCO and MCIT incurred for the year 2009 and the carry-over of excess tax credit which were obtained from Lines 23B, 27, and 31, respectively, of the Annual ITR[60].

The reasons for the said disallowances are indicated in the Details of Discrepancies in the FDDA dated August 16, 2013, to wit:[61]

- **<u>Net Operating Loss Carry-Over, P148,550.00</u>**- Verification disclosed that petitioner's operation showed taxable income instead of net operating loss as previously claimed in its ITR. The tax benefit of this amount has already been forwarding to succeeding period as provided for under Section 34(D)(3) of the NIRC which states that '*The net operating loss of the business or enterprise for any*

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[58] *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.*, G.R. No. L-19727, May 20, 1965.
[59] *Collector of Internal Revenue vs. Benipayo*, G.R. No. L-13656, January 31, 1962.
[60] BIR Records, p. 34.
[61] Exhibit "P-3", Docket, p. 350; BIR Records, p. 330.

> *taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as deduction from gross income for the next (3) consecutive taxable years immediately following the year of such loss.'*

- **Excess MCIT carried over to next period, P8,800.00**- Verification disclosed that petitioner's final return filed resulted to excess MCIT amounting to P8,800.00. This was excluded in the computation of deficiency income tax because this shall be carried forward and credited against petitioner's normal corporate income tax for the (3) immediately succeeding taxable year pursuant to Section 27 (E)(2) of the 1997 Tax Code.

- **Excess Credit Carried-Over to Succeeding year-P36,911.67**- The excess tax credit reflected in petitioner's Annual Income tax return cannot be credited against the deficiency income tax considering the said amount has already been forwarded to succeeding periods as provided by Section 76 (B) of the Nation Internal Revenue Code and Section 2.58 (C) of Revenue Regulation 2-98.

The Court believes that it was improper for respondents to disallow the said NOLCO, excess MCIT, and excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amounts redounds to the succeeding years. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

Furthermore, based on the Court's findings as discussed above, petitioner is not liable for any deficiency income tax for taxable year 2009; hence, there is no factual or legal basis for respondents to disallow the said NOLCO, excess MCIT, and excess tax credits, and must perforce be allowed to be carried-over to the succeeding year.

In sum, the Court finds petitioner not liable for any deficiency income tax.

Petitioner is partly liable to the subject VAT assessment.

Respondents assessed petitioner of deficiency VAT in the amount of ₱253,103.18, as follows:[62]

II. VALUE-ADDED TAX		
Gross Sales per VAT returns		₱ 440,000.00
Add: Income not subjected to VAT	₱904,467.00	
Unaccounted rent expense	55,000.00	959,467.00
VATable sales per audit		₱1,399,467.00
Output tax		₱ 167,936.04
Less: Input tax	₱ 31,131.63	
Less: Unsupported input tax	31,131.63	-
VAT due		₱ 167,936.04
Less: Payment		21,668.37
Basic tax due		₱ 146,267.67
Add: Interest (1.26.10 to 9.20.13)		106,835.51
TOTAL AMOUNT DUE		**₱253,103.18**

Thus, respondents' deficiency VAT assessment is anchored on the following items, to wit:

A. Income not subjected to VAT	₱904,467.00
B. Unaccounted rent expense	₱ 55,000.00
C. Unsupported input tax	₱ 31,131.63

A. The sale of the motor vehicle is subject to VAT.

The assessed income not subject to VAT in the amount of ₱904,467.00 pertains to the alleged proceeds from sale of motor vehicle as discussed earlier.

Respondents found that petitioner's retirement or disposal of motor vehicle was not subjected to VAT in violation of pertinent provisions of the Tax Code.

On the other hand, petitioner contends that the sale of motor vehicle owned by petitioner was merely an isolated transaction since it is not directly related to its regular business activity of leasing out real properties. Thus, such sale was not done in the course of business. Consequently, VAT cannot be imposed on such sale.

[62] Exhibit "P-3", Docket, pp. 347 to 350.

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Respondents are partly correct.

In *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, etc.*,[63] the Supreme Court ruled:

> "Mindanao II asserts that the sale of a fully depreciated Nissan Patrol is not an incidental transaction in the course of its business; hence, it is an isolated transaction that should not have been subject to 10% VAT.
>
> Section 105 of the 1997 Tax Code does not support Mindanao II's position:
>
>> SEC. 105. *Persons Liable.* – Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>>
>> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>>
>> The phrase 'in the ordinary course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, **including transactions incidental thereto**, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>>
>> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business. (Emphasis supplied)
>
> Mindanao II relies on *Commissioner of Internal Revenue v. Magsaysay Lines, Inc.* (*Magsaysay*)[64] and

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[63] G.R. Nos. 193301 and 194637, March 11, 2013.
[64] 529 Phil. 64 (2006).

> *Imperial v. Collector of Internal Revenue (Imperial)*[65] to justify its position. *Magsaysay*, decided under the NIRC of 1986, involved the sale of vessels of the National Development Company (NDC) to Magsaysay Lines, Inc. We ruled that the sale of vessels was not in the course of NDC's trade or business as it was involuntary and made pursuant to the Government's policy for privatization. *Magsaysay*, in quoting from the CTA's decision, imputed upon *Imperial* the definition of 'carrying on business.' *Imperial*, however, is an unreported case that merely stated that 'to engage' is to embark in a business or to employ oneself therein.'
>
> **Mindanao II's sale of the Nissan Patrol is said to be an isolated transaction. <u>However, it does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability.</u>** Indeed, a reading of Section 105 of the 1997 Tax Code would show that a transaction 'in the course of trade or business' includes 'transactions incidental thereto.' Mindanao II's business is to convert the steam supplied to it by PNOC-EDC into electricity and to deliver the electricity to NPC. **In the course of its business, Mindanao II bought and eventually sold a Nissan Patrol. Prior to the sale, the Nissan Patrol was part of Mindanao II's property, plant, and equipment. Therefore, the sale of the Nissan Patrol is an incidental transaction made in the course of Mindanao II's business which should be liable for VAT.**" *(Emphases and underscoring supplied)*

It is clear from the foregoing jurisprudential pronouncements that it does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability; and that a criteria for determining whether a sale of an asset may be treated as an incidental transaction is that when said asset was part of the taxpayer's property, plant and equipment.

In this case, petitioner admits that the sale of motor vehicle, as found by respondents, refer to a 1996 Honda Accord 2.2 A/T and was the subject of the Deed of Sale dated July 30, 2006 with a selling price of ₱200,000.00; and that the same is fully depreciated when it was sold.[66] As a corollary, according to the Accounting and Financial

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[65] 97 Phil. 992 (1955).
[66] Exhibit "P-4-a" vis-à-vis Purpose for which the said Exhibit was offered, Docket, p.

Reporting Policies of petitioner on *"Properties and Equipment"* as stated in the Notes to its Audited Financial Statements, the treatment for fully depreciated assets is as follows:

> "Fully depreciated assets are retained in the accounts until they are no longer in use and no further charge for depreciation is made in respect of those assets."[67]

Correspondingly, since there is no showing that the said sale of motor vehicle is not an incidental transaction and that the subject motor vehicle was retained in the accounts under petitioner's *"Properties and Equipment"* or was part thereof, the same sale is subject to VAT. However, in view of the fact that the selling price is only ₱200,000.00, the VAT should only be imposed on the said amount.

B. Unaccounted rent expense – ₱55,000.00

This assessment was based on the finding that petitioner had rent expense of ₱55,000.00, which was not accounted for in its Audited Financial Statements. As already pointed out, respondents concluded that petitioner had earned income which it failed to declare.

As in the case of the income tax imposition, the Court finds respondents' position without merit.

It must be remembered that the 12% VAT is imposed, *inter alia*, on the seller or lessor of the goods or properties, pursuant to Section 105 of the NIRC of 1997, to wit:

> "SEC. 105. *Persons Liable.* — **Any person who, in the course of trade or business, sells,** barters, exchanges, **leases goods or properties**, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the Code.
>
> xxx xxx xxx." *(Emphases supplied)*

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355 and 330, respectively. *Cf.* Petitioner's Memorandum, Docket, p.
[67] BIR Records, p. 17.

Furthermore, the VAT, insofar as leasing of goods or properties is concerned, is assessed on the *"gross receipts derived from the sale or exchange of services, including the use or lease of properties"*.[68] In this connection, the law defines *"gross receipts"* as follows:

> "...the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."[69]

Thus, what is critical to be shown, in the imposition or assessment of VAT in the sale and the lease of goods or properties, is that the taxpayer is paid an amount of money or its equivalent, representing the contract price, compensation, service fee, rental, etc. Simply put, the VAT is imposed when one leases goods or properties and is paid therefor, not when one rents out and pays for the rental.

Correspondingly, VAT should not be imposed on the supposed *"Unaccounted rent expense"* amounting to ₱55,000.00.

C. Unsupported input tax – ₱31,131.63

Respondents disallowed the creditable input taxes claimed by petitioner per VAT Returns for the latter's failure to comply with the invoicing requirement under Section 110 of the NIRC of 1997, as amended, in relation to Sections 113 and 237 of the same Code.[70]

Petitioner claims that in compliance with the invoicing requirements under Section 110 of the NIRC of 1997, it submitted to Revenue Officer Norberto De Mesa of BIR RDO No. 52 the schedule of output and input taxes attached to the Letter dated July 19, 2010.

The Court is not persuaded by petitioner's assertions.

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[68] Section 108(A), NIRC of 1997, as amended by RA 9337.
[69] *Supra.*
[70] Details of Discrepancy, FDDA, Exhibit "P-3", Docket, p. 350.

Under Section 8 of Republic Act (RA) No. 1125, this Court is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases.[71]

Here, petitioner did not submit the documents supporting its claimed input taxes of ₱31,131.63 for the Court's verification so as to ascertain whether the said supporting documents indeed complied with the invoicing requirements prescribed under Sections 113 and 237 of the NIRC of 1997, as amended. Hence, the Court cannot set aside respondents' disallowance of unsupported input tax.

In fine, petitioner shall be liable for basic deficiency VAT in the amount of ₱55,131.63, as computed below:

Gross Sales per VAT returns		₱ 440,000.00
Add: Income not subjected to VAT		
Proceeds from Sale of Motor Vehicle		200,000.00
VATable sales		₱ 640,000.00
Output tax		76,800.00
Less: Input tax	₱31,131.63	
Less: Unsupported input tax	₱31,131.63	-
VAT due		76,800.00
Less: Payment		21,668.37
Basic VAT due		**₱ 55,131.63**

Petitioner is not liable for the subject deficiency EWT assessment in the amount of ₱55,650.00.

The Court has already determined that the subject income payment amounting to ₱55,650.00 was made to a GPP, which is exempt from income tax pursuant to the aforequoted Section 26 of the NIRC of 1997, and consequently, to withholding tax, as provided under Section 2.57.5(B)(4) of RR No. 2-98, as amended. Thus, respondents' deficiency EWT assessment on the said income payment in the aggregate amount of ₱9,660.23 shall be cancelled.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The

[71] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

deficiency income tax and EWT assessments issued by respondents against petitioner for taxable year 2009 are hereby **CANCELLED** and **SET ASIDE**. On the other hand, petitioner is **ORDERED TO PAY** the deficiency VAT for taxable year 2009 in the modified amount of ₱68,914.54, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic VAT due	₱ 55,131.63
Add: 25% Surcharge	13,782.91
Total Deficiency VAT	**₱68,914.54**

In addition, petitioner is likewise **ORDERED TO PAY** delinquency interest at the rate of 20% per annum on the total amount of ₱68,914.54, computed from September 20, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(With Separate Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

VIRICSON CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE; OFFICE OF THE REGIONAL DIRECTOR, BUREAU OF INTERNAL REVENUE, REVENUE REGION NO. 8-MAKATI CITY; BUREAU OF INTERNAL REVENUE, REVENUE DISTRICT OFFICE NO. 52, PARAÑAQUE,
Respondents.

CTA CASE NO. 8709

Members:
DEL ROSARIO, Chairperson,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
JAN 24 2017 3:50 pm

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SEPARATE OPINION

With due respect, I concur with the result and disquisition of the Decision but dissent from the majority's non-imposition of deficiency interest on deficiency Value Added Tax (VAT).

It is my position that the imposition of deficiency interest, under Section 249(B) of the NIRC of 1997 in relation to the provisions of Section 247(a) and 249(a) of the same Code, as an addition to the tax or deficiency tax clearly embraces failure to pay all taxes imposed in the Tax Code, without any regard to the Title of the Code where provisions imposing particular taxes are textually located.[1] Otherwise stated, it applies to all internal revenue taxes and not only to selected taxes, i.e. income tax, estate tax and donor's tax.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[1] Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et. al., G.R. No. 106949-50, December 1, 1995.