REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CENTER FOR TRAINING AND DEVELOPMENT, INC., Petitioner,	**CTA CASE NO. 8742**
	Members:
- versus -	**BAUTISTA,** *Chairperson* **FABON- VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 08 2016 10:02 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

This case involves a Petition for Review[1] filed by Center for Training and Development, Inc. seeking the cancellation of the assessments covering deficiency income tax and value-added tax (VAT) for taxable year 2006 in the aggregate amount of ₱2,612,858.31, inclusive of interest.

The Facts

Petitioner Center for Training and Development, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Unit 2207-2208 Cityland 10 Tower 1, 6815 H.V. Dela Costa, Ayala Avenue, Makati City. It is primarily engaged

[1] Docket, pp. 7-17.

in providing, rendering, and conducting training, development and management education, corporate communication and research, research and development studies, business and management advisory services and other related activities. Petitioner is duly registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 50 of Revenue Region No. 8-South Makati City, Philippines.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia,* the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. Respondent is being represented in this case by the legal officers of the Legal Division of Revenue Region No. 8-Makati City, with office address at the 2/F Legal Division, BIR Bldg., No. 313 Sen. Gil Puyat Ave., Makati City.[3]

On August 30, 2007, respondent, through the Revenue Region No. 8, issued Tax Verification Notice (TVN) No. 00050279, authorizing Revenue Officers of RDO No. 50 to examine or audit petitioner's internal revenue taxes covering taxable year 2006.[4] Revenue District Officer Florante R. Aninag issued a Notice of Informal Conference with attached computation of tax deficiencies dated September 1, 2009.[5]

Petitioner then submitted its position paper to the preliminary findings in the form of a protest letter dated September 25, 2009.[6]

Notwithstanding the series of informal discussions and the submission of the position paper, respondent issued a Preliminary Assessment Notice (PAN) dated December 29, 2009 for alleged deficiency taxes, inclusive of interest and compromise penalties, in the total amount of ₱1,757,907.13, broken down as follows:[7]

TAX TYPE	AMOUNT
Income Tax	₱1,705,805.64
Value-added Tax (VAT)	50,963.12
EWT	1,138.37
TOTAL	₱1,757,907.13

[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues (JSFSI), docket, pp. 158-159.
[3] Par. 2, Stipulation of Facts, JSFSI, docket, p. 159.
[4] Par. 3, Stipulation of Facts, JSFSI, docket, p. 159.
[5] Par. 4, Stipulation of Facts, JSFSI, docket, p. 159.
[6] Par. 5, Stipulation of Facts, JSFSI, docket, p. 159.
[7] Par. 6, Stipulation of Facts, JSFSI, docket, pp. 159-160.

Subsequently, respondent issued Assessment Notices for income tax (IT TVN 50279-06-10-0116), VAT (VT TVN 50279-06-10-0116) and expanded withholding tax (WE TVN 50279-06-10-0116), as well as the Formal Assessment Notice (FAN) with the corresponding Details of Discrepancy, all dated January 14, 2010; which was received by petitioner on the same date, reiterating the alleged deficiency taxes contained in the PAN as follows:[8]

TAX TYPE	ASSESEMENT NO.	AMOUNT
Income Tax	(IT TVN 50279-06-10-0116)	₱1,729,933.02
VAT	(VT TVN 50279-06-10-0116)	51,664.13
Expanded Withholding Tax	(WE TVN 50279-06-10-0116)	1,153.98
TOTAL		₱1,782,751.13

Petitioner filed a protest letter against the FAN and paid the assessed expanded withholding tax for taxable year 2006 on February 9, 2010.[9] On August 8, 2011, Revenue District Officer Ricardo B. Espiritu issued a Second and Final Notice to petitioner, informing the latter to submit documentary evidence to support its arguments in the protest letter.[10]

On November 8, 2013, petitioner received an Amended Assessment Notice (IT-TVN 50279/TVN149101-06-13-0410) and Final Decision on Disputed Assessment (FDDA), both dated November 4, 2013,[11] with the following deficiency tax assessments:[12]

I. INCOME TAX			
Taxable Income (Loss) per ITR			₱ (273,032.00)
Add: Adjustments/Disallowance			
Undeclared Income (Schedule 1)		₱1,212,181.14	
Unsupported Expenses (Schedule 2)		1,818,134.70	3,030,315.84
Taxable Income (Loss) per Audit			₱ 2,757,283.84
Add: Net Operating Loss Carry Over (NOLCO)			273,032.00
Adjusted Taxable Income			₱ 3,030,315.84
Basic Income Tax Due (35%)			₱ 1,060,610.54
Less: Tax Credit/Paid per return			

[8] Par. 7, Stipulation of Facts, JSFSI, docket, p. 160.
[9] Par. 8, Stipulation of Facts, JSFSI, docket, p. 160.
[10] Par. 9, Stipulation of Facts, JSFSI, docket, p. 160.
[11] Par. 10, Stipulation of Facts, JSFSI, docket, p. 160.
[12] Exhibit "P-15", docket, pp. 237-241.

Prior Year's Excess Credits		₱ 830,824.59	
Creditable Tax Withheld		391,845.41	
Total		₱1,222,670.00	
Less: MCIT Carry Over	₱ 47,070.31		
Amount Carried Over to Succeeding Year	1,175,599.69		
Unsupported Creditable Tax Withheld	27,741.69	1,250,411.69	(27,741.69)
Basic Deficiency Income Tax			₱ 1,088,352.23
Add: Interest (04.16.07 to 12.09.13)			1,448,552.10
TOTAL AMOUNT DUE			**₱2,536,904.33**
II. VALUE-ADDED TAX			
Taxable Receipts per VAT Returns			₱ 8,759,946.36
Output Tax Due per Returns (Schedule 4)			₱ 1,046,633.56
Less: Creditable Tax/Payment			
Creditable Input Tax		₱ 284,205.67	
Less: Disallowed Input Tax (Schedule 5)	₱ 12,297.49		
Input Tax Allocable to Exempt Sales	1,636.45	13,933.94	270,271.73
VAT Payable			₱ 776,361.83
Less: Payment			744,378.44
Basic Deficiency VAT			₱ 31,983.39
Add: Interest (01.26.07 to 12.09.13)			43,970.59
TOTAL AMOUNT DUE			**₱ 75,953.98**

On December 5, 2013, petitioner filed the present Petition for Review before the Court of Tax Appeals.

Respondent filed her Answer[13] on January 30, 2014, interposing the defense that during the administrative investigation, petitioner failed to substantiate or submit supporting evidence against the BIR findings specified in the Details of Discrepancies attached to the PAN, the FAN and the FDDA of the following amounts:

I. Income Tax	
1. Undeclared Income	₱1,212,181.14
2. Unsupported Expenses	1,818,134.70
3. NOLCO	273,032.00
4. MCIT	47,070.31

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[13] Docket, pp. 66-70.

5. Amount Carried Over to the Succeeding Year	1,175,599.69
6. Unsupported Creditable Taxes Withheld	27,741.69
II. VAT	
1. Total Output Tax Due	₱1,046,633.56
2. Disallowed Input Tax	12,297.49
3. Input Tax Allocable as Exempt Sales	1,636.45

Respondent also claimed that petitioner duly executed a Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, thereby making Section 222(b) of the NIRC applicable. [14]

The case was then set for a pre-trial conference on March 27, 2014.[15]

After both parties filed their Pre-Trial Briefs[16] on March 20, 2014, they entered into a Joint Stipulation of Facts and Simplification of Issues[17]. The Court then issued the Pre-Trial Order[18], which terminated the pre-trial and set the initial presentation of petitioner's evidence on June 9, 2014.

Petitioner presented Mr. Enrico T. Pizarro, the Court-commissioned Independent Certified Public Accountant (ICPA), as its lone witness, who by way of Judicial Affidavit[19] testified on the procedures undertaken such as checking, verifying and examining the pertinent documents relative to these assessments.

Thereafter, petitioner submitted its Formal Offer of Evidence[20] on June 27, 2014. The Court admitted all the formally offered exhibits of petitioner in the Resolution[21] issued on July 23, 2014.

On the other hand, respondent presented Revenue Officer Ofelia L. Metrillo[22] and Revenue Officer Carlomar L. Frilles.[23] Respondent filed her Formal Offer of Evidence[24] on December 18, 2014. The Court admitted all the formally offered evidence of respondent via Resolution[25] dated January 14, 2015.

[14] Par. 6 of the Answer, docket, p. 68.
[15] Notice of Pre-Trial Conference issued on February 7, 2014, docket, p. 72.
[16] Petitioners' Pre-Trial Brief, docket, pp. 75-82; Respondent's Pre-Trial Brief, docket, pp. 83-86.
[17] Docket, pp. 158-162.
[18] Docket, pp. 170-175.
[19] Exhibit "P-35", docket, pp. 1038-1056.
[20] Docket, pp. 974-1004.
[21] Docket, pp. 1064-1067.
[22] Exhibit "R-11", docket, pp. 88-93.
[23] Exhibit "R-12", docket, pp. 124-129.
[24] Docket, pp. 1091-1095.
[25] Docket, pp. 1101-1102.

The case was declared submitted for decision on March 10, 2015[26], after petitioner filed its Memorandum,[27] *sans* a memorandum from respondent.

The Issues

The parties submitted the following issues[28] for this Court's resolution:

1. Whether or not the BIR's right to assess petitioner for taxable year 2006 has prescribed; and

2. Whether or not petitioner is liable for deficiency income tax and deficiency VAT for taxable year 2006.

The Court's Ruling

The petition is partly meritorious.

On the Issue of Prescription

Section 203 of the National Internal Revenue Code of 1997 provides:

> SEC. 203. **Period of Limitation Upon Assessment and Collection.** – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

None of the exceptions provided under Section 222 of the NIRC of 1997 are availing in this case. In particular, respondent's claim that petitioner executed a Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code deserves no consideration as the same is not supported by evidence.

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[26] Docket, p. 1125.
[27] Docket, pp. 1103-1122.
[28] JSFSI, docket, p. 161.

For the filing of ITRs, the relevant provision is Section 77(B) of the NIRC of 1997, which provides that the Annual ITR shall be filed on or before the fifteenth (15^{th}) day of April, or on or before the 15^{th} day of the fourth (4^{th}) month following the close of the fiscal year, as the case may be.

As regards VAT Returns, Section 114(A) of the NIRC of 1997 provides that the Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter.

Below is a summary of the dates when petitioner filed its 2006 Annual ITR and Quarterly VAT Returns,[29] and the corresponding deadlines for respondent to assess petitioner:

TAX RETURN	REQUIRED FILING DATE	DATE OF ACTUAL FILING	LAST DAY TO ASSESS
Annual ITR	April 16, 2007[30]	April 16, 2007[31]	April 16, 2010
Quarterly VAT Return			
1st Quarter	April 25, 2006	April 25, 2006[32]	April 27, 2009[33]
2nd Quarter	July 25, 2006	July 25, 2006[34]	July 27, 2009[35]
3rd Quarter	October 25, 2006	October 25, 2006[36]	October 26, 2009[37]
4th Quarter	January 25, 2007	January 25, 2007[38]	January 25, 2010

An assessment notice issued after the three (3)-year prescriptive period is not valid and has no effect. Based on the parties' stipulation and the evidence presented, the FAN[39] and the Assessment Notices[40] were issued by respondent and were received by petitioner on **January 14, 2010**. Indubitably, respondent's right to assess petitioner for deficiency VAT for the first, second, and third quarters of taxable year 2006 had already prescribed. This warrants the cancellation of the assessments for the first, second, and third quarters of taxable year 2006.

The Court shall now resolve the issue of whether or not petitioner is liable for the assessed deficiency income tax and deficiency VAT for the fourth quarter of taxable year 2006.

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[29] Petitioner employs the calendar year.
[30] April 15, 2007 fell on a Sunday.
[31] Exhibit "P-17", docket, pp. 264-266.
[32] Exhibit "P-22.3", docket, pp. 786-788.
[33] April 25, 2009 fell on a Saturday.
[34] Exhibit "P-22.6", docket, pp. 793-795.
[35] July 25, 2009 fell on a Saturday.
[36] Exhibit "P-22.9", docket, pp. 800-802.
[37] October 25, 2009 fell on a Sunday.
[38] Exhibit "P-22.12", docket, pp. 807-809.
[39] Exhibit "P-9", docket, pp. 222-226.
[40] Exhibit "P-6", docket, p. 219; Exhibit "P-7", docket, p. 220.

On the Computation of Deficiency Income Tax

Petitioner was assessed for basic deficiency income tax amounting to ₱1,088,352.23, arising from the following items:

1. Undeclared income	₱1,212,181.14
2. Unsupported expenses	1,818,134.70
3. NOLCO	273,032.00
4. MCIT	47,070.31
5. Amount carried over to the succeeding year	1,175,599.69
6. Unsupported creditable taxes withheld	27,741.69

1. Undeclared income - ₱1,212,181.14

Respondent's audit disclosed that petitioner had service fees for taxable year 2006 in the amount of ₱11,055,174.14 compared to that declared in its Annual ITR[41] in the amount of ₱9,842,993.00. Thus, pursuant to Section 32 of the NIRC of 1997, petitioner was assessed for alleged undeclared income of ₱1,212,181.14, computed as follows:[42]

Gross receipts per VAT return	₱ 8,770,446.36
Add: Trade receivable, end - net of VAT	2,456,140.18
Subtotal	₱ 11,226,586.54
Less: Trade receivable, beg - net of VAT	171,412.40
Service fees per audit	₱ 11,055,174.14
Service fees per ITR	9,842,993.00
Undeclared income	**₱1,212,181.14**

