REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TS TECH PHILIPPINES, INC. represented by TS TECH TRIM PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 8178**
	Members:
- versus-	**Castañeda, Jr.,** *Chairperson* **Casanova,** and **Cotangco-Manalastas,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** AUG 12 2015 3:00 p.m.

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AMENDED DECISION

COTANGCO-MANALASTAS, *J.:*

For resolution are petitioner's *Motion for Reconsideration (to the Decision dated April 6, 2015)* filed on April 22, 2015 and *Manifestation/Supplemental Motion for Reconsideration* filed on May 11, 2015 with respondent's *Comment* filed on May 18, 2015.

Petitioner moves for the reconsideration of the Decision of this Court dated April 6, 2015, dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. The assessments issued by respondent against petitioner for taxable year 2005 covering deficiency expanded withholding tax, withholding tax on compensation, income tax, and value-added tax are hereby **AFFIRMED** but with modifications. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of ₱20,245,996.43 representing deficiency expanded withholding tax, withholding tax on compensation, income tax, and value-added tax, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Deficiency Tax	Basic Tax	25% Surcharge	Total
Expanded Withholding Tax	₱ 227,540.80	₱ 56,885.20	₱ 284,426.00
Withholding Tax on Compensation	764,116.41	191,029.10	955,145.51
Income Tax	5,166,024.81	1,291,506.20	6,457,531.01
Value-Added Tax	10,039,115.13	2,509,778.78	12,548,893.91
TOTAL	**₱16,196,797.15**	**₱4,049,199.28**	**₱20,245,996.43**

In addition, petitioner is **ORDERED TO PAY** the following:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency expanded withholding tax, withholding tax on compensation, income tax, and value-added tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC, as amended;

	Basic Tax	20% Deficiency Interest Computed from
Expanded Withholding Tax	₱ 227,540.80	January 15, 2006
Withholding Tax on Compensation	764,116.41	January 15, 2006
Income Tax	5,166,024.81	April 15, 2006
Value-Added Tax	10,039,115.13	April 25, 2006

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱20,245,996.43 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from August 31, 2008 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Petitioner anchors its motion for reconsideration on the following grounds:

1. For Value Added Tax (VAT):

   a. TS Tech Philippines, Inc. (TTPI), Honda Cars Philippines, Inc. (HCPI), TS Tech Trim Philippines, Inc. (TTTPI), Automotive Interiors Corporation (AIC), and Yashima Sangyo Phils. Inc. (YSPI) are all Philippine Economic Zone Authority (PEZA) registered enterprises. The 2005 sales of TTPI to HCPI, TTTPI, AIC and YSPI are not subject to 10% VAT. Such sales are VAT Exempt or VAT Zero Rated.

b. Petitioner's sales for 2005 had been duly accounted and properly reported. Tax Reconciliation System – Letter Notice (TRS-LN) is not dependable or conclusive evidence.

c. The Bureau of Customs data of unaccounted sales has no basis. Assessment could not be based on estimates that appear to have been arbitrarily or capriciously arrived at.

d. Petitioner's sales of fixed assets to TS Tech Trim Philippines, Inc. (TTTPI) and Yashima Sangyo Phils., Inc. (YSPI) are not subject to VAT. In addition, the amount of ₱13,698,725.03 is not a sale subject to VAT.

2. For Income Tax:

a. Petitioner's sales for 2005 had been duly accounted and properly reported. There are no unaccounted sales.

b. The use of gross profit rate method without any documentary basis has no probative value and not conclusive evidence of assessment.

c. The petitioner's local purchases in the amount of ₱1,776,532.40 for taxable year 2005 are duly supported by evidence.

d. Petitioner's payments of salaries and wages for taxable year 2005 were subjected to the corresponding withholding taxes.

e. Petitioner already made payment of Expanded Withholding Taxes for 2005 in the amount of ₱610,341.71 upon recommendation of the ICPA.

