REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*Special Third Division*

**INTELLIGENT TOUCH CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 10215**

Members:

**RINGPIS-LIBAN,** *Chairperson*
**MODESTO-SAN PEDRO,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated:
OCT 19 2023
10:24 a.m.

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

# DECISION

***RINGPIS-LIBAN, J.:***

## The Case

The *Petition for Review* seeks before this Court the following:

1. To declare as void the tax assessment against petitioner for alleged deficiency income tax and deficiency value-added tax ("VAT") for taxable year 2011;

2. To affirm petitioner's entitlement to the payments made on October 19, 2015 amounting to Php161,613.06 and Php2,149,029.29, representing payments for deficiency income tax and deficiency VAT, respectively, for taxable year 2011;

a. Ordering the return of the payments made on October 19, 2015; or

b. In the event that the Court finds petitioner liable for the assessment, ordering the application thereof against the said internal revenue tax deficiencies.[1]

## The Facts

Petitioner Intelligent Touch Corporation is a domestic corporation duly organized and registered under the laws of the Republic of the Philippines, with Company Registration No. 200259725, and with principal address at Unit 109, Central Business Park, Pasig City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue, represented by the Legal Division of the Bureau of Internal Revenue ("BIR") Revenue Region No. 8A-Makati City, who may be served with pleadings and court processes at the 36th Floor, Export Bank Plaza Building, Sen. Gil Puyat Avenue, Makati City.[3]

On August 16, 2012, the BIR allegedly issued *Letter of Authority* (LOA) No. LOA-047-2012-00000383 (SN: eLA201100015037),[4] which authorized Revenue Officer ("RO") Remedios Arcega and Group Supervisor ("GS") Elizabeth Arias, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, covering the period from January 1, 2011 to December 31, 2011.

Thereafter, on October 22, 2014, a *Preliminary Assessment Notice* ("PAN"), with an Annex "A" embodying the *Details of Discrepancies* thereof,[5] was also allegedly issued by the BIR against petitioner, for taxable year 2011.

On November 11, 2014, respondent issued the *Formal Assessment Notice* ("FAN"), attaching therewith the *Details of Discrepancies* and *Assessment Notices*,[6] finding petitioner liable for deficiency income tax, VAT, expanded withholding tax ("EWT"), and withholding tax on compensation ("WTC"), in the aggregate amount of Php51,036,095.48, inclusive of interests, for taxable year 2011.

---

1 Docket, Pre-Trial Order dated June 08, 2021, Statement of the Case, p. 679.
2 *Id.*, *Joint Stipulation of Facts and Issues* (JSFI), Summary of Admitted Facts, Par. 1, p. 612.
3 *Id.*, JSFI, Summary of Admitted Facts, Par. 2, p. 612.
4 BIR Records, Exhibit "R-1", p. 248.
5 *Id.*, Exhibits "R-10" and "R-11", (unpaginated).
6 Docket, Exhibit "P-4", pp. 795 to 803; BIR Records Exhibits "R-12" "R-13", "R-14", "R-15", "R-16", and "R-17", (unpaginated).

Petitioner filed on December 10, 2014, the letter of even date (*Re: Request for Reinvestigation / Valid Protest of FAN dated 11 November 2014*).[7]

The BIR then issued the *Final Decision on Disputed Assessment* ("FDDA") dated September 17, 2015,[8] with attached *Details of Discrepancies*, finding petitioner liable for deficiency taxes, as follows:

| Tax type | Basic | Interest | Total |
|---|---|---|---|
| Income tax | Php 14,471,961.71 | Php 10,340,514.01 | Php 24,812,475.72 |
| VAT | 17,363,430.81 | 13,177,179.00 | 30,540,609.81 |
| EWT | 650,812.83 | 497,470.63 | 1,148,283.46 |
| WTC | 190,402.76 | 145,540.74 | 335,943.50 |
| | | TOTAL | **Php56,837,312.49** |

On October 19, 2015, petitioner paid in full the said deficiency WTC and EWT.[9] It also paid under protest the deficiency income tax and deficiency VAT in the amounts of Php161,613.06[10] and Php2,149,029.29,[11] respectively, to stop the running of interest.[12]

On the same day, petitioner filed the letter of even date addressed to respondent,[13] submitting that a decision be held either:

1) Cancelling the deficiency assessment for income tax and VAT against petitioner, for lack of LOA or PAN, and to refund the amounts of Php161,613.06 and Php2,149,029.29 paid under protest; or

2) Finding that petitioner's income tax and VAT is only Php161,613.06 and Php2,149,029.29 or lower respectively, and to apply petitioner's payments under protest made on October 19, 2015 to the said deficiency.

7 Docket, Exhibit "P-5", pp. 804 to 814; BIR Records, Exhibit "R-18", pp. 295 to 305.
8 Docket, Exhibit "P-6", pp. 815 to 822; BIR Records, Exhibits "R-25" and "R-26", pp. 573 to 577.
9 Docket, Exhibits "P-11" and "P-12", pp. 844 to 849.
10 *Id.*, Exhibit "P-9", pp. 837 to 839.
11 *Id.*, Exhibit "P-10", pp. 840 to 843.
12 *Id.*, Refer to Exhibit "P-8", p. 836.
13 *Id.*, Exhibit "P-7", pp. 823 to 831.

On October 24, 2019, petitioner received the *Decision* of respondent, wherein the latter ordered the former to pay deficiency income tax and VAT, amounting to Php180,360.72 and Php28,367,231.47, respectively, and inclusive of interest, surcharge, and penalties.[14]

On November 21, 2019, petitioner filed the present *Petition for Review*.[15]

Respondent then filed, on January 21, 2020, a *Motion for Extension of Time to File Answer*,[16] which was granted by the Court in its Resolution dated January 27, 2020.[17] On February 19, 2020, respondent posted a *Second Motion for Extension of Time to File Answer*,[18] which was also granted by the Court in its Resolution dated March 03, 2020.[19]

Respondent posted his *Answer (with Special and Affirmative Defenses)* on July 01, 2020.[20]

In the Resolution dated July 22, 2020,[21] the Court referred the case to mediation in the Philippine Mediation Center – Court of Tax Appeals ("PMC-CTA"). However, the parties decided not to have their case mediated by the PMC-CTA.[22]

On July 30, 2020, respondent transmitted the *BIR Records* for this case.[23]

Thereafter, in its Resolution dated September 17, 2020,[24] in view of the failure of the parties to enter into mediation, the Court set the Pre-Trial Conference on February 09, 2021, which proceeded as scheduled.[25] Prior thereto, the *Pre-Trial Brief for Petitioner* was filed on February 04, 2021,[26] while *Respondent's Pre-Trial Brief* was submitted on February 05, 2021.[27]

---

14 *Id.*, JSFI, Summary of Admitted Facts, Par. 3, p. 613.
15 *Id.*, pp. 7 to 27.
16 *Id.*, pp. 188 to 190.
17 *Id.*, p. 192.
18 *Id.*, pp. 193 to 195.
19 *Id.*, p. 198.
20 *Id.*, pp. 199 to 215.
21 *Id.*, pp. 315 to 316.
22 *Id.*, *No Agreement to Mediate* dated September 10, 2020 issued by the PMC-CTA, p. 319.
23 *Id.*, Respondent's *Compliance* dated July 28, 2020, p. 317.
24 *Id.*, pp. 321 to 322.
25 *Id.*, Minutes of the hearing held on, and Order dated, February 09, 2021, pp. 608 to 611.
26 *Id.*, pp. 348 to 360.
27 *Id.*, pp. 521 to 527.

On March 01, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*,[28] which the Court admitted and approved in the Resolution dated March 4, 2021,[29] thereby deeming the termination of the Pre-Trial. Subsequently, the Pre-Trial Order dated June 08, 2021 was issued.[30]

Trial then ensued, with both parties presented their testimonial and documentary evidence, respectively.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Efren Q. Samson, Jr.,[31] petitioner's Accounting Assistant; and (2) Atty. Edward M. Menor,[32] the Court-commissioned Independent Certified Public Accountant ("ICPA").[33]

The *Report* of the ICPA was posted on June 18, 2021.[34]

*Petitioner's Formal Offer of Evidence* was filed on October 15, 2021.[35] *Respondent's Comment (To the Petitioner's Formal Offer of Evidence)* was then posted on October 25, 2021.[36] In the Resolution dated March 01, 2022,[37] the Court admitted petitioner's offered exhibits.

For his part, respondent offered the testimony of OIC-Assistant Chief - Assessment Elizabeth C. Arias.[38]

Respondent filed a *Motion to Admit (Formal Offer of Evidence)* on June 16, 2022,[39] attaching therewith his *Formal Offer of Evidence*.[40] In the Resolution dated June 21, 2022,[41] the Court admitted the latter, and directed petitioner to file its comment thereto.

---

28 *Id.*, pp. 612 to 622.
29 *Id.*, pp. 624 to 625.
30 *Id.*, pp. 679 to 688.
31 *Id.*, Exhibit "P-20", pp. 367 to 381; Minutes of the hearing held on, and Order dated, June 17, 2021, pp. 691 to 693.
32 *Id.*, Exhibit "P-173", pp. 743 to 761; Minutes of the hearing held on, and Order dated, July 17, 2021, pp. 766 to 768.
33 *Id.*, *Oath of Commission* dated May 04, 2021, p. 667; Minutes of the hearing held on, and Order dated, May 04, 2021, pp. 663 to 665.
34 *Id.*, Exhibit "P-172", pp. 694 to 736.
35 *Id.*, pp. 769 to 780.
36 *Id.*, pp. 914 to 920.
37 *Id.*, pp. 924 to 925.
38 *Id.*, Exhibit "R-28", pp. 219 to 235; Minutes of the hearing held on, and Order dated, May 24, 2022, pp. 926 to 928.
39 *Id.*, pp. 929 to 931.
40 *Id.*, pp. 932 to 942.
41 *Id.*, p. 945.

Petitioner's *Comment/Opposition [On Respondent's Motion to Admit (Formal Offer of Evidence) dated 14 June 2022]* was then filed on June 28, 2022.[42] In the Resolution on August 02, 2022,[43] the Court admitted respondent's offered exhibits.

The *Memorandum for the Petitioner* was filed on October 03, 2022.[44] Respondent, however, failed to file his memorandum.[45]

The present case was deemed submitted for decision on October 26, 2022.[46]

## The Issue

As stipulated by the parties, the issues for this Court's resolution are as follows, *viz*:

"(1) Whether or not the Letter of Authority and the Preliminary Assessment Notice were duly received by the Petitioner; and

(2) Whether or not the Petitioner is liable to pay the assessed deficiency Income Tax, Value Added Tax, Expanded Withholding Tax, and Withholding Tax on Compensation for Taxable Year 2011."[47]

***Petitioner's arguments:***

Petitioner argues that the assessment is void for the absence of a duly issued LOA and a PAN duly received by it; and that petitioner is not liable for deficiency income tax and VAT, assuming without admitting that the assessment is not valid.

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

---

42 *Id.*, pp. 946 to 959.
43 *Id.*, pp. 966 to 967.
44 *Id.*, pp. 968 to 998.
45 *Id.*, Records Verification dated October 19, 2022 issued by the Judicial Records Division of this Court, p. 1001.
46 *Id.*, Resolution dated October 26, 2022, p. 1004.
47 *Id.*, Issue/s to be Resolved, JSFI, p. 613.

In his *Answer*, respondent contends that the LOA, PAN, and FAN were duly served upon petitioner; that petitioner is liable for deficiency income tax; and that petitioner is liable for deficiency VAT.

## Discussion/Ruling

The present *Petition for Review* has partial merit.

***The petition was timely filed.***

The Court of Tax Appeals ("CTA") is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[48] The jurisdiction of the CTA as regards to disputed assessment is provided under Section 7(a)(1) of Republict Act ("RA") No. 1125[49], as amended by RA No. 9282[50], which reads:

> "SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;"[51]

Similarly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals[52] (RRCTA) states:

---

48 Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.

49 An Act Creating The Court Of Tax Appeals, June 16, 1954.

50 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Of Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30 2004.

51 *Emphasis supplied.*

52 A.M. No. 05-11-07-CTA, November 22, 2005.

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue"[53]

Under Section 11 of RA No. 1125, as amended by RA No. 9282, a taxpayer aggrieved by a decision of the Commissioner of Internal Revenue ("CIR") may file an appeal with the CTA within thirty (30) days from the receipt thereof:

"SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision**, ruling or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **<u>may file an appeal with the CTA within thirty (30) days after the receipt of such decision</u>** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[54]

In the case at bar, petitioner received on September 21, 2018[55] the FDDA issued by Regional Director Jonas DP. Amora on September 17, 2015.

Under Section 3.1.4 of Revenue Regulation ("RR") No. 12-99[56], as amended by RR No. 18-13[57], if the protest to the FAN is denied by the CIR's

---

53 *Emphasis supplied.*
54 *Emphasis and underscoring supplied.*
55 BIR Records, Exhibits "R-25" and "R-26", pp. 573-577.
56 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September0 6, 1999.
57 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

duly authorized representative, the taxpayer may either appeal to the CTA within thirty (30) days from date of receipt of the said decision or file a request for reconsideration to the CIR within the same period.

Petitioner chose the second option. On October 19, 2015, or within thirty (30) days from the receipt of the FDDA, petitioner filed an administrative appeal to the CIR.[58]

Thereafter, on October 24, 2019, petitioner received the *Decision* of the CIR, assessing it deficiency income tax and VAT, amounting to Php180,360.72 and Php28,367,231.47, respectively.[59] Within thirty (30) days therefrom or on November 21, 2019, petitioner timely filed the present *Petition for Review.*

***The subject LOA and PAN were received by Petitioner.***

Petitioner contends that there was no LOA and PAN for taxable year 2011, making the assessment void for violation of the right to due process.

Unfortunately, We are not persuaded by Petitioner's assertion.

*First,* Petitioner's witness, Mr. Efren Q. Samson, Jr., merely stated in his Judicial Affidavit[60] that upon checking of the records of Petitioner, no LOA or PAN was turned over to him by his predecessors, to wit:

> **"Q18. Hold on. The assessment process under the Tax Code usually starts with the issuance of the Letter of Authority ('LOA') and Preliminary Assessment Notice ('PAN'). Do you mean to say that said documents were not issued nor provided to ITC?**
>
> A: Per checking of records of ITC, there was no LOA covering CY 2011 or PAN covering the same taxable year turned over to me by my predecessors."

This is not equivalent however to the fact that no LOA or PAN was duly issued by Respondent and that it was validly served to Petitioner. Simply put, it is a considerable leap to conclude that no LOA and PAN was issued and received

58 Docket, Exhibit "P-7", pp. 823 to 831.
59 *Id.*, JSFI, Summary of Admitted Facts, Par. 3, p. 613.
60 *Id.*, Judicial Affidavit of Mr. Efren Q. Samson, Jr., Exhibit "P-20", Question No. 18, p. 372.

by Petitioner just because Petitioner's witness was not given any copy of it by his predecessors.

Further, the defense of non-receipt of the LOA and PAN appears to be an afterthought as it was not raised at the earliest opportunity in Petitioner's protest against the FAN[61] but only ten (10) months after, when it filed an administrative appeal[62] to the FDDA issued on September 17, 2015. The fact that Petitioner failed to question the non-issuance of the LOA and PAN, documents essential for due process that render the assessment void, in the protest against FAN, and instead focused on explaining its position on the assessment items, raises suspicion in the Court's mind.

More importantly, Respondent presented evidence that a LOA and a PAN was duly issued and was validly served to Petitioner. Included in the BIR Records is LOA No. LOA-047-2012-00000383[63] which was issued on August 16, 2012 to Petitioner. The LOA was received by Sylvia D. Gapuz, Petitioner's representative, on August 23, 2012. Meanwhile the PAN[64] in the BIR Records which was issued on October 22, 2014 was received by Bernadette Estrada, Petitioner's HR Assistant, on even date.

Nonetheless, Petitioner disavows the authority of Sylvia D. Gapuz and Bernadette Estrada to receive the LOA and PAN, respectively. According to Petitioner, they are not employees of the company and they are not authorized to receive correspondences from the BIR.

Records show otherwise.

On March 31, 2015, Petitioner's President, Mr. Roberto DC Yap, wrote a letter[65] to Regional Director Jonas DP Amora reiterating their previous request for additional time to submit documents in support of the protest against the FAN. The letter was captioned "Re: Letter dated 30 March 2015". This letter Petitioner's President was referring to, pertains to the Letter[66] dated March 30, 2015 issued by Revenue District Officer Isabel A. Paulino denying Petitioner's request for extension to submit relevant documents in support of its protest against the FAN. Significantly, the person who received the said letter on March 30, 2015, as Petitioner's representative, is the same Bernadette Estrada who signed and received the PAN based on the BIR Records.

---

61 *Id.*, Letter dated December 10, 2014, Exhibit "P-5", pp. 804-814.
62 *Id.*, Letter dated October 19, 2015, Exhibit "P-7", pp. 823-831.
63 BIR Records, Letter of Authority, Exhibits "R-1", "R-1-a" and "R-1-b", p. 248.
64 *Id.*, Preliminary Assessment Notice, Exhibits "R-10", "R-11-a" and "R-11-b", unpaginated.
65 *Id.*, Letter dated March 31, 2015, Exhibits "R-23" and "R-23-a", pp. 395-396.
66 *Id.*, Letter dated March 30, 2015, Exhibits "R-22", "R-22-a" and "R-22-b", p. 323.

Considerably, Petitioner cannot rely on its witness to support its contention that Sylvia D. Gapuz and Bernadette Estrada were not employees of the company. Petitioner's witness, Mr. Efren Q. Samson, Jr., admitted in his Judicial Affidavit[67] that he was only hired in 2016. As alluded to during his cross-examination, he has no personal knowledge of the employees hired by Petitioner before his employment entry in 2016. The pertinent portion of the Transcript of Stenographic Notes (TSN) during the hearing held on June 17, 2021 reads:

> **Justice San Pedro:** Yes Mr. Witness, since when have you worked for the petitioner?
>
> **Witness:** From March 7, 2016 up to the present.
>
> **Justice San Pedro:** Would you know any Sylvia Gapuz?
>
> **Witness:** None.
>
> **Justice San Pedro:** How about Bernadette Estrada?
>
> **Witness:** None.
>
> **Justice San Pedro:** So these were no longer working with the petitioner because respondent claims they were the one who received the LOA and Preliminary Assessment Notice in 2012 and 2014. So in 2012 and 2014 you were not yet connected with the petitioner, it's [*sic*] correct?
>
> **Witness:** Yes Your Honor. (TSN, June 17, 2021, pp. 9-10)

In view of the foregoing, the totality of evidence presented by both parties cast doubt to Petitioner's allegations that it did not receive any LOA and PAN for taxable year 2011. Petitioner failed to convince this Court that there was violation of due process.

***Petitioner is liable only for deficiency VAT.***

---

67 Docket, Judicial Affidavit of Mr. Efren Q. Samson, Jr., Exhibit "P-20", Question No. 15, p. 371.

Respondent issued the FAN dated November 11, 2014, attaching therewith the Details of Discrepancies and Assessment Notices, finding petitioner liable for deficiency internal revenue taxes in the aggregate amount of Php51,036,095.48, summarized as follows:[68]

| Tax | Basic Deficiency | Interest | Total |
|---|---|---|---|
| Income Tax (IT) | Php 14,471,961.71 | Php 7,771,245.19 | Php 22,243,206.90 |
| Value-Added Tax (VAT) | 17,363,430.81 | 10,094,575.39 | 27,458,006.20 |
| Expanded Withholding Tax (EWT) | 650,812.83 | 381,929.06 | 1,032,741.89 |
| Withholding Tax on Compensation (WTC) | 190,402.76 | 111,737.73 | 302,140.49 |
| **Total** | **Php32,676,608.11** | **Php18,359,487.37** | **Php51,036,095.48** |

Petitioner filed a Request for Reinvestigation/Valid Protest of FAN on December 10, 2014.[69] Respondent then issued a Final Decision on Disputed Assessment (FDDA) dated September 17, 2015, with attached Details of Discrepancies, still finding petitioner liable for deficiency taxes, thus:[70]

| Tax | Basic Deficiency | Interest | Total |
|---|---|---|---|
| IT | Php 14,471,961.71 | Php 10,340,514.01 | Php 24,812,475.72 |
| VAT | 17,363,430.81 | 13,177,179.00 | 30,540,609.81 |
| EWT | 650,812.83 | 497,470.63 | 1,148,283.46 |
| WTC | 190,402.76 | 145,540.74 | 335,943.50 |
| **Total** | **Php32,676,608.11** | **Php24,160,704.38** | **Php56,837,312.49** |

Respondent, through the Regional Director, gave petitioner until October 19, 2015 to pay its deficiency tax liabilities. Petitioner is likewise given the option to appeal with the Commissioner of Internal Revenue ("CIR") or with the Court of Tax Appeals ("CTA") within thirty (30) days from the date of receipt thereof, otherwise the assessment shall become final, executory and demandable.[71]

On October 19, 2015, petitioner filed an Administrative Appeal of Income Tax and VAT Deficiency Findings with the CIR. In said appeal,

68 BIR Records, Exhibits "R-12", "R-13", "R-14", "R-15", "R-16", and "R-17", not paginated, and Docket, Exhibit "P-4", pp. 795 to 803.
69 Docket, Exhibit "P-5", pp. 804 to 814.
70 BIR Records, Exhibits "R-25" and "R-26", pp. 573 to 577, and Docket, Exhibit "P-6", pp. 815 to 822.
71 BIR Records, Exhibit "R-25", p. 576, and Docket, Exhibit "P-6", p. 816.

petitioner manifested that it paid the following deficiency taxes on the same date based on the FDDA:[72]

| Tax | Basic Deficiency | Interest | Total |
|---|---|---|---|
| **Paid in full:** | | | |
| EWT[73] | Php 650,812.83 | Php 497,470.63 | Php 1,148,283.46 |
| WTC[74] | 190,402.76 | 145,540.74 | 335,943.50 |
| **Paid under protest:** | | | |
| IT[75] | Php 94,959.38 | Php 66,653.68 | Php 161,613.06 |
| VAT[76] | 1,230,617.65 | 918,411.64 | 2,149,029.29 |
| **Total** | **Php2,166,792.62** | **Php1,628,076.69** | **Php3,794,869.31** |

On October 24, 2019, petitioner received the Decision of the CIR dated October 10, 2019,[77] partially upholding the FDDA thus:[78]

> "**WHEREFORE**, premises considered, the decision dated September 17, 2015, issued against **INTELLIGENT TOUCH CORPORATION** demanding payment of the amount of **P56,837,312.49**, representing deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and Withholding Tax on Compensation (WTC) for the taxable year 2011 is hereby **MODIFIED**. The deficiency **EWT** and **WTC** are hereby **cancelled** in view of full payment while the deficiency **IT** and **VAT** are hereby modified to **P180,360.72** and **P28,367,231.47** in view of partial payment.
>
> xxx xxx xxx
>
> This constitutes the **FINAL DECISION** of this Office on the matter."

Still discontented, petitioner filed a judicial appeal with the CTA through this instant Petition for Review.

*Timeliness of respondent's assessments for the taxable year 2011*

[72] Docket, Exhibit "P-7", pp. 823 to 835.
[73] *Id.,* Exhibit "P-12", pp. 847 to 849.
[74] *Id.,* Exhibit "P-11", pp. 844 to 846.
[75] *Id.,* Exhibit "P-9", pp. 837 to 839.
[76] *Id.,* Exhibit "P-10", pp. 840 to 843.
[77] *Id.,* JSFI, Summary of Admitted Facts, Par. 3, p. 613.
[78] *Id.,* Exhibit "P-13", pp. 164 to 173.

Section 203 of the Tax Code, as amended, provides that respondent has the right to assess internal revenue taxes within three (3) years after the last day prescribed by law for the filing of the return or date of filing, whichever is later, to wit:

> "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**." *(Emphasis supplied)*

Petitioner filed its annual income tax return for the taxable year 2011 on April 12, 2012.[79] Counting from that date, respondent had until April 15, 2015 to assess petitioner of deficiency income tax. Thus, the FAN issued on November 11, 2014 was within the 3-year period prescribed by the Tax Code, as amended.

However, respondent's right to assess deficiency value-added tax ("VAT") for the 1st and 2nd quarters of taxable year 2011 is time-barred. Section 114(A) of the Tax Code, as amended, prescribes the time of filing of quarterly VAT returns:

> "SEC. 114. *Return and Payment of Value-Added Tax.*—
>
> (A) *In General.*—**Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis." *(Emphasis supplied)*

Petitioner's dates of filing of its Quarterly VAT Returns for the four (4) quarters of the taxable year 2011 are shown hereafter:

[79] Exhibit "P-171". *(May be cross-referred at the BIR Records, p. 241, for a clearer copy of the stamped date).*

| Taxable Period | Quarterly Return Due | Quarterly Return Filed | End of 3 years |
|---|---|---|---|
| 1st Quarter | 25 Apr 2011 | 25 Apr 2011[80] | 25 Apr 2014 |
| 2nd Quarter | 25 Jul 2011 | 25 Jul 2011[81] | 25 Jul 2014 |
| 3rd Quarter | 25 Oct 2011 | 28 Nov 2011[82] | 28 Nov 2014 |
| 4th Quarter | 25 Jan 2012 | 23 Feb 2012[83] | 23 Feb 2015 |

Based on the foregoing, the FAN issued on November 11, 2014 was issued beyond the prescribed period for the 1st and 2nd quarters of the taxable year 2011. This is acknowledged by respondent in his Decision dated 10 October 2019:[84]

> "Based on ITC's filing date[s] of its quarterly VAT returns and the deadlines and prescription period provided by law as illustrated above, the right to assess ITC's deficiency VAT for the first two quarters of 2011 has indeed prescribed, the FAN/FLD having been issued only on November 11, 2014. However, deficiency VAT assessment for the last two quarters may still be validly issued at that point."

We now proceed to the determination of the propriety of the deficiency tax income tax assessment for the taxable year 2011 and deficiency value-added tax assessment for the 3rd and 4th quarters of taxable year 2011.

*__Petitioner is not liable for deficiency income tax for TY 2011.__*

Based on the Decision dated October 10, 2019, petitioner is liable for deficiency income tax amounting to Php180,360.72, including penalties:[85]

| | | |
|---|---|---|
| Taxable Income per Return | | Php2,454,766.00 |
| Add: Undeclared income from professional/legal fees | | 350,765.47 |
| Adjusted Taxable Income | | Php2,805,531.47 |
| Income Tax Due | | Php 841,659.44 |
| Less: Prior year's excess credits | Php 499,157.00 | |

80 Docket, Exhibit "P-16", pp. 902 to 903.
81 *Id.,* Exhibit "P-17", pp. 904 to 905.
82 *Id.,* Exhibit "P-18", pp. 906 to 907.
83 *Id.,* Exhibit "P-19", pp. 908 to 909.
84 *Id.,* Exhibit "P-13", p.172.
85 *Id.,* Exhibit "P-13", p. 170.

| | | | |
|---|---|---|---|
| Creditable taxes withheld (CWT) | | 1,852,284.00 | |
| Subtotal | | Php2,351,441.00 | |
| Less: Disallowed CWT | Php 94,959.38 | | |
| Excess credits carried over to succeeding period | 1,615,011.20 | 1,709,970.58 | 641,470.42 |
| Basic Deficiency Income Tax | | | Php 200,189.02 |
| Add: Interest (4.16.12 to 10.19.15) | | | 140,516.24 |
| Subtotal | | | Php 340,705.26 |
| Less: Payment made on 10.19.15 | | | 161,613.06 |
| Deficiency income tax due | | | Php 179,092.20 |
| Add: Interest (10.20.15 to 11.11.15) | | | 1,268.52 |
| **Total Amount Due** | | | **Php 180,360.72** |

Based on the foregoing, the assessment items are the following:

| | | |
|---|---|---|
| 1. Undeclared income from professional/legal fees | Php | 350,765.47 |
| 2. Disallowed CWT | Php | 94,959.38 |
| 3. Excess credits carried over to succeeding period | Php | 1,615,011.20 |

It should be noted that petitioner admits its liability on the disallowance of CWT amounting to Php94,959.38. In fact, its payment of Php161,613.06 on October 19, 2015 pertains to this item plus interest in the amount Php66,653.68.[86] Petitioner likewise did not contest the excess credits carried over to succeeding period in the amount of Php1,615,011.20. Hence, the remaining deficiency income tax arose from the alleged undeclared income from professional/legal fees in the amount of Php350,765.47.

This item of assessment is retained by respondent from the FDDA. As stated in the Details of Discrepancies, respondent's examiner found that petitioner's professional/legal fees per BIR Form 1601E exceeds the amount reported in its financial statements:[87]

**Schedule 3:**

| | | |
|---|---|---|
| Professional/Legal fees per BIR Form 1601E | | Php1,370,265.47 |
| Less: Professional/Legal fees per FS: | | |
| Professional fees | Php 957,500.00 | |
| Legal fees | 62,000.00 | 1,019,500.00 |
| **Undeclared income from unaccounted professional fees** | | **Php 350,765.47** |

---

86 *Id., Petition for Review,* Paragraphs 52 to 55, p. 20. See also Exhibit "P-9", pp. 837 to 839, and Exhibit "P-7", p. 825.

87 *Id.,* Exhibit "P-6", Schedule 3, *Details of Discrepancies,* p. 818.

In other words, petitioner under declared its professional fees expense in its audited financial statements for the taxable year 2011. The amount Php350,765.47 represents professional fees (from which petitioner withheld expanded withholding tax) that are not reported in the petitioner's audited financial statements.

Meanwhile, the ICPA report shows that the difference should only amount to Php348,500.00, computed as follows:[88]

| | | |
|---|---|---|
| Per 2011 AFS[89] | | |
| Professional fees | Php 957,500.00 | |
| Legal fees | 62,000.00 | Php 1,019,500.00 |
| Per 2011 Alphalist of Payees[90] | | |
| Paras, Jose Epifanio | Php 720,000.00 | |
| Yap, Roberto | 648,000.00 | 1,368,000.00 |
| **Difference** | | **Php 348,500.00** |

Further, the ICPA added:[91]

"xxx This only shows that the petitioner did not fully utilize its expenses as deduction but there is no indication that these unclaimed expenses were unreported income.

On the other hand, for the income payment to medical practitioner in the amount of Php2,265.47[92], the petitioner was unable to provide me to which account in the AFS the payment was reported on."

The Court agrees with the ICPA. Whether the difference is Php350,765.47 or Php348,500.00, respondent's assessment cannot stand. On numerous occasions, respondent's assessment for deficiency income tax arising from undeclared expenses considered as unreported income has not been sustained by the Court.

The Court En Banc's ruling in the case of Commissioner of Internal Revenue vs. Alpha 245, Inc.[93] should be reiterated:

---

88 *Id.,* Exhibit "P-172", p. 704.
89 *Id.,* Exhibit "P-15", p. 880. See also Exhibit "P-21", p. 5.
90 Exhibit "P-34", p. 2.
91 Docket, Exhibit "P-172", p. 705.
92 Exhibit "P-32". This is the difference between respondent's computation of professional fees of Php350,765.47 and the ICPA's Php348,500.00, which pertains to income payment to a medical practitioner.
93 CTA EB Case No. 1875 (C.T.A. Case No. 9225), October 01, 2019.

"It must be emphasized that for income tax purposes, a taxpayer is allowed to claim deductions from its gross income to compute its taxable income subject to income tax. **What is prohibited by the income tax law is a deduction beyond the amount authorized therein.**

Furthermore, it is worthy to note that the imputation of alleged undeclared income is based on a mere presumption that since there are undeclared expenses, there are corresponding undeclared sources of income. **Even if these alleged unaccounted expenses are to be treated as undeclared income, the same will be offset by recording the equivalent payments as expenses. As such, no taxable income will result for the said transactions.**" *(Emphasis supplied)*

Further, it is an established doctrine that while it is presumed that the assessments are correct, they must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[94]

As correctly pointed out by petitioner, there are three (3) elements in the imposition of income tax and in the case of *Commissioner of Internal Revenue v. The Court of Appeals, Court of Tax Appeals, and A. Soriano Corporation*,[95] the Supreme Court held in this wise:

"The three elements in the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax. Any business purpose as to why or how the income was earned by the taxpayer is not a requirement. Income tax is assessed on income received from any property, activity or service that produces the income because the Tax Code stands as an indifferent neutral party on the matter of where income comes from."

Here, petitioner could not possibly realize any gain or profit from under declaring its professional fees in the audited financial statements. If undeclared expenses represent undeclared income and need to be declared for tax purposes

---

94 *Commissioner of Internal Revenue v. Island Garment Manufacturing Corporation*, G.R. No. L-46644, September 11, 1987, 237 PHIL 649-661, quoting *Collector of Internal Revenue vs. Benipayo*, L-13656, January 31, 1962, 4 SCRA 182.

95 G.R. No. 108576, January 20, 1999.

as argued by respondent, the corresponding expenses need to be declared as well. This results to zero taxable income, which means that the computation would not result to any increase in the taxable income and deficiency income tax, thus:

| | | | |
|---|---|---|---|
| Taxable Income per Return | | | Php2,454,766.00 |
| Add: Undeclared income from professional/legal fees | | Php350,765.47 | |
| Less: Corresponding undeclared professional/legal fees | | (350,765.47) | - |
| Adjusted Taxable Income | | | Php2,454,766.00 |
| | | | |
| Income Tax Due | | | Php736,429.80 |
| Less: Prior year's excess credits | | Php 499,157.00 | |
| Creditable taxes withheld (CWT) | | 1,852,284.00 | |
| Subtotal | | Php2,351,441.00 | |
| Less: Disallowed CWT | Php94,959.38 | | |
| Excess credits carried over to succeeding period | 1,615,011.20 | 1,709,970.58 | 641,470.42 |
| Basic Deficiency Income Tax | | | Php 94,959.38 |
| Add: Interest (4.16.12 to 10.19.15) | | | 66,653.68 |
| Subtotal | | | Php 161,613.06 |
| Less: Payment made on 10.19.15 | | | 161,613.06 |
| **Deficiency income tax due** | | | **Php** - |

Thus, the Court finds that the assessment of undeclared expenses deemed as undeclared income lacks factual basis. Accordingly, respondent's deficiency income tax assessment from petitioner's unaccounted professional fees amounting to Php350,765.47 should be cancelled.

*<u>Petitioner is liable for deficiency VAT for the 3rd and 4th quarters of TY 2011</u>*

Per FDDA, respondent found that petitioner has basic deficiency VAT liability for the taxable year 2011 in the amount of Php17,363,430.81, computed as follows:[96]

| | |
|---|---|
| VATable sales per VAT Returns | Php149,743,745.02 |

[96] Docket, Exhibit "P-6", p. 816.

| | | | |
|---|---|---|---|
| Add: Sales not subjected to VAT | | Php 957,499.98 | |
| Other income not subjected to VAT | | 4,495,160.00 | 5,452,659.98 |
| Adjusted VATable sales | | | Php155,196,405.00 |
| | | | |
| Output tax (12%) | | | Php 18,623,568.60 |
| Less: Input tax carried over from previous period | | Php 749,591.07 | |
| Input tax claimed per returns | | 16,679,282.05 | |
| Subtotal | | Php17,428,873.12 | |
| Less: Disallowed input taxes | Php16,679,282.05 | | |
| Input tax carried over to succeeding period | 911,842.60 | 17,591,124.65 | (162,251.53) |
| Value-Added Tax Due | | | Php 18,785,820.13 |
| Less: VAT payments per returns | | | 1,422,389.32 |
| **Basic Deficiency Value-Added Tax** | | | **Php17,363,430.81** |

From the foregoing, the assessment items consist of the following:

| | | |
|---|---|---|
| 1. | Sales not subjected to VAT | Php 957,499.98 |
| 2. | Other income not subjected to VAT | Php 4,495,160.00 |
| 3. | Disallowed input taxes | Php 16,679,282.05 |
| 4. | Input tax carried over to succeeding period | Php 911,842.60 |

In his Decision dated October 10, 2019, respondent upheld the foregoing assessment, *albeit* taking into account petitioner's payment in the aggregate amount of Php2,149,029.29:[97]

| | |
|---|---|
| Basic Deficiency VAT | Php 17,363,430.81 |
| Add: Interest (01.26.12 to 10.19.15) | 12,958,352.20 |
| Subtotal | Php 30,321,783.01 |
| Less: Payments made on 10/19/15 | 2,149,029.29 |
| Deficiency VAT due on 10.19.15 | Php 28,172,753.72 |
| Add: Interest (10.20.15 to 11.11.15) | 194,477.75 |
| **TOTAL AMOUNT DUE** | **Php 28,367,231.47** |

As previously discussed, respondent's right to assess petitioner's deficiency VAT for the 1st and 2nd quarters of the taxable year 2011 has already prescribed. However, respondent argues that petitioner *"did not present any evidence*

[97] *Id.,* Exhibit "P-13", p. 173.

*showing which sales and other income, out of the amounts of Php957,499.98 and Php4,495,160.00, correspond to transactions made during the first two quarters of 2011. It must be noted that the reconciliation presented by [the petitioner] in its request for reconsideration only shows the taxable sales for the first two quarters of 2011 as declared in its Quarterly VAT Returns from which it deducted the entire amounts of P957,499.98 and P4,495,160.00. Absent a clear showing that the aforementioned sales and income were made and earned, respectively, during the first two quarters of 2011, the deduction of the entire amounts corresponding to the sales not subjected to VAT and other income not subjected to VAT is a mere presumption. Thus, the deficiency VAT for the abovementioned transactions may still be assessed under the third and fourth quarters of 2011. xxx*"[98]

Sales not subjected to VAT of Php957,499.98, and
Other income not subjected to VAT of
Php4,495,160.00

Petitioner avers that it has already paid the corresponding tax due on the subject assessment items.[99]

The ICPA presented petitioner's computation of deficiency VAT, which was the basis of its payment under protest, to wit:[100]

| | | Per BIR | Per Taxpayer |
|---|---|---|---|
| VATable sales per VAT returns | | Php149,743,745.02 | Php149,743,745.02 |
| 1Q sales prescribed assessment as of April 25, 2014 (Prescribed) | | - | (20,086,495.39) |
| 2Q sales prescribed assessment as of July 25, 2014 (Prescribed) | | - | (13,823,970.28) |
| Add: | Sales not subjected to VAT | 957,499.98 | 957,499.98 |
| | Other income not subjected to VAT | 4,495,160.00 | 4,495,160.00 |
| Adjusted VATable sales | | 155,196,405.00 | 121,285,939.33 |
| Output VAT | | 18,623,568.60 | 14,554,312.72 |
| Less: | Input tax carried over from previous period (already claimed in 1Q and 2Q) | (749,591.07) | - |
| | Input tax claimed per returns | (16,679,282.05) | (16,679,282.05) |
| Add: | Input VAT from 1Q (Prescribed) | - | 1,517,624.36 |
| | Input VAT from 2Q (Prescribed) | - | 234,921.59 |

98 *Id.*, Exhibit "P-13", pp. 172 to 173.
99 *Id.*, *Memorandum for the Petitioner*, Paragraph 64, p. 990.
100 *Id.*, Exhibit "P-172", p. 706.

| | | | |
|---|---|---|---|
| Input VAT for 3Q and 4Q before BIR assessment | | - | (14,926,736.10) |
| Add: | Disallowed input taxes | 16,679,282.05 | 1,828,329.83 |
| | Input tax carried over to succeeding periods | 911,842.60 | 911,842.60 |
| Input VAT | | (162,251.53) | (12,186,563.67) |
| Net VAT due as assessed | | 18,785,820.13 | 2,367,749.05 |
| Less: VAT payments per returns (only pertains to 3Q and 4Q net VAT payments) | | (1,422,389.32 | (1,137,131.40) |
| | | 17,363,430.81 | 1,230,617.65 |
| Interest on deficiency tax 1.26.12 to 10.19.15 | | 13,177,179.00 | 918,411.64 |
| **Total VAT Still Due** | | **Php30,540,609.81** | **Php2,149,029.29** |

Based on the foregoing, petitioner is amenable to the assessments pertaining to sales not subjected to VAT and other income not subjected to VAT in the respective amounts of Php957,499.98 and Php4,495,160.00. In fact, it no longer submitted supporting documents pertaining to respondent's findings on the said sales not subjected to VAT and other income not subjected to VAT.

Disallowed input taxes of Php16,679,282.05

Petitioner reported the following input taxes for the taxable year 2011:

| Exhibit | Taxable Period | Input |
|---|---|---|
| P-16 | 1st Qtr. | Php 1,517,624.36 |
| P-17 | 2nd Qtr. | 234,921.59 |
| | **Subtotal** | **Php 1,752,545.95** |
| P-18 | 3rd Qtr. | Php 11,935,104.09 |
| P-19 | 4th Qtr. | 2,991,632.01 |
| | **Subtotal** | **Php 14,926,736.10** |
| **Total input taxes** | | **Php 16,679,282.05** |

Respondent disallowed all of petitioner's input taxes for the taxable year 2011 amounting to Php16,679,282.05 for being unsupported by VAT official receipts and invoices, in violation to the substantiation and invoicing requirements set forth in Sections 110 and 113 of the NIRC of 1997, as amended, respectively.[101]

[101] *Id.*, Exhibit "P-6", p. 818.

Petitioner counters that the declared input taxes are supported by the necessary invoices and receipts.[102]

Based on petitioner's Summary List of Purchases,[103] a substantial amount of petitioner's input taxes for the taxable year 2011 comes from its purchases from NCR Corporation (Philippines) (NCR). The ICPA summarized petitioner's input taxes as follows:[104]

| Period | NCR | Others | Total |
|---|---|---|---|
| 1st Quarter | Php 1,284,564.87 | Php 233,059.49 | Php 1,517,624.36 |
| 2nd Quarter | 107,813.86 | 127,107.73 | 234,921.59 |
| 3rd Quarter | 11,897,830.00 | 37,273.99 | 11,935,103.99 |
| 4th Quarter | 2,885,081.49 | 106,550.62 | 2,991,632.11 |
| **TOTAL** | **Php16,175,290.22** | **P503,991.83** | **P16,679,282.05** |

Considering that respondent's right to assess the 1st and 2nd quarters of 2011 has prescribed, the input taxes pertaining thereto should be excluded from the total disallowed input taxes of Php16,679,282.05. Thus, the adjusted amount for disallowed input taxes should only be Php14,926,736.10, computed as:

| | | |
|---|---|---|
| Total input taxes for TY 2011 | | Php 16,679,282.05 |
| Less: Input taxes for | | |
| 1st Quarter | Php 1,517,624.36 | |
| 2nd Quarter | 234,921.59 | 1,752,545.95 |
| **Input taxes for the 3rd & 4th Quarters of 2011** | | **Php14,926,736.10** |

In support of the foregoing, petitioner submitted as evidence the invoices issued by NCR to petitioner for the taxable year 2011.[105] The total input taxes from these invoices amount to Php15,323,791.48.[106] However, only the total amount of Php13,235,218.90 pertains to the 3rd and 4th quarters of 2011, to wit:

| Exhibit | Period | Input Taxes |
|---|---|---|
| P-75 to P-140 | 3rd Quarter | 10,703,558.69[107] |
| P-141 to P-170 | 4th Quarter | 2,531,660.21[108] |
| | **TOTAL** | **Php13,235,218.90** |

N

102 *Id., Memorandum for the Petitioner,* Paragraph 66, p. 990.
103 Exhibit "P-35".
104 Docket, Exhibit "P-172", p. 709.
105 Exhibits "P-36" to "P-170".
106 Docket, Exhibit "P-172", Schedule 10, pp. 733 to 736.
107 *Id.,* Exhibit "P-172", Schedule 6, p. 729.
108 *Id.,* Exhibit "P-172", Schedule 7, p. 730.

Further, of the foregoing, it is noted that the ICPA reported the following disallowed NCR invoices:[109]

| Exhibit | Invoice Date | Input Tax |
|---|---|---|
| P-108 | 08/24/2011 | Php 31,601.00 |
| P-111 | 08/25/2011 | 36,760.80 |
| P-130 | 09/22/2011 | 432.48 |
| | Unidentified invoices | 62,259.81 |
| **3Q Subtotal** | | **Php 131,054.09** |
| P-142 | 10/27/2011 | Php 1,866.00 |
| P-146 | 11/17/2011 | 3,892.32 |
| **4Q Subtotal** | | **Php 5,758.32** |
| **TOTAL** | | **Php 136,812.41** |

Upon examination, these invoices pertain to petitioner's purchase of services from NCR. The Court upholds the disallowance since purchase of services must be supported by VAT official receipts pursuant to Section 113(A)(2) of the NIRC of 1997, as amended.

To summarize, petitioner's adjusted disallowed input taxes for the 3rd and 4th quarters of taxable year 2011 amount to Php1,828,329.61, computed thus:

| | | | |
|---|---|---|---|
| Total disallowed input taxes per FDDA | | | Php16,679,282.05 |
| Less: Input taxes for the: | | | |
| 1st Quarter | Php 1,517,624.36 | | |
| 2nd Quarter | 234,921.59 | Php1,752,545.95 | |
| Substantiated input taxes for the: | | | |
| 3rd Quarter – NCR invoices | Php10,703,558.69 | | |
| Less: Disallowed NCR invoices | 131,054.09 | 10,572,504.60 | |
| 4th Quarter – NCR invoices | Php2,531,660.21 | | |
| Less: Disallowed NCR invoices | 5,758.32 | 2,525,901.89 | 14,850,952.44 |
| **Adjusted disallowed input taxes** | | | **Php1,828,329.61** |

To recall, petitioner already paid the corresponding tax due on these disallowed input taxes in the amount of Php1,828,329.83, broken down as follows:[110]

[109] *Id.*, Exhibit "P-172", Schedules 8 and 9, pp. 731 to 732.
[110] *Id.*, Exhibit "P-172", p. 709. See also Exhibit "P-172", p. 706 and Exhibit "P-10", pp. 840 to 843.

| Nature | Schedule | Amount |
|---|---|---|
| Input Tax from Other Suppliers – Third Quarter | Schedule 4 | Php 37,273.99 |
| Input Tax from Other Suppliers – Fourth Quarter | Schedule 5 | 106,550.63 |
| Input Tax from NCR Corporation Philippines – Unsubstantiated for the Third Quarter | Schedule 6 | 1,194,271.31 |
| Input Tax from NCR Corporation Philippines – Unsubstantiated for the Fourth Quarter | Schedule 7 | 353,421.28 |
| Input Tax from NCR Corporation Philippines – Disallowed for the Third Quarter | Schedule 8 | 131,054.09 |
| Input Tax from NCR Corporation Philippines – Disallowed for the Fourth Quarter | Schedule 9 | 5,758.53 |
| **Total** | | **Php1,828,329.83** |

Considering the prescription of respondent's right to assess the 1st and 2nd quarters of 2011, and petitioner's submission of supporting documents and payment of deficiency VAT arising therefrom, the disallowance of input taxes in the amount of Php16,679,282.05 should be cancelled.

Input tax carried over to succeeding period of
Php911,842.60

Petitioner contested the disallowance of its input tax carried over to the succeeding period of Php911,842.60.[111] However, respondent's Details of Discrepancies attached to the FDDA is clear:

> "The excess input tax amounting to P911,842.60 was not applied against the allowable input tax in computing deficiency value added tax since this shall be carried over to the *[sic]* next succeeding period/quarter(s) as provided under Section 110(B) of the Tax Code, as amended."[112]

As the said amount has been carried over to the succeeding taxable period, it is only proper not to apply the same against any VAT liability for the taxable year 2011 that arose from respondent's audit. Verily, in computing for petitioner's deficiency VAT liability for 2011, respondent considered the input taxes carried over from the previous taxable period (2010) and the input taxes incurred for the taxable year in audit (2011), less the input tax carried over to the

[111] *Id.*, Paragraphs 75 to 78, *Memorandum for the Petitioner*, p. 993.
[112] BIR Records, Exhibit "R-26", p. 573, and Docket, Exhibit "P-6", p. 819.

succeeding taxable period (2012), and applied them to the VAT liability per audit findings. If petitioner were to be assessed of deficiency VAT in the taxable year 2012, the input taxes carried over to the succeeding taxable period in the amount of Php911,842.60 becomes the input tax carried over from the previous taxable period (2011). The same will be used to apply against any VAT liability that would have been found in the taxable year 2012. In short, if the Court were to allow this, taxpayers may end up benefiting twice from it, *i.e.*, tax credit against output VAT in the subsequent periods and payment for deficiency VAT at the expense of the government.

Moreover, petitioner included this amount in its computation for payment of deficiency VAT on October 19, 2015.[113] Hence, the ICPA reported that the remaining disputed assessment on VAT are with respect to the following items only:[114]

> "1. All assessments pertaining to the 1st and 2nd quarters of 2011, on the ground that these have prescribed already.
>
> 2. Disallowed input taxes for the 3rd and 4th quarters of 2011, on the ground that these were properly substantiated."

These disputed assessment items have been discussed and resolved herein.

Lastly, the Court notes that petitioner deducted the amount Php1,137,131.40 as VAT Payments per returns when it computed for the basic deficiency VAT it paid on October 19, 2015. Per its Quarterly VAT Returns, petitioner's total amount of VAT payments per returns is Php1,422,389.32, broken down as follows:

| **Exhibit** | **Taxable Period** | **VAT Payments** | |
|---|---|---|---|
| P-16 | 1st Quarter | Php | 328,199.00 |
| P-17 | 2nd Quarter | | 808,931.00 |
| | 2nd Quarter | | 285,257.92 |
| **Subtotal – 1st & 2nd Quarters** | | **Php** | **1,422,387.92** |
| P-18 | 3rd Quarter | Php | - |
| P-19 | 4th Quarter | | - |
| **Subtotal – 3rd & 4th Quarters** | | | **-** |
| **TOTAL – TY 2011** | | **Php** | **1,422,387.92** |

[113] Docket, Exhibit "P-172", p. 706.
[114] *Id.*, Exhibit "P-172", p. 707.

Petitioner only considered the VAT payments of Php328,199.00 and Php808,931.00 to arrive at the adjusted VAT payments of Php1,137,131.40.

The Court finds that this is not in order. Due to prescription, all items pertaining to the 1st and 2nd quarters should be excluded from the computation of petitioner's deficiency VAT liability. Hence, the total VAT payments amount of Php1,422,389.32 should be excluded.

In fine, taking into consideration the partial payments made by petitioner on October 19, 2015, petitioner's deficiency VAT liability for the 3rd and 4th quarters of the taxable year 2011 amounts to Php1,987,071.52, computed as follows:

| | | | |
|---|---|---|---|
| VATable sales per VAT Returns | | | Php115,833,279.35 |
| Add: Sales not subjected to VAT | | Php 957,499.98 | |
| Other income not subjected to VAT | | 4,495,160.00 | 5,452,659.98 |
| Adjusted VATable sales | | | Php121,285,939.33 |
| Output tax (12%) | | | Php 14,554,312.72 |
| Less: Input tax carried over from previous period | | Php - | |
| Input tax claimed per returns | | 14,926,736.10 | |
| Subtotal | | Php14,926,736.10 | |
| Less: Disallowed input taxes | Php1,828,329.83 | | |
| Input tax carried over to succeeding period | 911,842.60 | 2,740,172.43 | 12,186,563.67 |
| Value-Added Tax Payable | | | Php 2,367,749.05 |
| Less: VAT payments per returns | | | - |
| Value-Added Tax Due | | | Php 2,367,749.05 |
| Add: Interest (1.26.12 to 10.19.15) [Php2,367,749.05 x 20% x (1,363/365 days)] | | | 1,768,351.76 |
| Total amount due on 10.19.15 | | | Php 4,136,100.81 |
| Less: Payment on 10.19.15 | | | 2,149,029.29 |
| **Balance still due** | | | **Php 1,987,071.52** |

The balance still due of Php1,987,071.52 on October 19, 2015 consists of the following:

| | Basic Tax | Interest | Total |
|---|---|---|---|
| Total amount due on 10.19.15 | Php2,367,749.05 | Php1,768,351.76[115] | Php4,136,100.81 |
| Less: Payment on 10.19.15[116] | 1,230,617.65 | 918,411.64 | 2,149,029.29 |

[115] 20% Deficiency Interest computed from January 26, 2012 until October 19, 2015 *(Php2,367,749.05 x 20% x 1,363 days/365 days).*
[116] Docket, Exhibit "P-172", p. 706.

| | | | |
|---|---|---|---|
| **Balance still due** | **Php1,137,131.40** | **Php 849,940.12** | **Php1,987,071.52** |

In summary, petitioner has no deficiency income tax liability for the taxable year 2011. Only the deficiency VAT liability for the 3rd and 4th quarters of the taxable year 2011 in the amount of Php1,987,071.52 remains.

**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

The assessment issued by respondent against petitioner for taxable year 2011 covering the deficiency income tax is **CANCELLED and SET ASIDE**, while the assessment for deficiency VAT is **UPHELD**, but with modification.

Accordingly, petitioner should be **ORDERED TO PAY** respondent the aggregate amount of **Php3,772,955.77**, representing deficiency value-added tax for the 3rd and 4th quarters of the taxable year 2011, the remaining unpaid interest computed until October 19, 2015,[117] twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, twenty percent (20%) deficiency interest imposed under Section 249(B) of the same Code, and twenty percent (20%) delinquency interest imposed under Section 249(C) of the same Code, respectively, computed until December 31, 2017, as shown below:

| | |
|---|---|
| Basic tax | Php 1,137,131.40 |
| Unpaid interest on 10.19.2015 | 849,940.12 |
| Surcharge (25% x Php1,137,131.40) | 284,282.85 |
| **Total amount due – October 19, 2015** | **Php 2,271,354.37** |
| 20% Deficiency interest (10.20.2015 to 12.31.2017) [20% x Php1,137,131.40 x 804 days/365 days] | 500,960.90 |
| 20% Delinquency interest (10.20.2015 to 12.31.2017) [20% x Php2,271,354.37 x (804/365)] | 1,000,640.50 |
| **Total amount due – December 31, 2017** | **Php 3,772,955.77** |

In addition, petitioner should be **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total unpaid deficiency taxes of **Php2,271,354.37** as of October 19, 2015, as determined above, or equivalent to the amount of **Php746.75**[118] per day, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax

[117] *Id.*, Exhibit "P-6", p. 816. Per FDDA, petitioner was given until October 19, 2015 to pay its deficiency tax liabilities.

[118] Php2,271,354.37 multiplied by 12% divided by 365 days.

Reform for Acceleration and Inclusion Law and as implemented by Revenue Regulations No. 21-2018.

On the other hand, since all of petitioner's payments made on October 19, 2015 in the amounts of Php161,613.06 and Php2,149,029.29 for deficiency income tax and deficiency VAT, respectively, have been deducted from the tax due in computing the deficiency tax liability, there is no excess left to be refunded.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**WE CONCUR:**

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*

**CORAZON G. FERRER-FLORES**
*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.

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*
*Chairperson*

## CERTIFICATION

Pursuant to Article VIII, Section 13 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.

**MA. BELEN M. RINGPIS-LIBAN**
*Acting Presiding Justice*