Respondent's assessment is erroneous. A perusal of the Notes to Financial Statements[43], as well as the general ledgers[44], for the period covering January to December 2005 reveals that the beginning balance of "Trade receivables" for taxable year 2006 amounted to **₱1,714,124.42**, and not **₱171,412.40**, as detailed below:

EXHIBIT	ACCOUNT	AMOUNT
"P-24", p. 3	1020 Accounts Receivable – Trade	₱ 1,521,188.35
"P-25", p. 2	1023 Accounts Receivable – Billed OPE	82,706.79

[41] Exhibit "P-17", docket, pp. 264-266.
[42] Exhibit "P-15", Details of Discrepancies, docket, p. 239.
[43] Exhibit "P-16", docket, p. 256.
[44] Exhibits "P-24", "P-25", and "P-26", docket, pp. 896-923.

"P-26", p. 24	1021 Accounts Receivable – Unbilled OPE	110,229.28
	TOTAL	**₱1,714,124.42**

Respondent committed an accounting slide arising from an erroneous positioning of the decimal point. Moreover, following respondent's computation of petitioner's "Trade receivable, end – net of VAT", the amount of ₱1,714,124.42 shall be divided by 1.10[45]. The resulting amount of ₱1,558,294.93 represents petitioner's "Trade receivable, beg. – net of VAT". Consequently, petitioner has no undeclared income for the said year:

Gross receipts per VAT return	₱ 8,770,446.36
Add: Trade receivable, end - net of VAT (₱2,750,877.00 / 1.12)	2,456,140.18
Subtotal	₱ 11,226,586.54
Less: Trade receivable, beg - net of VAT (₱1,714,124.42 / 1.10)	1,558,294.93
Service fees per audit	₱ 9,668,291.61
Service fees per ITR	9,842,993.00
Overdeclaration of Service Fees	**₱(174,701.39)**

Evidently, respondent's assessment should be cancelled for lack of merit.

2. Unsupported expenses - ₱1,818,134.70

Respondent posits that the claimed expenses in the total amount of ₱1,818,134.70 should be disallowed for failure of petitioner to substantiate the same with sufficient evidence, as required under Section 34(A)(1)(b) of the NIRC of 1997.[46] The expenses are detailed as follows:[47]

PARTICULARS	AMOUNT
a. Billing Association dues	₱ 17,702.97
b. Light and water	54,697.50
c. Consulting fees	569,201.45
d. Representation and entertainment	12,500.00
e. Telephone	16,494.78
f. Professional/Reviewers' fees	1,147,538.00
Total unsupported expenses	**₱1,818,134.70**

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[45] The applicable VAT rate in 2005 was 10%.

[46] Section 34(A)(1)(b) of the Tax Code states, "xxx No deductions from gross income shall be allowed under this Subsection (A) hereof, unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or adequate records; (i) the amount of expenses being deducted...xxx."

[47] Exhibit "P-15", Details of Discrepancies, docket, p. 239.

(a) Association dues
(b) Light and water

Records show that petitioner entered into Contracts of Lease[48] dated May 30, 2003 and July 7, 2006 with AR Realty Holding Co., Inc. for the lease, covering the year 2006, of Unit 1814, Cityland 10 Tower I, 6815 Ayala Avenue, Makati City. Petitioner, as the lessee, agreed to answer and pay for the necessary expenses appurtenant thereto, particularly:

> "**Section 3.** WATER, ELECTRIC CURRENT, ETC. – All expenses for water, electricity, telephone, and association dues shall be for the account of the **LESSEE** during the period of the occupancy. All payments of said bills shall be paid directly by the **LESSEE** to concerned companies."[49]

Based on the summary of expenses submitted by petitioner, the association dues of ₱17,702.97,[50] and light and water of ₱54,698.60[51] are comprised of the following:

EXHIBITS	MONTH COVERED (CY 2006)	AMOUNT
Association dues		
"P-18.1", "P-18.1.1", "P-18.1.1.1"	January	₱ 2,000.15
"P-18.2", "P-18.2.1", "P-18.2.1.1"	March	1,857.29
"P-18.3", "P-18.3.1", "P-18.3.1.1"	April	1,785.86
"P-18.4", "P-18.4.1", "P-18.4.1.1"	June	1,857.29
"P-18.5", "P-18.5.1", "P-18.5.1.1"	July	1,785.86
"P-18.6", "P-18.6.1", "P-18.6.1.1"	September	2,104.13
"P-18.7", "P-18.7.1", "P-18.7.1.1"	October	2,104.13
"P-18.8", "P-18.8.1", "P-18.8.1.1"	November	2,104.13
"P-18.9", "P-18.9.1", "P-18.9.1.1"	December	2,104.13
Total		**₱ 17,702.97**
Light and water		
"P-19.1", "P-19.1.1"	January	₱ 4,023.80
"P-19.2", "P-19.2.1"	February	4,568.80
"P-19.3", "P-19.3.1"	March	4,728.90
"P-19.4", "P-19.4.1"	April	5,281.50
"P-19.5", "P-19.5.1"	May	5,091.35

[48] Exhibits "P-27" and "P-28", docket, pp. 924-931.
[49] Exhibits "P-27" and "P-28", docket, p. 924 and p. 928.
[50] Exhibit "P-18", docket, pp. 267-294.
[51] Exhibit "P-19", docket, pp. 295-319. As per respondent's audit, the amount of light and water amounted to ₱54,697.50.

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"P-19.6", "P-19.6.1"	June	4,872.30
"P-19.7", "P-19.7.1"	July	4,907.55
"P-19.8", "P-19.8.1"	August	4,381.65
"P-19.9", "P-19.9.1"	September	4,596.35
"P-19.10", "P-19.10.1"	October	4,267.50
"P-19.11", "P-19.11.1"	November	4,030.15
"P-19.12", "P-19.12.1"	December	3,948.75
TOTAL		**₱ 54,698.60**

These expenses were supported by cash disbursement journals, official receipts, statements of account, and invoices.[52] However, the official receipts and statements of account (for association dues) were issued in the name of AR Realty Holding Co., Inc., and the invoices (for light and water) were issued in the name of Sitaldas Bhagkian. While the Contracts of Lease[53] prove that the subject expenses were for the account of petitioner-lessee, these contracts do not certify that the lessor AR Realty Holding Co., Inc. or Sitaldas Bhagkian did not avail of these expenses as its/his own deductions in its/his 2006 ITR. Thus, respondent's disallowance of association dues and light and water is proper.

(c) Consultancy fees

Based on petitioner's allegations, the consultancy fees in question were incurred for some professional and technical needs in handling bookkeeping client's issues and concerns.[54] In support of its consultancy fees in the amount of ₱569,201.45, petitioner submitted cash disbursement journals[55] and checks[56] issued to various payees. Upon examination of these documents, the Court-commissioned ICPA, Mr. Enrico T. Pizarro, found that:[57]

> xxx [t]he cash disbursement journal vouchers used to record the payments made to consultants are listed in **Exhibit P-20**. From the cash disbursement journals, I accounted a total of **₱572,161.33** consultancy fees for the year 2006.
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> The said vouchers were in support of the payments made to each consultant for the year 2006. Most of the vouchers were supported by corresponding checks issued to each consultant. Since the amount I accounted is greater tha[n] the alleged unsupported

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[52] Docket, pp. 268-319.
[53] Exhibits "P-27" and "P-28", docket, pp. 924-931.
[54] Exhibit "P-10", docket, p. 229.
[55] Exhibits "P-20.1" to "P-20.48", docket, pp. 322 to 369.
[56] Exhibits "P-20.1.1" to "P-20.2.1", "P-20.6.1" to "P-20.21.1", "P-20.23.1" to "P-20.33.1", "P-20.35.1" to "P-20.40.1", "P-20.42.1" to "P-20.45.1", "P-20.47.1" to "P-20.48.1", docket, pp. 370-410.
[57] Exhibit "P-34", docket, p. 1026.

expenses, I am of the opinion that the BIR findings lacked factual bases.

We are not convinced. The checks simply establish the fact of payment, while the cash disbursement journals merely indicate the authorization/approval for payment and the corresponding accounting entries to be made. With only these documents at hand, the Court cannot ascertain the nature of the payments made by petitioner to various payees named in the checks.

(d) Representation and entertainment
(e) Telephone

The details of the representation and entertainment expenses of ₱12,500.00, and the telephone expense of ₱16,494.78, based on the cash disbursement journals,[58] are as follows:

EXHIBIT	PARTICULARS	AMOUNT
	Representation and entertainment	
"P-29"	Honorarium fee for Atty. Casasola (Seminar January 17, 2006)	₱ 4,000.00
"P-30"	Representation of Atty. Casasola (Seminar March 2, 2006)	4,500.00
"P-31"	Honorarium fee for Atty. Casasola (October 11-12, 2006)	4,000.00
	Total	**₱12,500.00**
	Telephone	
"P-32"	Telephone expenses statement as of February 17, 2006	**₱16,494.78**

For want of corroborative evidence, the cash disbursement journals are self-serving. Petitioner should have presented additional documentary evidence from which it can be verified and ascertained that the amounts in question indeed pertained to representation and entertainment expenses and telephone expenses.

(f) Professors'/reviewers' fees

According to petitioner, these fees were paid to reviewers for CPA review classes in its Recto, Manila and Makati branches.[59] Based on the summary[60] prepared by the ICPA, petitioner paid professors' fees amounting to ₱1,147,606.50

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[58] Docket, pp. 932-935.
[59] Exhibit "P-10", docket, p. 229.
[60] Exhibit "P-21", docket, pp. 411-415.

for 2006. The appointment of the professors[61] is evidenced by the Appointment Letters[62] duly accepted and signed by petitioner's President, Mr. Angelo D. Bernaldo, and the professors concerned.

However, the payments in the amount of ₱83,975.00, allegedly representing professors' fees, are not supported by checks[63] issued by petitioner. Hence, the following are disallowed as deduction from petitioner's gross income:

Professor / Reviewer	Period	Cash Disbursement Journal	Amount
Felipe Cahayon	Jan 12 – 29, 2006	"P-21.10"	₱ 8,850.00
Rico Peñamante	Jan 12 – 29, 2006	"P-21.11"	6,600.00
Justo Jude Uro, Jr.	Jan 12 – 29, 2006	"P-21.12"	5,100.00
Patricia Empleo	Jan 12 – 29, 2006	"P-21.13"	6,600.00
Ma. Cecilia Mercado	Jan 12 – 29, 2006	"P-21.14"	1,650.00
Rommel Valdez	Jan 12 – 29, 2006	"P-21.15"	9,625.00
Virgilio Litonjua	Jan 12 – 29, 2006	"P-21.16"	1,500.00
Luis Sabado	Jan 30 – Feb 13, 2006	"P-21.17"	3,300.00
Felipe Cahayon	Jan 30 – Feb 13, 2006	"P-21.18"	1,100.00
Rico Peñamante	Jan 30 – Feb 13, 2006	"P-21.19"	4,950.00
Justo Jude Uro	Jan 30 – Feb 13, 2006	"P-21.20"	4,550.00
Patricia Empleo	Jan 30 – Feb 13, 2006	"P-21.21"	4,400.00
Ma. Cecilia Mercado	Jan 30 – Feb 13, 2006	"P-21.22"	2,750.00
Rommel Valdez	Jun 29 – Jul 14, 2006	"P-21.124"	3,025.00
Rico Peñamante	Aug 1 – 15, 2006	"P-21.127"	3,300.00
Rommel Valdez	Aug 1 – 15, 2006	"P-21.130"	2,475.00
Louisita Aristorenas	Oct 1 – 15, 2006	"P-21.166"	4,400.00
Ma. Cecilia Mercado	Dec 1 – 15, 2006	"P-21.189"	4,900.00
Nenita Robles	Dec 1 – 15, 2006	"P-21.191"	4,900.00
		Total	**₱83,975.00**

As a result, only in the amount of ₱1,063,631.50 (₱1,147,606.50 less ₱83,975.00) is allowed as deduction from petitioner's taxable gross income for 2006.

3. NOLCO - ₱273,032.00

Petitioner's operations for taxable year 2006 resulted in a net taxable loss in the amount of ₱273,032.00[64]. Respondent added back the said amount to the

[61] Exhibit "P-33", docket, p. 936.
[62] Exhibits "P-33.1" to "P-33.16", docket, pp. 937-952.
[63] Docket, pp. 416-780.
[64] Exhibit "P-17", line 21B, docket, p. 264.

adjusted taxable income of petitioner, claiming that the tax benefit thereof has already been forwarded to succeeding periods as provided for under Section 34(D)(3) of the NIRC of 1997,[65] which states:

> "SEC. 34. *Deductions from Gross Income.* – xxx
>
> xxx xxx xxx
>
> (D) *Losses.* –
>
> xxx xxx xxx
>
> (3) *Net Operating Loss Carryover.* – The net operating loss of the business or enterprise for any taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss: xxx"

However, respondent failed to present evidence to prove that petitioner used its 2006 net loss as NOLCO in the succeeding years. Furthermore, said NOLCO is beyond the scope of the present assessment as it can only be the subject of assessment in the taxable year when it is claimed as a deduction. Thus, respondent was wrong to add back the net loss in the amount of ₱273,032.00 to petitioner's taxable income.

4. MCIT - ₱47,070.31

Respondent avers that the MCIT was not allowed as tax credit against the computed deficiency income tax, considering that the said amount shall be carried over and credited against the normal income tax for the three (3) immediately succeeding taxable years in compliance with the provision under Section 27(E)(2) of the NIRC of 1997,[66] to wit:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> xxx xxx xxx
>
> (E) *Minimum Corporate Income Tax on Domestic Corporations.* –

[65] Exhibit "P-15", Details of Discrepancies, docket, p. 239.
[66] Exhibit "P-15", Details of Discrepancies, docket, p. 239.

xxx xxx xxx

(2) *Carry Forward of Excess Minimum Tax.* – Any excess of the minimum corporate income tax over the normal income tax as computed under Subsection (A) of this Section shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years."

It was improper for respondent to disallow said MCIT, as any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed then.

5. Amount carried over to the succeeding year - ₱1,175,599.69

Respondent contends that the excess credit of ₱1,175,599.69 cannot be credited against the deficiency income tax since said amount was already carried forward to the succeeding year 2007 pursuant to Section 76 of the NIRC of 1997, as amended.[67]

As previously discussed, the benefit of excess tax credit carry-over will redound to the succeeding year. It is inappropriate to disallow the same as it is beyond the scope of the present assessment.

6. Unsupported creditable tax withheld - ₱27,741.69

Respondent found that the CWT claimed by petitioner in the amount of ₱27,741.69 was unsupported, hence, disallowed pursuant to Section 2.58.3 of Revenue Regulations No. 2-98.[68]

A perusal of the 2006 ITR[69] discloses that petitioner had CWT in the total amount of ₱391,845.41.[70] In support thereof, petitioner presented CWT certificates (BIR Form No. 2307)[71] which were summarized in Exhibit "P-23"[72]. The summary indicates a total CWT amounting to ₱395,566.86. However, further scrutiny of the certificates reveals that only the amount of ₱392,631.15 represents petitioner's valid CWT for 2006, computed as follows:

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[67] Exhibit "P-15", Details of Discrepancies, docket, p. 240.
[68] Exhibit "P-15", Details of Discrepancies, docket, p. 240.
[69] Exhibit "P-17", Docket, p. 264.
[70] [₱119,238.29 + ₱272,607.12 = ₱391,845.41]; Exhibit "P-17", lines 28C and 28D, docket, p. 264.
[71] Exhibits "P-23.1" to "P-23.83", docket, pp. 813-895.
[72] Docket, pp. 811-812.

Total creditable withholding taxes per summary					₱ 395,566.86
Add(Deduct):					
1) Discrepancies between the creditable withholding taxes per summary and per certificate					
Withholding Agent	Exhibit	CWT Per Summary	CWT Per Certificate	CWT Per Summary is Under/ (Over)	
MIMIR Holding, Inc.	"P-23.51"	₱1,000.00	₱1,500.00	₱ 500.00	
MIMIR Holding, Inc.	"P-23.81"	1,500.00	1,000.00	(500.00)	
JP Frances Holdings, Inc.	"P-23.78"	2,500.00	1,500.00	(1,000.00)	
JP Frances Holdings, Inc.	"P-23.80"	1,500.00	2,500.00	1,000.00	
FusionSolutions, Inc.	"P-23.32"	4,000.00	3,000.00	(1,000.00)	(1,000.00)
2) Creditable withholding taxes pertaining to taxable year 2007					
Withholding Agent	Exhibit		CWT		
Caterpillar Financial Services Phils Inc	"P-23.5"		₱ 700.00		
Caterpillar Financial Services Phils Inc	"P-23.6"		700.00		
Caterpillar Financial Services Phils Inc	"P-23.74"		535.71		(1,935.71)
Properly supported creditable withholding taxes for taxable year 2006					**₱392,631.15**

The amount duly supported by CWT certificates, ₱392,631.15, is greater than ₱391,845.41, which is the amount reflected in petitioner's 2006 ITR. Hence, respondent's disallowance of the CWT of ₱27,741.69 is without factual basis.

In fine, notwithstanding petitioner's unsupported expenses of ₱754,571.70, the income tax due thereon shall be offset against petitioner's total tax credits in the amount of ₱1,222,670.00. Therefore, petitioner is not liable for any deficiency income tax for taxable year 2006, as in fact it has excess tax credit computed below:

Taxable income (loss) per ITR		₱ (273,032.00)
Add: Unsupported expenses		
Association dues	₱ 17,702.97	
Light and water	54,697.50	
Consultancy fees	569,201.45	
Representation and entertainment	12,500.00	
Telephone	16,494.78	
Professors'/reviewers' fee	83,975.00	754,571.70
Taxable income (loss) per audit		₱ 481,539.70

Basic income tax due (35%)		₱ 168,538.90
Less: Tax credit paid per return		
Prior year's excess credits other than MCIT	₱ 830,824.59	
Creditable tax withheld	391,845.41	1,222,670.00
Excess Tax Credits		**₱(1,054,131.11)**

On the Computation of the Deficiency VAT

Respondent assessed petitioner for basic deficiency VAT in the amount of ₱31,983.39 based on the following findings: (1) total output tax due in the amount of ₱1,046,633.56, using the tax rate of 12%; (2) disallowed input tax in the amount of ₱12,297.49; and (3) input tax allocable to exempt sales in the amount of ₱1,636.45.

We find it unnecessary to discuss in detail respondent's computations of these amounts since the same pertain to only the first and second quarters of the taxable year 2006. In particular:

BIR Finding	Discussion
Total output tax due in the amount of ₱1,046,633.56	The discrepancy in the computation of output tax was caused by the respondent's use of 12% VAT rate for January 2006 and petitioner's use of 10% VAT rate for February 2006. Per RMC No. 7-2006, the VAT rate was increased from 10% to 12% effective February 1, 2006. Hence, only the <u>first quarter</u> assessment is affected by this finding.
Disallowed input tax in the amount of ₱12,297.49	The discrepancy in the computation of input tax was caused by the respondent's use of 12% VAT rate for purchases made in January 2006 and petitioner's use of 10% VAT rate for purchases made in February 2006. Again, only the <u>first quarter</u> assessment is affected by this finding.
Input tax allocable to exempt sales in the amount of ₱1,636.45	Exempt receipts claimed by petitioner for the <u>first quarter</u> of 2006[73] cannot be directly attributed to any particular transaction. The zero-rated receipts claimed by petitioner for the <u>second quarter</u> of 2006[74] are not corroborated by evidence.

[73] Exhibit "P-22.3", docket p. 786-788.
[74] Exhibit "P-22.6", docket p. 793-795.

We reiterate that the assessments for the first, second and third quarters of 2006 are void for being issued beyond the period prescribed by law. Hence, respondent may validly assess petitioner for deficiency VAT only for the **fourth quarter of taxable year 2006**.

An examination of the VAT returns[75] discloses the following details:

Taxable Quarter CY 2006	Vatable Receipts	Zero-Rated Receipts	Exempt Receipts	Total	Output Tax	Input Tax
1st[76]	₱ 1,751,855.61		₱ 10,500.00	₱ 1,762,355.61	₱ 190,054.55	₱ 65,561.28
2nd[77]	2,543,782.75	₱ 40,000.00		2,583,782.75	302,564.84	59,104.79
3rd[78]	1,897,462.47		-	1,897,462.47	226,854.49	70,342.85
4th[79]	2,526,845.53		-	2,526,845.53	296,812.76	76,899.28
Total	**₱8,719,946.36**	**₱40,000.00**	**₱10,500.00**	**₱8,770,446.36**	**₱1,016,286.64**	**₱271,908.20**

There is a deficiency in the fourth quarter VAT payment. There appears to be a miscalculation of the output VAT. Multiplying the total VATable receipts for the fourth quarter by 12% will yield the amount ₱303,221.46, and not ₱296,812.76.

Hence, petitioner is liable for the basic deficiency VAT for the fourth quarter of 2006 in the amount of ₱6,408.69, as follows:

	4TH QTR
Output tax	₱ 303,221.46
Less: Input tax	76,899.29
Less: Attributable to exempt sales	-
Net VAT payable	₱226,322.17
Less: Payments	219,913.48
Basic deficiency VAT	**₱ 6,408.69**

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The deficiency income tax assessment issued by respondent against petitioner for taxable year 2006 in the amount of ₱2,536,904.33 is **CANCELLED AND SET ASIDE**. However, the deficiency VAT assessment for taxable year 2006 is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **EIGHT THOUSAND TEN PESOS AND EIGHTY-SIX CENTAVOS (₱8,010.86)**

[75] Docket, pp. 782-809.
[76] Exhibit "P-22.3", docket p. 786-788.
[77] Exhibit "P-22.6", docket p. 793-795.
[78] Exhibit "P-22.9", docket p. 800-802.
[79] Exhibit "P-22.12", docket p. 807-809.

representing deficiency VAT for the fourth quarter of taxable year 2006, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Basic VAT Due	₱6,408.69
25% Surcharge	₱1,602.17
Total Amount Due	**₱8,010.86**

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

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱6,408.69 computed from January 25, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱8,010.86 and on the deficiency interest which have accrued as afore-stated in (a), computed from December 4, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

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 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.

ROMAN G. DEL ROSARIO
Presiding Justice