3. For Withholding Tax on Compensation:

a. Petitioner duly reported its salaries and wages for taxable year 2005. The corresponding taxes were duly withheld and remitted to the Bureau of Internal Revenue (BIR).

In her comment, respondent states that the Court had already meticulously discussed, passed upon, and considered the arguments raised therein. To discuss them anew is superfluity. In addition, its annexes were never offered in evidence to be given any credence and weight to overturn the Decision.

In its *Manifestation/Supplemental Motion for Reconsideration,* petitioner manifests that on May 4, 2015, it received a Letter/Confirmation dated April 27, 2015 from PEZA, confirming and certifying that TS Tech Trim Philippines, Inc., Yashima Sangyo Philippines, Inc., Automotive Interiors Corporation, and Honda Cars Philippines, Inc., are all VAT Zero Rated Entities/Enterprises and are entitled to VAT Zero Rating on their transactions for year 2005. The original copy of the Letter/Confirmation was attached as annex thereto.

In a Resolution dated May 15, 2015, the Court granted the motion to admit the said Letter/Confirmation. Accordingly, the Letter/Confirmation dated April 27, 2015 issued by PEZA was admitted as part of petitioner's evidence and considered as an additional support/supplemental to petitioner's Motion for Reconsideration filed on April 22, 2015.

The Court will now discuss the grounds asserted by petitioner.

I. Deficiency Value-Added Tax (VAT) - ₱10,039,115.13

For basic deficiency VAT, the Court premised its findings on the following:

A. Unsupported Exempt Sales in the amount of ₱6,597,104.64;
B. Unsupported Zero-Rated Sales in the amount of ₱90,960,855.70;
C. Sales not subjected to VAT in the amount of ₱32,348,655.00;
D. Unaccounted Sales per Bureau of Customs data in the amount of ₱4,729,965.01; and
E. Unaccounted Sales per TRS LN vs. CWT vs. ITR in the amount of ₱39,472,231.31.

I - A, B and C.1. *Unsupported Exempt Sales of ₱6,597,104.64; Unsupported Zero-Rated Sales of ₱90,960,855.70 and Sales not subjected to VAT of ₱11,896,414.78*[1]

Petitioner posits that the Court failed to consider that the sales made to the following entities are exempt or zero-rated by virtue of being PEZA-registered, thus are entitled to such incentives:

Registered Enterprises	**2005 Sales** *(in Pesos)*	**10% VAT** *(in Pesos)* (per Court's Decision dated April 6, 2015)
Honda Cars Philippines, Inc. (HCPI)	₱ 25,014,199.70	₱ 2,501,419.97
TS Tech Trim Philippines, Inc. (TTTPI)	65,946,656.00	6,594,665.60
	₱ 90,960,855.70	₱ 9,096,085.57
Automotive Interiors Corporation (AIC)	6,597,104.64	659,710.46
Yashima Sangyo Phils., Inc. (YSPI)	11,896,414.78	1,189,641.48
	₱ 109,454,375.12	**₱ 10,945,437.51**

Petitioner laid down the following arguments:

1. The Honorable Court had acknowledged in the assailed Decision that the above entities are indeed PEZA-registered by virtue of the respective Certificates of Registration issues by the PEZA Director General Lilia B. de Lima, and such certificates were part of the records as Exhibits "N", "L", "M" or "HH", and "OO".
2. The fact that petitioner is a PEZA-registered entity is already undisputed as indicated in the Joint Stipulation of Facts and Issues[2].
3. The fact that the above mentioned entities are all PEZA-registered is no longer disputed.
4. The Cross Border Doctrine recognized in the assailed Decision was made applicable to petitioner, thus, no VAT shall be imposed to form part of cost of goods destined for consumption outside the territorial border of the taxing authority.
5. The Certificates of Registration as PEZA-registered entities issued to the above mentioned entities are valid, legal, subsisting and continue to be enforceable from the time they were issued up to the present.
6. The validity or legality of said PEZA Certificates of Registration were never questioned by respondent nor

[1] Forming part of the ₱32,348,655.00 sales not subjected to VAT, Decision, pp. 46 and 52.
[2] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. I, pp. 82 to 85.

was ever raised in issue. Further, a PEZA Certificate of Registration is only issued once and not yearly.

7. Unless and until the Certificate of Registration issued by the PEZA to a certain enterprise is revoked or cancelled, it continues to be valid, subsisting and enforceable. And to require petitioner to re-submit another registration certificate for year 2005 violates the rule of procedures on "burden of evidence".
8. The Court erred in ruling that the statement of accounts as proof of zero-rated transactions of petitioner to TTTPI amounting to ₱65,946,656.00 are not sufficient.
9. The Independent Certified Public Accountant (ICPA) had indicated in his report and testified that the above entities are PEZA-registered enterprises. So as with the ICPA's examination of the statement of accounts supporting zero-rated transactions with TTTPI amounting to ₱65,946,656.00, hence makes it beyond doubt that such transactions are zero-rated.

A reading of petitioner's arguments shows that the same have already been sufficiently addressed in the assailed Decision.

While the PEZA registration certificate may only be issued once and does not require yearly renewal, it does not automatically mean that during the year when the sale was made, the said registrations were in good standing to sufficiently support the petitioner's sale transaction's entitlement to VAT exemption or zero-rating. Even when the "Cross Border Doctrine" applies to petitioner, it does not dispense the need for petitioner to present sufficient and convincing evidence that the said doctrine validly applies to it during the year of sale, which is in 2005.

Also, despite the fact that there were no disputes against the status of the involved entities being PEZA-registered enterprises, it still cannot be given full credence by this Court.

Under Section 8 of Republic Act No. 1125, the Court of Tax Appeals is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases.[3] Hence, petitioner, in this case must not have relied merely on an undisputed assertion which was neither indicated in the JSFI.

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

It is likewise worth emphasizing that this Court is not bound by the findings of the ICPA. The report submitted by the ICPA is but a tool or guide to aid the Court in the resolution 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.[4]

Hence, the findings of the ICPA shall still be subject to the verification of this Court based on the presented pieces of evidence by petitioner and respondent's controverting evidence, if any.

It has to be noted that the ICPA's findings on the status of the PEZA-registration of the involved entities and the statement of accounts proving zero-rated transactions with TTTPI were based on the same set of evidence which this Court had scrutinized. And it was upon the sound discretion of the Court that it ruled over the insufficiency of such pieces of evidence. Hence, must be accorded with deference and respect.

Be that as it may, petitioner presented through its *Manifestation/Supplemental Motion for Reconsideration,* a Letter/Certification dated April 27, 2015 issued by the PEZA Director General, Ms. Lilia B. De Lima, confirming and certifying that the following entities were issued with VAT-zero-rating certifications and are entitled to VAT zero rating on their transactions for the year 2005:

		VAT Zero-Rating	
Name of Enterprise	**Certificate of Registration Number/Date**	**Certificate Number**	**Certificate Date**
TS Tech Trim Philippines, Inc.	94-94 20 January 1998	2005-391	19 January 2005
Yashima Sangyo Phils., Inc.	05-50 25 August 2005	2005-1000	30 August 2005
Automotive Interiors Corporation	99-08 10 February 1999	2005-093	22 December 2004
Honda Cars Philippines, Inc.	00-040 28 January 2000	2005-627	10 February 2005

[4] *First Lepanto Taisho Insurance Corporation vs. CIR*, CTA E.B. Case No. 563, March 1, 2011.

As mentioned earlier, the original copy of the Letter/Certification[5] was attached as annex to the *Manifestation/Supplemental Motion for Reconsideration*, which was admitted as part of petitioner's evidence in a Resolution dated May 15, 2015.

With the presentation of the said Letter/Certification, petitioner has now proven that the said entities are PEZA-registered and are entitled to VAT zero-rating for the year 2005 except for Yashima Sangyo Phils., Inc. whose PEZA date of registration was only on August 25, 2005. As such, only those transactions pertaining to Yashima Sangyo Phils., Inc. covering the period of August 25, 2005 to December 31, 2005 may be considered for VAT zero-rating.

In the assailed Decision, this Court upheld respondent's imposition of 10% VAT on the following:

	Registered Enterprises	2005 Sales	10% VAT
		(in Pesos)	*(in Pesos)*
			(per Court's Decision dated April 6, 2015)
A.	Unsupported exempt sales		
	Automotive Interiors Corporation (AIC)	₱ 6,597,104.64	₱ 659,710.46
B.	Unsupported zero-rated sales		
	Honda Cars Philippines, Inc. (HCPI)	₱ 25,014,199.70	₱ 2,501,419.97
	TS Tech Trim Philippines, Inc. (TTTPI)	65,946,656.00	6,594,665.60
		₱ 90,960,855.70	₱ 9,096,085.57
C.	Included in the ₱18,649,930.00[6] Proceeds from sales of fixed assets		
	Yashima Sangyo Phils., Inc. (YSPI)	₱ 11,896,414.78	₱ 1,189,641.48
	TS Tech Trim Philippines, Inc. (TTTPI)	5,927,550.65	592,755.07
		₱ 17,823,965.43	₱ 1,782,396.54
		₱115,381,925.77	**₱ 11,538,192.57**

It is to be recalled that aside from the PEZA Certification, this Court denied the statements of account (SOAs) supporting petitioner's claimed zero-rated sales transactions to TTTPI in the amount of ₱65,946,656.00. However, in its Motion, petitioner contends that it is not claiming for refund but only stating the fact that it incurred sales transactions subject to zero-rated VAT. As such, the SOAs constitute substantial proof or acceptable evidence of sales.

[5] Docket, vol. 2, p. 1554.
[6] Part of the ₱32,348,655.00 Sales not subjected to VAT, Decision, pp. 46 and 52.

Further, petitioner submits that the strict application of the invoicing requirements for VAT refund finds no application. Accordingly, the wordings of the Supreme Court in *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[7] finds application in the instant case:

> "What applies to petitioner, as a PEZA-registered export enterprise, is the Court's pronouncement that leniency in the implementation of the VAT is an imperative, precisely to spur economic growth in the country and attain global competitiveness as envisioned in our laws. The incentives offered to PEZA enterprises, among which are tax exemptions and tax credits, ultimately redound to the benefit of the national economy, enticing as they do more enterprises to invest and do business within the zones, thus creating more employment opportunities and infusing more dynamism to the vibrant interplay of market forces."

Petitioner's argument is misplaced. The above cited case tackles a VAT refund where the Supreme Court's application of the pronounced leniency is on the information (*i.e.*, the BIR authority to print) required to be indicated in a VAT invoice issued for a zero-rated export sale but it did not dispense the fact the a VAT zero-rated invoice is required to prove such zero-rated sale.

As expressly stated in Section 113(A) of the NIRC of 1997, as amended, a VAT-registered person shall issue a VAT invoice for every sale, barter or exchange of goods or properties and a VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of service. Also, Section 113(B)(2)(b) of the same Code states that if the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt.

Nowhere is it stated in the aforementioned provisions that a SOA may as well be issued for a VATable sale.

The same holds true with the alleged zero-rated sales to YSPI in the amount of ₱11,896,414.78 and TTTPI in the amount of ₱5,927,550.65 forming part of the sales not subjected to VAT amounting to ₱32,348,655.00. The related deficiency VAT assessment which was upheld in the assailed Decision shall remain due to petitioner's failure to present VAT zero-rated sales invoices.

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[7] G.R. No. 166732, April 27, 2007.

However, since petitioner's sales to AIC and HCPI in the respective amounts of ₱6,597,104.64 and ₱25,014,199.70 or in the sum of ₱31,611,304.34 were duly supported by VAT zero-rated sales invoices, the deficiency VAT assessment thereon in the amount of ₱3,161,130.43 shall be cancelled.

I - C.2. *Sales not subjected to VAT in the amount of ₱13,698,725.03*

Portion of the sales not subjected to VAT amounting to ₱32,348,655.00 in the assailed Decision pertains to alleged income from scrap sales which were not subjected to VAT amounting to ₱13,698,725.03 which comprised of the following:

Classification	**Amount**
Write-off of long outstanding payables	₱ 6,067,257.31
Negative balance of bad debts expense	4,591,772.60
Reversal of accruals	1,589,928.40
Negative balance of support fees	1,347,768.66
Scrap sales	56,023.99
Insurance claim	25,174.07
Amortization of car loan	18,000.00
Scrap sales to associates	2,200.00
Dividend income	600.00
TOTAL	**₱ 13,698,725.03**

Petitioner contends that the above amount is not attributable to scrap sales but majority arose from write-off/reversal of payables and expense accounts with negative balances and such transactions are not sale of goods or services that must be subjected to VAT.

Petitioner also asserts that the independent findings on the transactions based on supporting evidence must prevail over the mere allegation of respondent that the whole amount arose from scrap sales.

The Court is not convinced. The same arguments and evidence were already considered in the assailed Decision and the reason for upholding this item of assessment was already adequately discussed therein. Hence, this item of assessment shall not be disturbed.

I - D. *Unaccounted Sales per Bureau of Customs data in the amount of ₱4,729,965.01*

Petitioner contends that it is basic that taxpayers shall be informed in writing of the law and the fact on which the assessment is made, otherwise, the assessment is void. The computation of the unaccounted sales per BOC Data using the gross profit rate is clearly based on estimate which is not allowed by law. Although taxes are the lifeblood of the government, their assessment and collection should be made in accordance with law as any arbitrariness and collection will negate the very reason for government itself. Petitioner submits that assessments could never be based on estimates, assumption or speculation. There must be factual and legal basis. Failure to comply with Section 228 does not only render the assessment void, but also finds no validation or confirmation in any provision of the Tax Code.

The Court does not agree.

First, as observed in the assailed Decision, petitioner did not dwell significantly on this matter. Petitioner even failed to present necessary pieces of evidence to dispute the same.

Further, estimations are not absolutely disallowed by law. What it disallows is when the estimation is arrived at arbitrarily and capriciously. As discussed by the Supreme Court in *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*[8]:

> " x x x The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously."

In the assailed Decision, petitioner was well apprised on the manner of arriving at the amount of sales which was subjected to VAT through the use of the gross profit method. Hence, there was a factual basis in arriving at the estimated amount of assessment. Contrary to what petitioner is claiming in the Motion, the estimate used was not arrived at arbitrarily and capriciously. Consequently, this particular assessment item shall remain.

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[8] G.R. No. 136975, March 31, 2005.

I - E. *Unaccounted Sales per TRS LN vs. CWT vs. ITR in the amount of ₱39,472,231.31.*

For this particular issue, petitioner presented two points to refute the same:

1. The Tax Reconciliation System – Letter Notice (TRS-LN) issued by respondent is not conclusive or dependable document. It could not be taken as if a gospel of truth; and
2. It appears that the Court adopts and selects only the findings of the ICPA unfavorable to petitioner.

The above arguments stemmed from petitioner's allegations that the Court adopted respondent's computation of assessment by choosing the greater amount between the TRS-LN and the CWT for comparison with the sales schedule of petitioner.

Petitioner is manifestly mistaken in making such hasty allegation. Had petitioner read the assailed Decision carefully, it might have appreciated the fact that the Court gave credence to the CWTs over the TRS-LN for failure of respondent to furnish a copy of the latter for the Court's perusal.

Below is a reproduction of the pertinent ruling from the assailed Decision for petitioner's enlightenment:

> "As noted, respondent based her assessment by comparing the higher amount per TRS-LN or CWT against the amount reflected in the sales schedule of petitioner. In most of the instances, the amounts per TRS-LN were higher than the amounts reflected in the CWT, thus were mostly used in arriving at the discrepancy.
>
> However, the Court finds this as inappropriate basis to derive the discrepancy for purposes of determining the amount to be assessed as deficiency income tax.
>
> It must be pointed out that petitioner attempted to reconcile the discrepancy despite respondent's failure to provide a copy of the TRS-LN. Also, respondent failed to present to this Court a copy of the TRS-LN in order to assess the veracity of the amounts claimed to have been obtained from the said source. Hence, the **Court finds it equitable that the determination of the amount of discrepancy must**

> **be based on the available evidence presented for verification, pertaining to the CWTs provided by petitioner**, which the total income payments and tax withheld amounted to ₱154,310,905.14 and ₱1,626,386.31, respectively."[9] (*Emphasis supplied*)

As to the second argument, petitioner alleges that the Honorable Court adopted the findings of the ICPA that the amount of ₱6,203,493.84 as possible undeclared sales. Verily, the sales or revenue in the amount of ₱194,557,361.84 should have been likewise used or adopted by the Court as a reference, the former having been derived from the latter. Therefore, there is no unaccounted sale of ₱33,268,737.47 to speak of. If there is any unaccounted sale, it should have been limited to the amount of ₱6,203,493.84 only.

Once again, the Court wishes to reiterate what was discussed earlier, with even greater emphasis, that "this Court is not bound by the findings of the ICPA. The report submitted by the ICPA is but a tool or guide to aid the Court in the resolution 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.**[10]"

For this particular issue, this Court was able to scrutinize the same set of evidence examined by the ICPA. However, it does not guarantee that both will arrive at the same conclusion at all instances. Petitioner is not in the position to dictate which findings must be adopted by the Court simply because it was attested by an independent professional commissioned for the instant case.

This Court had carefully examined all relevant evidence over the matter prior to arriving at its conclusion. The analysis over these pieces of evidence collated both from petitioner and respondent was thoroughly discussed in the assailed Decision which petitioner must revisit for its enlightenment.

[9] Decision dated April 6, 2015, p. 28 of 55.
[10] *First Lepanto Taisho Insurance Corporation vs. CIR*, CTA E.B. Case No. 563, March 1, 2011.

It has been often said that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[11] And in the absence of the Court's abuse or improvident exercise of authority, findings of facts made by the Court in Division must be accorded deference and respect.[12]

As such, finding that petitioner failed to pose well-founded arguments for this Court to reconsider its ruling on the issue, this particular assessment item shall likewise remain.

Based on the foregoing, petitioner's deficiency VAT is reduced to ₱6,877,984.70, computed as follows:

Vatable Sales per Return					₱ 93,094,968.04
Add:	Unaccounted Sales per BOC data			₱ 4,729,965.01	
	Unaccounted Sales per TRS LN vs. CWT vs. ITR			39,472,231.31	
	Exempt Sales (Unsupported)			-	
	Zero-rated Sales (Unsupported)			65,946,656.00	
	Sales not subjected to VAT (Audited F/S vs. VAT returns)			32,348,655.00	142,497,507.32
Vatable Sales per Audit					**₱235,592,475.36**
Output Tax Due					**₱ 23,559,247.54**
Less:	Available Input Tax				
	Carried over from previous quarter			₱ 5,931,497.59	
	Input Tax (local)			6,402,572.03	
	Input Tax (importation)			4,602,543.99	
	Available Input Tax			₱16,936,613.61	
	Less:	Input Tax forwarded to next quarter		-	
	Available Input Tax			₱16,936,613.61	
	Less:	Disallowed Input Tax			
		Unsupported input tax	₱ 207,269.25		
		Input tax not found per BOC data	7,469.52		
		Input tax - out of period	40,612.00	255,350.77	16,681,262.84
Basic Deficiency VAT					**₱ 6,877,984.70**

II. Deficiency Income Tax - ₱5,166,024.81

For basic deficiency income tax, the Court premised its findings on the following:

[11] *El Greco Ship Manning and Management Corporation vs. Commissioner of Customs*, C.T.A. EB No. 172 (C.T.A. Case No. 6618), March 14, 2007.

[12] *Union Refinery Corporation vs. Commissioner of Customs*, CT. A. EB No. 149 (C.T.A. Case No. 5917), January 15, 2007.

A. Unaccounted Sales per TRS LN vs. CWT vs. ITR in the amount of ₱39,472,231.31.
B. Unaccounted Gross Income in the amount of ₱17,652.01;
C. Unsupported local purchases in the amount of ₱2,072,692.54;
D. Unsupported purchases (importation) in the amount of ₱74,695.20;
E. Disallowed purchases in the amount of ₱406,120.00;
F. Salaries and wages not subjected to withholding tax on compensation in the amount of ₱5,371,190.51 (with the corresponding deficiency withholding tax on compensation amounting to ₱764,116.41);
G. Payment to suppliers not subjected to 1% EWT; and
H. Rental expense not subjected to 5% EWT.

For this matter, petitioner only moves for the reconsideration of items (A), (B), (C), (F), (G), and (H) which shall be discussed below.

For items (F), (G), and (H), *We* have integrated the discussion on the effect of the review of the deficiency income tax to the corresponding withholding tax assessments for each.

II - A and B. *Unaccounted Sales per TRS LN vs. CWT vs. ITR in the amount of ₱39,472,231.31 and Unaccounted Gross Income in the amount of ₱17,652.01*

These items have already been discussed in Sections I.E and I.D, respectively. In both issues, the Court found no cogent reason to reverse its previous findings contained in the assailed Decision.

II - C. *Unsupported local purchases in the amount of ₱2,072,692.54*

Petitioner merely repeated its argument that its local purchases amounting to ₱1,776,532.40 was duly supported by evidence which was even testified and proven by the ICPA.

As such, petitioner is appealing that the whole amount be granted as allowable deduction, compared to the assailed Decision that allowed only the amount of ₱139,412.46, hence a total disallowance of ₱2,072,692.54.

To reiterate, the evidence presented by petitioner were mere journal vouchers save for the amount of ₱139,412.46 which was substantiated with invoices and official receipts.

A journal voucher, on a stand-alone basis, merely proves that an accounting transaction was taken up in an entity's books but does not prove that the transaction actually occurred or existed, nor does it adequately show the relevant tax implications. A journal voucher, hence, must be supported by invoices or official receipts or other source document to prove the occurrence or existence of a particular transaction taken up in the books of the enterprise.

Finding that petitioner's arguments on this matter are but a mere rehash of its previous arguments, this assessment item shall stay.

II - F. *Salaries and wages not subjected to withholding tax on compensation in the amount of ₱5,371,190.51 and corresponding withholding tax deficiency amounting to ₱764,116.41*

Petitioner prays that the Court revisit its use of the amount of ₱16,224,870.95 as the base for the computation of taxable compensation since the said amount includes non-taxable salaries and wages which must not be subjected to withholding tax. Instead, petitioner maintains that the Court should have used the amount of ₱10,026,352.39 per AFS/ITR and ₱10,609,130.44 per BIR Form 1601-C reported by the former.

Petitioner's argument has been adequately addressed and ruled upon by the Court in the assailed Decision. There being no cogent reason to reverse the Court's findings, this assessment item shall be sustained. Consequently, the corresponding withholding tax assessment on compensation must likewise be sustained.

II - G and H. *Payment to suppliers not subjected to 1% EWT and Rental expense not subjected to 5% EWT*

Petitioner maintains that it already paid the EWT in the total amount of ₱610,341.71 upon recommendation of the

ICPA as early as October 12, 2014[13] as evidenced by BIR Payment Form 0605 and Tax Payment Acknowledgment which were attached as Annexes "A" and "B"[14] of the instant Motion.

The said payment is broken down as follows:

Basic EWT	₱ 227,810.67
Surcharge	56,952.67
Interest	305,578.37
Compromise	20,000.00
	₱ 610,341.71

In the assailed Decision, petitioner was ordered to pay basic deficiency EWT amounting to ₱227,540.80 and surcharge of ₱56,885.20 plus 20% deficiency interest and 20% delinquency interest. The basic deficiency EWT as found by the Court is slightly lower than the amount paid by petitioner. By virtue of this alleged settlement of deficiency EWT, petitioner moves that the corresponding expenses be allowed as deduction for income tax purposes and the deficiency EWT already be set aside.

The Court finds petitioner's arguments bereft of merit.

As provided in Section 2.58.5(C) of RR No. 2-98, as amended, a deduction from gross income will also be allowed even where no withholding of tax was made when the withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, **at the time of the audit/investigation or reinvestigation/ reconsideration**.

In the instant case, petitioner did not make any settlement on its deficiency EWT at the time of the audit/ investigation or reinvestigation/reconsideration. In fact, payment of the deficiency EWT was made while the case was already pending in Court. Hence, pursuant to Section 2.58.5 of RR No. 2-98, any settlement beyond the time of the audit/investigation or reinvestigation/reconsideration, shall no longer have the effect of cancelling the deficiency income tax assessment arising from the disallowed expense due to non-withholding of tax.

[13] However, BIR Form No. 0605 shows the date of filing is October 1, 2012.
[14] Docket, Vol. II, pp. 1546 to 1547.

As such, the disallowed deductions of local purchases and rentals not subject to EWT amounting to ₱14,452,221.26 and ₱1,621,486.80, respectively, shall remain in the deficiency income tax assessment.

As for the deficiency EWT assessment, considering that the BIR Form No. 0605 and Tax Payment Acknowledgment attached as Annexes "A" and "B" to petitioner's Motion were not offered and admitted as evidence by this Court, the same cannot be considered for purposes of applying the payment and determining whether the payment is sufficient to cover the basic deficiency EWT plus increments as ordered in the assailed Decision or an additional amount is still due. Hence, the deficiency EWT assessment must be upheld.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (to the Decision dated April 6, 2015)* and *Manifestation/Supplemental Motion for Reconsideration* are **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision promulgated on April 6, 2015 should be modified to read as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for taxable year 2005 covering deficiency expanded withholding tax, withholding tax on compensation, income tax, and value-added tax are hereby **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱16,294,583.40** representing deficiency expanded withholding tax, withholding tax on compensation, income tax, and value-added tax, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Deficiency Tax	Basic Tax	25% Surcharge	Total
Expanded Withholding Tax	₱ 227,540.80	₱ 56,885.20	₱ 284,426.00
Withholding Tax on Compensation	764,116.41	191,029.10	955,145.51
Income Tax	5,166,024.81	1,291,506.20	6,457,531.01
Value-Added Tax	6,877,984.70	1,719,496.18	8,597,480.88
TOTAL	**₱13,035,666.72**	**₱ 3,258,916.68**	**₱16,294,583.40**

> In addition, petitioner is hereby **ORDERED TO PAY**:
>
> a) Deficiency interest at the rate of 20% per annum on the basic deficiency expanded withholding tax, withholding tax on compensation, income tax and value-added tax

computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC, as amended;

	Basic Tax	20% Deficiency Interest Computed from
Expanded Withholding Tax	₱ 227,540.80	January 15, 2006
Withholding Tax on Compensation	764,116.41	January 15, 2006
Income Tax	5,166,024.81	April 15, 2006
Value-Added Tax	6,877,984.70	April 25, 2006

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱16,294,583.40 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from August 31, 2008 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice