REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

BATANGAS ELECTRIC 1 COOPERATIVE I (BATALEC I),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 8423

For: Assessment

Members:
BAUTISTA, Chairperson;
FABON-VICTORINO,
RINGPIS-LIBAN, *JJ.*

Promulgated:
APR 29 2015
10:29 a.m.

x---x

DECISION

RINGPIS-LIBAN, J.:

The instant Petition for Review [1] issued by respondent against petitioner Batangas Electric 1 Cooperative I (BATALEC I) seeks the withdrawal of the Final Decision on Disputed Assessment dated December 12, 2012 for the payment of alleged deficiency Valued-Added Tax (VAT), expanded withholding tax (WT - Expanded) and withholding tax on compensation (WT – Compensation) for the taxable year 2007 in the aggregate amount of **SIX MILLION THREE HUNDRED FOURTEEN THOUSAND NINETY NINE PESOS and 49/100 (P6,314,099.49)**, inclusive of interest and compromise penalty, broken down as follows:

	Deficiency Tax Due	Interest [2]	Compromise Penalty	Total Tax Due
VAT	3,536,873.75	2,412,856.27	25,000.00	5,974,730.02
WT–Expanded	-	175,898.25	16,000.00	191,898.25
WT–Compensation	80,269.73	55,201.49	12,000.00	147,471.22
TOTAL	**3,617,143.48**	**2,643,956.01**	**53,000.00**	**6,314,099.49**

THE PARTIES

---

[1] Petition for Review filed on February 2, 2011 pursuant to Section 3(a)(1), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals; Docket, pp. 6 to 391 with Annexes.
[2] Covering the period January 16, 2008 to January 10, 2011

Petitioner BATALEC I is an electric cooperative created pursuant to the Presidential Decree (P.D.) No. 269 [3], as amended. It is a Public Utility with a franchise to distribute electricity in twelve (12) Municipalities [4]. It is a non-profit organization providing electric service to its member-consumers.

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) with the authority to carry out the functions, duties, and responsibilities of her office, including, the power to decide disputed assessments, cancellation and abatement of tax liabilities, and grant of tax refund or issuance of tax credit certificates, pursuant to the provisions of the National Internal Revenue Code of 1997, as amended (Tax Code) and other tax laws as well as rules and regulations issued by the Bureau of Internal Revenue (BIR).

THE FACTS

On July 31, 2008, petitioner received a Letter of First Notice [5] requesting the production of documents pursuant to a Letter of Authority (LOA) [6] issued by respondent duly signed and authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes covering the taxable year 2007.

Petitioner submitted the requested documents on August 13, 2008 [7] and again on July 31, 2009 [8]. Notwithstanding petitioner's cooperation, respondent issued on September 13, 2010, a letter with Final Request for Presentation of Records [9] wherein it was stated that despite previous demands [10], petitioner failed to present and submit all the required documents.

On October 12, 2010, respondent issued a Notice of Informal Conference [11] informing petitioner of its alleged tax liabilities for VAT, WT – Expanded and WT - Compensation for the taxable year 2007 amounting to a total of P2,971,678.85.

---

[3] August 6, 1973

[4] Nasugbu, Tuy, Calatagan, Lian, Calaca, Balayan, Agoncillo, Sta. Teresita, Taal, Lemery, San Luis and San Nicolas.

[5] Dated July 24, 2008 and signed by the Revenue District Officer; marked as ***Exhibit "2"*** for Respondent, BIR Records, p. 117

[6] LOA No. 00032734 dated July 21, 2008 and signed by the OIC-Regional Director; marked as ***Exhibit "1"*** for Respondent, BIR Records, p. 116 with Checklist.

[7] Transmittal Letter duly received August 15, 2008

[8] Transmittal Sheet duly received on July 31, 2009

[9] Final Request for Presentation of Records received on September 13, 2010.

[10] Second Request for Presentation of Records dated August 5, 2008.

[11] Notice of Informal Conference signed and received October 15, 2010; BIR Records, pp. 1537 to 1538 with Details of Discrepancies, marked as ***Exhibit "7"*** by Respondent.

In response, petitioner sent a Letter to respondent dated October 29, 2010 [12] contesting the latter's audit findings.

On December 15, 2010, respondent issued a Preliminary Assessment Notice (PAN) [13] with alleged tax liabilities of petitioner amounting to a total of P6,309,862.96, this was received by petitioner on December 17, 2010.

Consequently, on January 13, 2011, petitioner received a Formal Letter of Demand (FLD) [14] and Assessment Notices [15] dated January 10, 2011 for the alleged deficiency VAT, WT-Expanded and WT-Compensation in the aggregate amount of P6,435,709.18, inclusive of interests and compromise penalty, broken down as follows:

	Deficiency Tax Due	Interest [16]	Compromise Penalty	Total Tax Due
VAT	3,536,873.75	2,094,992.07	25,000.00	5,656,865.82
WT–Expanded	255,777.60	152,905.95	16,000.00	424,683.55
WT–Compensation	211,639.80	126,520.01	16,000.00	354,159.81
	4,004,291.15	**2,374,418.03**	**57,000.00**	**6,435,709.18**

Petitioner filed its administrative protest [17] to the FLD and Assessment Notices on February 14, 2011 requesting for reinvestigation of the subject assessment. Subsequently on February 15, 2011 [18], petitioner paid the following basic deficiency taxes to respondent:

Expanded Withholding Tax	P 255,777.60
Withholding Tax on Compensation	131,370.07
TOTAL	**P 387,147.67**

On March 9, 2011 [19], petitioner submitted additional supporting documents to substantiate its request for reinvestigation and objections against the FLD and Assessment Notices.

[12] Letter signed and received by Respondent November 3, 2010.
[13] PAN dated December 15, 2010, BIR Records, pp. 1608 to 1610 marked as ***Exhibit "8"*** by Respondent with Details of Discrepancies.
[14] Dated January 10, 2011 with Details of Discrepancies; Docket, pp. 262 to 264 marked as ***Exhibit "9"*** by Respondent.
[15] Dated January 10, 2011; Docket, BIR Records, pp. 265 to 268 marked as ***Exhibits "9-A", "9-B"*** and ***"9-C"*** by Respondent.
[16] Covering the period January 26, 2008 to January 10, 2011
[17] Request for Reconsideration / Reinvestigation dated February 14, 2011.
[18] BIR Form No. 0605 dated February 15, 2011, BIR Records, p. 269.
[19] Request for Reconsideration / Reinvestigation dated March 9, 2011 – submission of relevant supporting documents.

In a Letter dated April 29, 2011 [20], respondent granted petitioner's request for reinvestigation and required petitioner to submit additional pieces of evidence specified therein. Petitioner complied with the request and submitted the documents on May 6, 2011 through a Transmittal Letter dated May 5, 2011.

On May 23, 2011, respondent issued a Revised Notice of Informal Conference [21] informing petitioner that the re-investigation resulted in the determination of the alleged tax liabilities for VAT, WT – Expanded and WT - Compensation for the taxable year 2007 amounting to P6,314,098.49. The details are as follows:

I.	**VALUE ADDED TAX**		
	VATable Receipts Per Audit		P 206,854,972.06
	Tax Rate		12%
	Output Tax Due		24,822,596.65
	Less: Allowed Input Taxes		9,786,712.38
	Tax Due		15,035,884.27
	Less: Supported Tax Payments		11,499,010.52
	Deficiency Tax Due		3,536,873.75
	Add: Interest (1/26/2008 – 1/10/2011)	P 2,094,992.07	
	Compromise Penalty	25,000.00	2,119,992.07
	Total Amount Due		**P 5,656,865.82**
II.	**EXPANDED WITHHOLDING TAX**		
	Expenses Not Subjected to Withholding Tax		P 35,611,733.23
	Tax Due		1,611,858.81
	Less: Tax Paid		1,356,081.21
	Deficiency Tax Due		255,777.60
	Less: Tax Paid (February 15, 2011)		255,777.60
	Deficiency		-0-
	Add: Interest (1/15/2008 – 6/25/2011)	P 175,898.25	
	Compromise Penalty	16,000.00	191,898.25
	Total Amount Due		**P 191,898.25**
III.	**WITHHOLDING TAX ON COMPENSATION**		
	Withholding Tax Due Per Books - December		P 357,552.19
	Withholding Tax Remittance – December		145,912.39
	Deficiency Tax Due		211,639.80
	Less: Tax Payment (February 15, 2011)		131,370.73
	Deficiency Tax Due		80,269.73
	Add: Interest	P 55,201.49	
	Compromise Penalty	12,000.00	67,201.49
	Total Amount Due		**P 147,471.22**

[20] Letter from RDO Abencio T. Torres, BIR RDO No. 58 - Batangas City, signed and received by petitioner May 4, 2011.

[21] Signed and received by petitioner on May 27, 2011; BIR Records, pp. 284 to 290, Marked as Exhibit "13" by Respondent.

On July 28, 2011, petitioner submitted additional documents [22] in support of respondent's request and its objection against the assessed deficiency tax liabilities, as determined after re-investigation conducted by respondent.

On December 12, 2011, respondent rendered a Final Decision on Disputed Assessment (FDDA) [23] which was received by petitioner on January 5, 2012. Respondent found that after re-investigation, petitioner was still held liable for the alleged tax liabilities.

On February 2, 2012, petitioner filed the instant Petition for Review.

On February 8, 2012, respondent issued a Preliminary Collection Letter [24] demanding payment in the aggregate amount of P6,314,099.49.

On March 2, 2012, petitioner filed a "Manifestation" dated February 21, 2011 wherein it stated that it ***(1)*** already paid the correct VAT due and thus has no longer any deficiency taxes for the taxable year 2007 and ***(2)*** the five (5%) Final VAT withheld by the Government is deductible from Output VAT.

Respondent filed her Answer [25] on April 30, 2012, interposing the following Special and Affirmative Defenses:

> "9. The deficiency tax assessments are supported by factual and legal bases.
>
> 10. The petitioner being a distribution company as defined in Section 4.108-3(f) of Revenue Regulations No. 16-2005 is subject to Valued-Added Tax (VAT) for its charges from delivery and distribution of electricity and related electric service of its. Distribution Charges were subjected to VAT at 12% Tax Rate which is equivalent to the Output Tax Due.
>
> 11. The Revenue Officer performed comprehensive audit procedures and techniques under RAMO 1-2000 and related issuances were observed. Petitioner's Financial Statements were

---

22 Submission of Photocopies of Required Documents re: 2007 Audit dated July 25, 2011, specifically Cash Vouchers (CV) in support of petitioner's objection to the disallowed input taxes.
23 FDDA dated December 12, 2011.
24 Preliminary Collection Letter dated February 8, 2012, BIR Records, p. 1657 marked as Exhibit "17" by Respondent.
25 Answer dated April 27, 2012, Docket, pp. 438 to 446

analysed including the sales, cost and expenses traced from the books of accounts.

12. Consequently, books/ledgers were examined and entries were disallowed as input tax, like setting up of payables for construction materials, liquidation of cash advances, replenishment of petty cash and travel per diem which were discovered to be claimed as input from toll fees.

13. The total substantiated input tax is lower than the actual input tax deducted and claimed by the petitioner. The invoices or receipts taken collectively are necessary to substantiate input VAT payments.

14. Hence, petitioner was assessed for deficiency VAT in violation of Section 4.110-8 of Revenue Regulation No. 16-2005, as amended.

15. Moreover, unsubstantiated claims for Creditable Withholding Tax were disallowed pursuant to Section 2.58.3 (B) of Revenue Regulations No. 2-98, as amended in relation to Section 108 of the National Internal Revenue Code.

16. Furthermore, petitioner incurred 2007 deficiency Expanded Withholding Taxes for various income payments specifically director's fee, professional's fee and sub-contractual labor which were not properly subjected to the required withholding tax due pursuant to Section 57 of the National Internal Revenue Code, as implemented by Section 2.57.2 (A) and (E) of Revenue Regulations 2-98, as amended by Revenue Regulations No. 30-2005.

17. Petitioner also incurred deficiency Withholding Tax Due on Compensation upon reconciliation of the Withholding Tax Due per books with Withholding Tax Remitted for the month of December 2007. The Withholding Tax due per books reflected a higher amount than the actual tax remitted by the petitioner. Hence, the assessment for deficiency taxes pursuant to Section 255 of then National Internal Revenue Code, as amended , and Revenue Memorandum Order No. 19-2007 in relation to Section 2.78 of Revenue Regulation No. 2-98, as amended.

18. The petitioner must also prove that the Petition for Review with Court of Tax Appeals was filed within thirty (30) days from receipt of the Final Decision of Disputed Assessment.

19. Based on the foregoing, the finding of deficiency tax liabilities against petitioner is proper in all respects. Worthy of note, are the words of the Supreme Court in the Case of Commissioner of Internal Revenue vs. Bank of the Philippine Islands."

On May 14, 2012, petitioner filed it Reply [26] by registered mail which was received by this Court on May 25, 2012.

On July 17, 2012, petitioner filed its Omnibus Motion seeking the supervision of the Court in exploring the possibility of an amicable settlement and/or the appointment of an Independent Certified Public Accountant (ICPA) [27] pursuant to Section 5, Rule 12 of the RRCTA. In a Resolution dated August 3, 2012, the Court granted the Commissioning of Mrs. Juanita Gallevo-Leviste as ICPA [28].

During trial, petitioner presented as witnesses Teresita Macalindong [29], Flora Pasia [30] and the ICPA [31]. On the other hand, respondent presented BIR personnel, Ms. Emelita Ruado-Abo [32], as her lone witness.

On March 26, 2013, petitioner filed its Motion [33] to Amend the Petition for Review to Conform to Evidence that surfaced during trial pursuant to Section 5, Rule 10 of the Revised Rules of Court. This Court denied the motion in a Resolution dated June 27, 2013.

The case was submitted for decision in a Resolution dated May 6, 2014, upon consideration of the parties' Memoranda [34].

---

[26] Docket, pp. 448 to 456
[27] Curriculum Vitae of Mrs. Juanita Gallevo-Leviste submitted by petitioner on July 30, 2012.
[28] Docket, p. 525
[29] Judicial Affidavit dated August 15, 2012; Docket, p. 528
[30] Judicial Affidavit dated November 15, 2012; Docket, p. 586
[31] Judicial Affidavit dated January 22, 2013; Docket, p. 613
[32] Judicial Affidavit dated June 13, 2013; Docket, p. 688
[33] Motion to Amend Petition to Conform to Evidence dated March 25, 2012; Docket, pp. 629 to 650 with attached Amended Petition for Review
[34] Petitioner's Memorandum filed on February 5, 2014 by registered mail, Respondent's Memorandum filed on February 18, 2014 and Petitioner's Reply Memorandum

THE ISSUES

The issues as stipulated by the parties are as follows:

I. Whether petitioner is liable to pay deficiency tax liabilities representing Value-Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation for the calendar year 2007, as well as penalty, deficiency and delinquency interest as provided in Sections 248 and 249 of the NIRC;

II. Whether or not petitioner paid the correct Value-Added Tax (VAT) due in 2007;

(A) Whether or not the correct Input VAT was deducted from the VAT due from petitioner in 2007.

(B) Whether or not the 5% VAT withheld from customers (Form 2306/2307) should have been deducted from VAT due from petitioner in 2007 considering that BATALEC I did not differentiate between government and non-government institutions in computing the total Output VAT by indiscriminately computing the rate of 12%;

III. Whether or not petitioner paid the correct amount due under the Expanded Withholding Tax system in 2007;

IV. Whether or not petitioner already paid the correct amount due under the Creditable Withholding Tax in 2007

Ultimately, the issue to be settled boils down to whether or not petitioner is liable to pay deficiency VAT, Expanded Withholding Tax and Withholding Tax on Compensation for the calendar year 2007, as well as penalty, deficiency and delinquency interest as provided in Sections 248 and 249 of the Tax Code.

THE COURT'S RULING

Timeliness of the Petition

The Court finds it appropriate to first determine the timeliness of the instant Petition for Review in accordance with Section 228 of the Tax Code, as amended, which provides:

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

On December 12, 2011, respondent issued her FDDA based on the reinvestigation which was received by petitioner on January 5, 2012. As such petitioner has thirty (30) days or until February 4, 2012, within which to appeal respondent's decision. Records show that petitioner filed the instant Petition for Review on February 2, 2012, well within the period prescribed by law to file the same.

Petitioner was not able to substantiate its claim for input tax and 5% Final Withholding VAT

Re: Disallowance of Input Tax Claimed

Based on documents submitted, petitioner paid a total of P11,499,010.52 for Output VAT during the calendar year 2007, broken down as follows:

Taxable Period for the year 2007	Amount Paid
January [35]	P 1,344,192.58
February [36]	1,093,158.19
March [37]	1,027,291.69
April [38]	792,125.97
May [39]	1,303,780.03
June [40]	422,894.47
July [41]	850,000.00
August [42]	1,858,011.56
September [43]	542,555.92
October [44]	439,325.82
November [45]	1,342,716.03
December [46]	482,958.26
Total	**P11,499,010.52**

In her FLD and Assessment Notice dated January 10, 2011, respondent assessed petitioner for basic deficiency VAT amounting to P3,536,873.75. Petitioner claims that respondent failed to consider certain documents submitted by petitioner on account of re-assignment or shuffle of BIR personnel during the period of reinvestigation.

Petitioner argues that if respondent had correctly considered ***(1)*** the Input Taxes per books amounting to P11,530,137.92 and ***(2)*** the five percent

[35] Exhibit "B-1-c"; Exhibit B-1-b"
[36] Exhibit "B-2-c"; Exhibit B-2-b"
[37] Exhibit "B-3-c"; Exhibit B-3-b"
[38] Exhibit "B-4-c"; Exhibit B-4-b"
[39] Exhibit "B-5-c"; Exhibit B-5-b"
[40] Exhibit "B-6-c"; Exhibit B-6-b"
[41] Exhibit "B-7-c"; Exhibit B-7-b"
[42] Exhibit "B-8-c"; Exhibit B-8-b"
[43] Exhibit "B-9-c"; Exhibit B-9-b"
[44] Exhibit "B-10-c"; Exhibit B-10-b"
[45] Exhibit "B-11-c"; Exhibit B-11-b"
[46] Exhibit "B-12-c"; Exhibit B-12-b"

(5%) final VAT withheld by government institutions evidenced by the issuance of BIR Form No. 2306 amounting to P1,791,190.72, petitioner would not have any deficiency VAT. Comparatively, respondent's assessment and petitioner's claim are presented as follows:

		Per Respondent		Per Petitioner
Output Tax Due	P	24,822,596.65	P	24,820,339.16
Less: Allowed Input Taxes		9,786,712.38		11,530,137.92
Final VAT Withheld from Government		-		1,791,190.72
Tax Due		15,035,884.27		11,499,010.52
Less: Supported Tax Payments		11,499,010.52		11,499,010.52
Deficiency Tax Due	**P**	**3,536,873.75**	**P**	**-**

Petitioner anchors its claim on the findings of the ICPA that it had paid the correct Output VAT for the calendar year 2007 and that it has in fact under claimed Input VAT amounting to P565,242.02 for the year 2007 which would effectively result into an overpayment of Output VAT.

On the other hand, respondent argues that only P9,786,712.38 of Input Tax claimed from purchases were substantiated by petitioner and consequently allowed as a credit to related Output Tax.

In respondent's assessment of petitioner's deficiency VAT, input taxes amounting to P1,743,425.54 were disallowed on the ground of violation of Section 4.110-8 of Revenue Regulation (R.R.) No. 16-2005, amended.

Respondent also disallowed the final VAT withheld amounting to P1,791,190.72 as unsubstantiated claims for Creditable Withholding Tax in violation to Section 2.58.3 (B) of R.R. No. 2-98, as amended.

We find petitioner's claim bereft of merit.

The only issue here is the substantiation of the allowable input tax claimed by petitioner and the 5% Final VAT Withheld by government institutions in their dealings with petitioner.

Section 4.110-8 of R.R. No. 16-2005, provides:

> "**SEC. 4.110-8.** ***Substantiation of Input Tax Credits*:**
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or service is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero rated sales, or subjected

to the 5% Final Withholding VAT, must be substantiated and supported by the following documents and must be reported in the information returns to be submitted to the Bureau:

(1) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods;

(2) <u>For the domestic purchase of goods and properties – invoice showing the information required under Sections 113 and 237 of the Tax Code;</u>

(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller;

(4) <u>For the purchase of services – official receipt showing the information required under Sections 113 and 237 of the Tax Code;</u>

xxx xxx xxx" *(Underscoring ours)*

Section 110 of the Tax Code, on the other hand provides that any Input Tax attributable to the "purchase of goods for use as supplies in the course of business" and "purchase of service on which a VAT has been actually paid", shall be creditable against Output Tax, *viz*:

"SEC. 110. *Tax Credits.* -

A. Creditable Input Tax. –

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

(a) Purchase or importation of goods:

(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

(2) The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) <u>A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:</u>

<u>(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and</u>

<u>(b) A ratable portion of any input tax which cannot be directly attributed to either activity.</u>

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

xxx xxx xxx." *(Underscoring ours)*

Based on the findings of the ICPA, the total input tax for the calendar year 2007 amounting to P11,530,137.92 were verified against covering check vouchers and supporting schedules [47] and journal vouchers [48] to which petitioner claims it is entitled to a credit against related output pursuant to Section 110 of the Tax Code. The ICPA also found that petitioner has under claimed Input Tax in the amount of P565,242.02.

The ICPA concluded in her report, as follows:

> "Based on the audit evidences I have obtained which I considered sufficient and appropriate, I hereby render my audit opinion –
>
> - That Petitioner Batangas I Electronic Cooperative Inc., has correctly deducted the Input VAT from the VAT payable in 2007, <u>except that, there was a net under claimed of Input Tax of P565,242.02 for the year 2007. The PETITIONER has deducted the 5% VAT withheld by consumers was deducted from VAT due for 2007. If it were not deducted, there would be a resulting overpayment.</u>" *(Underscoring ours)*

Time and again, it has been ruled that the Court is not bound by the findings of the ICPA. Hence, in the case of ***First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue*** [49], the Court explained that "the report submitted by the ICPA is but a tool or guide to aid the Court in the decision of the case. The determination of the merit or the probative value of such report is still within the province of the Court. In addition, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it".

In trailing the evidence proffered by petitioner, this Court found that the schedules and vouchers do not trace back to the actual substantiation of the receipts and/or invoices. With the Court's own evaluation of the evidence submitted by petitioner, including those of the report of the ICPA pursuant to Section 5, Rule 12 of the Revised Rules of the Court of Tax Appeals (RRCTA)

---

47 Representing replenishment of petty cash of various expenses, operating and non-operating which are compared against sales invoices and other supporting documents; Report of ICPA, Ibid.

48 Representing purchase of Capital Goods subject to deferred Input Tax, Report of ICPA, Ibid.

49 CTA EB Case No. 563, March 1, 2011.

[50], reveals that petitioner was not able to satisfactorily substantiate its claim of creditable input tax amounting to P11,530,137.92.

Re: Disallowance of 5% Final Withholding VAT:

Similarly, respondent disallowed the amount of P1,791,190.72 [51] representing the 5% Final Withholding VAT for failure to substantiate the same in violation of Section 2.58.3 (B) of R.R. No. 2-98, as amended, in relation to Section 4.114-2 of R.R. No. 16-2005, as amended by R.R. 4-2007, which states:

Section 2.58.3 of R.R. No. 2-98 provides:

> "**SEC. 2.58.3.** ***Claim for tax credit or refund.*** **–**
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payment shall be

[50] **SEC. 5.** ***Presentation of voluminous documents or long accounts.*** **-** In the interest of speedy administration of justice, the following rules shall govern the presentation of voluminous documents or long accounts, such as receipts, invoices and vouchers, as evidence to establish certain facts:
(a) Summary and CPA certification. - The party who desires to introduce in evidence such voluminous documents or long accounts must, upon motion and approval by the Court, refer the voluminous documents to an independent Certified Public Accountant (CPA) for the purpose of presenting:
(1) a summary containing, among other matters, a chronological listing of the numbers, dates and amounts covered by the invoices or receipts and the amount(s) of taxes paid and
(2) a certification of an independent CPA attesting to the correctness of the contents of the summary after making an examination, evaluation and audit of voluminous receipts, invoices or long accounts.
The name of the Certified Public Accountant or partner of a professional partnership of certified public accountants in charge must be stated in the motion. The Court shall issue a commission authorizing him to conduct an audit and, thereafter, testify relative to such summary and certification.
(b) Pre-marking and availability of originals. - The receipts, invoices, vouchers or other documents covering the said accounts or payment to be introduced in evidence must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. The original copies of the voluminous receipts, invoices or accounts must be ready for verification and comparison in case doubt on its authenticity is raised during the hearing or resolution of the formal offer of evidence.

[51] Difference between P11,530,137.92, the amount of input tax claimed by petitioner, and P9,786,912.38, the amount of input tax found by respondent to be substantiated in accordance with Section 4.114-2.

> given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding was established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom." *(Underscoring ours)*
>
> xxx xxx xxx

On the other hand, Section 4.114-2 of R.R. No. 16-2005, as amended by R.R. 4-2007 provides that income payments to the government on their purchases of goods and services shall be subject to Final Withholding VAT of 5%, thus:

> "**SEC. 4.114-2.** ***Withholding of VAT on Government Money Payments and Payments to Non-Residents. –***
>
> (a) The government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services taxed at twelve percent (12%) VAT pursuant to Secs. 106 and 108 of the Tax Code, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof. The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost." *(Underscoring ours)*

In support of petitioner's claim that it has fully complied with the substantiation requirements of 5% Final VAT, petitioner claims that it was able to secure BIR Forms No. 2306 and 1600 from government institutions arising from its sale of electricity and distribution charges. However, petitioner did not offer such forms for the Court to verify that the income payment was indeed part of the declared gross income and that there was in fact withholding of the 5% VAT. The only evidence it submitted was a "Summary/Schedule of 5% Final VAT Deducted in Advance of Various Consumers (Gov't. Entities) for the Year 2007" [52]. Without the said forms, such summary made by the ICPA has no factual basis.

This Court also disallowed the credit of the claimed 5% Final VAT based on petitioner's own admission that it presented its sales of electricity and distribution charges to government and non-government institutions in lump-sum. The determination of the Actual Input VAT to be compared against Standard Input VAT pursuant to Section 4.114-2 of R.R. No. 16-2005, as amended by R.R. 4-2007 includes the determination of the ratable portion of the Sales to Government over its total sales. With its presentation of sales in lump sum, the Court has no way of determining the actual input tax attributable to sales to government institutions.

In as much as petitioner failed to sufficiently substantiate its claim for allowable input tax, the Court upholds respondent's FDDA on basic deficiency VAT for the year 2007 in the amount of P3,536,873.75.

Re: Imposition of 25% surcharge

In addition, the Court imposes against petitioner a 25% surcharge pursuant to Section 248(A)(3) of the Tax Code, which provides:

> "**SECTION 248.** ***Civil Penalties. –***
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> xxx xxx xxx
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
>
> xxx xxx xxx." *(Underscoring ours)*

Despite payment of basic deficiency expanded withholding tax and deficiency tax withheld on compensation, petitioner is still liable for payment of deficiency interest under Section 249 of the Tax Code.

52 Marked as Exhibit "A-9" by ICPA, Formal Offer of Evidence by Petitioner.

Petitioner argues that no deficiency taxes should be assessed against it because it already paid on February 15, 2011 [53] the amounts of P255,777.60 for WT - Expanded and P131,370.07 for WT – Compensation for the year 2007 upon receipt of the FLD and Assessment Notices dated January 10, 2011. Petitioner relied once again on the report of the ICPA, as follows:

<u>On Payment of Expanded Withholding Tax</u>

"The Petitioner has paid the amount of P255,777.60 as deficiency tax as per assessment of the BIR, for the expanded withholding tax on 2007, xxx xxx xxx"

<u>On payment on Withholding Tax on Compensation</u>

"The Petitioner has paid the amount of P131,370.07 as net deficiency Tax Due, that is:"

Deficiency Tax Due	P	211,639.80
Less: Refund to Employees		80,269.73
Amount Paid	**P**	**131,370.07**

There is no dispute that on February 15, 2011, petitioner filed BIR Form No. 0605 and paid the aggregate amount of P387,147.67 for purposes of eliminating its deficiency tax liability based on the FLD and Assessment Notices issued January 10, 2010.

Petitioner argues that although deficiency withholding taxes carry with it the payment of interest and compromise penalty, the same is avoided when respondent allowed it to pay only the basic deficiency taxes of P387,147.67. To petitioner's mind, respondent in effect has consented to such payment of only the principal obligation when it received the payment on February 15, 2011.

Moreover, petitioner argues that it is unjust and inequitable if petitioner is made to pay for interest and compromise penalty when it was actually respondent who caused the delay in issuing an assessment.

We find petitioner's argument bereft of merit.

[53] BIR Form No. 0605 amounting to P387,147.67.

In her FDDA, respondent assessed petitioner for deficiency expanded withholding tax and deficiency withholding tax on compensation, as follows:

EXPANDED WITHHOLDING TAX

Deficiency Tax Due			-0-
Add:	Interest (1/15/2008 – 6/25/2011)	175,898.25	
	Compromise Penalty	16,000.00	191,898.25
Total Amount Due			**191,898.25**

WITHHOLDING TAX ON COMPENSATION

Deficiency Tax Due			80,269.73
Add:	Interest	55,201.49	
	Compromise Penalty	12,000.00	67,201.49
Total Amount Due			**147,471.22**

Section 249 of the Tax Code provides basis for the assessment of penalty interest as follows:

> "**SEC. 249. *Interest.* –**
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Section (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency Interest.* – In case of failure to pay:
>
> (1) The amount of tax due on any return required to be filed; or
>
> (2) The amount of tax due for which no return is required; or
>
> (3) A deficiency tax, or any surcharge or interest thereon the due date appearing in the notice and demand of the Commissioner.
>
> There shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Section (A) hereof until the amount is fully paid, which interest shall form part of the tax.

xxx xxx xxx." *(Underscoring ours)*

The aforementioned provision is clear that the imposition of penalty deficiency interest accrues to the taxpayer on account of deficiency taxes assessed by respondent. By arguing that petitioner assented to the payment of the basic deficiency taxes, petitioner in effect seeks to be exempt from the imposition of deficiency interest and compromise penalty.

Settled is the rule that taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting the exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption there from is the exception. However, if the grantee of the exemption is a political subdivision or instrumentality, the rigid rule of construction does not apply because the practical effect of the exemption is merely to reduce the amount of money that has to be handled by the government in the course of its operation[54].

In the case at bar, there is no rule or law cited by petitioner for it to be exempt from deficiency interest. Thus, this Court holds petitioner liable for the payment of deficiency interest from the date prescribed for its payment until the full payment thereof.

Re: Payment of Expanded Withholding Tax

As to the assessment for deficiency expanded withholding tax, petitioner claims that it made erroneous payments to the BIR when it withheld and remitted withholding taxes equivalent to ten percent (10%) of income payments made to certain tax exempt entities, as follows:

Law Firm	Amount Paid	Withheld
Bernardo & Pacido Law Offices	P 446,428.57	P 46,642,86
Cabio Law Office and Associates	30,000.00	3,000.00
Total	**P 476,428.57**	**P 47,642.86**

We find merit on petitioner's claim.

---

[54] ***Mactan Cebu International Airport Authority vs. Marcos,*** G.R. No. 120082, September 11, 1996.

Section 26 of the Tax Code provides that General Professional Partnerships are not subject to income taxes, thus:

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

In relation thereto, Section 2.57.5 of R.R. No. 2-98, as amended, provides that:

> **"SECTION 2.57.5.** ***Exemption from Withholding.*** — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> (A) . . .
>
> (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:
>
> (1) . . .
>
> (4) General Professional Partnerships
>
> xxx xxx xxx"

Based on the foregoing, it is clear that the law firms, being general professional partnership, should not have been subjected to the expanded withholding tax, hence, petitioner indeed made erroneous payments amounting to P47,642.86 arising from income payments of P476,428.57.

However, this Court has already determined that petitioner is liable for deficiency interest which would have accrued based on the total amount of deficiency tax assessed by respondent. The erroneous overpayment amounting to P47,642.86 shall be regarded only as a credit in determining the final deficiency withholding tax liability of petitioner, as follows:

	Details of Assessment	**Erroneous Payment**	**Adjusted Assessment**
Expenses Not Subjected to Expanded Withholding tax	P 35,611,733.23	P 476,428.57	P 35,135,304.66
EWT Due	P 1,611,858.81	P 47,642.86	P 1,564,215.95
Less: EWT Paid			1,356,081.21
Deficiency EWT			P 208,134.74
Add: 20% Deficiency Interest from Jan. 15, 2008 to Feb. 15, 2011 (P208,134.74 x 20% x 1125/365 days)			128,302.24
Total Amount Due			P 336,436.98
Less: Deficiency EWT paid			255,777.60
Amount Still Due			**P 80,659.38**

Re: Payment of Withholding Tax on Compensation

With regard to the assessment for deficiency withholding tax on compensation, respondent made a demand for the payment of unremitted taxes withheld on compensation amounting to P211,639.80 [55], determined as follows:

Income Tax Withheld per books as of December	P 357,552.19
Tax Remittance - December	145,912.39
Discrepancy	**P 211,639.80**

On February 15, 2011, instead of paying the above-stated discrepancy, petitioner paid the amount of P131,370.07. Petitioner claims that the difference amounting to P80,269.73 represents the year-end adjustment on excess withholding tax on compensation for the year 2007 which were refunded to the employees..

Petitioner argues that the failure to deduct the amount of P80,269.73 is oppressive and would result in overpayment of taxes. It expounded this argument in its Memorandum, *viz*:

> "25. In petitioner's letter dated February 14, 2011 (Annex "J" & "J-1" of the Original Petition), petitioner immediately paid PhP 131,370.07 because it deducted PhP 80,269.73 from the principal amount of PhP 211,639.80. The deduction of PhP

[55] FLD - Details of Discerpancies, BIR Records, p. 262

80,269.73 represents the excess withholding income taxes for the year 2007. The excess withholding taxes is explained as follows:

25.1 Taxes withheld and remitted are provisional in nature. (Vitug&Acosta, Tax Law and Jurisprudence 192 [2006]) Taxes are regularly withheld from employees throughout the year. However, the actual days worked and total compensation due are finalized only at the end of the year. Since the taxes withheld throughout the year presumes perfect attendance by the employees, there would be a discrepancy on the rate base of the withholding tax at the end of the year when total compensation due to an employee is computed less their absences. This means that absences and leaves would necessarily result in excess taxes withheld on compensation.

25.2 Annex "R" of the Original Petition represents the amount of withholding taxes that were remitted to the BIR in excess of the taxes due from employees after computing and ascertaining the amount of days worked and total compensation due at the end of Year 2007.

25.3 Not allowing the deduction of PhP 80,269.73 from the total amount due on Withholding Tax on Compensation would be oppressive to the petitioner and would constitute over taxation."

Petitioner's argument deserves scant consideration.

To prove that there was indeed excess withholding tax on compensation withheld from its employees and remitted to the BIR, petitioner submitted a summary list [56] of employees and their supposed tax refund for the year-ending December 31, 2007. There is no evidence on record for the Court to verify the actual taxes due from the employees for the year presented in the list to be compared against the actual taxes withheld which would justify petitioner's claim of tax refund.

Thus, the Court upholds respondent's deficiency assessment against in the amount of P80,269.07, computed as follows:

---

[56] Tax Refund for Year Ending 2007, marked as ***Exhibit "F"*** by petitioner, Docket, pp. 389 to 390.

WT - Compensation Due Per Books (December)	P	357,552.19
Less: Remittance of WT - Compensation (December)		145,912.39
Deficiency WT - Compensation		211,639.80
Less: Deficiency WT-Compensation paid on Feb. 15, 2011		131,370.73
Deficiency WT - Compensation Still Due	**P**	**80,269.07**

In addition, petitioner shall be liable for 25% surcharge for its failure to pay the amount of tax due pursuant to Section 248(A)(3) of the Tax Code.

Petitioner shall also be liable for 20% deficiency Interest pursuant to Section 249 which would have accrued on the payment made on February 15, 2011 amounting to P131,370.73 from January 10, 2008 up to the time of payment, computed as follows:

20% Deficiency Interest on the Deficiency WT – Compensation of P131,370.73 paid on February 15, 2011 (P131,370.73 x 20% x 1125/365 days)	**P**	**80,981.96**

Petitioner is not liable for Compromise Penalty.

Petitioner argues that it should not be held liable for compromise penalty imposed in the FLD and Asessment Notices.

We agree.

In ***Philippine International Fair, Inc. vs. The Collector of Internal Revenue*** [57], the Supreme Court held that "No compromise penalty may be imposed on petitioner as compromise requires mutual consent of the parties. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer." Also in ***Commissioner of Internal Revenue vs. Liangga Bay Logging Co., Inc.*** [58], the Supreme Court further held that "absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized."

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED.** Accordingly, the FDDA on deficiency VAT and deficiency Withholding Tax on Compensation for the year 2007 against petitioner is

[57] 4 SCRA 781
[58] 193 SCRA 92 to 93

hereby **UPHELD** by this Court and petitioner is hereby **ORDERED TO PAY** the amount of P4,421,092.19 and P181,318.30, respectively, inclusive of surcharge and deficiency interest.

On the deficiency Expanded Withholding Tax, petitioner is hereby **ORDERED TO PAY** respondent deficiency interest amounting to P80,659.38.

The foregoing payments to respondent are broken down as follows:

	Basic Tax	25% Surcharge	20% Deficiency Interest on Payments made on Feb. 15, 2011	Total
Value-Added Tax	P 3,536,873.75	P 884,218.44		P 4,421,092.19
WT-Expanded	-		P 80,659.38	80,659.38
WT-Compensation	80,269.07	20,067.27	80,981.96	181,318.30
Total	**P 3,617,142.82**	**P 904,285.71**	**P 161,641.34**	**P 4,683,069.87**

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

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of P3,536,873.75 and on the basic deficiency WT-Compensation of P80,269.07 computed from January 25, 2008 and January 15, 2008, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC, as amended;

b) Delinquency interest at the rate of twenty percent (20%) per annum on the amount of P4,421,092.19, representing basic deficiency VAT of ₱3,536,873.75 and 25% surcharge of ₱884,218.44 and on the amount of ₱181,318.30 representing basic deficiency WT-Compensation of 80,269.07 and 25% surcharge of P20,067.27, computed from January 5, 2012 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997;

c) Delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest of ₱161,641.34 due on the Feb. 15, 2011 deficiency WT remittances computed from January 5, 2012 until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice