# REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
# QUEZON CITY

## FIRST DIVISION

**MERIAL PHILIPPINES, INC.,** Petitioner,

**CTA Case No. 8370**

**- versus -**

***Members:***

**DEL ROSARIO,** P.J.,
**UY,** and
**MINDARO-GRULLA,** JJ.

**COMMISSIONER OF INTERNAL REVENUE,** Respondent.

***Promulgated:***

MAY 13 2015 ; 8:22 A.M.

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# DECISION

**UY,** J.:

Before Us is the Petition for Review filed on November 9, 2011 by Merial Philippines, Inc. against the Commissioner of Internal Revenue, seeking the nullification of the Formal Letter of Demand dated January 7, 2011 and Assessment Notices issued by the latter assessing petitioner deficiency income tax amounting to P24,876,769.56; deficiency value-added tax amounting to P3,905,681.12; and deficiency expanded withholding tax amounting to P1,530,272.06, inclusive of interests, for taxable year 2007.

## THE FACTS

Petitioner Merial Philippines, Inc. is a domestic corporation, organized and existing under Philippine laws, with principal office at Unit 2504, 25/F Discovery Centre, 25 ADB Avenue, Ortigas, Pasig City, herein represented by its President, Dr. Generoso Rene Romo, Jr., of legal age, who is duly authorized by the Board of Directors of petitioner to file the instant suit.[1]

On the other hand, respondent Commissioner of Internal Revenue is the duly appointed head of the Bureau of Internal Revenue (BIR). She is vested with authority to administer all laws pertaining to internal revenue taxes and has the jurisdiction to decide disputed tax assessments.[2]

On December 17, 2010, respondent issued petitioner Preliminary Assessment Notice (PAN) for taxable year 2007 which was received by petitioner on December 29, 2010.[3] In the said PAN, the BIR informed petitioner that the following were found due,[4] to wit:

**DEFICIENCY INCOME TAX**

| | | | |
|---|---|---|---|
| Taxable income per Income Tax Return (ITR) | | | ₱ 68,768,443.00 |
| Add: Adjustments per investigation: | | | |
| Income payments not subjected to withholding tax | | ₱ 26,767,371.06 | |
| Unaccounted source of cash | | 18,714,600.81 | 45,481,971.87 |
| Taxable income per investigation | | | ₱114,250,414.87 |
| Income tax due thereon (35%) | | | ₱ 39,987,645.20 |
| Less: Allowable tax credits / payments | | | |
| Payments | | ₱ 22,928,521.00 | |
| Creditable tax withheld | | 1,140,434.00 | 24,068,955.00 |
| Deficiency Income Tax | | | ₱ 15,918,690.20 |
| Add: 20% Interest p.a. (04.16.08 to 12.10.10) | | | 8,443,447.73 |
| **TOTAL AMOUNT DUE** | | | **₱ 24,362,137.93** |

**DEFICIENCY VALUE-ADDED TAX**

| | | | |
|---|---|---|---|
| Taxable revenue/receipts per valued added tax (VAT) returns | | | ₱470,172,852.92 |
| Add: Adjustments per investigation: | | | |
| Unaccounted source of cash | | ₱ 18,714,600.81 | |
| Taxable sales/receipts not subjected to VAT | | 1,637,199.08 | 20,351,799.89 |
| Taxable revenue/receipts per investigation | | | ₱490,524,652.81 |
| Output tax due thereon (12%) | | | ₱ 58,862,958.34 |
| Less: Allowable tax credits / payments | | | |
| Tax credits carried over from previous period | | ₱ 344,986.73 | |
| Creditable VAT withheld | | 201,165.83 | |
| Payments | | 15,885,003.86 | |
| Claimed input tax | | 40,219,880.34 | |
| Total | | ₱ 56,651,036.76 | |
| Less: Input tax on sale to government closed to expense | ₱ 216,704.00 | | |
| Input tax attributable to VAT exempt sale | 1,605.60 | 218,309.60 | 56,432,727.16 |

[1] Joint Stipulation of Facts and Issues (JSFI), Par. 1, Docket, p. 84.
[2] JSFI, Par. 2, Docket, p. 84.
[3] JSFI, Par. 3, Docket, p. 85.
[4] Exhibit "A", Docket, pp. 222 to 226.

| | | | |
|---|---|---|---|
| Deficiency VAT | | | 2,430,231.18 |
| Add: 20% Interest p.a. (01.26.08 to 12.10.10) | | | 1,396,883.57 |
| **TOTAL AMOUNT DUE** | | | **₱ 3,827,114.75** |

**DEFICIENCY EXPANDED WITHHOLDING TAX (EWT)**

| | Amount | EWT Rate | EWT Due |
|---|---|---|---|
| Income payments made by top 10,000 corporation-services | ₱19,266,271.82 | 2% | ₱ 385,325.44 |
| Income payments made by top 10,000 corporation-goods | 7,696,176.64 | 1% | 76,961.77 |
| Commissions | 4,866,582.60 | 10% | 486,658.26 |
| Deficiency EWT | | | ₱ 948,945.37 |
| Add: 20% Interest p.a. (01.16.08 to 12.10.10) | | | 550,648.36 |
| **TOTAL AMOUNT DUE** | | | **₱ 1,499,593.83** |

Thereafter, on January 7, 2011, respondent issued the Formal Letter of Demand (FLD) with attached Assessment Notices against petitioner, for alleged deficiency income tax, deficiency value-added taxes and deficiency expanded withholding taxes in the amounts of ₱24,876,769.56, ₱3,905,681.12 and ₱1,530,272.06, respectively, for taxable year 2007,[5] computed as follows:[6]

**DEFICIENCY INCOME TAX**

| | | |
|---|---|---|
| Taxable income per Income Tax Return (ITR) | | ₱ 68,768,443.00 |
| Add: Adjustments per investigation: | | |
| Income payments not subjected to withholding tax | ₱ 26,767,371.06 | |
| Unaccounted source of cash | 18,714,600.81 | 45,481,971.87 |
| Taxable income per investigation | | ₱114,250,414.87 |
| Income tax due thereon (35%) | | ₱ 39,987,645.20 |
| Less: Allowable tax credits / payments | | |
| Payments | ₱ 22,928,521.00 | |
| Creditable tax withheld | 1,140,434.00 | 24,068,955.00 |
| Deficiency Income Tax | | ₱ 15,918,690.20 |
| Add: 20% Interest p.a. (04.16.08 to 2.7.11) | | 8,958,079.36 |
| **TOTAL AMOUNT DUE** | | **₱ 24,876,769.56** |

**DEFICIENCY VALUE-ADDED TAX**

| | | |
|---|---|---|
| Taxable revenue/receipts per valued added tax (VAT) returns | | ₱470,172,852.92 |
| Add: Adjustments per investigation: | | |
| Unaccounted source of cash | ₱ 18,714,600.81 | |
| Taxable sales/receipts not subjected to VAT | 1,637,199.08 | 20,351,799.89 |
| Taxable revenue/receipts per investigation | | ₱490,524,652.81 |
| Output tax due thereon (12%) | | ₱ 58,862,958.34 |
| Less: Allowable tax credits / payments | | |
| Tax credits carried over from previous period | ₱ 344,986.73 | |
| Creditable VAT withheld | 201,165.83 | |

[5] JSFI, Par. 5, Docket, p. 85.
[6] Exhibit "B", Docket, pp. 223 to 236.

| | | | |
|---|---|---|---|
| Payments | | 15,885,003.86 | |
| Claimed input tax | | 40,219,880.34 | |
| Total | | ₱ 56,651,036.76 | |
| Less: Input tax on sale to government closed to expense | ₱ 216,704.00 | | |
| Input tax attributable to VAT exempt sale | 1,605.60 | 218,309.60 | 56,432,727.16 |
| Deficiency VAT | | | 2,430,231.18 |
| Add: 20% Interest p.a. (01.26.08 to 2.7.11) | | | 1,475,449.94 |
| **TOTAL AMOUNT DUE** | | | **₱ 3,905,681.12** |

**DEFICIENCY EXPANDED WITHHOLDING TAX (EWT)**

| | Amount | EWT Rate | EWT Due |
|---|---|---|---|
| Income payments made by top 10,000 corporation-services | ₱19,266,271.82 | 2% | ₱ 385,325.44 |
| Income payments made by top 10,000 corporation-goods | 7,696,176.64 | 1% | 76,961.77 |
| Commissions | 4,866,582.60 | 10% | 486,658.26 |
| Deficiency EWT | | | ₱ 948,945.37 |
| Add: 20% Interest p.a. (01.16.08 to 2.7.11) | | | 581,326.59 |
| **TOTAL AMOUNT DUE** | | | **₱ 1,530,272.06** |

On January 13, 2011, petitioner filed with the respondent the Letter of Protest dated January 10, 2011 against the said PAN.[7]

Subsequently, on February 14, 2011, petitioner filed with the respondent another Letter of Protest dated January 13, 2011 against the said FLD.[8]

On April 13, 2011, petitioner then filed its Letter dated April 8, 2011 with the BIR, submitting certain supporting documents in connection with the said Letter of Protest.[9]

In view of the BIR's failure to act within 180 days from the submission of the said documents pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, petitioner filed the instant Petition for Review on November 9, 2011, praying as follows:

1. Declare null and void, and set aside, the Formal Letter of Demand dated 7 January 2011 and attached Assessment Notices issued by respondent, for having been issued in violation of Revenue Regulations (RR) No. 12-99;

2. Set aside the assessments of respondent in its Formal Letter of Demand dated January 7, 2011 and attached Assessment Notices, as follows: deficiency income tax amounting to

[7] JSFI, Par. 4, Docket, p. 85.
[8] JSFI, Par. 6, Docket, p. 85.
[9] Exhibit "E", Docket, pp. 245 to 247.

₱24,876,769.56, deficiency VAT amounting to ₱3,905,681.12, and deficiency EWT amounting to ₱1,530,272.06, for lack of legal and factual basis; and

3. Declare that the three-year period to issue a valid assessment against petitioner for taxable year 2007 has already prescribed.

In her Answer filed on January 2, 2012,[10] respondent raises the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. The petitioner contends that the assessments are void because they have been issued in violation of the due process rights of the latter because the Formal Letter of Demand dated 07 January 2011 have been issued before the lapse of the 15-day period for the latter to file its protest to the Preliminary Assessment Notice dated 17 December 2010 as provided by Revenue Regulation 12-99;

5. However, assuming arguendo that the PAN has been received on the date alleged by the Petitioner, the said regulation does not expressly invalidate nor considered void ab initio a Formal Letter of Demand issued prior to the protest of a taxpayer to the Preliminary Assessment Notice. The only instance that said regulation invalidates an assessment is provided in Section 3.1.4 and to quote:

    > ' XXX. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.'

6. The same rule is being mandated by Section 228 of the National Internal Revenue Code ( NIRC ) of 1997 as amended;

7. The Preliminary Assessment Notice ( PAN ) and Formal Letter of Demand and Assessment Notice No. 043A-B300-07 ( FAN ) dated 17 December 2010 and 07

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[10] Docket, pp. 63 to 67.

January 2011 respectively were issued in compliance with the provisions of Section 228 of the National Internal Revenue Code ( NIRC ) of 1997 as amended and in accordance to existing Revenue Rules and Regulations in relation to the right of the taxpayer and in the instant case, the petitioner to be informed of the factual and legal bases upon which the assessments were made;

8. Furthermore, the Notice of Informal Conference was sent to and received by the Petitioner on 25 June 2009. Another, letter was sent on 16 May 2011 requesting the Petitioner to prepare the necessary accounting records and documents for verification to validate their claim in their protest. In both instances, the Petitioner have been given the opportunity to present its case, but opted not to exercise such right. How can the Petitioner allege now, that they were deprived of their rights where in fact they were the ones who waive such rights?

9. It is also worthy to note that the Petitioner is banking upon the procedural due process in the issuance of a deficiency tax assessment, wherein the Respondent is insisting that the substantive aspect had served its purpose. First, the Petitioner was able to file their protest on both the Preliminary Assessment Notice and Formal Letter of Demand and Assessment Notice, a proof that they received both notices. Second, in their protest, they were able to point out their objections to the assessment item by item, an indication that they were informed of the factual and legal bases upon which the assessments were made;

10. Petitioner's allegation that Section 2.57.2 ( M ) of Revenue Regulations No. 2-98 as amended by Revenue Regulations No. 17-03 regarding income payments made by the top ten thousand ( 10,000 ) corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax is applicable in the case at bar is bereft of merit. The said Section of Revenue Regulations No. 2-98 as amended by Revenue Regulations No. 17-03 pertains only to **the top ten thousand ( 10,000 ) corporations, as** ***determined by the Commissioner.*** The said regulation also provides that and to quote:

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

Clearly, there was no proof that the Petitioner belongs to the top ten thousand ( 10,000 ) private corporations. And therefore, Section 2.57.2 ( M ) will not apply to them;

11. Furthermore, all presumptions are in favor of the correctness of the assessment. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed;"

After the pre-trial conference held on February 2, 2012, and as directed by the Court,[11] the parties filed their Joint Stipulation of Facts and Issues (JSFI) on February 22, 2012[12], which was approved in the Resolution dated February 24, 2012 and pre-trial was terminated.[13]

During trial, the parties presented their respective documentary and testimonial evidence. In the Resolution dated January 7, 2014, the Court ordered the parties to file their respective memorandum.[14]

On March 4, 2014, petitioner filed its Memorandum[15]. On the other hand, although the Court granted respondent's Motion for Extension of Time To File Memorandum in the Resolution dated March 20, 2014[16], still respondent failed to file her memorandum.[17] Thus, on May 13, 2014, the instant case was submitted for decision.[18]

Hence, this Decision.

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[11] Minutes of the hearing held on February 2, 2012, Docket, p. 83.
[12] Docket, pp. 84 to 87.
[13] Docket, p. 88.
[14] Docket, p. 440.
[15] Docket, 450-476
[16] Docket, p. p. 482
[17] Records Verification dated May 8, 2014,Docket, pp. 483.
[18] Docket, p. 485.

## THE ISSUES

The following are the issues stipulated by the parties for the resolution of the Court, to wit:

> "1. Whether or not the Formal Letter of Demand dated 7 January 2011 is void ab initio for having been issued before the lapse of Petitioner's 15-day period to file a protest to the Preliminary Assessment Notice dated 17 December 2010.
>
> 2. Whether or not the Petitioner is liable for deficiency income tax amounting to Twenty-four Million Eight Hundred Seventy-Six Thousand Seven Hundred Sixty-Nine Pesos and 56/100 (Php24,876,769.56) for taxable year 2007.
>
> 3. Whether or not the Petitioner is liable for deficiency value-added tax amounting to Three Million Nine Hundred Five Thousand Six Hundred Eighty-One Pesos and 12/100 (Php3,905,681.12) for taxable year 2007.
>
> 4. Whether or not the Petitioner is liable for deficiency expanded withholding tax amounting to One Million Five Hundred Thirty Thousand two Hundred Seventy-Two Pesos and .06/100 (Php1,530,272.06) for taxable year 2007."[19]

### *Petitioner's arguments:*

Petitioner argues that the FLD/Final Assessment Notice is void *ab initio* for having been issued before the lapse of petitioner's 15-day period to file a protest to the PAN. Thus, for having been prematurely issued, there is allegedly no valid assessment against petitioner for taxable year 2007, and the three-year period to issue a valid assessment under Section 203 of the NIRC has already prescribed.

Furthermore, petitioner maintains that the assessments made by respondent in her FLD for deficiency EWT, deficiency income tax, and deficiency VAT are allegedly without legal or factual basis.

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[19] Docket, pp. 85 to 86.

***Respondent's counter-arguments:***

In her Answer, respondent contends that RR No. 12-99 does not expressly invalidate nor consider void *ab initio* an FLD issued prior to the protest of a taxpayer to the PAN. According to respondent, the only instance that said regulation and Section 228 of the NIRC of 1997, as amended, invalidates an assessment is when the *"letter of demand calling for the payment of taxpayer's deficiency tax or taxes"* fails to *"state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based"*.

In addition, respondent asserts that the PAN dated December 17, 2010 and the FLD dated January 7, 2011 were issued in compliance with the said Section 228 and in accordance with existing Revenue Rules and Regulations in relation to the right of the taxpayer and in the instant case, the petitioner to be informed of the factual and legal bases upon which the assessments were made.

According to respondent, the Notice of Informal Conference was sent and received by petitioner on June 25, 2009, and another letter requesting petitioner to prepare the necessary accounting records and documents for verification to validate their claim in their protest was sent on May 16, 2011. Thus, in both instances, petitioner was allegedly given the opportunity to present its case, but opted not to exercise such right.

Petitioner was allegedly able to file their protest on both the PAN and the FLD and Assessment Notice—a proof that they received both notices; and that, in their protest, they were able to point out their objections to the assessment item by item—an indication that they were informed of the factual and legal bases upon which the assessments were made.

Anent the subject deficiency EWT assessment, there was allegedly no proof that petitioner belongs to the top 10,000 private corporation and therefore, Section 2.57.2(M) will not apply to them.

Lastly, respondent invokes the doctrine that all presumptions are in favor of the correctness of the assessment; and in the absence of proof of any irregularities in the performance of duties, an assessment duly made by a BIR examiner and approved by his superior officers will not be disturbed.

## THE COURT'S RULING

The instant Petition for Review is partly meritorious.

In arguing that the FLD/Final Assessment Notice is void *ab initio*, petitioner points to Section 3.1.2 of RR No. 12-99[20] as its legal anchor, to wit:

> "3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.2 **Preliminary Assessment Notice (PAN).** – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). <u>If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.</u>"

As mentioned earlier, it is petitioner's contention that from receipt of the PAN, it had a full period of fifteen (15) days within which to file its protest thereto. And since the FLD/Final Assessment Notice was allegedly issued prematurely (or before the lapse of petitioner's 15-day period to file its protest to the PAN), petitioner concludes that it is void *ab initio*. Therefore, there is allegedly no valid assessment against petitioner for taxable year 2007, and the three-year period to issue a valid assessment under Section 203 of the NIRC has already prescribed.

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[20] 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 Extrajudicial Settlement of a Taxpayer's Criminal Violation of the code through payment of a Suggested Compromise Penalty.

We disagree with petitioner.

It is undisputed that the PAN dated December 17, 2010 was received by petitioner on December 29, 2010;[21] and that the subject FLD with attached Assessment Notices were issued on January 7, 2011,[22] or nine (9) days after petitioner's receipt of the said PAN.

However, to the mind of the Court, the issuance of the subject FLD and Assessment Notices before the lapse of the 15-day period does not violate the due process requirement under the law. This must be so because the essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.[23]

In this case, petitioner was given ample opportunities to explain its side, or to contest the subject PAN and the subject FLD with the attached Assessment Notices. First, petitioner was able to file its letter of protest to the PAN on January 13, 2011;[24] and second, petitioner was given the opportunity to file its letter of protest to the FLD on February 14, 2011,[25] as well as to submit certain documents in support of said letter of protest on April 13, 2011.[26]

Thus, there is no violation of due process in this case and the subject FLD and Assessment Notices are <u>not</u> void *ab initio*. The Court finds no merit in petitioner's insistence that the three-year prescriptive period under Section 203 of the NIRC of 1997 has prescribed.

We shall now proceed to determine the validity of the subject assessments.

## A. Deficiency EWT – ₱1,530,272.06

Respondent assessed petitioner for deficiency EWT for taxable year 2007 in the amount of ₱1,530,272.06,based on the finding that there are income payments not fully subjected to EWT pursuant to

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[21] JSFI, Par. 3, Docket, p. 85.
[22] JSFI, Par. 5, Docket, p. 85.
[23] *Flores, et al. vs. Montemayor*, G.R. No. 170146, June 8, 2011.
[24] Exhibit "C", Docket, pp. 237 to 239.
[25] Exhibit "D", Docket, pp. 240 to 244.
[26] Exhibit "E", Docket, pp. 245 to 247.

RR No. 2-98, as amended computed as follows:[27]

| | Amount | EWT Rate | EWT Due |
|---|---|---|---|
| Income payments made by top 10,000 corporation-services | ₱19,266,271.82 | 2% | ₱ 385,325.44 |
| Income payments made by top 10,000 corporation-goods | 7,696,176.64 | 1% | 76,961.77 |
| Commissions | 4,866,582.60 | 10% | 486,658.26 |
| Deficiency expanded withholding tax | | | ₱ 948,945.47 |
| Add: 20% Interest p.a. (01.16.08 to 2.7.11) | | | 581,326.59 |
| **TOTAL AMOUNT DUE** | | | **₱ 1,530,272.06** |

### A.1. Income payments made by top 10,000 corporation – services & goods

The amounts of ₱19,266,271.82 and ₱7,696,176.64 were computed by respondent by comparing income payments per petitioner's alphalist as against those reported per Financial Statements/Income Tax Return (FS/ITR), as shown as follows:[28]

| | Per FS/ITR | Per Alphalist | Difference |
|---|---|---|---|
| **Income payments made by top 10,000 corporation-services** | | | |
| Distribution and warehousing | ₱ 10,053,854.00 | | |
| Advertising and promotion | 6,637,645.00 | | |
| Travel and transportation* (₱6,119,920.00+₱1,002,115.00) | 7,122,035.00 | | |
| Insurance* (₱1,877,874.00+₱1,071,099.00) | 2,948,973.00 | | |
| Communication, light and water* (₱1,875,587.00+₱713,215.00) | 2,588,802.00 | | |
| Repairs and maintenance* (₱1,174,509.00+₱727,233.00) | 1,901,742.00 | | |
| Outside services (net of professional fees of ₱926,484.18)* (₱659,277.00+₱1,233,670.82) | 1,892,947.82 | | |
| Increase in leasehold improvement | 138,460.00 | | |
| Total | ₱ 33,284,458.82 | ₱ 14,018,187.00 | **₱ 19,266,271.82** |
| **Income payments made by top 10,000 corporation-goods** | | | |
| Office Supplies* (₱239,372.00+₱237,734.00) | ₱ 477,106.00 | | |
| Seminars, meetings and conferences* (₱1,982,214.00+₱260,824.00) | 2,243,038.00 | | |
| Miscellaneous* (₱866,123.00+₱269,389.00) | 1,135,512.00 | | |
| Acquisition of transportation equipment | 2,787,636.00 | | |
| Acquisition of office furniture, fixtures and | 1,191,547.00 | | |

[27] Exhibit "B", Docket, p. 228
[28] Docket, p. 232.

| | | | |
|---|---|---|---|
| equipment | | | |
| Acquisition of computer equipment | 944,017.00 | | |
| Domestic purchases of goods other than capital goods | 8,307,876.84 | | |
| Total | ₱ 17,086,732.84 | ₱ 9,390,556.20 | **₱ 7,696,176.64** |
| | | | |

**Total of Distribution & selling and General & administrative expenses*

Petitioner asserts that some of these expenses were properly subjected to withholding tax while some were casual purchase and employee reimbursements made from non-regular suppliers, involving less than six (6) transactions and casual expenses not exceeding ₱10,000 threshold, which are not subject to withholding tax under Section 2.57.2(M) of RR No. 2-98, as amended by RR No. 17-2003. Said provision reads:

> "Sec. 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:
>
> xxx xxx xxx
>
> (M) *Income payments made by top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax.* — Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines
>
> Supplier of goods – One percent (1%)
> Supplier of services – Two percent (2%)
> xxx xxx xxx
>
> The term "local/resident supplier of goods" pertains to a supplier from whom any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, regularly makes its purchases of goods. As a general rule, this term does not include casual purchase of goods, that is, purchases made from non-regular suppliers and oftentimes involving single purchases. However, a single purchase which involves

ten thousand pesos (P10,000) or more shall be subject to a withholding tax. The term "regular suppliers" refers to suppliers who are engaged in business or exercise of profession/calling with whom the taxpayer-buyer has transacted at least six (6) transactions, regardless of amount per transaction, either in the previous year or current year. The same rules apply to local/resident supplier of services other than those covered by separate rates of withholding tax.

xxx xxx xxx.

The Court-commissioned Independent CPA (ICPA), Maria Gracia Morfe of Morfe, Ceneta & Co., CPAs, examined each of petitioner's income payment accounts and reported whether or not the same are subject to withholding tax.[29] The summary details of her report shall be presented under each of the abovementioned accounts, and shall be discussed *in seriatim*.

***a.) Distribution and warehousing***

With regard to the distribution and warehousing expenses, petitioner claims that some refer to reimbursements of actual expenses of Gordez Philippines, Inc., which provides distribution and warehousing services to the former, and pick-up discounts given to customers who pick-up their purchases themselves from petitioner's warehouse, both of which are not subject to withholding tax.

Based on the report of the ICPA, the distribution and warehousing expenses consist of the following:[30]

| Particular | Schedule[31] | Amount |
|---|---|---|
| Subjected to withholding tax | I-A | ₱ 9,084,752.70 |
| Reimbursement and not subject to withholding | I-B | 308,399.69 |
| Pick-up discount | I-C | 269,718.85 |
| Accruals with no withholding tax and supporting documents | I-D | 390,882.28 |
| Casual expense by an employee | I-E | 100.00 |
| | | **₱ 10,053,853.52** |

Petitioner failed to support its reimbursements of ₱308,399.69 and casual expense of ₱100 as the references indicated therein

[29] Exhibit "MMM", pp. 18 and 24.
[30] Exhibit "MMM", pp. 4 to 5.
[31] Exhibit "MMM-3".

cannot be found from the records of the case. Thus, the assessment shall be sustained. Likewise, the assessment for the amount of ₱390,882.28 shall remain considering that the same is unsupported.

As to the amount of ₱269,718.85, petitioner submits that this pertains to pick-up fees which are discounts given to customers who picked up their purchases themselves from petitioner; and that these pick up fees were not paid to petitioner's suppliers of goods and services.

Considering that these pick-up discounts are not income payments of petitioner but merely discounts given to customers, respondent's assessment for the same is without basis. In fine, out of the ₱10,053,853.52 distribution and warehousing expense, only the amount of ₱9,784,134.67[32] shall be subject to 2% EWT.

### *b.) Advertising and promotion*

Petitioner maintains that most of its advertising and promotion expenses which were not subjected to withholding tax pertain to donations and contributions to tax-exempt entities, such as, government and non-stock and non-profit educational institutions, non-stock corporation or association organized only for religious, charitable, scientific, athletic or cultural purposes and labor, agricultural or horticultural organizations not organized principally for profit. Other advertising and promotions expenses also refer to imported equipment for poultry vaccination which petitioner lent to its customers, as well as sample products provided by field personnel and officers to clients and the Bureau of Animal Industry for product testing.

Petitioner's advertising and promotions expenses comprise of the following:[33]

| Particular | Amount | Schedule[34] |
|---|---|---|
| Payments subjected to withholding tax | ₱ 2,824,942.66 | III |
| Advertising under various accounts | 1,451,237.92 | III-A |
| Employee reimbursements | 1,484,979.69 | III-B |
| Sample promotion | 100,836.03 | III-C |
| Donations and contributions to tax exempt entities | 442,829.94 | III-D |
| Payments not subjected to withholding | | III-E |

[32] ₱10,053,853.52 – ₱269,718.85 = ₱9,784,134.67.
[33] Exhibit "MMM", pp. 8 to 10.
[34] Exhibit "MMM-2".

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| | | |
|---|---|---|
| tax | 45,891.96 | |
| Payments without valid supporting documents | 286,926.80 | III-F |
| | **₱ 6,637,645.00** | |

A perusal of documents reveal that out of the ₱2,824,942.66 advertising and promotion expense, the following amounts totaling ₱467,917.12 are payments for the purchase of goods and shall be subject to EWT at 1%:

| **Supplier** | **Exhibit No.** | **Goods** |
|---|---|---|
| Abenson Inc. | Q-1.1 to Q-1.10 | ₱ 108,324.12 |
| Abenson Ventures Inc.-Lipa | Q-1.125 | 17,670.00 |
| Abenson Ventures, Inc. | Q-1.11 | 13,303.58 |
| Abenson Ventures, Inc.-Cavite | Q-1.12 | 19,464.29 |
| Martikids Trading | Q-1.33 | 53,125.00 |
| Optimaxx Galore Enterprise | Q-1.38 | 50,500.00 |
| P&L Sales Merchandising | Q-1.116 | 17,410.69 |
| Pioneer Home Industries, Inc | Q-1.117 | 41,964.29 |
| Pioneer Home Industries, Inc | Q-1.54 | 61,607.14 |
| RAM Concepts Agency | Q-1.59 | 12,500.00 |
| Star Paper Corp | Q-1.67 | 72,048.01 |
| **Total** | | **₱ 467,917.12** |

The ICPA further classified the amount of ₱1,451,237.92 advertising expense into the following:

| **Particular** | **Amount** | **Reference** |
|---|---|---|
| payments subjected to withholding tax | ₱ 639,406.10 | Schedule XII |
| payments to travel agencies, hotels and other suppliers | 305,031.25 | Schedule XII-A |
| payments to donee institutions | 407,556.25 | Schedule XII-B |
| without supporting documents | 99,244.32 | Schedule XII-E |
| **Total** | **₱ 1,451,237.92** | |

With regard to the payments to travel agencies, petitioner alleges that out of the ₱305,031.25, ₱251,262.25[35] thereof pertains to reimbursements of airline tickets and visas to the former which are valid expenses not subject to withholding tax, while the remaining amounts of ₱6,000.00 and ₱47,769.00 refer to payments for service fees and to hotels and other suppliers, respectively.

Based on the documents submitted, out of the ₱251,262.25 alleged reimbursements, petitioner was able to prove that only the amount of ₱60,745.00 pertains to reimbursements which are not

[35] Exhibit "MMM-4", Schedule XII-A.

subject to EWT, as presented below,:

| | Exhibit No. | Amount |
|---|---|---|
| Corporate International Travel & Tours, Inc. | W-6.2 | ₱ 14,151.00 |
| Corporate International Travel & Tours, Inc. | W-6.12 | 21,072.00 |
| Corporate International Travel & Tours, Inc. | W-6.27 | 2,574.00 |
| Corporate International Travel & Tours, Inc. | W-6.33 | 12,346.00 |
| Corporate International Travel & Tours, Inc. | W-7.3 | 10,602.00 |
| **Total** | | **₱ 60,745.00** |

Thus, after deducting the amount of ₱60,745.00 from ₱251,262.25, the remaining amount of ₱190,517.25 must be subject to EWT as this is not clearly identifiable as reimbursement. Likewise, the service fees of ₱6,000.00 and the payments to hotels and other suppliers by petitioner, as one of the top 10,000 corporation, in the amount of ₱47,769.00 must also be subject to withholding tax, as the same are income payments subject to EWT under Section 2.57.2(M) of RR No. 2-98, as amended by RR No. 17-2003.

Further, Schedules XII-B[36] and III-D[37] provide a list of petitioner's payments to donee institutions which it avers are not subject to withholding tax, the institutions being tax-exempt entities.

Section 8(a) of RR No. 13-98[38] provides the substantiation requirements for donors claiming donations and contributions to non-stock, nonprofit corps. as deductions from taxable income, to wit:

"**SEC. 8.** *Substantiation Requirements.-*

(a) *For Donors.* – Donors claiming donations and contributions to accredited non-stock, nonprofit corporation/NGO as deductions from their taxable business income should submit evidence or proofs to the BIR by showing the Certificate/s of Donation and indicating therein the following:

(i) Actual receipt by the accredited non-stock, non profit corporation/ NGO of the donation or contribution and the date of receipt thereof; and

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36 Exhibit "MMM-4".
37 Exhibit "MMM-2".
38 SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as amended" Specifically Section 34 (H) Relative to the Deductibility of Contributions or Gifts Actually Paid or Made to Accredited Donee Institutions in Computing Taxable Income.

(ii) The amount of the charitable donation or contribution, if in cash; if property, whether real or personal, the acquisition cost of the said property.
xxx xxx xxx"

From the abovementioned provision, for a donor to claim its contributions to qualified donee institutions as deductions from gross income, it should submit a Certificate of Donation as proof thereof. In the instant case, petitioner failed to provide Certificates of Donations issued by the listed institutions for its alleged contributions. Also, there was no proof that these institutions were accredited or qualified as donee institutions enjoying tax exemption.

Thus, the ₱407,556.25 and ₱442,829.94 contributions must likewise be subject to EWT.

As to the employee reimbursements of ₱1,484,979.69, the Court notes the ICPA's findings that the amount of ₱891,889.73 thereof has no supporting documents; while the amount of ₱593,089.96 has supporting documents, out of which, ₱237,667.83 was reported by the ICPA as not subject to EWT.

However, upon further verification, the Court finds that the payments enumerated below, amounting to ₱80,140.24, should be deducted from the amount of ₱237,667.83 found by the ICPA as not subject to EWT, as the Court finds otherwise, to wit:

| Supplier/Particulars | Exhibit | Findings | Amount |
|---|---|---|---|
| Convocar, Rey Salvador | AA-25 | payment of ferry tickets not exempt from withholding tax | ₱ 20,675.54 |
| Acorda, Tomas M. | DD1-2 | no supporting OR/invoice | 3,000.00 |
| Caballero, Fidel B. | DD8 | Cannot be ascertained from the documents submitted | 12,216.90 |
| Castillo, Manuel | DD9 | Exhibit referred to cannot be found | 1,339.29 |
| Viloria, Dr. Florisa | DD14 | | 16,942.68 |
| Viloria, Dr. Florisa | DD20 | | 17,500.00 |
| Viloria, Dr. Florisa | DD20-1 | | 600.00 |
| Atienza, Jose Nicandro C. | DD58 | excess amount of claim w/c pertains to vat (341-304.46) | 36.54 |
| Nagera, Anna Esmeralda J. | DD81 | Exhibit referred to cannot be found | 1,548.68 |
| Viloria, Dr. Florisa | DD119-30 | acknowledgement receipt only | 3,000.00 |
| Acorda, Tomas M. | DD146 | Exhibit referred to cannot be found | 600.00 |
| Concepcion, Cristino | DD194 | | 590.00 |
| Carandang, Ma. Teresa A. | DD192.Q | supporting doc not readable | 477.00 |
| Martinez, Peter Beverly | DD-270 | supporting doc not readable | 769.75 |
| Acorda, Tomas M. | DD-296 | no supporting docs out of the amount claimed | 300.00 |

| | | | |
|---|---|---|---|
| Martinez, Peter Beverly | DD407 | amount of claim in excess of actual (14,232.32-14,174.12) | 58.20 |
| Acorda, Tomas M. | DD409 | amount of claim in excess of actual (8,565.57-8,479.91) | 85.66 |
| Acorda, Tomas M. | - | no reference | 400.00 |
| **Total** | | | **₱ 80,140.24** |

Hence, insofar as the amount of ₱1,484,979.69, only the amount of P157,527.59 is not subject to EWT, while the amount of ₱1,327,452.10[39] must be subjected to EWT.

Petitioner maintains that the amount of ₱100,836.03 pertains to the cost of the sample products provided by field personnel and officers to customers. However, this amount cannot be verified from the stock/supplies requisitions and sample invoices[40] submitted by petitioner. Nevertheless, even if the same are verifiable, the said sample products used in its promotion are still subject to EWT.

Furthermore, it appears that the amount of ₱45,891.96 pertains to a single transaction, which obviously exceeded the ₱10,000 threshold. Thus, the said amount was correctly subjected to EWT.

Anent the amount of ₱286,926.80, petitioner was not able to provide supporting documents for review and verification. Hence, the deficiency EWT assessment must perforce be maintained.

To recapitulate, out of the ₱6,637,645.00 advertising and promotion expense, ₱5,951,455.29, as summarized hereunder are subject to EWT:

| Particular | Amount |
|---|---|
| Payments subjected to 2% withholding tax | ₱ 2,357,025.54 |
| Advertising under various accounts | 1,390,492.92 |
| Employee reimbursements | 1,327,452.10 |
| Sample promotion | 100,836.03 |
| Donations and contributions to tax exempt entities | 442,829.94 |
| Payments not subjected to withholding tax | 45,891.96 |
| Payments without valid supporting documents | 286,926.80 |
| **Total** | **₱ 5,951,455.29** |

### *c.) <u>Travel and transportation</u>*

Petitioner contends that some of its travel and transportation

[39] ₱891,889.73 + (₱593,089.96 - ₱237,667.83) + ₱80,140.24= ₱1,327,452.10.
[40] Exhibit "GG".

expenses refer to payments made to Pilipinas Shell Petroleum Corporation for Shell Fleet Cards which are not subject to withholding tax under BIR Ruling [DA-649-06] issued on November 2, 2006. Furthermore, petitioner argues that those pertaining to overseas travel are not subject to EWT under RR No. 2-98, as amended by RR No. 17-03, as only income payments to local supplier of goods and services are subject to withholding tax.

Moreover, petitioner is of the view that a portion of the petitioner's travel and transportation expenses also refer to accruals for the Annual Sales Conference overseas for the following year 2008. According to petitioner, as mere accruals, it is naturally not subject to EWT; that its travel and transportation expenses for local business travel are also not subject to EWT as they were mere reimbursements of the actual expenses of the field personnel and officers. A summary of petitioner's travel and transportation account is provided by the ICPA as follows:

| Particular | Amount |
|---|---|
| Subjected to withholding tax[41] | ₱ 54,426.83 |
| Payment made to HSBC Visa card[42] | 88,757.76 |
| Employee reimbursements | |
| a. Without supporting document | 1,121,452.06 |
| b. With supporting documents | 1,404,424.93 |
| Travel agencies | 867,060.35 |
| Pilipinas Petroleum Shell Corporation | 1,905,132.14 |
| Hotel and Resort | 17,411.03 |
| Accrual of trip incentives | 1,651,369.90 |
| Payment made to an association | 12,000.00 |
| | **₱ 7,122,035.00** |

We find, however, that not all of the foregoing items are subject to EWT.

Under Revenue Memorandum Circular (RMC) No. 72-2004, a top ten thousand corporation (TTC) is exempted from the 1% and 2% withholding tax requirement on purchases of goods and services if payment is made through the use of a company-issued credit card.[43]

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[41] Exhibit "MMM-3", Schedule II-A.

[42] Exhibit "MMM-3", Schedule II-B.

[43] "Q20. If the payment for the purchase of goods or services to their regular suppliers by the TTC/GO/LT is through credit card or through company issued credit card to officers/ employees for purposes of reimbursements, will the TTC/GO/LT be required to withhold the tax when it presents the credit card to the supplier?

*A20. The TTC/GO/LT is not required to withhold the tax upon presentation of the*

However, petitioner failed to present other documents to prove that the HSBC credit card used to purchase the airline tickets in the amount of ₱88,757.76, is a company-issued credit card, and not a personal credit card by the employee or officer concerned of petitioner. Thus, the said amount is a valid subject of assessment.

Moreover, anent the amount of ₱1,404,424.93, which supposedly represents employee reimbursements with supporting documents, the Court finds that ₱682,782.10 thereof pertains to income payments to casual/non-regular suppliers but exceeded the ₱10,000 threshold. Thus, the amount of ₱682,782.10 must be subject to EWT.

Nonetheless, the remaining ₱721,642.83 (of the ₱1,404,424.93) were reported as casual purchases not exceeding ₱10,000 threshold not subject to withholding tax. The Court, however, finds that out of the said amount of ₱721,642.83, ₱369,433.34 thereof should be subjected to EWT because the same is not supported by, or cannot be traced or ascertained from, the documents submitted, as detailed below:

| Particulars | Exhibit | Amount | |
|---|---|---|---|
| ***Cannot be ascertained from the documents submitted*** | | | |
| Piczon, Elmer G. | AA-17 | ₱ 11,794.65 | |
| Alano, Michael Rosser H. | DD37 | 1,614.40 | |
| Baysac, Benida Dela Paz | DD38-1 | 1,308.00 | |
| Castillo, Manuel | DD61 | 672.50 | ₱ 15,389.55 |
| ***Exhibits referred to cannot be found from the records of the case*** | | | |
| Viloria, Dr. Florisa | DD2-1 | 1,910.00 | |
| Castillo, Manuel | DD9-1 | 677.00 | |
| Castillo, Manuel | DD9-2 | 593.00 | |
| Castillo, Manuel | DD9-3 | 1,442.50 | |
| Castillo, Manuel | DD9-4 | 927.00 | |
| Causin, Marlo | DD10 | 300.00 | |
| Convocar, Rey Salvador | DD11-1 | 448.04 | |
| Convocar, Rey Salvador | DD11-2 | 7,992.00 | |
| Alano, Michael Rosser H. | DD12 | 1,852.50 | |
| Alano, Michael Rosser H. | DD12-1 | 1,100.10 | |
| Alano, Michael Rosser H. | DD12-2 | 1,136.40 | |
| Alano, Michael Rosser H. | DD12-3 | 1,375.40 | |
| Atienza, Jose Nicandro C. | DD12-4 | 2,895.40 | |
| Alano, Michael Rosser H. | DD12-5 | 816.00 | |
| Viloria, Dr. Florisa | DD14 | 7,685.43 | |
| Franco, Anna Teresita | DD15 | 730.00 | |

*credit card to the supplier. The TTC/GO/LT, however, is required to withhold the 2% expanded withholding tax corresponding to the interest payment and/or service fee and other charges imposed by the credit card company. The credit card company, on the other hand, shall withhold 1% of 50% of the gross amount paid to any business entity pursuant to Section 2.57.2(L) of RR 2-98, as amended.*"

| | | | |
|---|---|---|---|
| Romo, Generoso | DD16 | 18,504.11 | |
| Gopez, Ana Maria R. | DD17 | 711.90 | |
| Acorda, Tomas M. | DD18 | 7,174.64 | |
| Gopez, Ana Maria R. | DD19 | 1,724.60 | |
| Viloria, Dr. Florisa | DD20 | 5,077.79 | |
| Viloria, Dr. Florisa | DD20-1 | 9,209.50 | |
| Alano, Michael Rosser H. | DD37-1 | 1,214.40 | |
| Piczon, Elmer G. | DD43-2 | 702.49 | |
| Nagera, Anna Esmeralda J. | DD81 | 2,817.88 | |
| Martinez, Peter Beverly | DD81 | 1,744.00 | |
| Martinez, Peter Beverly | DD83 | 1,386.00 | |
| Asentista, Ed | DD84 | 790.00 | |
| Asentista, Ed | DD85 | 750.00 | |
| Romo, Generoso | DD87 | 3,281.50 | |
| Gorubat, Tomas | DD89 | 948.90 | |
| Franco, Anna Teresita | DD90 | 1,090.00 | |
| Lozano, Alvin S. | DD91 | 1,340.00 | |
| Garbeles, Rodel | DD92 | 574.00 | |
| Concepcion, Cristino | DD94 | 1,200.00 | |
| Convocar, Rey Salvador | DD120 | 479.40 | |
| Concepcion, Cristino | DD137 | 25.00 | |
| Francia, Mel Faustino | DD138 | 450.00 | |
| Gopez, Ana Maria R. | DD141-1 | 295.00 | |
| Acuna, McArthur L. | DD161 | 1,447.60 | |
| Acuna, McArthur L. | DD161-1 | 3,967.46 | |
| Alano, Michael Rosser H. | DD162 | 911.40 | |
| Acuna, McArthur L. | DD163 | 2,739.60 | |
| Convocar, Rey Salvador | DD164 | 5,053.28 | |
| Caballero, Fidel B. | DD164-1 | 2,485.90 | |
| Piczon, Elmer G. | DD225 | 906.80 | |
| Convocar, Rey Salvador | DD235-1 | 1,025.88 | |
| Piczon, Elmer G. | DD236 | 617.30 | |
| Franco, Anna Teresita | DD237 | 2,190.00 | |
| Franco, Anna Teresita | DD362 | 1,527.50 | |
| Carandang, Ma. Teresa A. | DD364 | 7,151.00 | |
| Calungsud, Mariel Matthew | DD365 | 745.15 | |
| Franco, Anna Teresita | DD366 | 1,405.00 | |
| Lozano, Alvin S. | DD367 | 750.00 | |
| Gorubat, Tomas | DD369 | 900.00 | |
| Acuna, McArthur L. | DD376 | 987.70 | |
| Acorda, Tomas M. | DD381-1 | 2,246.00 | |
| Viloria, Dr. Florisa | DD382-2 | 9,032.35 | 139,461.80 |
| ***Without supporting OR/invoice*** | | | |
| Nagera, Anna Esmeralda J. | DD383-1 | 1,232.47 | |
| Palmar, Roger | DD383-2 | 1,210.00 | |
| Romo, Generoso | DD384 | 433.70 | |
| Gopez, Ana Maria R. | DD385-1 | 810.36 | |
| Gorubat, Tomas | DD390 | 600.00 | |
| Francia, Mel Faustino | DD51 | 399.10 | |
| Causin, Marlo | DD60 | 326.43 | |
| Asentista, Ed | DD63-5 | 904.40 | |
| Lagumbayan, Jocelyn A. | AA-1 | 200.00 | |
| Concepcion, Cristino | AA-3 | 693.00 | |
| Concepcion, Cristino | AA-4 | 729.00 | |
| Piczon, Elmer G. | AA-9 | 6,496.00 | |
| Concepcion, Cristino | AA-10 | 925.00 | |
| Concepcion, Cristino | Aa-11 | 579.25 | |

| | | | |
|---|---|---|---|
| Franco, Anna Teresita | AA-14 | 35,155.00 | |
| Concepcion, Cristino | AA-15 | 931.37 | |
| Concepcion, Cristino | AA-18 | 1,289.34 | |
| Concepcion, Cristino | AA-20 | 2,812.00 | |
| Ramirez, Marita E. | AA-21 | 1,200.00 | |
| Nagera, Anna Esmeralda J. | DD1 | 4,020.39 | |
| Acorda, Tomas M. | DD1-1 | 6,241.52 | |
| Acorda, Tomas M. | DD1-2 | 5,581.10 | |
| Acuna, McArthur L. | DD2 | 750.00 | |
| Acuna, McArthur L. | DD3 | 1,176.00 | |
| Atienza, Jose Nicandro C. | DD4 | 2,056.82 | |
| Caballero, Fidel B. | DD5 | 712.00 | |
| Atienza, Jose Nicandro C. | DD7 | 1,070.95 | |
| Castillo, Manuel | DD42 | 296.29 | |
| Castillo, Manuel | DD42-1 | 944.50 | |
| Lozano, Alvin S. | DD43 | 1,479.00 | |
| Martinez, Peter Beverly | DD43-1 | 1,163.00 | |
| Romo, Generoso | DD44 | 2,835.47 | |
| Lozano, Alvin S. | DD46-1 | 1,331.00 | |
| Convocar, Rey Salvador | DD48 | 520.00 | |
| Convocar, Rey Salvador | DD48-1 | 949.29 | |
| Francia, Mel Faustino | DD48-4 | 619.40 | |
| Causin, Marlo | DD49 | 312.90 | |
| Causin, Marlo | DD49-1 | 554.06 | |
| Causin, Marlo | DD49-2 | 489.60 | |
| Calungsud, Mariel Matthew | DD50-1 | 874.65 | |
| Calungsud, Mariel Matthew | DD50-3 | 930.20 | |
| Francia, Mel Faustino | DD51-1 | 332.80 | |
| Baysac, Benida Dela Paz | DD59 | 641.21 | |
| Alano, Michael Rosser H. | DD63-1 | 756.90 | |
| Alano, Michael Rosser H. | DD63-2 | 1,210.90 | |
| Asentista, Ed | DD63-4 | 544.40 | |
| Viloria, Dr. Florisa | DD64 | 1,173.72 | |
| Acorda, Tomas M. | DD97 | 705.00 | |
| Alano, Michael Rosser H. | DD99-1 | 990.40 | |
| Alano, Michael Rosser H. | DD99-2 | 484.00 | |
| Caballero, Fidel B. | DD99-3 | 537.29 | |
| Caballero, Fidel B. | DD99-4 | 572.55 | |
| Gopez, Ana Maria R. | DD100-1 | 640.89 | |
| Martinez, Peter Beverly | DD100-2 | 948.80 | |
| Baysac, Benida Dela Paz | DD111 | 1,507.00 | |
| Baysac, Benida Dela Paz | DD112 | 3,689.84 | |
| Asentista, Ed | DD113 | 2,094.00 | |
| Alano, Michael Rosser H. | DD114 | 1,390.00 | |
| Alano, Michael Rosser H. | DD115 | 787.40 | |
| Acorda, Tomas M. | DD117 | 1,951.00 | |
| Romo, Generoso | DD118 | 22,285.54 | |
| Piczon, Elmer G. | DD123 | 1,225.00 | |
| Acuna, McArthur L. | DD124 | 1,287.00 | |
| Alano, Michael Rosser H. | DD125 | 1,415.00 | |
| Caballero, Fidel B. | DD127 | 571.30 | |
| Calungsud, Mariel Matthew | DD128 | 966.44 | |
| Castillo, Manuel | DD130 | 593.50 | |
| Martinez, Peter Beverly | DD132 | 800.15 | |
| Lozano, Alvin S. | DD133 | 844.00 | |
| Lozano, Alvin S. | DD134 | 667.00 | |
| Acuna, McArthur L. | DD135 | 582.84 | |

| | | | |
|---|---|---|---|
| Carandang, Ma. Teresa A. | DD142 | 8,408.00 | |
| Baysac, Benida Dela Paz | DD149 | 5,509.76 | |
| Gorubat, Tomas | DD152 | 2,606.92 | |
| Gorubat, Tomas | DD152-1 | 2,000.76 | |
| Causin, Marlo | DD165 | 300.00 | |
| Causin, Marlo | DD165-1 | 600.00 | |
| Causin, Marlo | DD165-2 | 732.74 | |
| Gorubat, Tomas | DD166 | 1,508.99 | |
| Lozano, Alvin S. | DD167 | 800.00 | |
| Lozano, Alvin S. | DD167-1 | 976.00 | |
| Piczon, Elmer G. | DD168 | 800.00 | |
| Piczon, Elmer G. | DD168-1 | 494.00 | |
| Carandang, Ma. Teresa A. | DD192 | 4,758.75 | |
| Martinez, Peter Beverly | DD256 | 231.24 | |
| Piczon, Elmer G. | DD271 | 280.00 | |
| Convocar, Rey Salvador | DD278 | 1,426.50 | |
| Lozano, Alvin S. | DD279 | 954.00 | |
| Causin, Marlo | DD299 | 1,829.80 | |
| Francia, Mel Faustino | DD315 | 450.00 | |
| Lozano, Alvin S. | DD318 | 450.00 | |
| Piczon, Elmer G. | DD321 | 900.00 | |
| Piczon, Elmer G. | DD322 | 525.00 | |
| Piczon, Elmer G. | DD323 | 660.30 | |
| Calungsud, Mariel Matthew | DD326 | 414.75 | |
| Asentista, Ed | DD329 | 1,472.00 | |
| Caballero, Fidel B. | DD340 | 750.00 | |
| Caballero, Fidel B. | DD341 | 257.58 | |
| Asentista, Ed | DD342 | 2,101.00 | |
| Asentista, Ed | DD344 | 2,298.75 | |
| Acuna, McArthur L. | DD345 | 700.00 | |
| Baysac, Benida Dela Paz | DD347 | 850.00 | |
| Caballero, Fidel B. | DD348 | 550.00 | |
| Castillo, Manuel | DD349 | 750.00 | |
| Gorubat, Tomas | DD391 | 975.00 | |
| Piczon, Elmer G. | DD396 | 725.00 | |
| Caballero, Fidel B. | DD399 | 415.00 | |
| Convocar, Rey Salvador | DD400 | 1,559.83 | |
| Acuna, McArthur L. | DD411 | 450.00 | |
| Acuna, McArthur L. | DD411.3 | 316.00 | |
| Acuna, McArthur L. | DD412 | 135.00 | |
| Viloria, Dr. Florisa | DD417 | 8,490.18 | 204,443.28 |
| ***Without supporting documents (no reference provided)*** | | | |
| Ramirez, Marita | - | 4,280.00 | |
| Ramirez, Marita | - | 2,233.00 | |
| Martinez, christopher S. | - | 2,368.30 | |
| Atienza, Jose Nicandro C. | - | 1,257.41 | 10,138.71 |
| **Total** | | | **₱ 369,433.34** |

Petitioner also made payments to travel agencies in the amount of ₱867,060.35 for reimbursements of airline tickets and visas during the taxable year 2007. However, upon verification, only the amount of ₱856,964.83 represents reimbursements which are not subject to withholding tax.[44] In other words, only the amount of ₱10,095.52[45] must be subjected to EWT.

As gleaned from Schedule XII-C[46] and verified from the official receipts, payment slips and Shell Fleet Card Billing Reports[47], petitioner paid a total of ₱1,926,321.95 to Pilipinas Shell Petroleum Corporation (Shell) for services purchased from participating retail stations using Shell Fleet Cards, for which the amount of ₱1,905,132.00 was classified as travel and transportation expense.

Based on the BIR Ruling No. DA-649-06 dated November 2, 2006, under the scheme using the Shell Fleet Cards, Shell issues an agreed number of Fleet Card to the company-designated employee. The company- designated employee would purchase from designated Shell retail station petroleum products, Select items and services and charge such purchase to the Fleet Card. Shell shall purchase all receivables at gross or the face value of the invoice issued by the retail station arising from the transaction with Fleet Cardholders giving the former a right to collect from third-party company. Shell, then, undertakes the preparation of the Statement of Account to the card members, which becomes the basis for the payment of receivables.

Thus, pursuant to the said BIR Ruling No. DA-649-06, under the said scheme, there are basically two (2) transactions. One is that which takes place between Shell and the Fleet Cardholder, while the other one is between Shell and the Retail Dealer. Between the Retail Dealer and the Fleet Cardholder is a sale and purchase of goods, while between the Retail Dealer and Shell, is a sale and purchase of receivables. In no instance does Shell sell any tangible personal property to the Fleet Cardholders. Since the sale of goods took place between the Retail Dealer and Fleet Cardholders, the payment collected and received by Shell from the Fleet Cardholder is not payment for the goods sold by the Retail Dealer to the Fleet Cardholders but rather for purchasing of receivables.

Hence, following the ruling enunciated in BIR Ruling No. DA-649-06 that there is no income payment attributable to Shell, and consequently, no basis for withholding tax, the payments made by petitioner to Shell pertaining Shell Fleet Cards should not be subject

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[44] Exhibit "MMM-4", Schedule XII-A.
[45] ₱867,060.35 - ₱856,964.83 = ₱10,095.52.
[46] Exhibit "MMM-4".
[47] Exhibits "W-9.1" to "W-9.10".

to EWT.

As for the payments for hotel and resort, there are no supporting documents for the Court to make a determination whether or not these should be subject to withholding tax. Thus, the amount of ₱17,411.03 shall be subject to EWT.

As regards the amount of ₱1,651,369.90, which allegedly pertain to accrual of trip incentives, petitioner submitted receipts issued to it by Corporate International Travel and Tours dated January 4, 2008 in the amounts of $20,000.00[48] and ₱847,143.50[49]., , petitioner failed to prove its contention that the same is not subject to withholding tax. Hence, the Court adopts the ICPA's finding that said accruals are subject to withholding tax.

The Court also finds the amount of the ₱12,000.00 representing payment to an association, as subject to EWT, since petitioner failed to substantiate its claim that the said association was accredited or was qualified as a donee institution enjoying tax exemption, pursuant to RR No. 13-98.

In sum, out of the ₱7,122,035.00 travel and transportation expense, the amount of ₱4,007,728.54, as summarized hereunder, are subject to EWT, to wit:

| Particular | Amount |
|---|---|
| Subjected to withholding tax | ₱ 54,426.83 |
| Payment made to HSBC Visa Card | 88,757.76 |
| Employee reimbursements | |
| a. Without supporting document | 1,490,885.40 |
| b. With supporting documents | 682,782.10 |
| Travel agencies | 10,095.52 |
| Hotel and Resort | 17,411.03 |
| Accrual of trip incentives | 1,651,369.90 |
| Payment made to an association | 12,000.00 |
| **Total** | **₱ 4,007,728.54** |

### *d.) Insurance*

Petitioner purports that some of its insurance expense including amortization and payment to travel agency are valid expenses with supporting documents and should not be subject to assessment.

[48] Exhibit "PPP", Docket, p. 313.
[49] Exhibit "PPP-1", Docket, p. 314.

Based on the report of the ICPA, petitioner's insurance expense consists of the following:[50]

| Particular | Schedule[51] | Amount |
|---|---|---|
| Amortization of insurance policy | V-A | ₱ 2,504,240.85 |
| Payment to travel agency for reimbursement[52] | | 986.00 |
| Insurance expense purchased during the year | V | 368,418.26 |
| No supporting documents | V | 75,327.89 |
| | | **₱ 2,948,973.00** |

As clarified under RMC No. 72-2004,[53] payments for life and non-life insurance premium by the top ten thousand corporation to domestic/resident foreign insurance companies are considered payment for services subject to the 2% EWT. Thus, only the payment to travel agency for reimbursement amounting to ₱986.00 is not subject to EWT, while the remaining amount of ₱2,947,987.00[54] shall be subject to EWT.

### *e.)* ***<u>Communication, Light and water</u>***

According to petitioner, payments to Digitel Mobile Phils., Inc, a Board of Investments (BOI) - registered enterprise, which enjoyed income tax holiday under a special law from January 2003 to December 2008, are not subject to withholding tax as expressly stated in BIR Ruling [DA-089-05]. Petitioner further alleges that light and water expenses are not subject to withholding tax since these are mere reimbursements of actual expenses of Discovery Centre Condominium Corp. and Rhodia Philippines, Inc.

The following summary shows petitioner's communication, light and water expenses:[55]

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[50] Exhibit "MMM", p. 11.

[51] Exhibit "MMM-2".

[52] Exhibit "W-6.31".

[53] "Q15. Are payments for life and non-life insurance premium by the TTC/GO/LT to domestic/resident foreign insurance companies considered payment for services subject to the 2% EWT?

*A15. Yes.*"

[54] ₱2,948,973.00 - ₱986.00 = ₱2,947,987.00.

[55] Exhibit "MMM", pp. 14 to 15.

| Particular | Schedule[56] | Amount |
|---|---|---|
| Payments to suppliers subjected to withholding tax | VII | ₱ 1,898,648.19 |
| Payment to BOI-Registered Enterprise not subjected to withholding tax | VII-A | 59,289.49 |
| Reimbursement for utility charges | VII-B | 215,825.00 |
| Payments to suppliers not subjected to withholding tax | VII-C | 3,857.00 |
| Employee reimbursements | VII-D | 24,700.44 |
| Utilities without supporting documents | VII-E | 32,739.20 |
| Utilities under various accounts[57] | | 354,013.14 |
| | | **₱ 2,589,072.46** |

Petitioner's assertions regarding payments to Digitel of ₱59,289.49 and reimbursements of utility charges to Discovery Centre Corp in the amount of ₱322,573.00[58] and to Rhodia Phils., Inc of ₱215,825.00 are bereft of merit.

While it is true that BOI-registered entities enjoying exemption from income tax are not subject to EWT under Section 2.57.5(B) of RR No. 2-98, as amended,[59] petitioner failed to present proof of Digitel's BOI registration and exemption from income tax, and thus, the payment to Digitel in the amount of ₱59,289.49 shall be subject to withholding tax. Moreover, pursuant to RMC No. 72-2004,[60] payments to utility companies, in cases where the Top Ten Thousand

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[56] Exhibit "MMM-2".

[57] Exhibit "MMM-4", Schedules XII and XII-D.

[58] Exhibit "MMM-4", Schedule XII-D.

[59] "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:

xxx xxx xxx

(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

(2) **Corporations duly registered with the Board of Investments,** Philippine Export Processing Zones and Subic Bay Metropolitan Authority **enjoying exemption from the income tax pursuant** to E.O. 226, as amended, R.A. 7916, **the Omnibus Investment Code of 1987** and R.A. 7227, as amended, respectively;

xxx xxx xxx." *(Emphases supplied)*

[60] "Q10. Is the TTC/GO/LT-lessee required to withhold the 2% EWT on its payments to Meralco, PLDT and other utility companies which are coursed through the lessor, the electric meter being in the name of the lessor?

*A10.* Yes, *the TTC/GO/LT-lessee shall withhold the 2% EWT whether or not the electric meter is in its name provided that valid proof that payment of a particular expense is being shouldered by the payor claiming the expense. The lessee shall present the contract of lease together with the photocopy of the notice from the BIR designating the corporation as one of the Top 1000 Private Corporations to Meralco, PLDT and other utility companies through the lessor and shall likewise issue the corresponding BIR Form No. 2307 in the name of the utility companies.*"

Corporation is a lessee, are subject to 2% EWT whether or not the electric meter is in the name of the latter.

Considering that petitioner failed to prove that part of its communication, light, and water expenses are excluded from withholding tax, the total amount of ₱2,588,802.00[61] shall be subject to 2% EWT.

*f.)* ***Repairs and Maintenance***

Petitioner asserts that some of its repairs and maintenance expenses are not subject to EWT as these are casual purchases within the ₱10,000 threshold and reimbursements of actual expenses of its field personnel and officers for repairs and maintenance on the company premises, motor vehicles and office equipment.

Petitioner's repairs and maintenance includes the following expenses:[62]

| Particular | Schedule[63] | Amount |
|---|---|---|
| Payments to suppliers subjected to withholding tax | IX | ₱ 816,468.98 |
| Payments not subjected to withholding tax | IX-A | 56,533.50 |
| Employee reimbursements | IX-B | 717,427.94 |
| Payments without supporting documents | IX-C | 17,462.62 |
| Utilities under various accounts[64] | | 293,848.96 |
| | | **₱ 1,901,742.00** |

Based on Schedule IX-B prepared by the ICPA, out of the total employee reimbursements of ₱717,427.94, the Court notes that the amount of ₱248,247.60 was ascertained by the ICPA as not subject to withholding tax under section 2.57.2 (M) of RR 2-98, as the same pertains to casual purchases made from non-regular suppliers, which involves less than 6 transactions and within the threshold amount of less than ₱10,000.

However, a further verification reveals the following additional exceptions amounting to ₱97,922.16:

[61] ₱2,589,072.46 - = ₱2,588,802.00
[62] Exhibit "MMM", pp. 16 to 17.
[63] Exhibit "MMM-2".
[64] Exhibit "MMM-4", Schedules XII-C, XII-D &XII-E.

| Supplier/Particular | Exhibit | Amount | Findings |
|---|---|---|---|
| Piczon, Elmer G. | AA-69 to 69.5 | ₱ 99.00 | excess amount of claim which pertains to VAT (7,785.61-7,686.61) |
| Causin, Marlo | AA-72 to 72.6 | 73.20 | excess amount of claim which pertains to VAT (3,072.09-2,998.89) |
| Piczon, Elmer G. | AA-82 to 82.1 | 801.43 | excess amount of claim which pertains to VAT (7,480-6,678.57) |
| Nagera, Anna Esmeralda J. | DD1 | 300.00 | No supporting OR/invoice |
| Acorda, Tomas M. | DD1-1 | 300.00 | |
| Acorda, Tomas M. | DD1-2 | 300.00 | |
| Atienza, Jose Nicandro C. | DD4 | 300.00 | |
| Atienza, Jose Nicandro C. | DD7 | 300.00 | |
| Castillo, Manuel | DD9-4 | 510.00 | Exhibit referred to cannot be found |
| Convocar, Rey Salvador | DD11-1 | 450.00 | |
| Alano, Michael Rosser H. | DD12-1 | 300.00 | |
| Franco, Anna Teresita | DD15 | 1,716.89 | |
| Romo, Generoso | DD16 | 300.00 | |
| Piczon, Elmer G. | DD43-1L to 43-1w | 76.71 | excess amount of claim which pertains to VAT (5,691.00-5,614.29) |
| Romo, Generoso | DD47 | 300.00 | No supporting OR/invoice |
| Francia, Mel Faustino | DD48-2 | 1,261.06 | excess amount of claim without supporting docs(2153.92-892.86) |
| Calungsud, Mariel Matthew | DD50-5 | 300.00 | No supporting OR/invoice |
| Calungsud, Mariel Matthew | DD52-3 | 300.00 | |
| Franco, Anna Teresita | DD53 | 600.00 | |
| Castillo, Manuel | DD61 to 61.c | 48.00 | excess amount of claim which pertains to VAT (448-400) |
| Nagera, Anna Esmeralda J. | DD81 | 3,112.50 | Exhibit referred to cannot be found |
| Romo, Generoso | DD87 | 8,085.37 | |
| Gorubat, Tomas | DD88 | 2,589.29 | |
| Franco, Anna Teresita | DD90 | 300.00 | |
| Baysac, Benida Dela Paz | DD95 | 1,710.13 | |
| Palmar, Roger | DD98 | 600.00 | No supporting OR/invoice |
| Alano, Michael Rosser H. | DD99-2 | 300.00 | |
| Caballero, Fidel B. | DD99-3 | 225.00 | |
| Asentista, Ed | DD113 | 300.00 | |
| Causin, Marlo | DD143-1 | 5,572.80 | Exhibit referred to cannot be found |
| Baysac, Benida Dela Paz | DD149 | 457.50 | No supporting OR/invoice |
| Gorubat, Tomas | DD152 | 300.00 | |
| Gorubat, Tomas | DD152-1 | 300.00 | |
| Franco, Anna Teresita | DD237 | 299.97 | Exhibit referred to cannot be found |
| Franco, Anna Teresita | DD241-4 | 599.94 | No supporting OR/invoice |
| Lozano, Alvin S. | DD-279 | 300.00 | |
| Nagera, Anna Esmeralda J. | DD-293 | 300.00 | |
| Lozano, Alvin S. | DD302 to 302.3 | 300.00 | excess amount of claim which pertains to VAT (2,800-2,500) |
| Atienza, Jose Nicandro C. | DD-310 | 300.00 | No supporting OR/invoice |
| Franco, Anna Teresita | DD-316 | 300.00 | |
| Lozano, Alvin S. | DD-320 | 11,071.43 | amount exceeds ₱10,000 threshold |

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| | | | |
|---|---|---|---|
| Castillo, Manuel | DD-324 to 324.5 | 14,900.00 | amount exceeds ₱10,000 threshold |
| Calungsud, Mariel Matthew | DD331 | 300.00 | No supporting OR/invoice |
| Caballero, Fidel B. | DD-341 | 600.00 | |
| Nagera, Anna Esmeralda J. | DD-346 | 300.00 | |
| Baysac, Benida Dela Paz | DD-347 to 347.17 | 650.00 | invoice dated 2006 |
| Castillo, Manuel | DD-349 | 300.00 | No supporting OR/invoice |
| Atienza, Jose Nicandro C. | DD-363 | 300.00 | Exhibit referred to cannot be found |
| Carandang, Ma. Teresa A. | DD-364 | 600.00 | |
| Lozano, Alvin S. | DD-367 | 300.00 | |
| Gorubat, Tomas | DD-369 | 300.00 | |
| Viloria, Dr. Florisa | DD-383-4 | 11,813.70 | No supporting OR/invoice and amount exceeds ₱10,000 threshold |
| Martinez, Peter Beverly | DD-394 | 300.00 | No supporting OR/invoice |
| Atienza, Jose Nicandro C. | DD-414 | 300.00 | |
| Acuna, McArthur L. | - | 3,125.00 | No supporting document (no reference) |
| Carandang, Ma. Teresa A. | DD57 to 57d | 24,049.75 | Exceeds ₱10,000 threshold |
| Castillo, Manuel | DD356 to 356.6 | (6,176.51) | additional amount allowed with supporting docs (in addition to P2,238.25) |
| **Total** | | **₱ 97,922.16** | |

Thus, only the amount of ₱567,102.50[65] from the amount of ₱717,427.94 is subject to EWT.

The amount of ₱293,848.96 pertaining to payment of utilities appears to be further divided into three, to wit: (1) ₱266,855.58, represents payments to Discovery Center Corp. per Schedule XII-D; (2) ₱21,189.81, pertains to payments to Shell for Shell Fleet Cards per Schedule XII-C; and (3) ₱5,803.57, embodies payment to Microbase, Inc. per Schedule XII-E.

A perusal of documents reveal that the payments to Discovery Centre Condominium Corporation actually pertain to its monthly association dues which are not subject to withholding tax.

As for the payments to Shell for Shell Fleet Cards, as earlier discussed under travel and transportation, the same are not subject to EWT, pursuant to BIR Ruling No. DA-649-06 dated November 2, 2006.

With regard to the payment to Microbase, its reference is not found in the actual exhibits, thus, should be considered as

[65] ₱717,427.94 - ₱248,247.60 + ₱97,922.16= ₱567,102.50.

unsupported and shall be subject to withholding tax.

In fine, out of the ₱1,901,742.00 repairs and maintenance expense, ₱1,463,371.17 shall be subject to EWT, as summarized below:

| Particular | Amount |
|---|---|
| Payments to suppliers subjected to withholding tax | ₱ 816,468.98 |
| Payments not subjected to withholding tax | 56,533.50 |
| Employee reimbursements | 567,102.50 |
| Payments without supporting documents | 17,462.62 |
| Utilities under various accounts | 5,803.57 |
| **Total** | **₱ 1,463,371.17** |

### *g.) Outside services*

Petitioner alleges that its expenses for outside services are not subject to withholding tax as these were paid to tax-exempt general professional partnerships, such as its lawyers and external auditors.

A summary of its account is as follows:[66]

| Particular | Schedule[67] | Amount |
|---|---|---|
| Payment to suppliers subjected to withholding tax | VI | ₱ 501,497.65 |
| Payment to general professional partnership exempted from withholding tax | VI-A | 1,187,855.98 |
| Payment through employee reimbursements | VI-B | 750.00 |
| Without supporting documents | VI-C | 1,121,728.37 |
| Payment to travel agent[68] | | 7,600.00 |
| **Total** | | **₱ 2,819,432.00** |

Regarding the amount of ₱1,187,855.98, Section 2.57.5 of RR No. 2-98, as amended,[69] explicitly exempts income payments made

[66] Exhibit "MMM", pp. 12 to 13.
[67] Exhibit "MMM-2".
[68] Exhibit "MMM-4", Schedule XII-A.
[69] "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:
xxx xxx xxx
(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**
xxx xxx xxx." *(Emphases supplied)*

to a general professional partnership from the EWT. However, upon verification, this Court finds that of the said amount, the amount of ₱196,403.98 is not substantiated. Thus, only the remaining amount of ₱991,452.00[70] may be exempted from EWT.

The following employee reimbursements amounting to ₱200 shall also be subject to EWT, in addition to the ₱1,121,728.37 unsupported payments and ₱7,600.00 payment to travel agent:

| Supplier/Particular | Exhibit | Amount | Findings |
|---|---|---|---|
| Nagera, Anna Esmeralda J. | DD80 | ₱ 30.00 | exhibit referred to cannot be found |
| Carandang, Ma. Teresa A. | DD253 | 110.00 | no supporting OR/invoice |
| Frnaco, Anna Teresita | DD-265 | 30.00 | no supporting OR/invoice |
| Frnaco, Anna Teresita | DD-362 | 30.00 | exhibit referred to cannot be found |
| **Total** | | **₱ 200.00** | |

Hence, out of the ₱2,819,432.00 total payments for outside services, only the amount of ₱1,827,430.00, shall be subject to 2% EWT, summarized as follows:

| Particular | Subject to EWT |
|---|---|
| Payment to suppliers subjected to withholding tax | ₱ 501,497.65 |
| Payment to general professional partnership exempted from withholding tax | 196,403.98 |
| Payment through employee reimbursements | 200.00 |
| Without supporting documents | 1,121,728.37 |
| Payment to travel agent | 7,600.00 |
| **Total** | **₱ 1,827,430.00** |

### *h.)* ***<u>Office supplies</u>***

Petitioner's office supplies is accounted as follows:[71]

| Particular | Schedule[72] | Amount |
|---|---|---|
| Payment to suppliers subjected to withholding tax | Schedule X | ₱ 319,126.19 |
| Casual purchase not subject to withholding tax | Schedule X-A | 5,580.36 |
| Employee reimbursements | Schedule X-B | 78,865.20 |
| Under various suppliers and expense accounts[73] | | 73,534.64 |
| **Total** | | **₱ 477,106.39** |

[70] ₱1,187,855.98 - ₱196,403.98 = ₱991,452.00.
[71] Exhibit "MMM", p. 21.
[72] Exhibit "MMM-4".
[73] Exhibit "MMM-4", Schedule XII-E.

As ascertained by the ICPA, the amount of ₱5,580.36 pertains to a single transaction made to B.E. Scientific Glass Instrument, which is considered as a purchase from non-regular supplier involving less than 6 transactions, not subject to withholding tax under the aforequoted Section 2.57.2 (M) of RR No. 2-98, as amended. However, no reference or document was provided to support the same, hence, it must be subject to EWT.

Out of the ₱78,865.20 employee reimbursements, the ICPA noted that ₱27,854.66 are casual expenses not exceeding ₱10,000 threshold with complete supporting documents. Yet, upon further review, the Court finds the amount of ₱4,564.07 as subject to EWT, in addition to the unsupported amount of ₱51,010.54[74], for the reasons stated below:

| ***Particulars*** | ***Exhibit*** | ***Reason*** | ***Amount*** |
|---|---|---|---|
| Franco, Anna Teresita | DD-362 | exhibit referred to cannot be found | ₱ 1,410.71 |
| Convocar, Rey Salvador | DD11-2 | | 40.00 |
| Martinez, Peter Beverly | DD-368 | | 1,062.50 |
| Martinez, Peter Beverly | DD-378-1 | | 299.50 |
| | | no basis (casual purchase of service as per ICPA schedule) | 1,751.36 |
| **Total** | | | **₱ 4,564.07** |

Thus, out of the total office supplies expense of ₱477,106.39, ₱453,815.80 shall be subject to 1% EWT, as summarized below:

| **Particular** | **Amount** |
|---|---|
| Payment to suppliers subjected to withholding tax | ₱319,126.19 |
| Casual purchase not subject to withholding tax | 5,580.36 |
| Employee reimbursements | 55,574.61 |
| Under various suppliers and expense accounts | 73,534.64 |
| **Total** | **₱ 453,815.80** |

### *i.)* ***<u>Seminars, meetings and conferences</u>***

Petitioner claims that expenses pertaining to seminars, meetings and conferences are not subject to withholding tax as they were also paid to various non-stock, non-profit organizations, such as the Philippine Veterinary Medical Association, as convention fees and registration fees. According to petitioner, these were also reimbursements of actual expenses of field personnel and officers, which are not subject to EWT.

[74] Exhibit "MMM", p. 21.

Petitioner's seminars, meetings and conferences account is presented hereunder:[75]

| Particular | Schedule[76] | Amount |
|---|---|---|
| Payment to suppliers subjected to withholding tax | VIII | ₱ 86,017.86 |
| Payment to suppliers with single transactions and not subject to withholding tax | VIII-A | 278,806.25 |
| Employee reimbursements | VIII-B | 1,617,194.75 |
| Payments to suppliers under various expense accounts[77] | | 261,019.14 |
| **Total** | | **₱ 2,243,038.00** |

The amount of ₱278,805.96, as detailed below, represents payment for purchases made from casual/non-regular suppliers, which involves less than six (6) transactions and within the threshold amount of ₱10,000 and thus, not subject to withholding tax.

| Supplier | Exhibit | Amount |
|---|---|---|
| Casa San Pablo | S-1.3 | ₱ 82,450.00 |
| La Luz Beach Resort | S-1.4 | 174,150.00 |
| Speaker | - | 9,000.00 |
| Tan-vy International | - | 241.96 |
| Samina's Café | S-1.5 | 12,964.00 |
| **Total** | | **₱ 278,805.96** |

However, payments to Speaker and Tan-vy International in the aggregate amount of ₱9,241.96 shall be subject to withholding tax considering that no available supporting document was provided by petitioner to prove that the same is not subject to EWT.

Moreover, out of the ₱1,617,194.75 representing employee reimbursements, the amount of ₱961,960.96 is not substantiated, and thus, must be subject to EWT.

On the other hand, the remaining amount of ₱655,233.79[78] pertains to casual expenses not exceeding six (6) transactions at the ₱10,000 threshold per transaction and thus, should not be subject to withholding tax. However, upon further examination, the Court finds said amount subject to additional exceptions amounting to

[75] Exhibit "MMM", pp. 19 to 20.
[76] Exhibit "MMM-2".
[77] Exhibit "MMM-4", Schedules XII-A, XII-B and XII-E.
[78] ₱1,617,194.75 - ₱961,960.96 = ₱655,233.79.

₱270,398.17 due to the following reasons:

| Supplier/Particular | Exhibit | Amount | Findings |
|---|---|---|---|
| Gorubat, Tomas | AA-39 to AA39.2 | ₱ 1,339.29 | OR dated 2006 |
| Monjardin, Joey | AA-13 to AA13.7 | 465.00 | no supporting OR/invoice |
| Franco, Anna Teresita | AA-14 to AA14.8 | 220.00 | receipt not dated |
| | | 110.00 | without valid OR/invoice |
| Martinez, peter Beverly | AA-40 to AA40.3 | 350.00 | receipt details not readable |
| | | 11,607.14 | without valid OR/invoice and exceeds ₱10,000 threshold |
| Lozano, Alvin S. | AA-41 to AA41.2 | 11,777.77 | amount exceeds ₱10,000 threshold |
| calungsud, Mariel Matthew | AA-42 to AA42.2 | 962.00 | receipt details not readable |
| Martinez, peter Beverly | AA-45.4 | 2,190.00 | document not signed |
| Convocar, Rey Salvador | AA-46.3 | 3,800.00 | without valid OR/invoice |
| | | 140.00 | |
| Martinez, peter Beverly | AA-47 to AA47.3 | 1,034.82 | receipt details not readable |
| Acuna, McArthur | AA-50.1 | 2,500.00 | without valid OR/invoice |
| Concepcion, Cristino | AA-51 to AA51.2 | 151.33 | no year indicated in the receipt |
| | | 630.00 | year not seen on the receipt |
| Baysac, Benida dela Paz | AA-52 to AA52.1 | 17,500.00 | amount exceeds ₱10,000 threshold |
| Gorubat, Tomas | AA-83 to AA83.2 | 2,400.00 | receipt details not readable |
| Acuna, McArthur | AA-89 to AA89.1 | 908.75 | |
| Acorda, Tomas M. | DD1-1 to DD1-1b | 9,943.35 | no supporting OR/invoice |
| Acorda, Tomas M. | DD1-2a to DD1-2w | 504.17 | |
| Atienza, Jose Nicandro C. | DD4 to DD4.15 | 426.00 | |
| Atienza, Jose Nicandro C. | DD12-4 | 2,802.00 | exhibit referred to cannot be found |
| Viloria, Dr. Florisa | DD14 | 3,643.80 | |
| Romo, Generoso | DD16 | 11,206.93 | |
| Acorda, Tomas M. | DD18 | 7,104.64 | |
| Viloria, Dr. Florisa | DD20 | 930.00 | |
| Gopez, Ana Maria R. | DD53 | 585.00 | Cannot be ascertained from the document submitted |
| Acorda, Tomas M. | DD53 to DD53r | 1,622.61 | Cannot be ascertained from the document submitted (other supporting doc is not readable) |
| Nagera, Anna Esmeralda | DD81 | 1,243.23 | exhibit referred to cannot be found |
| Martinez, peter Beverly | DD82 | 2,730.61 | |
| Martinez, peter Beverly | DD83 | 2,718.00 | |
| Franco, Anna Teresita | DD90 | 5,417.26 | |
| Acorda, Tomas M. | DD96 to DD96t | 4,728.53 | Cannot be ascertained from the document submitted |
| Palmar, Roger | DD98 to DD98g | 1,020.53 | no supporting OR/invoice |
| Franco, Anna Teresita | DD121 to DD121.2 | 1,858.79 | no proof of purchase |
| Martinez, peter Beverly | DD132 to DD132.7 | 455.00 | Without valid OR/invoice |
| Acorda, Tomas M. | DD131 to DD131.14 | 1,663.56 | no supporting OR/invoice |
| Acorda, Tomas M. | DD146 | 8,235.93 | exhibit referred to cannot be found |
| Palmar, Roger | DD147 | 5,189.06 | |
| Palmar, Roger | DD148 | 708.00 | |
| Romo, Generoso | DD118 to DD118.6 | 8,131.86 | no proof of purchase |
| Piczon, Elmer G. | DD153 to DD153.3 | 332.00 | supporting doc per exhibit does not pertain to the amount stated |
| Romo, Generoso | DD181 | 12,285.63 | exhibit referred to cannot be |

| | | | |
|---|---|---|---|
| | | | found |
| Viloria, Dr. Florisa | DD244-1 to DD244-3 | 1,564.00 | no proof of purchase |
| Calungsud, Mariel Matthew | DD250-3 to DD250-3g | 785.40 | no supporting OR/invoice (OR not readable) |
| Carandang, Ma. Teresa A. | DD253to DD253.5 | 4,071.86 | no supporting OR/invoice |
| Martinez, peter Beverly | DD255 to DD255.10 | 598.00 | no supporting OR/invoice (some ORs not readable) |
| Franco, Anna Teresita | DD265 to DD265.16 | 500.00 | no proof of purchase |
| Romo, Generoso | DD272 to DD272.9 | 5,876.50 | no year indicated in the OR |
| Viloria, Dr. Florisa | DD290 to DD290.3 | 1,655.00 | no proof of purchase |
| Martinez, peter Beverly | DD304 to DD304-1f | 778.00 | no supporting doc |
| Calungsud, Mariel Matthew | DD331 to DD331.3 | 434.50 | no supporting docs |
| Franco, Anna Teresita | DD362 | 665.00 | exhibit referred to cannot be found |
| Atienza, Jose Nicandro C. | DD363 | 720.00 | |
| Atienza, Jose Nicandro C. | DD373-2 | 5,869.57 | |
| Atienza, Jose Nicandro C. | DD374-1 | 4,390.00 | |
| Martinez, Peter Beverly | DD378-1 | 1,284.00 | |
| Monjardin, Joey | DD379 | 11,658.03 | exhibit referred to cannot be found and amount exceeds ₱10,000 threshold |
| Acorda, Tomas M. | DD381 | 14,182.07 | exhibit not found |
| Acorda, Tomas M. | DD381-1 | 12,000.29 | exhibit referred to cannot be found and amount exceeds ₱10,000 threshold |
| Nagera, Anna Esmeralda | DD383-1 to DD383-10 | 291.20 | OR dated 2004 |
| Franco, Anna Teresita | DD410 to DD410.10 | 2,503.68 | no supporting OR/invoice |
| Nagera, Anna Esmeralda | DD416 to DD416.25 | 311.00 | |
| De Dios, Teresita T. | DD420 to DD420.4 | 585.00 | OR not readable |
| Rodriguez, Daniel | DD427 to DD427.17 | 10,513.39 | receipt dated 2004 |
| Rodriguez, Daniel | - | 8,127.25 | Without supporting OR/invoice (no reference) |
| Ramirez, Marita E. | - | 3,384.95 | |
| Caballero, Fidel B. | - | 10,096.11 | |
| Zoilo Lapuz | - | 10,000.00 | |
| Ramirez, Marita E. | - | 3,980.78 | |
| **Total** | | **₱270,398.17** | |

Thus, the amount for employee reimbursements subject to EWT must be reduced from ₱1,617,194.75 to ₱1,232,359.13[79].

To recapitulate, out of the ₱2,243,038.00, representing petitioner's seminars, meetings and conferences account, the amount of ₱1,588,638.09 shall be subject to EWT, summarized as follows:

[79] ₱961,960.96 + ₱270,398.17 = ₱1,232,359.13.

| Particular | Amount |
|---|---|
| Payment to suppliers subjected to withholding tax | ₱86,017.86 |
| Payment to suppliers with single transactions and not subject to withholding tax | 9,241.96 |
| Employee reimbursements | 1,232,359.13 |
| Payments to suppliers under various expense accounts | 261,019.14 |
| **Total** | **₱1,588,638.09** |

However, since the supporting documents show that these were actually purchase of services, the same shall be subject to 2% instead of 1% EWT.

### *j.)* ***Miscellaneous***

Petitioner asserts that its miscellaneous expenses refer to reimbursements of actual expenses of its field personnel and officers, as well as bank charges and bad debts that had been written-off, which are all not subject to withholding tax.

Petitioner's miscellaneous account is composed of the following:[80]

| Particular | Schedule[81] | Amount |
|---|---|---|
| Payment to suppliers subjected to withholding tax | XI | ₱ 27,582.86 |
| Casual purchase not subject to withholding tax | XI-A | 8,928.00 |
| Casual purchases | XI-B | 7,361.61 |
| Bad debts accounts | XI-C | 166,971.48 |
| Bank charges | XI-D | 211,629.62 |
| Employee reimbursements | XI-E | 678,329.20 |
| Without supporting documents | XI-F | 14,306.87 |
| Paid under various expense[82] | | 20,402.64 |
| **Total** | | **₱ 1,135,512.28** |

As ascertained by the ICPA, the amount of ₱27,582.86 represents payment to suppliers subject to EWT; while the amounts of ₱8,928.00 and ₱7,361.61 pertain to petitioner's casual purchases

[80] Exhibit "MMM", pp. 22 to 23.
[81] Exhibit "MMM-4".
[82] Exhibit "MMM-4", Schedules XII-A and XII-E.

which are not subject to withholding tax. However, out of the ₱7,361.61 casual purchases, the amount of ₱901.61 is not substantiated, and thus, must be subject to EWT.

Also, part of the miscellaneous expense subjected by the BIR to withholding tax is the amount of ₱166,971.48. According to petitioner, the same pertains to bad debts written off, which is not an income payment, and thus, not subject to withholding tax. However, petitioner failed to prove that the same indeed pertains to written off bad debts.

Furthermore, under RMC No. 72-2004,[83] services fees and other charges of local banks are considered payment for services rendered, hence, subject to 2% EWT. Thus, petitioner's bank charges in the amount of ₱211,629.62 must be subject to the 2% EWT.

As ascertained by the ICPA, the employee reimbursements of ₱678,329.20 represent casual expenses not exceeding six transactions at ₱10,000 threshold per transaction; of which the amount of ₱423,088.01 is without valid supporting documents, and thus, subject to EWT. Upon further verification, the Court finds that the additional amount of ₱69,617.63 shall also be subject to EWT for the reasons stated hereunder:

| Particulars | Exhibit | Amount | |
|---|---|---|---|
| ***Cannot be ascertained from the document submitted*** | | | |
| Caballero, Fidel B. | AA-43.1 | ₱ 2,668.25 | |
| Atienza, Jose Nicandro C. | DD7 to 7.3 | 1,875.00 | |
| Franco, Anna Teresita | DD53 | 60.00 | |
| Rodriguez, Daniel | DD100 | 2,678.58 | |
| Romo, Generoso | DD118 | 6,979.86 | |
| Alano, Michael Rosser H. | DD125 | 273.00 | |
| Caballero, Fidel B. | DD127 | 459.00 | |
| Acuna, McArthur | DD135 | 400.00 | |
| Convocar, Rey Salvador | DD251-1 to 251-1i | 247.00 | |
| Convocar, Rey Salvador | DD278 | 158.00 | |
| Baysac, Benida Dela Paz | DD286-2 | 310.00 | |
| Acorda, Tomas | DD296 | 229.50 | |

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[83] "Q19. Is the payment of the principal and interest on loans, service fees and other charges considered as income extended by local banks, quasi-banks and other financial institutions to the TTC/GO/LT subject to the 2% EWT?

*A19. Only the interest payments on loans, service fees and other charges considered as income are considered payment for services rendered, hence, subject to 2% EWT. Payment corresponding to the principal amount is not subject to EWT.*"

| | | | |
|---|---|---|---|
| Acuna, McArthur | DD345 to 345.6 | 735.40 | |
| Castillo, Manuel | DD355 | 354.35 | |
| Romo, Generoso | DD418 | 3,154.64 | |
| Rodriguez, Daniel | DD427 | 9,353.10 | |
| Acuna, McArthur | DD439 | 230.00 | ₱ 30,165.68 |
| ***Overclaimed expense*** | | | |
| Monjardin, Joey | DD301-1 to 301-5 | 10.00 | 10.00 |
| ***Exhibit referred to cannot be found from the records of the case*** | | | |
| Viloria, Dr. Florisa | DD2-1 | 547.75 | |
| Castillo, Manuel | DD9- 4, DD9-1 | 960.00 | |
| Causin, Marlo | DD10 | 850.00 | |
| Convocar, Rey Salvador | DD11 | 1,376.00 | |
| Convocar, Rey Salvador | DD11-2 | 567.00 | |
| Franco, Anna Teresita | DD15 | 100.00 | |
| Romo, Generoso | DD16 | 937.50 | |
| Gopez, Ana Maria | DD17 | 992.00 | |
| Viloria, Dr. Florisa | DD20-1 | 7,920.00 | |
| Martinez, Peter Beverly | DD83 | 680.00 | |
| Asentista, Ed | DD86,85 | 1,068.00 | |
| Romo, Generoso | DD87 | 1,323.21 | |
| Lozano, Alvin S. | DD91 | 1,098.00 | |
| Alano, Michael Rosser H. | DD99 | 247.00 | |
| Convocar, Rey Salvador | DD120 | 808.00 | |
| Convocar, Rey Salvador | DD120-1 | 1,467.85 | |
| Gorubat, Tomas | DD122 | 619.00 | |
| Acuna, McArthur | DD163 | 525.00 | |
| Caballero, Fidel B. | DD164-1 | 176.00 | |
| Piczon, Elmer G. | DD231-4 | 589.00 | |
| Piczon, Elmer G. | DD236 | 1,366.30 | |
| Atienza, Jose Nicandro C. | DD363 | 2,167.40 | |
| Carandang, Ma. Teresa | DD364 | 1,789.89 | |
| Calungsud, Mariel Matthew | DD365 | 2,861.00 | |
| Gorubat, Tomas | DD369 | 798.00 | |
| Caballero, Fidel B. | DD370 | 405.00 | |
| Atienza, Jose Nicandro C. | DD374-1 | 1,002.00 | |
| Piczon, Elmer G. | DD380 | 3,161.24 | |
| Acorda, Tomas | DD381 | 163.96 | |
| Alano, Michael Rosser H. | FF1-1 | 243.60 | 36,809.70 |
| ***OR dated outside the taxable year 2007*** | | | |
| Piczon, Elmer G. | DD258 to 258.3 | 145.00 | 145.00 |
| ***Without valid OR/invoice*** | | | |
| Caballero, Fidel B. | AA-87 to 87.3 | 850.00 | |
| Calungsud, Mariel Matthew | DD276 to 276.9 | 320.00 | 1,170.00 |
| ***Supporting document not readable*** | | | |
| Piczon, Elmer G. | DD281-1 | 320.25 | |
| Piczon, Elmer G. | DD322 | 497.00 | |
| Piczon, Elmer G. | DD323 to 323.3 | 100.00 | 917.25 |
| ***Year not indicated in the OR*** | | | |
| Lozano, Alvin S. | DD267.5 to 267.8 | 400.00 | 400.00 |
| **TOTAL** | | | **₱ 69,617.63** |

Thus, of the amount ₱678,329.20 representing casual expenses, only the amount of ₱492,705.64[84] must be subjected to EWT.

In sum, out of the ₱1,135,512.28 miscellaneous expense, ₱934,500.72 shall be subject to EWT, as summarized below:

| Particular | Amount |
|---|---|
| Payment to suppliers subjected to withholding tax | ₱ 27,582.86 |
| Casual purchases | 901.61 |
| Bad debts accounts | 166,971.48 |
| Bank charges | 211,629.62 |
| Employee reimbursements | 492,705.64 |
| Without supporting documents | 14,306.87 |
| Paid under various expense | 20,402.64 |
| **Total** | **₱ 934,500.72** |

***k.) Acquisition of transportation equipment/office furniture, fixtures and equipment/computer equipment***

The ICPA, in Schedule XIII[85] of her report, provided a breakdown of petitioner's various acquisitions for the year 2007 as reflected in its Audited Financial Statements, to wit:

| | |
|---|---|
| Acquisition of transportation equipment | ₱ 2,787,636.00 |
| Acquisition of office furniture, fixtures and equipment | 1,191,547.00 |
| Acquisition of computer equipment | 944,017.00 |
| **Total** | **₱ 4,923,200.00** |

Petitioner alleges that payments to Micron Sprayers, Ltd. and Merial Select, Inc., both foreign suppliers, in the total amount of ₱849,883.42 were foreign purchases and thus, not subject to withholding tax. However, petitioner failed to prove that these foreign corporations are not engaged in trade or business in the Philippines to be exempt from final withholding tax.

Thus, the total acquisitions in the amount of ₱4,923,200.00 shall be subject to EWT.

***l. ) Increase in leasehold improvement and Domestic purchase of goods other than capital goods***

Petitioner claims that all its income payments to local/resident

[84] ₱423,088.01 + ₱69,617.63 = ₱492,705.64.
[85] Exhibit "MMM-4".

supplier of goods and services have been properly subjected to withholding tax. However, petitioner was not able to prove that indeed its leasehold improvements for the year 2007 and its domestic purchases of goods other than capital goods have been properly subjected to withholding tax, thus, respondent's assessment shall be sustained. This is in line with the principle that tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of tax assessment unless proven otherwise.[86]

To recapitulate, petitioner is liable for deficiency EWT on income payments made as TTC in the amounts of ₱325,596.40 for services and ₱56,967.54 for goods, computed as follows:

| Income payments subject to EWT per review: | **for services** | **for goods** |
|---|---|---|
| Distribution and warehousing | ₱ 9,784,134.67 | |
| Advertising and promotion | 5,951,455.29 | ₱ 467,917.12 |
| Travel and transportation | 4,007,728.54 | |
| Insurance | 2,947,987.00 | |
| Communication, light and water | 2,588,802.00 | |
| Repairs and maintenance | 1,463,371.17 | |
| Outside services | 1,827,430.00 | |
| Increase in leasehold improvements | 138,460.00 | |
| Office supplies | | 453,815.80 |
| Seminars, meetings and conferences | 1,588,638.09 | |
| Miscellaneous | | 934,500.72 |
| Acquisition of transportation equipment | | 2,787,636.00 |
| Acquisition of office furniture, fixtures and equipment | | 1,191,547.00 |
| Acquisition of computer equipment | | 944,017.00 |
| Domestic purchases of goods other than capital goods | | 8,307,876.84 |
| **Total** | **₱ 30,298,006.76** | **₱ 15,087,310.48** |
| Multiply by EWT rate | 2% | 1% |
| EWT due | **₱ 605,960.14** | **₱ 150,873.10** |
| Less: Taxes withheld per EWT returns and alphalist | 280,363.74 | 93,905.56 |
| **EWT still due** | **₱ 325,596.40** | **₱ 56,967.54** |

### A.2. Commissions

Respondent assessed petitioner of deficiency EWT on its commissions, detailed as follows:

[86] *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzales, et at.*, G.R. No. 177279, October 13, 2010.

| | |
|---|---|
| Commissions per FS/ITR | ₱ 5,698,962.00 |
| Commissions per returns/alphalist | 832,379.40 |
| Difference | **₱ 4,866,582.60** |
| Multiply by EWT rate | x 10% |
| EWT due | **₱ 486,658.26** |

Petitioner contends that the difference computed by respondent amounting to ₱4,866,582.60 should not have been disallowed since the commissions used thereon in the amount of ₱5,698,962.00 pertains to commissions paid to its employees as part of their sales incentives and the same has already been subjected to withholding tax on compensation.

A scrutiny of petitioner's records reveals that petitioner had records of commissions totaling ₱6,260,188.92, with the following monthly breakdown:

| | Monthly Payroll Register[87]/ Detailed report per employee[88] |
|---|---|
| January | ₱ 503,324.54 |
| February | 185,055.04 |
| March | 482,267.15 |
| April | 846,121.31 |
| May | 934,272.90 |
| June | 396,209.91 |
| July | 596,496.93 |
| August | 392,545.63 |
| September | 717,925.75 |
| October | 462,241.19 |
| November | 383,085.59 |
| December | 360,642.98 |
| **Total** | **₱ 6,260,188.92** |

Petitioner claims that the above amount was already subjected to withholding tax on compensation. The Court notes however, that the above amount does not tally with the commissions being subjected by respondent to withholding tax. It may be true that the amount of ₱6,260,188.92 had already been subjected to withholding tax on compensation, but it cannot be surmised that the subject assessment in the amount of ₱5,698,962.00 pertains to one and same commission alleged by petitioner. Moreover, although the ICPA provided a Schedule[89] accounting the ₱5,698,961.82 amount of commission, no evidence were presented by petitioner to verify the

[87] Exhibits "II-1" to "II-12".
[88] Exhibits "II-14" to "II-14d".
[89] Exhibit "MMM-2", Schedule IV.

amount of debits and credits listed thereon. Hence, the assessment must be upheld for failure of petitioner to support its allegation.

In recapitulation, petitioner is liable to pay basic deficiency expanded withholding tax of ₱869,222.20, as summarized below:

| Particulars | Amount |
|---|---|
| Income payments made by top 10,000 corporation-services | ₱ 325,596.40 |
| Income payments made by top 10,000 corporation-goods | 56,967.54 |
| Commissions | 486,658.26 |
| **Total basic deficiency EWT** | **₱ 869,222.20** |

## B. Deficiency VAT – ₱3,905,681.12

Respondent's computation of the deficiency VAT assessment for the taxable year 2007 in the amount of ₱3,905,681.12 is shown below:[90]

| | | | |
|---|---|---|---|
| Taxable revenue/receipts per VAT returns | | | ₱ 470,172,852.92 |
| Add: Adjustments per investigation: | | | |
| Unaccounted source of cash | | ₱ 18,714,600.81 | |
| Taxable sales/receipts not subjected to VAT | | 1,637,199.08 | 20,351,799.89 |
| Taxable revenue/receipts per investigation | | | ₱ 490,524,652.81 |
| | | | |
| Output tax due thereon (12%) | | | ₱ 58,862,958.34 |
| Less: Allowable tax credits/payments: | | | |
| Tax credits carried over from previous period | | ₱ 344,986.73 | |
| Creditable VAT withheld | | 201,165.83 | |
| Payments | | 15,885,003.86 | |
| Claimed input tax | | 40,219,880.34 | |
| Total | | ₱ 56,651,036.76 | |
| Less: Input tax on sale to government closed to expense | ₱216,704.00 | | |
| Input tax attributable to VAT exempt sales | 1,605.60 | 218,309.60 | 56,432,727.16 |
| Deficiency value-added tax | | | ₱ 2,430,231.18 |
| Add: 20% Interest p.a. (01.26.08 to 2.7.11) | | | 1,475,449.94 |
| **TOTAL AMOUNT DUE** | | | **₱ 3,905,681.12** |

### B.1. Unaccounted source of cash - ₱18,714,600.81

[90] Exhibit "B", Docket, p. 228.

The discussion on the unaccounted source of cash shall be in relation to the income tax and VAT assessments.

Respondent found that various accounts in petitioner's FS/ITR were not properly reported. According to respondent, the discrepancy, as computed below, is considered as unaccounted source of cash which led to the inference that part of petitioner's income had not been declared as enunciated in the case of *Perez vs. Court of Tax Appeals, et al.*[91]:

| | Per alphalist | Per FS/ITR | Difference |
|---|---|---|---|
| b.1 Unaccounted Rentals | ₱ 1,776,970.80 | ₱ 1,737,361.00 | ₱ 39,609.80 |
| b.2 Unaccounted salaries, wages and other benefits | | | |
| 13th month pay and other benefits | ₱ 5,721,412.39 | | |
| SSS,GSIS,PHIC and Pag-ibig contributions and Union dues | 375,925.00 | | |
| Salaries and other forms of Compensation | 30,101,204.25 | | |
| Salaries and wages | | ₱ 25,390,730.00 | |
| Employee benefits | | 7,376,709.00 | |
| Grossed-up monetary value of fringe benefits | | (766,275.11) | |
| Total | ₱ 36,198,541.64 | ₱ 32,001,163.89 | ₱ 4,197,377.75 |
| | | | |
| | **Per audit** | **Per FS/ITR** | |
| b.3 Unaccounted inventory | | | |
| Inventory, beginning | ₱ 84,148,381.34 | ₱ 83,736,970.00 | 411,411.34 |
| Inventory, ending | 78,766,805.40 | 77,260,524.00 | 1,506,281.40 |
| | | | ₱ 1,917,692.74 |
| b.4 Unaccounted purchase of goods | | | |
| Purchases-cost of sales | ₱305,382,802.52 | ₱ 292,822,882.00 | ₱ 12,559,920.52 |
| **Unaccounted source of cash** | | | **₱18,714,600.81** |

As can be gleaned from the foregoing, anent the rentals and salaries, respondent concluded that since the expenses reflected in petitioner's alphalist is higher than the amounts reported in its FS/ITR, the difference pertains to undeclared income. Moreover, the amount of inventory was compared by respondent to petitioner's List of Finished Goods Inventory;[92] while the purchase of goods per Financial Statement (FS) was compared to the amounts of importations and local purchases per its audit, and likewise considered the differences therefrom as undeclared income.

[91] G.R. No. L-10507, May 30, 1958.
[92] Exhibit "N".

The Court finds the assessment unmeritorious.

No deficiency VAT assessment should arise from the said *"Unaccounted source of cash"*, unless it is clearly shown that there was sale, barter, exchange, lease of goods or properties, or the rendering of services, in the course of trade or business.

It must be remembered that VAT is imposed on the seller, 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)*

Thus, what is critical to be shown, in the imposition or assessment of VAT, is that there was a sale, barter, exchange, lease of goods or properties, or the rendering of services, in the course of trade or business, and not when said taxpayer disburses an amount of money to pay for rentals or for the salaries and wages as well as other benefits of his employees. Simply put, the VAT is imposed when one sells, not when one spends.

Correspondingly, VAT should not be imposed on the supposed *"Unaccounted source of cash"* of petitioner.

**B.2. Taxable sales/receipts not subjected to VAT – ₱1,637,199.08**

By comparing petitioner's sales per FS with the sales reported per VAT returns, respondent found that the total taxable sales/receipts of ₱1,637,199.08, computed hereunder, was not fully subjected to VAT, pursuant to Sections 106 and 108 of the NIRC of 1997, as amended:[93]

| | | |
|---|---|---|
| Taxable sales/receipts per ITR/FS: | | |
| Sales/receipts (before returns/discounts of ₱ 12,104,448.00) | ₱ 470,259,329.00 | |
| Commission Income | 1,183,393.00 | |

[93] Exhibit "B", Docket, p. 231.

| | | |
|---|---|---|
| Gain on disposal of asset | 386,202.00 | ₱ 471,828,924.00 |
| Taxable sales/receipts per VAT returns | | 470,191,724.92 |
| **Taxable sales/receipts not subjected to VAT** | | **₱ 1,637,199.08** |

Petitioner claims that the commission income of ₱1,183,393.00 is subject to zero percent (0%) rate under Section 108(B)(2) of the NIRC since it was received as indent commission for facilitation of importation of goods from non-resident foreign corporations engaged in business outside the Philippines and it was paid in acceptable foreign currency and accounted for in accordance with the rules of BSP. Furthermore, petitioner asserts that the gain on disposal pertains to vehicles sold to its employees, thus, is not subject to VAT as it is not in the ordinary course of trade or business.

On this score, the Court finds petitioner's assertions without merit.

Though disclosed in Note 14[94] of the Notes to FS as of and for the years ended December 31, 2007 and 2006 that petitioner had commission income from indent sale with affiliates Merial S.A.S. and Merial Italia SPA in the amounts of ₱749,820.00 and ₱422,931.00, respectively, aggregating to ₱1,172,751.00, the amount does not tally with that reported in its FS/ITR.

Moreover, petitioner failed to provide sufficient and corroborative evidence to prove that it complied with the requisites provided under Section 108(B)(2) of the NIRC of 1997, as amended, to subject said income to zero percent (0%) VAT rate, to wit:

1) the services was performed in the Philippines;
2) the recipient of such services is doing business outside the Philippines;
3) the services must be other than processing, manufacturing or repacking goods;[95] and
4) the consideration for the services is paid for in acceptable foreign currency accounted for in accordance with the *Bangko Sentral ng Pilipinas* rules and regulations.

With regard to the gain on the disposal of asset in the amount of ₱386,202.00, petitioner asserts that the ICPA confirmed that said

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[94] Exhibit "DDD-34".

[95] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.

gain pertains to vehicles sold to its employees, in accordance with its policy that employees may choose to assume their assigned vehicles after a certain number of years. Thus, according to petitioner, the said gain is not subject to VAT as it is not a sale in the ordinary course of trade or business.

We do not agree.

Section 105 of the NIRC of 1997 provides as follows:

> "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.
>
> 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 course of trade or business'* means the regular conduct or pursuit of a commercial or an economic activity, <u>including transactions incidental thereto</u>**, 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.
>
> xxx xxx xxx." *(Emphases supplied)*

Contrary to petitioner's contention, under the said Section 105, VAT is imposable when the sale is made *"in the course of trade or business"*. Parenthetically, a careful reading of the said phrase would reveal that the law does not distinguish whether the sale is made *"in the <u>ordinary</u> course of trade or business"*, as petitioner suggests, to justify the non-imposition of the VAT.

Based on the definition of the phrase *"in the course of trade or business"*, the same includes the taxpayer's incidental transactions.

In *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue"*,[96] the Supreme Court held:

> "Mindanao II's sale of the Nissan Patrol is said to be an isolated transaction. However, it does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability. 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.**" *(Emphasis supplied)*

Based on this pronouncement, while the taxpayer is primarily engaged in a different type of business, said taxpayer's sale of a motor vehicle, which was bought by the said taxpayer and formerly used in his business, is subject to VAT.

Accordingly, petitioner's gain on sale of company vehicles to its employees is subject to VAT, it being an incidental transaction since the vehicles were acquired and used in furtherance of its business.

Thus, the VAT assessment in the amount of ₱1,637,199.08 must be upheld. Nonetheless, since the taxable sales/receipts used in the assessment is inclusive of VAT exempt sales in the amount of ₱18,872.00,[97] the computation of the amount of ₱1,637,199.08 must be shown to consider the latter, *viz*:

| | | |
|---|---|---|
| Taxable sales/receipts per FS/ITR (per assessment) | ₱ 471,828,924.00 | |
| Less: exempt sales | 18,872.00 | ₱ 471,810,052.00 |
| Taxable sales/receipts per VAT returns (per assessment) | 470,191,724.92 | |
| Less: exempt sales | 18,872.00 | 470,172,852.92 |
| Taxable sales/receipts not subjected to VAT | | **₱ 1,637,199.08** |

[96] G.R. Nos. 193301 and 194637, March 11, 2013.
[97] Exhibit "GGG-3", line 18.

**B.3. Input tax attributable to VAT exempt sale – ₱1,605.60**

Respondent computed input tax attributable to VAT exempt sales in the amount of ₱1,605.60 as shown below:[98]

| | | |
|---|---|---|
| VAT exempt sale | | ₱ 18,872.00 |
| Divided by Total sale | | ÷ 470,191,724.92 |
| Multiplied by Current input tax: | | |
| Claimed input tax | ₱ 40,219,880.34 | |
| Less: Input tax on sale to government closed to expense | 216,704.00 | x ₱ 40,003,176.34 |
| Input tax attributable to VAT exempt sale | | **₱ 1,605.60** |

However, as mentioned in the previous discussion, petitioner had exempt sales amounting to ₱18,872.00 reflected in its VAT Return for the second quarter of 2007.[99] Thus, the allocation for the input tax attributable to said sales should only involve its total sales and claimed input tax for the second quarter of 2007. Such being the case, the input tax attributable to VAT exempt sales for the said period shall be ₱2,140.10, computed as follows:

| | | |
|---|---|---|
| VAT exempt sales | | ₱ 18,872.00 |
| Divided by Total 2nd quarter sales | | ÷ 122,337,543.25 |
| Multiplied by Current input tax for 2nd quarter: | | |
| Claimed input tax | ₱ 13,883,001.27 | |
| Less: Input tax on sale to government closed to expense | 9,833.10 | x 13,873,168.17 |
| Input tax attributable to VAT exempt sale | | **₱ 2,140.10** |

In fine, petitioner is liable for basic deficiency VAT in the amount of ₱185,013.58, computed as follows:

| | | | |
|---|---|---|---|
| Taxable revenue/receipts per VAT returns | | | ₱ 470,172,852.92 |
| Add: Taxable sales/receipts not subjected to VAT | | | 1,637,199.08 |
| Taxable revenue/receipts per review | | | ₱ 471,810,052.00 |
| | | | |
| Output tax due thereon (12%) | | | ₱ 56,617,206.24 |
| Less: Allowable tax credits/payments: | | | |
| Tax credits carried over from previous period | | ₱ 344,986.73 | |

[98] Exhibit "B", Docket, p. 231.
[99] Exhibit "GGG-3", line 18.

| | | | |
|---|---|---|---|
| Creditable VAT withheld | | 201,165.83 | |
| Payments | | 15,885,003.86 | |
| Claimed input tax | | 40,219,880.34 | |
| Total | | ₱ 56,651,036.76 | |
| Less: Input tax on sale to government closed to expense | ₱ 216,704.00 | | |
| Input tax attributable to VAT exempt sales | 2,140.10 | 218,844.10 | 56,432,192.66 |
| **Basic Deficiency VAT** | | | **₱ 185,013.58** |

## C. Deficiency Income Tax – ₱24,876,769.56

Respondent found petitioner liable for deficiency income tax for taxable year 2007 in the amount of ₱24,876,769.56, computed as follows:[100]

| | | |
|---|---|---|
| Taxable income per Income Tax Return (ITR) | | ₱ 68,768,443.00 |
| Add: Adjustments per investigation: | | |
| Income payments not subjected to withholding tax | ₱ 26,767,371.06 | |
| Unaccounted source of cash | 18,714,600.81 | 45,481,971.87 |
| Taxable Income per investigation | | ₱ 114,250,414.87 |
| Income tax due thereon (35%) | | ₱ 39,987,645.20 |
| Less: Allowable tax credits/payments: | | |
| Payments | ₱ 22,928,521.00 | |
| Creditable tax withheld | 1,140,434.00 | 24,068,955.00 |
| Deficiency Income Tax | | ₱ 15,918,690.20 |
| Add: 20% Interest p.a. (04.16.08 to 2.7.11) | | 8,958,079.36 |
| **Total Amount Due** | | **₱24,876,769.56** |

### C.1. Income payments not subjected to withholding tax

Per comparison of petitioner's FS/ITR as against its alphalist, respondent found that income payments amounting to ₱26,767,371.06, as detailed below, were allegedly not subjected to withholding tax and therefore disallowed as deduction from gross income pursuant to Section 34(K) of the NIRC of 1997, as amended:[101]

| | Per ITR/FS | Per Alphalist | Difference |
|---|---|---|---|
| Income payments made by top 10,000 corporation-services | | | |
| Distribution and selling expenses: | | | |
| Distribution and warehousing | ₱10,053,854.00 | | |

[100] Exhibit "B", Docket, p. 228.
[101] Exhibit "B", Docket, p. 230.

| | | | |
|---|---|---|---|
| Advertising and promotion | 6,637,645.00 | | |
| Travel and transportation | 6,119,920.00 | | |
| Insurance | 1,877,874.00 | | |
| Communication, light and water | 1,875,587.00 | | |
| Repairs and maintenance | 1,174,509.00 | | |
| Outside services | 659,277.00 | | |
| General and administrative expenses: | | | |
| Outside services net of professional fees of P926,484.18 | 1,233,670.82 | | |
| Insurance | 1,071,099.00 | | |
| Travel and transportation | 1,002,115.00 | | |
| Communication, light and water | 713,215.00 | | |
| Repairs and maintenance | 727,233.00 | | |
| Total | ₱33,145,998.82 | ₱14,018,187.00 | ₱ 19,127,811.82 |
| Income payments made by top 10,000 corporation-goods | | | |
| Distribution and selling expenses: | | | |
| Office supplies | ₱ 239,372.00 | | |
| Seminars, meetings and conferences | 1,982,214.00 | | |
| Miscellaneous | 866,123.00 | | |
| General and administrative expenses: | | | |
| Seminars, meetings and conferences | 260,824.00 | | |
| Office supplies | 237,734.00 | | |
| Miscellaneous | 269,389.00 | | |
| Domestic purchases of goods other than capital goods | 8,307,876.84 | | |
| Total | ₱12,163,532.84 | ₱ 9,390,556.20 | 2,772,976.64 |
| Commissions | ₱ 5,698,962.00 | ₱ 832,379.40 | 4,866,582.60 |
| **Income payments not subjected to withholding tax** | | | **₱26,767,371.06** |

As earlier discussed, petitioner's income payments subject to EWT amount to ₱45,385,317.24. Of this amount, ₱17,149,192.82 was properly subjected to withholding tax, as determined below:

| **Income payments subject to EWT per review:** | **Amount** | **Properly Subjected to EWT** | **Disallowed Deduction** |
|---|---|---|---|
| Distribution and warehousing | ₱ 9,784,134.67 | ₱ 7,688,672.60[102] | ₱ 2,095,462.07 |
| Advertising and promotion | 6,419,372.41 | 2,405,469.97[103] | 4,013,902.44 |
| Travel and transportation | 4,007,728.54 | 38,891.09[104] | 3,968,837.45 |
| Insurance | 2,947,987.00 | - | 2,947,987.00 |
| Communication, light and water | 2,588,802.00 | 1,600,626.01[105] | 988,175.99 |
| Repairs and maintenance | 1,463,371.17 | 769,162.99[106] | 694,208.18 |

[102] Refer to Annex A of this Decision for the computation of this amount.
[103] Refer to Annex B of this Decision for the computation of this amount.
[104] Refer to Annex C of this Decision for the computation of this amount.
[105] Refer to Annex D of this Decision for the computation of this amount.
[106] Refer to Annex E of this Decision for the computation of this amount.

| | | | |
|---|---|---|---|
| Outside services | 1,827,430.00 | 421,077.58[107] | 1,406,352.42 |
| Increase in leasehold improvements | 138,460.00 | - | 138,460.00 |
| Office supplies | 453,815.80 | 332,500.15[108] | 121,315.65 |
| Seminars, meetings and conferences | 1,588,638.09 | 258,157.11[109] | 1,330,480.98 |
| Miscellaneous | 934,500.72 | 28,490.90[110] | 906,009.82 |
| Acquisition of transportation equipment | 2,787,636.00 | 2,787,636.00[111] | - |
| Acquisition of office furniture, fixtures and equipment | 1,191,547.00 | 119,919.14[112] | 1,071,627.86 |
| Acquisition of computer equipment | 944,017.00 | 697,589.28[113] | 246,427.72 |
| Domestic purchases of goods other than capital goods | 8,307,876.84 | - | 8,307,876.84 |
| **Total** | **₱ 45,385,317.24** | **₱ 17,149,192.82** | **₱28,237,124.42** |

Consequently, the amount of ₱28,237,124.42 shall be disallowed as deduction from petitioner's gross income pursuant to Section 34(K) of the NIRC of 1997, which provides as follows:

> "SEC. 34. *Deductions from Gross Income.*— xxx
>
> xxx xxx xxx
>
> (K) *Additional Requirements for Deductibility of Certain Payments.*— **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 <u>only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue</u>** in accordance with this Section, Sections 58 and 81 of this Code." *(Emphasis and underscoring supplied)*

In the same vein, as found in the previous discussion, the commission in the amount of ₱5,698,962.00 shall likewise be disallowed as deduction from petitioner's gross income, pursuant to the above-quoted Section 34(K).

### C.2. Unaccounted source of cash – ₱18,714,600.81

[107] Refer to Annex F of this Decision for the computation of this amount.
[108] Refer to Annex G of this Decision for the computation of this amount.
[109] Refer to Annex H of this Decision for the computation of this amount.
[110] Refer to Annex I of this Decision for the computation of this amount.
[111] Refer to Annex J of this Decision for the computation of this amount.
[112] Refer to Annex J of this Decision for the computation of this amount.
[113] Refer to Annex J of this Decision for the computation of this amount.

As likewise previously discussed concerning the deficiency VAT assessment, respondent's finding of *"Unaccounted source of cash"* in relation to the income tax assessment is bereft of merit.

A finding of *"Unaccounted source of cash"*, without further proof, does not by itself result in the imposition of income tax.

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.[114] Income tax is assessed on income received from any property, activity or service.[115] Such being the case, in the imposition or assessment of income tax, it is not when there is an *"Unaccounted source of cash"*, 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 respondent simply because there was *"Unaccounted source of cash"*, 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 income tax law is to claim a deduction beyond the amount authorized therein.[116] Hence, even granting that there is an unaccounted expense, such as those pertaining to rentals and payments for salaries, wages and other benefits, the same is not prohibited by law.

Bearing in mind that an unaccounted expense is not prohibited by law, it goes without saying that petitioner can exercise its discretion on whether or not it will declare a lesser amount of deductions or none at all.

Thus, in simply relying on the fact that there is an *"Unaccounted source of cash"*, respondent's imposition or assessment of the subject income tax does not hold water. Such being the case, the deficiency income tax assessment pertaining to petitioner's *"Unaccounted source of cash"* must perforce be cancelled.

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[114] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[115] *Supra.*
[116] *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.*, G.R. No. L-19727, May 20, 1965.

In sum, petitioner is liable to pay deficiency income tax in the amount of ₱11,586,297.51, computed as follows:

| | | |
|---|---|---|
| Taxable income per ITR | | ₱ 68,768,443.00 |
| Add: Adjustments/Disallowance | | |
| Income payments not subjected to withholding tax | ₱ 28,237,124.42 | |
| Commission | 4,866,582.60 | 33,103,707.02 |
| Taxable Income per review | | ₱ 101,872,150.02 |
| Income tax due (35%) | | ₱ 35,655,252.51 |
| Less: Allowable tax credits/payments: | | |
| Payments | 22,928,521.00 | |
| Creditable tax withheld | 1,140,434.00 | 24,068,955.00 |
| **Basic Deficiency Income Tax Due** | | **₱ 11,586,297.51** |

**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Petitioner is hereby **ORDERED TO PAY** the assessments covering deficiency EWT, deficiency VAT and deficiency income tax for taxable year 2007 in the **MODIFIED** amount of ₱15,800,666.62, inclusive of 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

| Tax Type | Basic | 25% Surcharge | Total |
|---|---|---|---|
| EWT | ₱ 869,222.20 | ₱ 217,305.55 | ₱ 1,086,527.75 |
| VAT | 185,013.58 | 46,253.40 | 231,266.98 |
| Income Tax | 11,586,297.51 | 2,896,574.38 | 14,482,871.89 |
| **Total** | **₱ 12,640,533.29** | **₱ 3,160,133.33** | **₱ 15,800,666.62** |

In addition, petitioner is hereby **ORDERED TO PAY**:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency EWT of ₱869,222.20, VAT of ₱185,013.58 and income tax of ₱11,586,297.51, or in the aggregate amount of ₱12,640,533.29, computed from January 15, 2008, January 25, 2008 and April 15, 2008, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and

(b) delinquency interest at the rate of 20% per annum on the total amount of ₱15,800,666.62 representing deficiency EWT, VAT and income tax and on the deficiency interest which have accrued as afore-stated in (a) computed from February 7, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

*(With Dissenting Opinion)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**CERTIFICATION**

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

**ROMAN G. DEL ROSARIO**
Chairperson
Presiding Justice

**Schedule of Distribution and Warehousing Properly Subjected to Withholding Tax**
**For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---:|:---:|
| Cargo Fareast 2000 Express Intl. Inc. | 12,211.95 | O-1.1 |
| Cargo Fareast 2000 Express Intl. Inc. | 19,183.29 | O-1.2 |
| Fastpak Global Express Corporation | 36,121.49 | O-2.1 to O-2.4 |
| Gapuzan Trucking & Gen. Trading, Inc. | 6,900.00 | O-3.1 |
| Gapuzan Trucking & Gen. Trading, Inc. | 10,090.00 | O-3.2 |
| Gapuzan Trucking & Gen. Trading, Inc. | 3,300.00 | O-3.3 |
| Gapuzan Trucking & Gen. Trading, Inc. | 5,040.00 | O-3.4 |
| Gapuzan Trucking & Gen. Trading, Inc. | 11,600.00 | O-3.5 |
| Gapuzan Trucking & Gen. Trading, Inc. | 1,800.00 | O-3.6 |
| Gapuzan Trucking & Gen. Trading, Inc. | 3,300.00 | O-3.7 |
| Gapuzan Trucking & Gen. Trading, Inc. | 4,380.00 | O-3.8 |
| Gapuzan Trucking & Gen. Trading, Inc. | 6,900.00 | O-3.9 |
| Gapuzan Trucking & Gen. Trading, Inc. | 1,800.00 | O-3.10 |
| Gapuzan Trucking & Gen. Trading, Inc. | 4,290.00 | O-3.11 |
| Gapuzan Trucking & Gen. Trading, Inc. | 8,000.00 | O-3.12 |
| Gapuzan Trucking & Gen. Trading, Inc. | 3,600.00 | O-3.13 |
| Gapuzan Trucking & Gen. Trading, Inc. | 7,680.00 | O-3.14 |
| Gordez Philippines, Inc. | 25,618.29 | O-4.1 |
| Gordez Philippines, Inc. | 33,618.34 | O-4.3 |
| Gordez Philippines, Inc. | 39,327.50 | O-4.4 |
| Gordez Philippines, Inc. | 38,472.98 | O-4.15 |
| Gordez Philippines, Inc. | 29,854.75 | O-4.14 |
| Gordez Philippines, Inc. | 41,745.70 | O-4.6 |
| Gordez Philippines, Inc. | 33,854.70 | O-4.7 |
| Gordez Philippines, Inc. | 37,909.35 | O-4.8 |
| Gordez Philippines, Inc. | 43,975.91 | O-4.16 |
| Gordez Philippines, Inc. | 48,254.86 | O-4.12 |
| Gordez Philippines, Inc. | 487,336.61 | O-4.17 |
| Gordez Philippines, Inc. | 445,041.70 | O-4.18 |
| Gordez Philippines, Inc. | 942,895.46 | O-4.19 |
| Gordez Philippines, Inc. | 258,696.37 | O-4.20 |
| Gordez Philippines, Inc. | 501,316.80 | O-4.21 |
| Gordez Philippines, Inc. | 373,814.21 | O-4.22 |
| Gordez Philippines, Inc. | 469,679.73 | O-4.23 |
| Gordez Philippines, Inc. | 309,030.11 | O-4.25 |
| Gordez Philippines, Inc. | 377,320.60 | O-10.1 |
| Interlink Farm Resources | 11,380.00 | O-5.1 |
| Interlink Farm Resources | 12,070.00 | O-5.2 |
| Interlink Farm Resources | 14,340.00 | O-5.3 |
| Interlink Farm Resources | 24,640.00 | O-5.4 |
| Interlink Farm Resources | 15,070.00 | O-5.5 |
| Interlink Farm Resources | 23,080.00 | O-5.6 |

**Schedule of Distribution and Warehousing Properly Subjected to Withholding Tax**
**For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Interlink Farm Resources | 20,440.00 | O-5.7 |
| Interlink Farm Resources | 17,490.00 | O-5.8 |
| Interlink Farm Resources | 18,170.00 | O-5.9 |
| Interlink Farm Resources | 15,240.00 | O-5.10 |
| Interlink Farm Resources | 17,250.00 | O-5.11 |
| Interlink Farm Resources | 14,760.00 | O-5.12 |
| Interlink Farm Resources | 18,330.00 | O-5.13 |
| Interlink Farm Resources | 20,070.00 | O-5.14 |
| Interlink Farm Resources | 16,690.00 | O-5.15 |
| Interlink Farm Resources | 11,690.00 | O-5.16 |
| Interlink Farm Resources | 13,850.00 | O-5.17 |
| Interlink Farm Resources | 19,270.00 | O-5.18 |
| Interlink Farm Resources | 14,710.00 | O-5.19 |
| Interlink Farm Resources | 16,180.00 | O-5.20 |
| Interlink Farm Resources | 17,380.00 | O-5.21 |
| Interlink Farm Resources | 15,290.00 | O-5.22 |
| Interlink Farm Resources | 18,590.00 | O-5.23 |
| Interlink Farm Resources | 5,720.00 | O-5.24 |
| Interlink Farm Resources | 2,750.00 | O-5.25 |
| Interlink Farm Resources | 4,620.00 | O-5.26 |
| Interlink Farm Resources | 17,800.00 | O-5.27 |
| Interlink Farm Resources | 11,610.00 | O-5.28 |
| Interlink Farm Resources | 16,190.00 | O-5.29 |
| Interlink Farm Resources | 21,540.00 | O-5.30 |
| Interlink Farm Resources | 15,820.00 | O-5.31 |
| Interlink Farm Resources | 15,920.00 | O-5.32 |
| Interlink Farm Resources | 7,690.00 | O-5.33 |
| Interlink Farm Resources | 16,320.00 | O-5.34 |
| Interlink Farm Resources | 11,330.00 | O-5.35 |
| Interlink Farm Resources | 15,890.00 | O-5.36 |
| Interlink Farm Resources | 9,780.00 | O-5.37 |
| Interlink Farm Resources | 19,280.00 | O-5.38 |
| Interlink Farm Resources | 16,270.00 | O-5.39 |
| Interlink Farm Resources | 12,180.00 | O-5.40 |
| Interlink Farm Resources | 15,820.00 | O-5.41 |
| Interlink Farm Resources | 21,260.00 | O-5.42 |
| Interlink Farm Resources | 21,130.00 | O-5.43 |
| Interlink Farm Resources | 17,660.00 | O-5.44 |
| Interlink Farm Resources | 3,750.00 | O-5.45 |
| Interlink Farm Resources | 15,450.00 | O-5.46 |
| Interlink Farm Resources | 20,890.00 | O-5.47 |
| Interlink Farm Resources | 16,690.00 | O-5.48 |

**Schedule of Distribution and Warehousing Properly Subjected to Withholding Tax**
**For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Interlink Farm Resources | 4,850.00 | O-5.49 |
| Interlink Farm Resources | 4,490.00 | O-5.50 |
| Interlink Farm Resources | 5,360.00 | O-5.51 |
| Interlink Farm Resources | 4,120.00 | O-5.52 |
| Interlink Farm Resources | 3,010.00 | O-5.53 |
| Interlink Farm Resources | 4,850.00 | O-5.54 |
| Interlink Farm Resources | 4,490.00 | O-5.55 |
| Interlink Farm Resources | 5,280.00 | O-5.56 |
| Interlink Farm Resources | 5,730.00 | O-5.57 |
| Interlink Farm Resources | 7,210.00 | O-5.58 |
| LBC Express, Inc. | 8,352.67 | O.6.1 |
| LBC Express, Inc. | 4,861.61 | O-6.2 |
| LBC Express, Inc. | 7,727.68 | |
| Per Job Freight services, Inc. | 16,334.88 | O-7.1 |
| V-freight Cargo Services, Inc. | 122,354.72 | O-8.1 TO O-8.4 |
| V-freight Cargo Services, Inc. | 768,156.73 | O-8.5 to O-8.30 |
| V-freight Cargo Services, Inc. | 1,288,193.61 | O-8.31 to O-8.78 |
| **GRAND TOTAL** | **7,688,672.60** | |

**Schedule of Advertising and Promotion Properly Subjected to Withholding Tax**
**For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| 2x2 Design, Inc. | 60,000.00 | Q-1.1 |
| 2x2 Design, Inc. | 7,175.00 | Q-1.2 |
| 2x2 Design, Inc. | 32,400.00 | Q-1.3 |
| Abenson, Inc. | 12,254.46 | Q-1.4 |
| Abenson, Inc. | 13660.72 | Q-1.5 |
| Abenson, Inc. | 13,569.64 | Q-1.6 |
| Abenson, Inc. | 11,339.29 | Q-1.7 |
| Abenson, Inc. | 25,982.14 | Q-1.8 |
| Abenson, Inc. | 12,991.08 | Q-1.9 |
| Abenson, Inc. | 5,535.71 | Q-1.10 |
| Abenson Ventures, Inc. | 13,303.58 | Q-1.11 |
| Abenson Ventures, Inc.-Cavite | 19,464.29 | Q-1.12 |
| ABS-CBN Broadcasting Corporation | 17,857.14 | Q-1.13 |
| Aruba Bar and Restaurant | 125,000.00 | Q-1.14 |
| Asia Adproducts Ltd. Co. | 45,500.00 | Q-1.15 |
| AV-gatz Merchandising | 32,142.86 | Q-1.121 |
| AV-gatz Merchandising | 30,357.14 | Q-1.16 |
| AV-gatz Merchandising | 19,285.71 | Q-1.17 |
| AV-gatz Merchandising | 9,821.43 | Q-1.18 |
| Cebu Parklane | 17857.14 | Q-1.19 |
| Golden Prince Hotel & Suites | 20,803.57 | Q-1.20 |
| Manila Broadcasting Company | 82,080.00 | Q-1.21 to Q-1.22 |
| Manila Bulletin Publishing Corp. | 6,000.00 | Q-1.23 |
| Manila Bulletin Publishing Corp. | 6,000.00 | Q-1.25 |
| Manila Bulletin Publishing Corp. | 6,000.00 | Q-1.26 |
| Manila Bulletin Publishing Corp. | 6,000.00 | Q-1.27 |
| Manila Bulletin Publishing Corp. | 6,000.00 | Q-1.28 |
| Manila Bulletin Publishing Corp. | 6,000.00 | Q-1.29 |
| Manila Bulletin Publishing Corp. | 6,000.00 | Q-1.30 |
| Manila Bulletin Publishing Corp. | 6,000.00 | Q-1.31 |
| Manila Bulletin Publishing Corp. | 6,000.00 | Q-1.32 |
| Manila Bulletin Publishing Corp. | 6,000.00 | Q-1.123a |
| Martikids Trading | 53,125.00 | Q-1.33 |
| Maureen Fredeluces | 111,965.00 | Q-1.34 |
| Medicomm Pacific, Inc. | 60,000.00 | Q-1.35 |
| Medicomm Pacific, Inc. | 269,280.00 | Q-1.36 |
| Megabasic Enterprise | 156,339.28 | Q-1.37 |
| Optimaxx Galore Enterprise | 50,500.00 | Q-1.38 |
| P&L Sales Merchandising | 17,410.69 | Q-1.116 |
| Paencor, Inc. | 13,000.00 | Q-1.39 |
| Paencor, Inc. | 13,000.00 | Q-1.40 |
| Paencor, Inc. | 13,000.00 | Q-1.41 |

**Schedule of Advertising and Promotion Properly Subjected to Withholding Tax**
**For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Paencor, Inc. | 13,000.00 | Q-1.42 |
| Paencor, Inc. | 10,500.00 | Q-1.43 |
| Paencor, Inc. | 13,000.00 | Q-1.44 |
| Paencor, Inc. | 13,000.00 | Q-1.45 |
| Paencor, Inc. | 13,000.00 | Q-1.46 |
| Paencor, Inc. | 13,000.00 | Q-1.47 |
| Paencor, Inc. | 13,000.00 | Q-1.48 |
| Paencor, Inc. | 13,000.00 | Q-1.49 |
| Paradigm Visions Incorporated | 12,857.14 | Q-1.50 |
| Philprint | 16,017.86 | Q-1.51 |
| Philprint | 3,535.71 | Q-1.52 |
| Philprint | 3,535.71 | Q-1.53 |
| Pioneer Home Industries, Inc. | 41,964.29 | Q-1.117 |
| Pioneer Home Industries, Inc. | 61,607.14 | Q-1.54 |
| Pioneer Home Industries, Inc. | 8,482.14 | Q-1.121 |
| Premium Gift Center, Inc. | 4,621.94 | Q-1.55 |
| Premium Graphics Asia Center Inc | 4,218.75 | Q-1.56 |
| Premium Graphics Asia Center Inc | 2,100.66 | Q-1.57 |
| Print Innovations | 14,732.14 | Q-1.58 |
| RAM Concepts Agency | 12,500.00 | Q-1.59 |
| Red Rhino Publishing | 22,000.00 | Q-1.60 |
| Silvershark Graphic Design | 3,000.00 | Q-1.63 |
| Silvershark Graphic Design | 5,000.00 | Q-1.64 |
| Silvershark Graphic Design | 2,500.00 | Q-1.65 |
| Silvershark Graphic Design | 2,000.00 | Q-1.66 |
| Star Paper Corporation | 72,048.01 | Q-1.67 |
| The Enterprise | 20,000.00 | Q-1.68 |
| Timeline Media Productions, Inc. | 89,285.71 | Q-1.69 |
| Timeline Media Productions, Inc. | 21,428.57 | Q-1.70 |
| United Daily News | 23,328.00 | Q-1.71 |
| United Daily News | 10,000.00 | Q-1.72 |
| United Daily News | 10,000.00 | Q-1.73 |
| United Daily News | 10,000.00 | Q-1.118 |
| United Daily News | 10,000.00 | Q-1.74 |
| United Daily News | 10,000.00 | Q-1.75 |
| Woman Fine Clothing, Inc. | 58,035.71 | Q-1.76 |
| Woman Fine Clothing, Inc. | 15,625.00 | Q-1.77 |
| Woman Fine Clothing, Inc. | 29,017.85 | Q-1.119 |
| Woman Fine Clothing, Inc. | 41,116.07 | Q-1.78 |
| Woman Fine Clothing, Inc. | 11,607.14 | Q-1.79 |
| Woman Fine Clothing, Inc. | 10,714.29 | Q-1.80 |
| Woman Fine Clothing, Inc. | 11,160.71 | Q-1.81 |

**Schedule of Advertising and Promotion Properly Subjected to Withholding Tax**
**For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Woman Fine Clothing, Inc. | 17,410.71 | Q-1.127 |
| Woman Fine Clothing, Inc. | 166,517.85 | Q-1.122 |
| **TOTAL** | **2,405,469.97** | |

**Schedule of Travel and Transportation Properly Subjected to Withholding Tax**
**For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Asian Institute of Management | 4,180.00 | P-1 |
| Holiday Inn Galleria Manila | 3,639.61 | P-2 |
| Metro Parking Management Inc. | 15,535.74 | P-3.1 |
| Metro Parking Management Inc. | 15,535.74 | P-3.3 |
| **TOTAL** | **38,891.09** | |

**Schedule of Communication, light and water Properly Subjected to Withholding Tax For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Airfreight 2100, Inc. | 950.51 | R-1.2 |
| Airfreight 2100, Inc. | 953.58 | R-1.3 |
| Consolidated Indl. Gases, Inc. | 11822.08 | R-2.2 |
| Consolidated Indl. Gases, Inc. | 11,822.08 | R-2.3 |
| Consolidated Indl. Gases, Inc. | 17,733.12 | R-2.1 |
| Consolidated Indl. Gases, Inc. | 17,733.12 | R-2.5 |
| Consolidated Indl. Gases, Inc. | 11822.08 | R-2.4 |
| Consolidated Indl. Gases, Inc. | 5,911.04 | R-2.9 |
| Consolidated Indl. Gases, Inc. | 19,642.21 | R-2.8 |
| Consolidated Indl. Gases, Inc. | 5,911.04 | R-2.10 |
| Consolidated Indl. Gases, Inc. | 5,911.04 | R-2.7 |
| Consolidated Indl. Gases, Inc. | 5,911.04 | R-2.6 |
| Consolidated Indl. Gases, Inc. | 11,822.08 | R-2.11 |
| Consolidated Indl. Gases, Inc. | 11,822.08 | R-2.12 |
| Consolidated Indl. Gases, Inc. | 17,733.12 | R-2.14 |
| Consolidated Indl. Gases, Inc. | 11,822.08 | R-2.13 |
| Consolidated Indl. Gases, Inc. | 17,733.12 | R-2.15 |
| Consolidated Indl. Gases, Inc. | 11,822.08 | R-2.16 |
| Consolidated Indl. Gases, Inc. | 17,733.12 | R-2.17 |
| Consolidated Indl. Gases, Inc. | 13,731.17 | R-2.18 |
| Consolidated Indl. Gases, Inc. | 11,822.08 | R-2.19 |
| Consolidated Indl. Gases, Inc. | 17,733.12 | R-2.20 |
| Consolidated Indl. Gases, Inc. | 11,822.08 | R-2.21 |
| Consolidated Indl. Gases, Inc. | 11,822.08 | R-2.23 |
| Consolidated Indl. Gases, Inc. | 11,822.08 | R-2.22 |
| Consolidated Indl. Gases, Inc. | 11,822.08 | R-2.24 |
| Consolidated Indl. Gases, Inc. | 23,938.80 | R-2.25 |
| Consolidated Indl. Gases, Inc. | 12,411.36 | R-2.27 |
| Consolidated Indl. Gases, Inc. | 18,617.04 | R-2.26 |
| Consolidated Indl. Gases, Inc. | 18,617.04 | R-2.29 |
| Consolidated Indl. Gases, Inc. | 6,205.68 | R-2.28 |
| Consolidated Indl. Gases, Inc. | 6,205.68 | R-2.31 |
| Consolidated Indl. Gases, Inc. | 18,617.04 | R-2.30 |
| Consolidated Indl. Gases, Inc. | 18,617.04 | R-2.32 |
| Consolidated Indl. Gases, Inc. | 12,411.36 | R-2.33 |
| Consolidated Indl. Gases, Inc. | 24,822.71 | R-2.34 |
| Innove Communications, Inc. | 23,230.95 | R-4.5 |
| Innove Communications, Inc. | 17,832.75 | R-4.1 |
| Innove Communications, Inc. | 16,473.19 | R-4.4 |
| Innove Communications, Inc. | 15,810.89 | R-4.11 |
| Innove Communications, Inc. | 14,576.15 | R-4.7 |
| Innove Communications, Inc. | 13,563.97 | R-4.10 |
| Innove Communications, Inc. | 11031.04 | R-4.6 |
| Innove Communications, Inc. | 10,383.53 | R-4.9 |
| Innove Communications, Inc. | 10,188.04 | R-4.2 |

**Schedule of Communication, light and water Properly Subjected to Withholding Tax For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Innove Communications, Inc. | 7,115.11 | R-4.3 |
| Innove Communications, Inc. | 5,211.92 | R-4.8 |
| Innove Communications, Inc. | 11,536.45 | R-4.14 |
| Phil. Long Distance Telephone | 20,150.34 | R-5.1 to R-5.9 |
| Phil. Long Distance Telephone | 28,282.25 | R-5.10 to R-5.21 |
| Phil. Long Distance Telephone | 19,510.25 | R-5.22 to R-5.29 |
| Phil. Long Distance Telephone | 13,608.92 | R-5.30 to R-5.34, R-5.36 |
| Phil. Long Distance Telephone | 89,855.61 | R-5.37 to R-5.75, R-5.101 to R-5.107 |
| Phil. Long Distance Telephone | 1,979.39 | R-5.76 |
| Phil. Long Distance Telephone | 1,570.31 | R-5.77 |
| Phil. Long Distance Telephone | 22,416.73 | R-5.78 to R-5.88 |
| Phil. Long Distance Telephone | 5,158.06 | R-5.89 |
| Phil. Long Distance Telephone | 2,541.34 | R-5.90 |
| Smart Communications, Inc. | 2,678.57 | R-6.17 |
| Smart Communications, Inc. | 2,232.14 | R-6.18 |
| Smart Communications, Inc. | 1,412.06 | R-6.64 |
| Smart Communications, Inc. | 1,071.43 | R-6.20 |
| Smart Communications, Inc. | 39,085.41 | R-6.19 |
| Smart Communications, Inc. | 38,727.37 | R-6.12 |
| Smart Communications, Inc. | 2,232.14 | R-6.13 |
| Smart Communications, Inc. | 4,288.75 | R-6.14 to R-6.16 |
| Smart Communications, Inc. | 86,714.04 | R-6.21 to R-6.24 |
| Smart Communications, Inc. | 187,667.33 | R-6.25 to R-6.42 |
| Smart Communications, Inc. | 116,265.71 | R-6.44 to R-6.53 |
| Smart Communications, Inc. | 89,347.87 | R-6.1 to R-6.11 |
| Smart Communications, Inc. | 140,918.94 | R-6.54 to R-6.63 |
| DHL Express (Philippines) Corp. | 10,847.82 | R-7.1 |
| DHL Express (Philippines) Corp. | 2,413.79 | R-7.2 |
| DHL Express (Philippines) Corp. | 1,346.81 | R-7.3 |
| DHL Express (Philippines) Corp. | 5,653.95 | R-7.7 |
| DHL Express (Philippines) Corp. | 1,752.66 | R-7.6 |
| DHL Express (Philippines) Corp. | 1,056.32 | R-7.8 |
| DHL Express (Philippines) Corp. | 2,366.72 | R-7.5 |
| DHL Express (Philippines) Corp. | 1,429.79 | R-7.4 |
| Fair Lane Forwarders | 7,002.65 | W-11.1 |
| MRX Marketing Specialists, Inc. | 24,437.49 | W-12.1 to W-12.6 |
| **TOTAL** | **1,600,626.01** | |

**Schedule of Repairs and Maintenance Properly Subjected to Withholding Tax**
**For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Brother's Venture Trading Corp. | 4,392.50 | T-1.1 |
| Brother's Venture Trading Corp. | 3,499.12 | T-1.2 |
| Brother's Venture Trading Corp. | 3586.61 | T-1.3 |
| Brother's Venture Trading Corp. | 4,392.50 | T-1.4 |
| Brother's Venture Trading Corp. | 3,499.12 | T-1.5 |
| Brother's Venture Trading Corp. | 3,499.12 | T-1.6 |
| Brother's Venture Trading Corp. | 3499.12 | T-1.7 |
| Brother's Venture Trading Corp. | 3,499.12 | T-1.9 |
| Hewlett-Packard Philippines Corp. | 338,432.64 | T-2.1 to T-2.10 |
| Honda Cars Kalookan Inc | 7,323.68 | T-3.1 |
| Honda Cars Pasig | 3,413.69 | T-4.1 |
| Honda Cars Pasig | 5,745.73 | T-4.2 |
| Honda Cars Pasig | 11,070.30 | T-4.4 |
| Honda Cars Pasig | 14,132.00 | T-4.3 |
| Honda Cars Pasig | 3,353.69 | T-4.5 |
| Honda Cars Pasig | 19,694.00 | T-4.6 |
| Honda Cars Pasig | 13,736.69 | T-4.7 |
| Honda Cars Pasig | 15,965.71 | T-4.13 |
| Honda Cars Pasig | 13,400.30 | T-4.8 |
| Honda Cars Pasig | 27,415.41 | T-4.9 |
| Honda Cars Pasig | 14,080.72 | T-4.14 |
| Honda Cars Pasig | 15,967.05 | T-4.10 |
| Honda Cars Pasig | 8,024.58 | T-4.11 |
| Honda Cars Pasig | 4,888.98 | T-4.12 |
| IBM Solutions Delivery Inc. | 4,108.04 | T-5.1 |
| Isuzu Automotive Dealership, Inc. | 6,616.21 | T-6.1 |
| Isuzu Pasig | 2,742.81 | T-7.1 |
| Isuzu Pasig | 10,177.32 | T-7.2 |
| Isuzu Pasig | 8,760.80 | T-7.3 |
| Isuzu Pasig | 3,971.81 | T-7.4 |
| Isuzu Pasig | 10,548.95 | T-7.5 |
| Isuzu Pasig | 2,886.61 | T-7.6 |
| Metrosoft Inc. | 6,785.71 | T-8.1 |
| Metrosoft Inc. | 6,250.00 | T-8.2 |
| MGM Motor Trading Corp. | 6,472.47 | T-9.1 |
| MGM Motor Trading Corp. | 6,762.82 | T-9.2 |
| Nissan Gallery-Ortigas | 3,174.98 | T-10.1 |
| Nissan Gallery-Ortigas | 50,039.29 | T-10.2 |
| Nissan Gallery-Ortigas | 8,212.27 | T-10.3 |
| Nissan Gallery-Ortigas | 4,068.77 | T-10.4 |
| Nissan Gallery-Ortigas | 3,569.24 | T-10.5 |
| Phil-data Business Systems, Inc. | 3,660.71 | T-11.1 |
| Phil-data Business Systems, Inc. | 3,482.14 | T-11.2 |

**Schedule of Repairs and Maintenance Properly Subjected to Withholding Tax**
**For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Roadstar Enterprises | 2,991.07 | T-12.1 |
| Roadstar Enterprises | 11,607.14 | T-12.2 |
| Roadstar Enterprises | 9,937.50 | T-12.3 |
| Roadstar Enterprises | 4,017.86 | T-12.4 |
| Saturn Autospec Inc. | 2,241.96 | T-13.2 |
| Toyota Shaw-Ortigas | 8,399.58 | T-3.1 |
| Toyota Shaw-Ortigas | 2,390.41 | T-14.1 |
| Toyota Shaw-Ortigas | 5,366.77 | T-14.2 |
| Toyota Shaw-Ortigas | 2,390.41 | T-14.3 |
| Unique Auto Car Spealist Co. | 17,400.89 | T-15.1 |
| Unique Auto Car Spealist Co. | 3,616.07 | T-15.2 |
| **TOTAL** | **769,162.99** | |

**Schedule of Outside Services Properly Subjected to Withholding Tax For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Bayanihan Placement & Management | 15,059.82 | BB-1.1 |
| Bayanihan Placement & Management | 16,405.03 | BB-1.2 |
| Jammas Incorporated | 11,462.61 | BB-3.1 |
| Jammas Incorporated | 23431.12 | BB-3.2 |
| Jammas Incorporated | 9,666.12 | BB-3.17 |
| Jammas Incorporated | 12,175.23 | BB-3.3 |
| Jammas Incorporated | 13,560.02 | BB-3.4 |
| Jammas Incorporated | 12,879.45 | BB-3.5 |
| Jammas Incorporated | 12,930.74 | BB-3.6 |
| Jammas Incorporated | 10,081.06 | BB-3.7 |
| Jammas Incorporated | 11,339.05 | BB-3.8 |
| Jammas Incorporated | 11,207.65 | BB-3.9 |
| Jammas Incorporated | 12,055.58 | BB-3.10 |
| Jammas Incorporated | 12,062.27 | BB-3.11 |
| Jammas Incorporated | 11,159.89 | BB-3.13 |
| Jammas Incorporated | 11,140.41 | BB-3.12 |
| Jammas Incorporated | 12,908.60 | BB-3.14 |
| Jammas Incorporated | 12,411.01 | BB-3.15 |
| Jammas Incorporated | 12,836.87 | BB-3.16 |
| Lane Archive Technologies Corp. | 16,188.40 | BB-4.1 |
| Lane Archive Technologies Corp. | 2,530.00 | BB-4.2 |
| Lane Archive Technologies Corp. | 2,473.00 | BB-4.3 |
| Lane Archive Technologies Corp. | 18,448.80 | BB-4.4 |
| Lane Archive Technologies Corp. | 4,295.00 | BB-4.5 |
| Lane Archive Technologies Corp. | 2,200.00 | BB-4.6 |
| Lane Archive Technologies Corp. | 7,886.55 | BB-4.7 |
| Lane Archive Technologies Corp. | 2,200.00 | BB-4.8 |
| Lane Archive Technologies Corp. | 2,778.55 | BB-4.9 |
| Lane Archive Technologies Corp. | 21,136.69 | BB-4.10 |
| Lane Archive Technologies Corp. | 2,200.00 | BB-4.11 |
| Mosaic Communications, Inc. | 5,753.99 | BB-6.1 |
| Mosaic Communications, Inc. | 5,074.84 | BB-6.2 |
| Mosaic Communications, Inc. | 4,697.28 | BB-6.3 |
| Mosaic Communications, Inc. | 7,026.76 | BB-6.4 |
| Mosaic Communications, Inc. | 6,115.84 | BB-6.5 |
| Mozcom, Inc. | 6,571.82 | BB-7.1 |
| Mozcom, Inc. | 5,623.45 | BB-7.2 |
| Mozcom, Inc. | 6,602.57 | BB-7.3 |
| Mozcom, Inc. | 4,775.58 | BB-7.4 |
| Mozcom, Inc. | 3,749.68 | BB-7.5 |
| Pacific Management Forum | 7,595.25 | BB-8.1 |
| Pacific Management Forum | 7,595.25 | BB-8.2 |
| Pacific Management Forum | 15,190.50 | BB-8.3 |

| | | |
|---|---|---|
| Pacific Management Forum | 7,595.25 | BB-8.4 |
| **TOTAL** | **421,077.58** | |

**Schedule of Office Supplies Properly Subjected to Withholding Tax For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Accufile Systems Trading | 19,800.00 | U-1.1 |
| Advant-garde Advertising Design | 9,200.00 | U-2.1 |
| Amen Prints and Services | 10,460.00 | U-3.1 |
| Amstar Company, Inc. | 36,517.86 | U-4.1 |
| E-Plus Stationery, Inc. | 21,327.26 | U-4.2 |
| E-Plus Stationery, Inc. | 25,875.54 | U-5.1 |
| E-Plus Stationery, Inc. | 13,592.86 | U-6.1 |
| E-Plus Stationery, Inc. | 18,254.46 | U-7.1 |
| Forms International Enterprises Corp. | 36,696.43 | U-8.1 |
| Integrated Computer Systems | 5,714.28 | U-9.1 |
| Jeida Farm Supply | 32,062.50 | U-10.1 |
| Jeida Farm Supply | 29,464.29 | U-10.2 |
| MRX Marketing Specialists, Inc | 3,794.64 | W-12.5 |
| Rebmann, Incorporated | 48,102.68 | W-12.1 |
| Transprint Corporation | 13,490.00 | W-22.1 |
| UKC Commercial Press, Inc. | 8,147.35 | W-14.5 |
| **TOTAL** | **332,500.15** | |

**Schedule of Seminars, meetings and conferences Properly Subjected to Withholding Tax For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Duka Bay Resort | 43,008.93 | S-1.1 |
| Duka Bay Resort | 43,008.93 | S-1.2 |
| Astoria Plaza | 47,232.14 | W-2.1 |
| Astoria Plaza | 46,131.37 | W-3.1 |
| Gruppo Largo Inc. | 3,633.93 | W-4.1 |
| Gruppo Largo Inc. | 26,928.57 | W-4.2 |
| Gruppo Largo Inc. | 38,830.36 | W-4.3 |
| Quantum Hotels and Resorts | 6,766.50 | W-4.4 |
| | 2,616.38 | W-4.5 |
| **TOTAL** | **258,157.11** | |

**Schedule of Miscellaneous Properly Subjected to Withholding Tax For**
**Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| Intercontinental Waste Disposal | 6,250.00 | V-1.1 |
| Intercontinental Waste Disposal | 7,142.86 | V-1.2 |
| Lipa Quality Control Center | 2,365.00 | V-2.1 |
| Lipa Quality Control Center | 11,825.00 | V-2.2 |
| Discovery Suites | 908.04 | W-19.1 |
| **TOTAL** | **28,490.90** | |

**Schedule of Acquisitions Properly Subjected to Withholding Tax For Meriel Philippines, Inc.**
**For the Calendar Year Ended December 31, 2007**

| Supplier | Amount | Exhibit No. |
|---|---|---|
| **ACQUISITION OF TRANSPORTATION EQUIPMENT** | | |
| Honda Cars Cebu, Inc, | 809,821.43 | X-1 |
| Honda Cars Cebu, Inc, | 13,392.86 | X-2 |
| Mantrade Development Corp. | 664,985.72 | X-10 |
| Mantrade Development Corp. | 664,985.72 | X-11 |
| Toyota Bicutan Paranaque | 634,449.89 | X-3 |
| **TOTAL** | **2,787,635.62** | |
| | | |
| **ACQUISITION OF OFFICE FURNITURE, FIXTURE AND EQUIPMENT** | | |
| Cosmotech Philippines, Inc. | 33,026.79 | X-4 |
| Micro Pacific Technologies and System | 26,785.71 | X-5 |
| MFT International Corporation | 15,107.43 | X-6 |
| Robinsons Handyman, Inc. | 44,999.21 | X-7 |
| **TOTAL** | **119,919.14** | |
| | | |
| **ACQUISITION OF COMPUTER EQUIPMENT** | | |
| Microbase, Inc. | 233,035.71 | X-1 |
| Micro Pacific Technologies and System | 129,642.86 | X-2 |
| Northgate Technologies, Inc. | 334,910.71 | X-10 |
| **TOTAL** | **697,589.28** | |

REPUBLIC OF THE PHILIPPINES
***Court of Tax Appeals***
QUEZON CITY

## ***FIRST DIVISION***

**MERIAL PHILIPPINES, INC.**
*Petitioner,*

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 8370**

Present:

**DEL ROSARIO**, *Chairperson*
**UY**, *and*
**MINDARO-GRULLA**, *JJ.*

Promulgated:

MAY 13 2015 ; 8:27 A.M.

x ---------------------------------------------------------------------------------------- x

# DISSENTING OPINION

***DEL ROSARIO, P.J.:***

In her *ponencia,* my esteemed and learned colleague, the Honorable Associate Justice Erlinda P. Uy, partially granted the Petition for Review and found petitioner liable for deficiency Expanded Withholding Tax (EWT), Value-Added Tax (VAT) and Income Tax for taxable year 2007 in the amount of Php15,800,666.62.

With due respect, however, I manifest my dissent on the findings that petitioner was not deprived of its right to due process. I am of the humble view that the subject assessments issued against petitioner are null and void for having been issued in violation of petitioner's right to due process.

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

"**SEC. 228. Protesting of Assessment.** - When the Commissioner or his duly authorized representative **finds that proper taxes should be assessed**, he shall **first notify** the taxpayer of his findings: provided, however, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

**Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

xxx xxx xxx."

Corollary thereto, Section 3.1.2 of Revenue Regulations No. 12-99[1] provides:

"3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, **it is determined that there exists sufficient basis to assess the taxpayer** for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based..... **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN**, he shall be considered in default, in which case, **a formal letter of demand and assessment notice shall be caused to be issued** by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx"

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[1] dated September 6, 1999.

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Pursuant to the above provisions, the procedure pertaining to the issuance of an assessment is as follows:

> First – The Commissioner of Internal Revenue (CIR) or his duly authorized representative makes an initial determination that "there exists sufficient basis to assess the taxpayer";
>
> Second – The Bureau of Internal Revenue (BIR) issues a PAN, giving the taxpayer fifteen (15) days within which to respond; and,
>
> Third – If no response is made, the taxpayer is "considered in default" in which case, a formal letter of demand and assessment notice (FAN) is caused to be issued against the taxpayer.

The right of the taxpayer to respond to a PAN carries with it the correlative duty on the part of the BIR to consider the response. The procedure is intrinsic in the taxpayer's right to be heard. To be sure, the issuance of a FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process.

Otherwise stated, to sustain the validity of FAN despite glaring violation of the procedure mandated by law would render meaningless the clear and categorical requirement of "hearing" a taxpayer before he is subjected to an assessment – the recall or cancellation of which, entails long, tedious and expensive process.

Worse, any precedent that upholds the validity of a FAN as long as the taxpayer is able to file a protest is fraught with mischievous consequences. Parenthetically, it would in essence encourage the unscrupulous practice of issuing a FAN even without prior compliance with the procedure no less prescribed by law, first – in requiring the issuance of a PAN; and, second in considering the taxpayer's response thereto. There is nothing more devious than the scenario where government ignores as much its own rules as the taxpayer's constitutional right to due process.

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In the instant case, **records show that petitioner received a copy of the PAN on December 29, 2010**. Petitioner has fifteen (15) days or until **January 13, 2011** within which to file a reply or protest against the PAN. Prior to the lapse of the fifteen-day period within which petitioner can respond to the PAN, **petitioner received a copy of the Formal Letter of Demand (FLD) on January 7, 2011. The BIR did not wait for petitioner to reply to the PAN[2] before issuing the assessment notices on January 7, 2011.**

As aforestated, the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. In wantonly disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process as enshrined in Section 228 of the Tax Code and RR No. 12-99.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[3] the Supreme Court emphasized the importance of complying with the requirement to send a PAN to the taxpayer as an integral part of due process in the issuance of a deficiency tax assessment. It then declared in no uncertain terms that **the failure of the CIR to strictly comply with the requirements laid down by law and its own rules** is a denial of Metro Star's right to due process. Undeniably, providing the taxpayer with a copy of the PAN is meaningless to the concept of due process if, after all, his right to respond to it within the prescribed period would be ignored.

Although petitioner was given ample opportunity to contest the FLD and assessment notices, **the fatal infirmity that attended its issuance prior to the lapse of the period to respond to the PAN is not cured thereby**. In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,*[4] the Supreme Court ruled that the non-compliance with statutory and procedural due process renders the final assessment notice as null and void, *viz*:

> "**While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.**

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[2] Petitioner filed its reply to the PAN on January 13, 2011.
[3] G.R. No. 185371, December 8, 2010.
[4] G.R. No. 172598, December 21, 2007.

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> Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in Roxas v. Court of Tax Appeals:
>
> > The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." **And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously**."

Notably, the Court has declared void any assessment that fails to comply with the due process requirement.

In *A Brown Co., Inc. vs. Commissioner of Internal Revenue*,[5] the CTA ruled that an assessment is void because of the multiple violations of due process committed by the BIR. The violations include, among others: (1) **<u>issuance of the final assessment only four (4) days after the issuance of the PAN</u>**; and, (2) **<u>the lack of opportunity given to the taxpayer to reply to the PAN within fifteen (15) days from its receipt</u>**.

Similarly, in *Puratos Philippines, Inc. vs. Commissioner of Internal Revenue*,[6] the Court ruled that:

> "**<u>Given that the FAN was issued on the same day petitioner received the PAN, it is evident that respondent violated the provisions of Section 228 of the NIRC of 1997, as well as of the provisions of Revenu-</u>**
> **<u>-e Regulations Nos. 12-85 and 12-99 and Revenue Memorandum Order No. 37-94, which give the taxpayer a period of fifteen days within which to reply to the PAN</u>**. Even assuming that there was an Informal Conference that took place between petitioner and respondent, and that during the conference and even thereafter, petitioner, through its counsel, requested a copy of the FAN, the fact remains that as indicated in the FAN, it was issued on the same day the PAN was received by petitioner. Clearly, petitioner was denied of its right to due process." *(Emphasis supplied)*

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[5] CTA Case 6357, June 7, 2004, penned by Presiding Justice Ernesto P. Acosta and concurred by Justice Juanito C. Castañeda and Justice Lovell R. Bautista.

[6] CTA Case No. 6980, October 4, 2010, penned by Associate Justice Lovell R. Bautista and concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.

The above rulings were reiterated in *Yumex Philippines Corporation vs. Commissioner of Internal Revenue*[7] wherein the assessments were cancelled on the ground of non-observance by the CIR of the 15-day period

Finally, in the recent case of *Polymer Products (Phil.), Inc. vs. Commissioner of Internal Revenue*[8] the Court ruled that:

> "As earlier quoted, Section 228 of the NIRC of 1997, as implemented by RR No. 12-99, specifically Section 3.1.2 thereof, prescribes a fifteen (15)-day period from receipt of a PAN within which a taxpayer may respond thereto. Indubitably, **the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment.** In wantonly disregarding petitioner's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated petitioner's right to due process as enshrined in Section 228 of the Tax Code and RR No. 12-99. **To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* giving the taxpayer an opportunity to respond thereto.**"

In closing, the admonition of the Supreme Court as early as 1962 to an agency of government similar to the BIR is apropos:

> "The Public Service Commission is an agency of the government, and should at all times, maintain a due regard for the constitutional rights of parties litigant. Also, the Commissioners (who are not judges in the true sense) would do well to ponder the implications of Article 32, No. 6, of the New Civil Code on the individual responsibility of public officers and employees who impair a person's right against deprivation of property without due process of law."[9]

For the reasons afore-stated, I VOTE to GRANT the Petition for Review filed by petitioner Merial Philippines, Inc.

**ROMAN G. DEL ROSARIO**
Presiding Justice

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[7] CTA Case No. 8331, 28 November 2013, penned by Associate Justice Cielito N. Mindaro-Grulla and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Caesar A. Casanova.
[8] CTA Case No. 8299, January 30, 2015, penned by Presiding Justice Roman G. Del Rosario and concurred by Associate Justice Erlinda P. Uy.
[9] *Danan vs. Aspillera,* G.R. No. L-17305, November 28, 1962.