REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ITHIEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8872

Members:

CASTAÑEDA, JR., Chairperson,
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

JUN 0 7 2017 1:30 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court are the following:

(1) Petitioner's Motion for Partial Reconsideration (to the Decision dated February 23, 2017) filed on March 10, 2017, sans respondent's comment; and

(2) Respondent's Motion for Partial Reconsideration, filed through registered mail on March 10, 2017 and received by the Court on March 22, 2017, with petitioner's Comment/Opposition (to Respondent's Motion for Partial Reconsideration dated March 10, 2017) filed on April 6, 2017.

For easy reference, the dispositive portion of the assailed Decision[1] reads:

> "In view thereof, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is liable to **PAY** the adjusted total amount of ₱6,406,869.78, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	25% Surcharge	Total
Income Tax	₱ 3,048,863.55	₱ 762,215.89	₱ 3,811,079.44
Value Added Tax	1,209,135.40	302,283.85	1,511,419.25
Expanded Withholding Tax	867,496.87	216,874.22	1,084,371.09
TOTAL	**₱ 5,125,495.82**	**₱ 1,281,373.96**	**₱ 6,406,869.78**

> In addition, petitioner is liable to pay:
>
> a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency taxes computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax Due	20% Deficiency Interest Computed from:
Income Tax	₱ 3,048,863.55	15-Apr-2010
Value-Added Tax	1,209,135.40	25-Jan-2010
Expanded Withholding Tax	867,496.87	13-Jan-2010

> b) Delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency taxes of ₱6,406,869.78 and on the deficiency interest which have accrued as aforementioned in (a), computed from August 26, 2014 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.
>
> **SO ORDERED.**"

In its Motion, petitioner asserts that: (1) The three (3) year prescriptive period should apply to the expanded withholding tax

[1] Docket, Vol. II, pp. 677-729.

deficiency assessment covering taxable year 2009; (2) It is not liable for deficiency income tax for taxable year 2009; and (3) It is not liable for deficiency VAT for taxable year 2009.

On the other hand, respondent asserts in his Motion that: (1) The ten (10) year prescriptive period is applicable to petitioner's deficiency VAT for the 1st to 3rd quarters of taxable year 2009; and (2) Petitioner failed to present sufficient evidence.

Based on the foregoing, the Court is presented with the following issues: (1) Whether the ten (10) year prescriptive period is applicable to petitioner's deficiency VAT for the 1st to 3rd quarters of taxable year 2009; (2) Whether the three (3) year prescriptive period should apply to the expanded withholding tax deficiency assessment covering taxable year 2009; (3) Whether petitioner is liable for deficiency income tax for taxable year 2009; and (4) Whether petitioner is liable for deficiency VAT for taxable year 2009.

The Court denies both motions.

The ten (10) year prescriptive period is not applicable to petitioner's deficiency VAT for the 1st to 3rd quarters of taxable year 2009

Respondent asserts that since petitioner made substantial under-declaration in its income, the ten (10) year prescriptive period is applicable to petitioner's deficiency VAT for the 1st to 3rd quarters of taxable year 2009.

Respondent's assertion is misplaced.

As found by the Court in the assailed Decision, respondent derived its presumption that there was a corresponding undeclared income due to petitioner's alleged undeclared expenses. Thus, the Court ruled that:

> "The imputation of alleged undeclared income is based on a mere presumption that since there were alleged undeclared expenses, there was likewise a corresponding undeclared income. Even if these alleged

> undeclared expenses are to be considered as income, the same will be offset by recording the equivalent payments as expenses. Hence, no taxable income will result from the said transactions.
>
> 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.
>
> Consequently, it necessarily follows that no VAT-able income will result from the said transactions. Therefore, there is no falsity or deviation from truth on the VAT returns submitted by petitioner.
>
> It must be stressed that like fraud, falsity also involves a question of fact and must not be presumed. In order to be sustained, it must be supported by sufficient evidence. Considering that respondent's allegation of falsity in petitioner's VAT return arose from a mere presumption, the 10-year prescriptive period will not apply."[2] (*Citations omitted*)

To stress, even if these alleged undeclared expenses are to be considered as income, the same will be offset by recording the equivalent payments as expenses. Hence, no taxable income will result from the said transactions. As such, it necessarily follows that no VAT-able income will result from the said transactions. Therefore, there is no falsity or deviation from truth on the VAT returns submitted by petitioner.

Thus, the Court finds respondent's assertion untenable.

The three (3) year prescriptive period is not applicable to the expanded withholding tax deficiency assessment covering taxable year 2009

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[2] Id., pp. 688-689.

To determine whether the three (3) year prescriptive period should apply to the expanded withholding tax deficiency assessment covering taxable year 2009, the Court shall re-examine the evidence submitted by the parties pertaining to petitioner's Professional Fees and Other Outside Services, as well as petitioner's Rentals.

a. Professional Fees and Other Outside Services

Respondent compared the professional fees paid by petitioner per alphalist of payees for the taxable year 2009 with the amount reported in petitioner's audited financial statements under the "Professional Fees and Other Outside Services" expense account and found the following discrepancy:[3]

Reference	Particulars	Amount
Exhibit P-10-AA-ICPA	Per ITR - Professional fees and other outside services	₱ 9,379,916.87
BIR Records pp. 92-96	Per Alphalist - Income payments subjected to 10% and 15% withholding tax	868,605.03
	Not subjected to withholding tax	**₱ 8,511,311.84**

The income payments subjected to 10% and 15% withholding tax are broken down below:

Supplier	Income Payment	EWT
Subjected to 10%:		
DC Electrical Contractor Inc.	₱ 70,000.00	₱ 7,000.00
EGY Engineering Consultants	20,000.00	2,000.00
Gerodias, Angelito	5,555.60	555.56
Artiaga, Aida	8,571.40	857.14
Bautista, Jumaline	27,729.90	2,772.99
Carag, Corazon	370.50	37.05
Cadaguit, Dario	1,115.70	111.57
Bembo, Josephine	296.40	29.64
Gayo, Maurito	46,248.90	4,624.89
Laluan, Engr. Reynaldo	4,666.63	466.66
Lambino, Raul	372,050.00	37,205.00
Recio, Magno	50,000.00	5,000.00
Subtotal	**₱ 606,605.03**	**₱ 60,660.50**
Subjected to 15%:		
De Guzman, Eduardo	262,000.00	39,300.00
Total	**₱ 868,605.03**	**₱ 99,960.50**

[3] Exhibit "R-11", Details of Discrepancies.

On the other hand, the ICPA reported that the Professional Fees and Other Outside Services account amounting to ₱9,379,916.87 consist of the following:[4]

Payments to contractors with 2% withholding tax	₱ 8,529,025.93
Professional fees with 10% withholding tax (per Alphalist)	387,272.22
Payments to GPP and exempt entity	222,399.10
Payments without withholding (shared expenses)	241,219.62
TOTAL	**₱ 9,379,916.87**

From the foregoing, petitioner asserts that the subject expense account does not comprise of professional fees <u>only</u> but also payments to contractors for other outside services.

The ICPA further broke down the amount of ₱8,529,025.93, which pertain to the payments to contractors subjected to 2% withholding tax, to wit:[5]

Payee	**Amount**	**Withholding Tax**
Alemania, Allan	₱ 487.50	₱ 9.75
Aramdillo Holdings Inc.	8,291,281.70	165,825.63
Christian Environmental Specialist Services	36,788.60	735.77
Collado, Rodrigo	9,141.00	182.82
Comoda, Renato	11,887.50	237.75
Deita, Aireen Duenas	98,724.79	1,974.50
Jandoc, Randy	3,285.31	65.71
Mabborang, Adona	19,203.52	384.07
Mercado, Catherine	48,492.32	969.85
Patriot Security & Investigation Specialists	9,733.69	194.67
TOTAL	**₱ 8,529,025.93**	**₱ 170,580.52**

However, the Court found that per Schedule 4 of BIR Form 1604-E,[6] petitioner made income payments in different amounts to the same suppliers, thus:

Payee	**Amount**	**Withholding Tax**
Alemania, Allan	₱ 16,790.51	₱ 335.81
Aramdillo Holdings Inc.	8,833,732.00	176,674.64

[4] Exhibit P-18, Annex B.1-ICPA.
[5] Exhibit "P-18", Annex B.2-ICPA.
[6] BIR Records pp. 92-96.

Christian Environmental Specialist Services	414,481.50	8,289.63
Collado, Rodrigo	9,141.00	182.82
Comoda, Renato	82,024.00	1,640.48
Deita, Aireen Duenas	98,724.79	1,974.50
Jandoc, Randy	3,285.31	65.71
Mabborang, Adona	23,156.00	463.12
Mercado, Catherine	48,492.32	969.85
Patriot Security & Investigation Specialists	1,351,006.35	27,020.13
TOTAL	**₱10,880,833.78**	**₱ 217,616.69**

As previously noted by the Court, petitioner's total income payments made to contractors for the taxable year 2009 amounted to ₱23,795,738.77.[7] Likewise, total income payments made to professionals and consultants amounted to ₱12,893,865.50.[8] Petitioner, as well as the ICPA, failed to show the different expense accounts where the entire payments were lodged, other than the professional fees and other outside services account.[9]

Petitioner accounted for the amount of ₱2,351,807.85, which is the difference between the amounts found by the Court of ₱10,880,833.78 and that reported by the ICPA of ₱8,529,025.93, as follows:[10]

Payee	**Renovation in Progress-Labor**	**Renovation in Progress-Overhead**	**Non-trade Receivables-CUSA**	**Materials, Supplies & Facilities**	**Research & Development**	**Total**
Alemania, Allan	₱ 7,378.14	₱ -	₱ 900.00	₱ 8,024.87	₱ -	₱ 16,303.01
Aramdillo Holdings Inc.	525,010.30	17,440.00	-	-	-	542,450.30
Christian Environmental Specialist Services	-	-	374,385.30	3,307.60	-	377,692.90
Collado, Rodrigo	-	-	-	-	-	-
Comoda, Renato	-	-	70,136.50	-	-	70,136.50
Deita, Aireen Duenas	-	-	-	-	-	-
Jandoc, Randy	-	-	-	-	-	-
Mabborang, Adona	-	-	-	-	3,952.48	3,952.48
Mercado, Catherine	-	-	-	-	-	-
Patriot Security & Investigation Specialists	-	-	1,341,272.66	-	-	1,341,272.66

[7] This amount is the sum of income payments made to corporate (WC120) and individual (WI120) contractors per Schedule 4 of BIR Form 1604-E.
[8] This amount is the sum of income payments made to professionals, lawyers, CPAs, engineers, etc. (WI010/WC010) and management and technical consultants (WI051/WC051) per Schedule 4 of BIR Form 1604-E.
[9] See Note 1, p. 691.
[10] Motion for Partial Reconsideration, Docket Vol. II, p. 738.

TOTAL	**₱532,388.44**	**₱ 17,440.00**	**₱1,786,694.46**	**₱11,332.47**	**₱ 3,952.48**	**₱2,351,807.85**

However, the reconciliation submitted by petitioner is not sufficient to prove that the income payments in the alphalist of payees indeed formed part of the professional and other outside services account in petitioner's audited financial statements. Absent the ledger of the subject expense account together with the Monthly Alphalist of Payees (MAP), the Court cannot ascertain whether the income payments recorded therein were subjected to withholding tax.

Thus, the disallowance of petitioner's professional fees and other outside services expense amounting to ₱8,511,311.84 should be maintained.

b. <u>Rentals</u>

Petitioner reiterates that out of the discrepancy of ₱327,313.70, the amount of ₱292,784.67 pertains to advance rental paid to lessors in taxable year 2008 and the withholding taxes of which were already paid and remitted in the same year:

Quezon City Treasurer's Office	₱ 66,315.79
Manolito/Procesa de Castro	226,468.88
Total	**₱ 292,784.67**

As found by the Court, the official receipt issued by the Quezon City Treasurer's Office (QCTO) in the amount of ₱63,000.00 is dated January 10, 2009.[11] Petitioner avers that the corresponding withholding tax for the rent paid for the month of January 2009 was withheld and recorded in 2008 when the same was processed and accrued for tax and accounting purposes. This is in accordance with Section 2.57.4 of Revenue Regulations No. 2-98 which provides:

> "SECTION 2.57.4. *Time of Withholding.*—The obligation of the payor to deduct and withhold tax under Section 2.57 of these regulations arises at the time an income is **paid or payable, whichever comes first**, the term 'payable' refers to the date the obligation

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[11] Exhibit "P-15.1-A.2-ICPA".

become[s] due, demandable or legally enforceable." *(Emphasis supplied)*

While the alphalist of payees subjected to withholding tax for the taxable year 2008 reflected payments to QCTO, the income payment reflected therein is in the amount of ₱862,105.40 with the corresponding withholding tax of ₱43,105.27. Petitioner did not submit the breakdown of the foregoing nor presented supporting documents that include an advance payment for the month of January 2009.

As to the amount of ₱226,468.88, the Court maintains its findings in the assailed Decision that:

> "As to the amount of ₱226,468.88, no evidence was presented to show that the alleged payment was made in 2008 for rent expenses pertaining to the succeeding period/year. Besides, the A/P Batch Listing-Invoice shows that in the year 2008, the amount of ₱226,468.88 was already recognized as rent expense, and not as prepaid expense."[12]

Moreover, a careful scrutiny of the alphalist of payees subjected to withholding tax for taxable year 2008 showed an income payment of the same amount to <u>Procesa F. De Castro</u> and income payments to <u>Manolito De Castro</u> amounting to ₱2,631,352.20.[13] Per ICPA report, petitioner made rental payments to Manolito De Castro,[14] and not to Procesa F. De Castro. Petitioner failed to submit the details of the income payments to Manolito De Castro in 2008 or to prove that payments made to Procesa F. De Castro formed part of its rent expense in the year 2009.

Aside from failing to present evidence that the payments were made in 2008, petitioner likewise failed to prove that taxes were withheld therefrom. Hence, the disallowance of petitioner's rent expense in the amount of ₱327,313.70 should remain.

Considering the foregoing findings, the Court sees no cogent reason to disturb its ruling. Thus, the Court maintains that these factual circumstances support the conclusion that petitioner

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[12] See Note 1, p. 694.
[13] Exhibit "P-15.2-M.3-ICPA".
[14] Exhibit "P-18", Annex C – ICPA.

committed falsity in its EWT Returns and as such, the ten (10)-year prescriptive period applies.

Petitioner is liable for deficiency income tax for taxable year 2009

The Court shall also re-examine its findings with respect to petitioner's deficiency income tax for taxable year 2009.

a. Professional Fees and Other Outside Services; Rentals

These items were already discussed in the immediately preceding discussion. Thus, the Court sees no cogent reason to disturb its findings in the assailed Decision.

b. Salaries and Wages

Petitioner merely rehashed its argument that the withholding taxes pertaining to salaries and wages were remitted to the BIR. However, petitioner failed to support the same. Thus, the Court uphold its findings with regard to the disallowed expenses due to non-withholding of taxes.

c. Undeclared Revenue

Petitioner also rehashed its assertion that the Allowance for Credit Losses of ₱1,097,742.00 should be deducted from the Trade Receivables for the year 2009 to come up with the ending balance of Accounts Receivable. As pointed by petitioner, Note 7 of its audited financial statements shows that:[15]

> "The average credit period on rentals is 30 days. No interest is charged on trade receivables. The Company has recognized an allowance for doubtful debts of 100% against all receivables from Shield Credit and Loans, Inc. because historical experience shows that receivables that are past due beyond 2006 are not recoverable.

[15] Exhibit "P-10-V-ICPA".

The concentration of credit risk is limited due to the customer base being large and unrelated. Accordingly, the directors believe that there is no further credit provision required in excess of the allowance for credit losses."

Based on the foregoing, the subject allowance may be related to the Trade Receivables account. However, petitioner failed to substantiate the same, *i.e.*, the Court cannot ascertain whether the receivables from Shield Credit and Loans, Inc. formed part of the Trade Receivables balance for the year 2009.

Thus, the Court maintains the deficiency income tax assessment arising from undeclared revenue in the amount of ₱761,238.54.

Considering the foregoing findings, the Court sees no cogent reason to disturb its ruling with respect to petitioner's deficiency income tax.

Petitioner is liable for deficiency VAT for taxable year 2009

Finally, the Court shall determine whether petitioner is liable for deficiency VAT for taxable year 2009.

Petitioner asks the Court to dispense with strict compliance of the substantiation requirements with respect to the disallowed input taxes for the fourth quarter of 2009 amounting to ₱1,899,993.29, since it is not applying for tax credit certificate or tax refund.

In the assailed decision, the Court disallowed input taxes in the aggregate amount of ₱1,899,993.29 for failure to meet the substantiation requirements provided by law, thus:[16]

Without supporting documents (representing the difference between the amount declared in the quarterly VAT return and per Schedule of Input VAT)		₱ 149,818.46
Input VAT on purchases of goods other than capital goods		1,737,507.42
Input VAT on purchases of capital goods exceeding ₱1Million	₱ 253,348.14	

[16] See Note 1, p. 719.

Less: Unamortized input VAT on purchases of capital goods exceeding ₱1Million (₱253,348.14/60 months x 57 months)	240,680.73	12,667.41
Total		**₱ 1,899,993.29**

However, the law plainly provides for invoicing and accounting requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended by RA 9337, and as implemented by Sections 4.110-2, 4-110.8 and 4.113-1 of RR 16-05. For easy reference, the pertinent provisions of the 1997 NIRC are set forth, as follows:

"SEC. 110. *Tax Credits.—*

(A) *Creditable Input Tax.—*

(1)Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

xxx xxx xxx"

"SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons. —*

(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.—***The following information shall be indicated in the VAT invoice or VAT official receipt:**

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) <u>The total amount which the purchaser pays or is obligated to pay to the seller with the</u> ℊ𝓁

> **<u>indication that such amount includes the value-added tax</u>:** *Provided,* That:
>
> > **(a) The amount of tax shall be shown as a separate item in the invoice or receipt;**
> >
> > (b) If the sale is exempt from value-added tax, the term *'VAT-exempt sale'* shall be written or printed prominently on the invoice or receipt;
> >
> > (c) If the sale is subject to zero percent (0%) value-added tax, the term *'zero-rated sale'* shall be written or printed prominently on the invoice or receipt;
> >
> > (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
>
> **(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and**
>
> **(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.**"*(Emphasis supplied)*

Nowhere from the foregoing provisions can it be found that the foregoing requirements are applicable only in claims for refund. On the contrary, the law categorically states that the foregoing requirements are required in order for the input taxes to be credited against output taxes.

To stress, the Court found the following disallowances:[17]

[17] See Note 1, pp. 714-719.

Without supporting documents		₱ 149,818.46
Input VAT on purchases of capital goods exceeding ₱1Million:		
Input VAT supported by VAT Official Receipt but the amount of Input VAT is not separately indicated	₱ 253,348.14	
Less: Unamortized input VAT on capital goods exceeding ₱1Million	240,680.73	12,667.41
Input VAT on purchases of goods other than capital goods		
1. Input VAT supported by Non-VAT Receipts	₱ 25,561.11	
2. Input VAT supported by VAT Official Receipts/Invoices but issued not in the name of the Petitioner	23,715.17	
3. Input VAT supported by Documents other than VAT Official Receipts/VAT Invoices	9,460.35	
4. Input VAT supported by VAT Official Receipts/Invoices but the amount of Input VAT is not separately indicated	276,834.00	
5. Input VAT supported by VAT Official Receipts/Invoices but issued not in the name of the Petitioner and the amount of Input VAT is not separately indicated	1,885.71	
6. Input VAT supported by Sworn Statements executed by the Supplier	1,394,375.09	
7. Input VAT supported by documents not found in the records	5,675.99	1,737,507.42
TOTAL		**₱1,899,993.29**

Clearly, the assailed disallowances clearly violate the invoicing requirements set forth by law. As such, the Court finds petitioner's assertion untenable.

To conclude, the parties failed to present meritorious arguments to justify the reconsideration of the assailed Decision. Hence, the Court is constrained to uphold the same.

WHEREFORE, petitioner's Motion for Partial Reconsideration (to the Decision dated February 23, 2017) and respondent's Motion for Partial Reconsideration are both **DENIED**, for lack of merit. Accordingly, the Decision dated February 23, 2017 is **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice