REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

COMPOSITE MATERIALS, INC., Petitioner,	**CTA CASE NO. 8365**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 03 2016 ; 3:30 p.m.

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AMENDED DECISION

UY, *J.*:

For this Court's resolution are the following:

1. respondent's **Motion for Reconsideration (Re: Decision dated May 2, 2016)**, filed on May 18, 2016, with petitioner's **Comment (To Respondent's Motion for Reconsideration)**, filed on July 1, 2016; and

2. petitioner's **Motion for Partial Reconsideration (Re: Decision dated May 2, 2016) (With Motion to Re-Open Trial)**, filed through registered mail on May 18, 2016, and received by this Court on May 26, 2016, with respondent's **Opposition to Motion to Re-Open Trial**, filed on June 15, 2016.

Respondent and petitioner seek reconsideration of the Court's Decision promulgated on May 2, 2016 (assailed Decision)[1], the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱3,735,933.18**, representing deficiency income tax and VAT for taxable year 2006, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Tax	Surcharge	Total
Income Tax	₱ 2,562,365.92	₱ 640,591.48	**₱ 3,202,957.40**
VAT	426,380.62	106,595.16	**532,975.78**
Total	**₱ 2,988,746.54**	**₱ 747,186.64**	**₱ 3,735,933.18**

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

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱2,562,365.92, computed from the April 15, 2007, and VAT of ₱426,380.62, computed from January 25, 2007, until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997;

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱3,735,933.18 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from September 30, 2011, until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

In view of petitioner's partial payment of its deficiency income tax and VAT in the respective amounts of ₱1,031,714.04 and ₱170,552.24 to the BIR on September 30, 2013, the same shall be considered in the computation of petitioner's deficiency taxes still due and payable.

SO ORDERED."[2]

[1] Docket, pp. 1053-1083.
[2] Docket, p. 1082.

Petitioner contends that respondent's assessment for deficiency income tax and value-added tax (VAT) for taxable year (TY) 2006 is null and void for violating its right to due process. Moreover, it avers that it had no undeclared sales amounting to ₱2,589,285.72 for TY 2006, and that it properly withheld the applicable taxes on all its expenses for the same taxable year. Petitioner also alleges that respondent's deficiency VAT assessment should be cancelled since his right to assess has already prescribed. It avers that even assuming that it is liable for deficiency income tax and VAT for TY 2006, there should be no deficiency interest imposed on its deficiency VAT liability.

Furthermore, petitioner asks the Court to reopen the trial to allow the submission of additional documentary evidence supporting its position that respondent's deficiency income tax and VAT assessment for TY 2006 is invalid. Petitioner seeks to submit proof that the journal entries to correct the erroneous recording of the receipt of advance payments from Polymer Products (Phil.) Inc. (PPPI) amounting to P2,900,000.00 forms part and is duly reported in petitioner's Audited Financial Statements (AFS) for TY 2006.

On the other hand, respondent maintains that his right to assess petitioner for Expanded Withholding Tax (EWT) and Final Withholding Tax (FWT) from January to December 2006, and VAT for the first (1^{st}) to third (3^{rd}) quarters of TY 2006 has not yet prescribed. Hence, according to respondent, when petitioner received the Formal Letter of Demand and accompanying assessment notices on January 19, 2010, respondent still had the power to assess.

The Court shall first address the propriety of petitioner's Motion to Reopen Trial for the presentation and reception of additional evidence.

<u>Petitioner's Motion to Re-open Trial</u>

A party should present all its evidence at first instance and not by piecemeal to avoid injurious surprises to the other party and the consequent delay in the administration of justice.[3]

In the order of trial, Section 5(f), Rule 30 of the Rules of Court provides that the parties may respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of

[3] *Republic vs. Sandiganbayan (Fourth Division),* G.R. No. 152375, December 13, 2011.

justice, permits them to adduce evidence upon their original case. It reads:

> "Sec. 5. *Order of trial.* – Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
>
> xxx xxx xxx
>
> (f) The parties may then respectively adduce rebutting evidence only, **unless** the court, for **good reasons and in the furtherance of justice**, permits them to **adduce evidence upon their original case**." (Emphasis supplied)

Relative to this, a motion to reopen may properly be presented only after either or both parties have formally offered, and closed their evidence, but before judgment.[4] The ruling of the Supreme Court in *Alegre vs. Reyes, et al.*[5] is clear:

> "xxx the reopening of a case for the reception of additional evidence **after a case has been submitted for decision but before judgment is actually rendered** is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown." (Emphasis supplied)

In this case, the Court already rendered its judgment when petitioner filed a Motion to Reopen Trial. The assailed Decision was promulgated on May 2, 2016, while petitioner filed its motion with a prayer to re-open trial only on May 18, 2016. At the time petitioner filed the said motion, the Court already rendered a judgment on this case, thus, the motion cannot be sustained.

It has been held that while a party may believe that it has a meritorious legal defense, this must be weighed against the need to

[4] *Alegre vs. Reyes, et al.,* G.R. No. L-56923, May 9, 1988.
[5] *Ibid.*

halt an abuse of the flexibility of procedural rules. It is well established that faithful compliance with the Rules of Court is essential for the prevention and avoidance of unnecessary delays and for the organized and efficient dispatch of judicial business.[6] Moreover, fundamental considerations of public policy and sound practice necessitate that, at the risk of occasional errors, the judgment or orders of courts should attain finality at some definite time fixed by law. Otherwise, there would be no end to litigation.[7]

Even assuming We treat petitioner's motion as a Motion for New Trial, the same cannot prosper. It may only be granted based on specific, well-defined grounds, set forth in the Rules.[8] Sections 1 and 2, Rule 37 of the Rules of Court find application, to wit:

> "**Section 1.** *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
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> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
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> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.
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> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.
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> **SEC. 2.** *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be

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[6] *Philippine National Bank vs. Commissioner of Internal Revenue*, G.R. No. 172458, December 14, 2011.

[7] *Reynante Tadeja, Ricky Tadeja, Ricardo Tadeja and Ferdinand Tadeja vs. People of the Philippines*, G.R. No. 145336, February 20, 2013.

[8] *Ibid.*

made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal."

In relation to these provisions are Sections 5 and 6, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

"SEC. 5. *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.

A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

SEC. 6. *Contents of motion for reconsideration or new trial and notice.* — The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed *pro forma*, which shall not toll the reglementary period for appeal."

The rules allow the filing of a motion for new trial on the grounds of fraud, accident, mistake or excusable negligence; or of newly discovered evidence, in the manner provided for proof of motions.

Upon perusal of the instant motion, it shows that the same was neither based on fraud, accident, mistake or excusable negligence that would need affidavits of merit, nor based on newly discovered evidence which would require affidavits of witnesses. Notably, no affidavits were filed in support of the motion for new trial.

Further, the evidence of petitioner which it seeks to present are not newly discovered evidence. In *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*[9], Supreme Court enumerated the requisites for the grant of a motion for new trial on the ground of

[9] G.R. No. 188260, November 13, 2013.

newly discovered evidence in this wise:

> "In order that newly discovered evidence may be a ground for allowing a new trial, it must be fairly shown that: (a) the evidence is discovered after the trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) such evidence is material, not merely cumulative, corroborative, or impeaching; and (d) such evidence is of such weight that it would probably change the judgment if admitted."

Based on the above parameters, petitioner's additional documentary evidence was not newly discovered, but "forgotten" evidence which petitioner intends to present only after obtaining an unfavorable decision. As held in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel:*[10]

> "Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence."

Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final the issue or cause involved therein should be laid to rest.[11]

In view of the foregoing, petitioner's Motion to Re-Open Trial should be denied.

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[10] G.R. No. 164460, June 27, 2006.

[11] *Rolando Juani, As Administrator For The Estate of the Deceased Bienvenido Juani vs. Robert G. Alarcon*, G.R. No. 166849, September 05, 2006.

<u>Respondent's Motion for Reconsideration</u>

Timeliness of the Issuance of Assessment

Respondent asserts that the right to assess petitioner for deficiency VAT for the 1st to 3rd Quarters of TY 2006 and for deficiency EWT and FWT for TY 2006 has not yet prescribed.

The issue on prescription was sufficiently passed upon and fully discussed in the assailed Decision. Again, Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. In the assailed Decision, the Court summarized the periods showing that prescription has already set in, to wit:

> "In determining the last day for respondent to assess petitioner for deficiency VAT, this Court shall apply Section 114(A) of the NIRC of 1997, as amended; and for deficiency EWT and FWT, Section 2.58 of RR No. 2-98, as amended by RR No. 17-03 is relevant, to wit:
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> > '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)*
> >
> > 'Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.
> >
> > (A) *Monthly return and payment of taxes withheld at source.–*

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xxx xxx xxx

(2) WHEN TO FILE –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, **within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; xxx.' *(Emphasis supplied)*

In the instant case, petitioner received the FLD on January 19, 2010. As a result, respondent's right to assess petitioner for deficiency VAT for the first to third quarters of taxable year 2006, and for deficiency EWT and FWT for the months of January to December of the same year had already prescribed, shown as follows:

Month/ Quarter (2006)	Date of Filing of Return	Last Day to File the Return under the Law	Last Day to Assess	Date of Receipt of FLD	Prescribed or Not Prescribed
VAT					
1st	04/25/06	04/25/06	04/27/09[12]	01/19/10	Prescribed
2nd	07/25/06	07/25/06	07/27/09[13]		Prescribed
3rd	10/25/06	10/25/06	10/26/09[14]		Prescribed
4th	01/25/07	01/25/07	01/25/10		Not Prescribed
EWT					
January	02/08/06	02/10/06	02/10/09	01/19/10	Prescribed
February	03/10/06	03/10/06	03/10/09		Prescribed
March	04/10/06	04/10/06	04/10/09		Prescribed
April	05/08/06	05/10/06	05/11/09[15]		Prescribed
May	06/13/06	06/13/06	06/15/09[16]		Prescribed
June	07/10/06	07/10/06	07/10/09		Prescribed
July	08/07/06	08/10/06	08/10/09		Prescribed
August	09/11/06	09/11/06	09/11/09		Prescribed
September	10/09/06	10/10/06	10/12/09[17]		Prescribed
October	11/8/06	11/10/06	11/10/09		Prescribed
November	12/7/06	12/11/06[18]	12/11/09		Prescribed

[12] April 25, 2009 fell on Saturday.
[13] July 25, 2009 fell on Saturday.
[14] October 25, 2009 fell on Sunday.
[15] May 10, 2009 fell on Sunday.
[16] June 13, 2009 fell on Saturday.
[17] October 10, 2009 fell on Saturday.

December	01/10/07	01/15/07	01/15/10		Prescribed
FWT					
January	02/08/06	02/10/06	02/10/09	01/19/10	Prescribed
February	03/10/06	03/10/06	03/10/09		Prescribed
March	04/05/06	04/10/06	04/10/09		Prescribed
April	05/05/06	05/10/06	05/11/09[19]		Prescribed
May	06/13/06	06/13/06	06/15/09[20]		Prescribed
June	07/10/06	07/10/06	07/10/09		Prescribed
July	08/04/06	08/10/06	08/10/09		Prescribed
August	09/07/06	09/11/06[21]	09/11/09		Prescribed
September	10/10/06	10/10/06	10/12/09[22]		Prescribed
October	11/10/06	11/10/06	11/10/09		Prescribed
November	12/06/06	12/11/06[23]	12/11/09		Prescribed
December	01/05/07	01/15/07	01/15/10		Prescribed

Consequently, **the assessments pertaining to deficiency EWT and FWT from January to December 2006, and VAT for the first to third quarters of taxable year 2006, shall be cancelled, for having been made beyond the prescriptive period. Meanwhile, the assessment pertaining to deficiency VAT for the fourth quarter of taxable year 2006 was made within the prescriptive period.**"[24] (Emphasis supplied)

Petitioner's Motion for Partial Reconsideration

Petitioner requests this Court to partially reconsider the assailed Decision on the following grounds:

A. respondent's assessment for deficiency income tax and VAT for TY 2006 is null and void for violating petitioner's right to due process;

B. petitioner had no undeclared sales amounting to ₱2,589,285.72 for TY 2006;

C. petitioner properly withheld the applicable taxes on all of its expenses for TY 2006;

D. respondent's deficiency VAT assessment for TY 2006 should be cancelled in view of this Court's

[18] December 10, 2006 fell on Sunday.
[19] May 10, 2009 fell on Sunday.
[20] June 13, 2009 fell on Saturday.
[21] September 10, 2006 fell on Sunday.
[22] October 10, 2009 fell on Saturday.
[23] December 10, 2006 fell on Sunday.
[24] Docket, pp. 1066-1068.

finding that respondent's right to assess deficiency VAT for the 1st to 3rd quarters of TY 2006 has already prescribed *vis-à-vis* respondent's failure to identify which particular taxable quarters petitioner allegedly had undeclared sales; and

E. assuming *arguendo* that petitioner is liable for deficiency income tax and VAT for TY 2006, it is submitted that there should be no deficiency interest imposed on petitioner's deficiency VAT liability and that there is substantial ground to revise the computation of deficiency and delinquency interest due on the deficiency income tax.

A careful examination of the foregoing arguments, except the last one, shows that the same were sufficiently addressed and passed upon in the assailed Decision. At any rate, this Court shall reiterate the pertinent portions of the assailed Decision.

A. Respondent's deficiency tax assessment sufficiently informed petitioner of its factual and legal bases.

Petitioner contends that respondent's assessment notice did not provide sufficient information regarding the factual and legal bases supporting the findings of alleged deficiency income tax, VAT, EWT and FWT for TY 2006. Petitioner avers that this Court upheld the validity of the assessment notice on the ground that petitioner was "notified" and was given the opportunity to explain its side. Citing the case of *Commissioner of Internal Revenue vs. Toledo Power Company*[25], petitioner maintains that there is a significant difference between "informing" and merely "notifying" a taxpayer of the basis of an assessment. According to petitioner, respondent merely "notified" petitioner of its deficiency tax assessment, but did not sufficiently inform the latter of the factual and legal bases of the assessment. In view thereof, respondent's deficiency tax assessments should have been declared null and void by this Court.

The Court disagrees with petitioner.

[25] CTA EB Case No. 833, October 1, 2012.

There is nothing in the assailed Decision which shows that in upholding the validity of the assessment, the Court based its finding on the ground that petitioner was merely "notified" of the same. To recall, this Court held that petitioner was **informed** of the legal and factual bases of the subject tax assessments. Based on the Details of Discrepancies attached to the Formal Letter of Demand, a summary of the facts and the law upon which the subject assessments were based, as shown in the assailed Decision, is as follows:

Kind of Tax	Amount Involved	Facts	Law / Rules & Regulations / Jurisprudence
Income Tax	₱ 2,589,285.72	Undeclared sales per audit	Section 31, NIRC of 1997, as amended
	₱ 3,816,213.20	Income Payments not subjected to withholding tax	Section 34(K), NIRC of 1997, as amended
	₱ 963, 886.06	Disallowed expenses	Section 34(A)(1)(b), NIRC of 1997, as amended
VAT	₱ 2,589,285.72	Undeclared sales per audit	Sections 106 and 108, NIRC of 1997, as amended
	₱ 115,666.33	Disallowed input from disallowed expenses	Sections 110 in relation to Sections 113 and 237, NIRC of 1997, as amended
EWT	₱ 3,816,213.20	Income Payments not subjected to EWT	Revenue Regulations (RR) No. 2-98
FWT	₱ 500,000.00	Dividends declared were not fully subjected to FWT	Section 24(B)(2), NIRC of 1997, as amended, and RR No. 2-98, as amended

We reiterate the ruling of the Court in a long line of cases that the requirement of the law to inform the taxpayer of the basis of the assessment should not be construed as limiting to the assessment notice itself. The assessment notices need not be a full narration of the facts and laws on which the assessment is based. While the law mandates that the notice must be in writing, it does not categorically state that the assessment itself must contain such information. It is enough that petitioner be substantially informed of the law and the facts on which the assessment for a tax liability is made in any other written document presented to the taxpayer.[26]

Thus, so long as the parties are notified and were given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[27]

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[26] *Southern Negros Development Corporation vs. Commissioner of Internal Revenue*, CTA E.B. Case No. 162 (CTA Case No. 7075), August 8, 2006, citing the case *Calma vs. Court of Appeals,* 302 SCRA 682.
[27] *Ibid.*

As can be gleaned from the Details of Discrepancies attached to the Formal Letter of Demand and as summarized above, petitioner is considered to have been properly apprised of the factual and legal bases of the subject assessment for deficiency income tax, VAT, EWT and FWT for TY 2006. Moreover, the fact that petitioner was able to intelligently protest the assessment implies that it had substantial understanding of the factual and legal bases of the assessments.

Finding no error in the Court's ruling on this matter, the same must be sustained.

B. The deficiency income tax assessment arising from petitioner's alleged undeclared sales shall not be nullified.

In the assailed Decision, this Court also sustained respondent's deficiency income tax assessment arising from respondent's imputation of undeclared sales on the basis of discrepancy in the balance of petitioner's accounts receivable account *vis-à-vis* the total sales reported in petitioner's AFS.

Petitioner submits that it has presented sufficient evidence to explain that respondent's finding of alleged undeclared sales has no factual basis as it merely arose from respondent's erroneous examination of petitioner's records. Petitioner reiterates that the alleged undeclared sales in the amount of ₱2,589,285.72 are not part of petitioner's sales for TY 2006. This amount pertains to advance payments made by PPPI to petitioner. However, petitioner's accountants made an error in recording the amount of cash received. This error was later corrected in petitioner's journal entries and accounting records.

As already explained by this Court, petitioner failed to establish that these entries were actually effected or incorporated in its books. Notwithstanding petitioner's submission of its general ledger, this Court cannot ascertain the veracity of petitioner's allegations. Considering that the said ledger is presented only on a monthly basis, the Court cannot trace whether or not said entries were included in the monthly totals per ledger.

Absent any additional documentary evidence to prove petitioner's contention, this Court finds no reason to disturb its ruling.

C. Petitioner's expenses for professional fees, commissions, and brokerage fees for TY 2006 were not properly substantiated.

The Court also sustained the disallowance of director's fees/professional fees amounting to ₱647,348.70, holding that the vouchers submitted by petitioner in support of its claim are considered self-serving in the absence of any other corroborating evidence.

Petitioner insists that the vouchers evidencing expenses for professional fees are not self-serving. It cites the case of *Golden (Iloilo) Delta Sales Corporation vs. Pre-Stress International Corporation,*[28] *(Golden Delta* case*)*, where the Supreme Court ruled that evidence cannot be considered self-serving simply because they were prepared by the proponent and the evidence were prepared *ante litem motam* and without anticipation that any litigation between the parties may ensue in the future.

Petitioner submits that *Exhibits "S-44"* to *"S-129"* were prepared *ante litem motam.* These vouchers were created in the regular conduct of petitioner's business, were prepared and issued at the time petitioner pays the fees due its consultants, and were not prepared in anticipation of the present action. Thus, applying the Supreme Court's disquisition in *Golden Delta*, petitioner's vouchers should be given substantial evidentiary weight by this Court.

Petitioner's arguments are misplaced.

In the case of *Towne & City Development Corporation vs. Court of Appeals, et al.*,[29] the Supreme Court held that "a voucher is not necessarily an evidence of payment. It is merely a way or method of recording or keeping track of payments made. A procedure adopted by companies for the orderly and proper accounting of funds disbursed. Unless it is supported by an actual payment like the issuance of a check which is subsequently encashed or negotiated, or an actual payment of cash duly receipted for as is customary among businessmen, *a voucher remains a piece of paper having no evidentiary weight*".

[28] G.R. No. 176768, January 12, 2009.
[29] G.R. No. 135043, July 14, 2004.

As already held by this Court, the vouchers submitted by petitioner in support of its claim are considered self-serving in the absence of any other corroborating evidence and thus, deserve scant consideration.

D. Petitioner's payments of commissions for TY 2006 were not properly subjected to withholding tax.

The Court partially sustained the disallowance of commission expenses due to non-withholding. The Court did not appreciate BIR Form No. 1601-E, finding that the said Form only confirms petitioner's remittance of withholding tax on commissions pertaining to taxable period 2007, but not to the period which is the subject of the assessment, i.e., 2006. Thus, the disallowance of the commissions in the amount of ₱2,972,357.54 was sustained.

In this regard, petitioner avers that the fact that its BIR Form No. 1601-E does not indicate that payment pertains to TY 2006 does not disprove petitioner's actual withholding of EWT on the corresponding commission payments. If at all, petitioner submits that it should only be held liable for deficiency interest on the late payment of the EWT covered by the BIR Form No. 1601-E.

The Court is not swayed.

While it is true that petitioner remitted the taxes withheld on its income payments in the amount of ₱297,854.83, as evidenced by BIR Form No. 1601-E *(Exhibit "M")*[30] filed on October 10, 2007, however, a re-examination of this form reveals that the said withholding tax pertains to the period September 2007. It was clearly indicated in the portion "For the Month" which petitioner supplied the information "09/2007". By stating "09/2007" therein, petitioner declares that the tax withheld and remitted pertains to the period September 2007, thereby negating its claim that the said remittance is for the period September 2006 which is the period subject of the present assessment.

Finding no error in the previous ruling, the same is sustained.

[30] Docket, Vol. II, p. 695.

Meanwhile, petitioner contends that the disallowance of the expenses should be cancelled in view of its payment of the deficiency EWT in the total amount of ₱872,895.35, pursuant to 2.58.5 of Revenue Regulations (RR) No. 2-98, as amended.

This contention has already been discussed and ruled upon in the assailed Decision. The pertinent portion of which reads as follows:

> "The Court disagrees with the petitioner.
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> Section 2.58.5 of RR No. 2-98, as amended by RR No. 14-2002, reads:
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> > 'Sec. 2.58.5. *Requirements for Deductibility* – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.
> >
> > A deduction will also be allowed in the following cases where no withholding of tax was made:
> >
> > xxx xxx xxx
> >
> > (B) The withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, **at the time of the audit/investigation <u>or</u> reinvestigation/ reconsideration**.' *(Emphasis supplied)*
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> It should be noted that the payment was made long after the issuance of the Final Decision – that is, beyond 'the time of the audit/investigation or reinvestigation/ reconsideration'. Thus, the related expenses shall still be disallowed for income tax purposes."[31]

E. Respondent's deficiency VAT assessment is valid.

Petitioner posits that, despite definitive finding that

[31] Docket, pp. 1079-1080.

respondent's right to assess deficiency VAT against petitioner for the 1st to 3rd quarters of TY 2006 had already prescribed, the Court nonetheless upheld respondent's deficiency VAT assessment on the basis of petitioner's alleged undeclared sales and disallowed input VAT. According to petitioner, the Court considered the alleged undeclared sales as referring to the 4th quarter of TY 2006 in spite of the absence of any evidence to this effect. Petitioner further maintains that there is no law or doctrine which sanctions a presumption that such alleged undeclared sales must have taken place during the only quarter of the year which is not covered by prescription. It would thus appear that there is no factual or legal basis to support a presumption that, in case of partial prescription, a tax assessment shall be presumed to fall outside the scope of prescription.

Petitioner's argument is untenable.

Consistent with the ruling in the consolidated case of *Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation*[32], the burden still rests on petitioner, as the taxpayer contesting the validity of the assessment issued by respondent, to show which portion of deficiency VAT pertains to the prescribed quarter. The CTA *En Banc* therein ruled in this wise:

> "LPC contends that it was erroneous for the Court in Division to impute the entire deficiency tax assessments to the unprescribed portion of taxable year 2006.
>
> We do not agree.
>
> It must be remembered that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of tax assessments. In other words, the taxpayer contesting the validity or correctness of an assessment must prove not only that the CIR is wrong but the taxpayer is right, otherwise, the presumption in favor of the correctness of tax assessment stands.
>
> Correspondingly, while the Court in Division found that the CIR's right to assess LPC for deficiency VAT for

[32] CTA EB Nos. 1117 & 1119, September 21, 2015.

the second quarter of 2006 and deficiency EWT and WTC for the months of January 2006 to September 2006 has prescribed, the burden is still upon LPC, as the taxpayer contesting the validity of the assessments issued by the CIR, to show which portion of said deficiency taxes pertain to the prescribed months. xxx

Mere allegations without adducing evidence are not sufficient. Allegation is not synonymous with proof. In the absence of proof, the Court in Division had no alternative but to uphold the validity and correctness of the assessment and consider the entire assessment as pertaining to the unprescribed portion of taxable year 2006." *(Citations omitted)*

As discussed earlier, petitioner failed to establish that there are no undeclared sales. The burden rests on the petitioner to show that the subject deficiency VAT assessment pertains to the prescribed quarter. However, petitioner failed on this one.

With regard to the disallowance of input taxes attributed to unsupported expenses, petitioner disagrees with the Court's findings. Petitioner maintains that it did not claim any input tax on its payments for commissions and professional fees. On the input tax attributed to the disallowed brokerage fees, petitioner also did not actually claim any input tax thereon as such disallowed brokerage fees pertain to reimbursements made by petitioner for its brokers' out-of-pocket expenses. According to petitioner, these expenses are all duly supported by vouchers issued to its consultants, agents and brokers. Thus, there is no basis for respondent's imputation of claimed input tax credits on these expenses.

The Court is not persuaded.

In order for an input tax to be creditable against output tax, the input tax must be supported by VAT invoice, in case of purchase of goods, and VAT official receipt, in case of purchase of services.[33] Due to petitioner's failure to substantiate its expenses by VAT invoices or official receipts, the input taxes corresponding to the disallowed expenses should also be disallowed.

To address petitioner's assertion that it did not claim any input

[33] Sections 110(A) and 113(A)(1) and (2) of the NIRC of 1997, as amended.

tax on its payments for commissions and professional fees, as well as on brokerage fees, the basic rule is that mere allegation is not evidence and is not equivalent to proof.[34] To emphasize, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[35]

In fine, the Court finds no reason to disturb its findings.

F. Petitioner is not liable for deficiency interest on deficiency VAT.

Petitioner submits that even assuming it is liable for deficiency VAT for TY 2006, this Court erred in imposing deficiency and delinquency interest thereon in view of this Court's ruling in *Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue* ('Liquigaz' case) wherein it was held that deficiency interest under Section 249(B) may only be imposed on three (3) types of taxes, namely, income tax, estate tax and donor's tax.[36]

Petitioner's argument is tenable.

Based on Section 249(B), the *"Deficiency Interest"* shall be imposed on "[a]*ny deficiency in the tax due, as the term is defined in this Code"*, *i.e.*, as the term "deficiency" as defined in the NIRC of 1997. Section 249 of the NIRC of 1997 reads:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for its payment until the amount

[34] *Social Security Commission vs. Favila*, G.R. No. 170195, March 28, 2011.
[35] *Commissioner of Internal Revenue vs. Traders Royal Bank*, G.R. No. 167134, March 18, 2015 citing *Sy Po vs. Court of Tax Appeals*, 247 Phil. 487 (1988).
[36] CTA EB Case Nos. 1117 & 1119, September 21, 2015.

is fully paid.

(B) *Deficiency Interest.* – Any **deficiency** in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* – In case of failure to pay:

xxx xxx xxx

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax." (Emphasis supplied)

An analysis of the NIRC of 1997 discloses that there are only three (3) instances where it defines the term "deficiency", and this relates only and respectively to three (3) types of internal revenue taxes, namely, income tax, estate tax, and donor's tax, pursuant to Sections 56(B), 93 and 104 of the NIRC of 1997, to wit:

"SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations.—*

xxx xxx xxx

(B) *Assessment and Payment of Deficiency Tax.—* After the return is filed, the Commissioner shall examine its and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.

As used in this Chapter[37], in respect of a tax imposed by this Title[38], the term **'deficiency'** means:

[37] Chapter IX – RETURNS AND PAYMENT OF TAX.
[38] Title II – TAX ON INCOME.

(1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." (Emphasis supplied)

"SEC. 93. *Definition of Deficiency.* — As used in this Chapter[39], the term **'deficiency'** means:

(a) The amount by which the tax imposed by this Chapter exceeds the amount shown as the tax by the executor, administrator or any of the heirs upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax; or

(b) If no amount is shown as the tax by the executor, administrator or any of the heirs upon his return, or if no return is made by the executor, administrator, or any heir, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." (Emphasis supplied)

"SEC. 104. *Definitions.* — xxx

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[39] CHAPTER I – ESTATE TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

> The term **'deficiency'** means: (a) the amount by which the tax imposed by this Chapter[40] exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded or otherwise repaid in respect of such tax, or (b) if no amount is shown as the tax by the donor upon his return, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency, but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned or otherwise repaid in respect of such tax." (Emphasis supplied)

Such being the case, the deficiency interest under Section 249(B) should be applied only whenever there is a deficiency income tax, a deficiency estate tax, and a deficiency donor's tax. For this reason, no deficiency interest under Section 249(B) should be imposed on the deficiency VAT against petitioner. Thus, the computation of the delinquency interest imposed under Section 249(C) should not as well include the said deficiency interest.

In view of the foregoing, respondent's **Motion for Reconsideration (Re: Decision dated May 2, 2016)** is **DENIED** for lack of merit. Meanwhile, petitioner's **Motion for Partial Reconsideration (Re: Decision dated May 2, 2016)** is **PARTIALLY GRANTED**, while **petitioner's Motion to Re-Open Trial** is **DENIED** for lack of merit.

Accordingly, the dispositive portion of the assailed Decision dated May 2, 2016 is hereby amended to read, as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱3,735,933.18**, representing deficiency income tax and VAT for taxable year 2006, inclusive of twenty-five

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[40] CHAPTER II – DONOR'S TAX (under TITLE III – ESTATE AND DONOR'S TAXES).

percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Tax	Surcharge	Total
Income Tax	₱ 2,562,365.92	₱ 640,591.48	**₱ 3,202,957.40**
VAT	426,380.62	106,595.16	**532,975.78**
Total	**₱ 2,988,746.54**	**₱ 747,186.64**	**₱ 3,735,933.18**

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

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱2,562,365.92, computed from April 15, 2007 until February 15, 2010, pursuant to Section 249(B) of the NIRC of 1997; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱3,735,933.18 and on the 20% deficiency interest which accrued as afore-stated in (a), computed from September 30, 2011, until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

In view of petitioner's partial payment of its deficiency income tax and VAT in the respective amounts of ₱1,031,714.04 and ₱170,552.24 to the BIR on September 30, 2013, the same shall be considered in the computation of petitioner's deficiency taxes still due and payable.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(No Part)
ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice