Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

WELLINGTON INVESTMENT AND MANUFACTURING CORPORATION,
Petitioner,

CTA Case No. 8726
For: Assessment

Members:

-versus-

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 14 2017 ; 4:00pm

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review[1] filed on November 7, 2013 by Wellington Investment and Manufacturing Corporation, pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125[3], as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] Docket, pp. 6-39.

[2] 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 Code or other laws administered by the Bureau of Internal Revenue; xxx.

[3] Act Creating the Court of Tax Appeals.

[4] 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.

[5] Sec. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

Petitioner seeks the cancellation of the assessments for alleged deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), fringe benefit tax (FBT), improperly accumulated earnings tax (IAET), and compromise penalty for taxable year ending December 31, 2008 in the total amount of ₱20,218,222.93, inclusive of interests.

Petitioner Wellington Investment and Manufacturing Corporation is a corporation duly organized and existing under and by virtue of the laws of the Philippines. Its office address is located at WFM Compound, Shaw Blvd., Bo. Pineda, Pasig City.[6]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Quezon City.

On September 5, 2011, petitioner received a copy of the Preliminary Assessment Notice (PAN) dated August 31, 2011 signed by Mr. Alfredo V. Misajon - OIC Assistant Commissioner of the Large Taxpayers Service, charging petitioner with deficiency taxes for the taxable year ending December 31, 2008, as follows[7]:

Income Tax	₱ 6,510,552.29
Value-Added Tax	2,325,076.26
Withholding Tax on Compensation	3,124,697.50
Final Withholding Tax	18,516, 940.72
Expanded Withholding Tax	255,231.58
Fringe Benefits Tax	1,408,407.44
Improperly Accumulated Earnings Tax	2,891,090.03
Compromise Penalty	25,000.00
TOTAL DEFICIENCY TAXES	**₱35,059,193.72**

On October 4, 2011, petitioner filed a letter-protest[8] against the PAN dated August 31, 2011, which was duly stamped received[9] by the

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[6] The Parties, Petition for Review, Docket vol. I, p. 7.
[7] Par. 1, Statement of the Facts, Petition for Review, Docket vol. I, p. 8.
[8] Exhibit "P-4", Docket vol. II, pp. 636-644.
[9] Exhibit "P-4-a", Docket vol. II, p. 636.

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BIR LT Regular Audit Division on October 4, 2011. In its letter-protest, petitioner set forth the factual and legal bases of its protest and attached to the said letter-protest supporting documents.

On November 16, 2011, petitioner received respondent's Formal Letter of Demand[10] dated November 4, 2011 with attached Details of Discrepancies[11] and Audit Results/Assessment Notices[12].

In the Formal Letter of Demand, respondent assessed petitioner for alleged deficiency taxes for the taxable year ending December 31, 2008, as follows:

CLASS OF TAX	**ASSESSMENT NO.**	**ALLEGED DEFICIENCY TAX**
Income Tax	LTRAD I-LOA-116-2008-IT-000009[13]	₱ 6,656,152.57
Value Added Tax	LTRAD I-LOA-116-2008-VT-000009[14]	2,375,179.01
Withholding Tax – Compensation	LTRAD I LOA-116-2008-WC-000005[15]	3,182,532.43
Final Withholding Tax	LTRAD I LOA-116-2008-WF-000004[16]	18,863,282.24
Withholding Tax – Expanded	LTRAD I LOA-116-2008-WE-000007[17]	261,851.76
Fringe Benefits Tax	LTRAD I LOA-116-2008-WR-000002[18]	1,434,411.37
Improperly Accumulated Earnings Tax	LTRAD I LOA-116-2008-OTH-INC-000010[19]	3,028,995.71

[10] Exhibit "R-3", BIR Records, pp. 1488-1491.
[11] Exhibit "R-4", BIR Records, pp. 1492-1495.
[12] Exhibit "R-5" to "R-12", BIR Records, pp. 1480-1487.
[13] Exhibit "R-5", BIR Records, p. 1487.
[14] Exhibit "R-6", BIR Records, p. 1486.
[15] Exhibit "R-7", BIR Records, p. 1485.
[16] Exhibit "R-8", BIR Records, p. 1484.
[17] Exhibit "R-9", BIR Records, p. 1483.
[18] Exhibit "R-10", BIR Records, p. 1482.
[19] Exhibit "R-11", BIR Records, p. 1481.

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Compromise Penalty	LTRAD I LOA-116-2008-MC-000002[20]	25,000.00

On November 25, 2011, petitioner filed its letter-protest[21] dated November 22, 2011 to the Final Letter of Demand, duly stamped[22] on even date by the BIR LT Regular Audit Division I. Thereafter, on August 30, 2012, petitioner filed a Supplemental Protest[23].

On October 8, 2013, petitioner received the copy of the Final Decision on Disputed Assessment[24] (FDDA) with attached Details of Discrepancies[25], finding petitioner liable for the following alleged tax deficiencies:

CLASS OF TAX	ASSESSMENT NO.	ALLEGED DEFICIENCY TAX
Income Tax	IT-116-LOA-33724-08-13-149[26]	₱ 7,839,508.03
Value-added Tax	VT-116-LOA-33724-08-13-150[27]	2,799,230.57
Withholding Tax – Compensation	WC-116-LOA-33724-08-13-151[28]	3,846,248.94
Expanded Withholding Tax	WE-116-LOA-33724-08-13-152[29]	312,602.06
Fringe Benefits Tax	FBT-116-LOA-33724-08-13-153[30]	1,732,833.72
Improperly Accumulated Earnings Tax	IAET-116-LOA-33724-08-13-154[31]	3,662,799.62

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[20] Exhibit "R-12", BIR Records, p. 1480.
[21] Exhibit "P-29", Docket vol. II, pp. 854-862.
[22] Exhibit "P-29-a", Docket vol. II, p. 854.
[23] Exhibit "P-30", Docket vol. II, pp. 863-868.
[24] Exhibit "P-1", Docket vol. II, pp. 616-619; Exhibit "R-15", BIR Records, pp. 1568-1574.
[25] Exhibit "P-1-a", Docket vol. II, pp. 620-622.
[26] Exhibit "P-1-b", Docket vol. II, p. 623.
[27] Exhibit "P-1-c", Docket vol. II, p. 624.
[28] Exhibit "P-1-g", Docket vol. II, p. 628.
[29] Exhibit "P-1-f", Docket vol. II, p. 627.
[30] Exhibit "P-1-e", Docket vol. II, p. 626.
[31] Exhibit "P-1-d", Docket vol. II, p. 625.

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Compromise Penalty	CP-116-LOA-33724-08-13-155[32]	25,000.00
TOTAL		**₱20,218,222.93**

Hence, on November 7, 2013, petitioner filed the instant Petition for Review[33].

Within the extended time granted by the Court,[34] respondent filed his Answer[35] on January 21, 2014, interposing the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

5. The deficiency tax assessments are supported by factual and legal bases.

6. The Revenue Officers performed comprehensive audit procedure and technique. Petitioner's Financial Statements and books of accounts were analysed and comprehensive study of petitioner's pertinent accounting records disclosed that it is liable to pay deficiency tax assessments.

7. Consequently, petitioner is liable to pay deficiency Income Tax, Value-Added Tax, Withholding Tax on Compensation, Improperly Accumulated Earnings Tax, Expanded Withholding Tax, Fringe Benefits Tax and Compromise Penalty for taxable year 2008 (with interest until October 31, 2013). The following is a summary of the findings of the revenue examiners as a result of the investigation conducted, to wit:

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[32] Exhibit "P-1-h", Docket vol. II, p. 629.
[33] Docket vol. I, pp. 6-39.
[34] Order dated December 9, 2013 and Resolution dated January 28, 2014, Docket vol. I, pp. 431 and 449.
[35] Docket vol. I, pp. 437-446.

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8. The detailed computation prepared by the revenue examiners regarding the total deficiency Income Tax as a result of the investigation conducted is shown hereunder:

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9. A comparison made between the summary of Creditable Withholding Tax at Source (2307) from selected company customers and schedule of sales (SLS) submitted showed unreported sales/revenue of P5,006,149.40. However, submission of proof that the amount of P645,000.00 was a result of multiple issuance of certificate of creditable tax withheld (BIR Form 2307) by San Miguel Properties Inc. (SMPI) led to the reduction of unreported sales/revenue to P4,361,149.40. Adjustment to taxable income was hereby made pursuant to Section 32 of the Tax Code.

9.1 Contrary to petitioner's allegation that the amount of P313.372.80 was the result of erroneous encoding of the name 'Manuel Stationary, Inc.,' in the summary of alpha list of withholding taxes (SAWT) and that the taxpayers name should be 'Riteway distributor', the taxpayer did not present its sales book to show that Riteway Distributor sales is recorded and Manuel Stationary sales is not in the sales book to rebut its allegation.

9.2 Likewise, petitioner alleges that the amount of P3,214,285.00 was due to erroneous encoding reflected in SAWT, the taxpayers name should have been Gerry Commercial Inc, instead of French Baker Inc. However, the taxpayer did not present its sales book to show that Gerry Commercial, Inc. was recorded.

9.3 On the amount of P81,315.03, allegedly the result of issuance of Henry Yu of BIR Form 2307 for the first two quarters and another BIR Form 2307 for whole year 2008. It is respondents position that the tax credits claimed as a basis of undeclared income is claimed per SAWT. BIR Form 2307 representing the alleged period of January to December 2008 cannot over turn the fact that such amount was claimed per SAWT and does not reflect a duly signed form by payer's representative.

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9.4 With regard to the amount of P700,222.00, which arose from recording the trade name Gem stationary vis a vis BIR's data in the name of Lao Hian. Respondent strongly maintains that Lao Hian is not registered and TIN 000-328-739-000 solely pertains to Gem Stationary upon verification of Taxpayers Identification Number.

9.5 On the remaining P9,275.13 unexplained unreported revenue, the taxpayer did not give any explanation on the remaining difference on unreported revenue.

10. Disallowance of Amortization of Interest Expense amounting to P1,694,553.00; Light, Water and Taxes & Licenses amounting to P130,502.15 and Miscellaneous Expenses amounting to P3,791,869.41 were the result of reconciliation/comparison made between the claimed expenses per ITR versus the corresponding expense per analysis of submitted documents. Said expenses were disallowed pursuant to Section 34 of the Tax Code.

10.1 The amount of P130,502.15 comprising of water and electric bills as well as taxes and licenses were disallowed due to the fact that the billings were not in the name of the company but rather under the name Salustiana Dee; furthermore, the merger being claimed happened on June 2009 and not during taxable year 2008.

10.2 On the prorated share on the lawyer and arbitration fees, petitioner's contention lacks substantiation in order to comply with the requirements of Section 34 (1b) of the Tax Code. The petitioner failed to present proof that it was indeed one of the parties in an arbitration case to merit its claim of sharing in the payment of lawyer and arbitration fees.

11. Claimed creditable withholding taxes (CWT) aggregating to P654,304.81 were not allowed for failure of the taxpayer to submit copies of certificates in violation of Section 2.58.3 of Revenue Regulations 2-98. However, the said disallowance was further adjusted to reflect the multiple certificates claimed from San Miguel Properties Inc. (SMPI) amounting to P32,250. Hence, the total disallowance of creditable withholding taxes claimed amounted to P686,554.81.

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11.1 On the disallowed creditable tax 2307, petitioner failed to prove that the income payments reflected in the additional BIR Form 2307 submitted has been declared as part of its gross income as the sales book were not presented to prove its allegations.

12. With regard to the total Deficiency Value Added Tax, the computation made by the Revenue Officer is broken down as follows:

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13. Reconciliation made between output tax per Value Added Tax (VAT) returns amounting to P197,259,124.05 versus output tax per our investigation of P196,214,218.58 showed a difference of P1,044,905.52. However, submission of proof that the amount of P645,000.00 was a result of multiple issuance of certificate of creditable tax withheld (BIR Form 2307) by San Miguel Properties Inc. (SMPI) led to the reduction of unreported sales/revenue to P4,361,149.40. Hence, the same was assessed pursuant to Sections 106 and 108 of the Tax Code.

14. On the amount of P3,214,287.19 which represents other income, it is comprised of P1,687,150.00 & 819,245.79 reimbursement for light and water, P380,698.40 for association dues, P316,000.00 for parking fees and P11,193 remaining balance of other income. The reimbursement for light and water were disallowed as petitioner did not submit any proof to substantiate its claim, the association dues as source of cash was included as part of income and the remaining balance was retained by respondent for failure of the petitioner to give explanation of the remaining difference.

15. Claimed input taxes for domestic purchase of goods and services in the amount of P285,437.61 and ratable portion of input tax attributable to exempt sales in the amount of P169,739.21, the aggregate amount of which is P455,176.82 were disallowed pursuant to Sections 110 and 113 of the Tax Code, as amended- Invoicing and Accounting Requirements for VAT Registered Persons.

16. The computation prepared by the revenue examiners with regard to the total deficiency Withholding Tax-Compensation as a result of the investigation conducted is shown hereunder:

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17. In relation to the deficiency Withholding Tax on Compensation, claimed Salaries and Wages, direct and indirect labor aggregating to P100,576,708.90 is P5,411,202.91 higher than the Alpha List submitted amounting to P95,165,505.99. Said discrepancy is therefore subjected to deficiency withholding tax to conform to Sections 78, 79 and 80 of the Tax Code, as amended.

    17.1 Contrary to petitioner's allegation on the amount of P220,000.00, petitioner did not provide the articles of incorporation to show the list of members of the board of directors to support its claim and a mere schedule was submitted without any supporting document.

    17.2 On the P1,669,384.00 retirement benefits, petitioner did not submit proof that such retirement benefits complied with Section 32B(6) of the Tax Code.

    17.3 Petitioner's contention on the management bonus has no merit. Petitioner did not present any supporting schedules to substantiate its claim.

18. Moreover, interest amounting to P444,658.32 was imposed on late remittance of withholding tax on compensation (management bonus for 2008) paid and remitted on April 13, 2009, pursuant to RMO 1-90, as amended.

19. With regard to the total Improperly Accumulated Earnings Tax, the computation made by the Revenue Officer is as follows:

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20. Improperly accumulated earnings tax of 10% was imposed on the accumulated Retained Earnings amounting to P1,653,545.28 pursuant to Section 29 of the Tax Code.

    20.1 Petitioner's contention lacks sufficient substantiation and no liquidation report was submitted to show that the subject earnings were used.

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21. The computation on deficiency Expanded Withholding Tax made by the revenue officer is as follows:

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22. Reconciliation made between claimed expenses subject to 1%, 2% and 5% EWT including domestic purchases of goods, services and rental expenses versus the amount subjected to the same rates per Alphalist of Payees showed a difference of P8,464,296.40. Hence, the same was subjected to deficiency EWT to comply with Section 57 (B) of the Tax Code, as amended.

22.1 Contrary to petitioner's assertion, it failed to show supporting schedules on the rentals, as well as proof on the purchases of services and goods.

23. Interest amounting to P35,667.78 was imposed on late remittance of withholding tax on management bonus (for 2008) subject to EWT paid and remitted on April 13, 2009 and Interest amounting to P2,747.26 on late remittance of withholding tax on purchases of goods and services subject to EWT pursuant to RMO 1-90, as amended.

24. The computation on deficiency Fringe Benefits Tax made by the Revenue Officer is as follows:

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25. Fringe Benefits Tax (32%) amounting to P778,560.78 was imposed on the grossed up monetary value of fringe benefits of P2,433,002.44 given/granted to its employee/officers amounting to P1,654,441.66 pursuant to Section 33 of the Tax Code, as amended.

26. On the computation shown hereunder, the assessment was retained for failure of the petitioner to present supporting documents.

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27. Lastly, Compromise Penalty of P25,000 is hereby imposed for failure to file the list of regular suppliers subject to RMO 1-90.

28. Respondent posits that, assessments are presumed correct and made in good faith. The taxpayer has the duty of

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proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. **(Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997)**

29. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands **(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc, G.R No. 136975, March 31, 2005).** The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

30. All presumptions are in favor of the correctness of tax assessments *(Sy Po vs. Court of tax Appeals, 164 SCRA 524)*. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

31. As decreed by the Honorable Supreme Court:

> '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.'"

Respondent's Pre-Trial Brief[36] was filed on February 14, 2014; while the Pre-Trial Brief for the Petitioner[37] was filed on April 7, 2014.

[36] Docket vol. I, pp. 486-491.
[37] Docket vol. I, pp. 526-543.

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On April 30, 2014, the parties filed their Joint Stipulation of Facts and Issues[38]. However, for failure to indicate the list of the documentary exhibits, the names of their witnesses, and the trial dates agreed upon by the parties, the parties were ordered to file a Supplemental Joint Stipulation of Facts and Issues.[39]

Thus, on May 26, 2014, the parties filed a new Joint Stipulation of Facts and Issues[40]. During the hearing on May 30, 2014, upon motion of petitioner, the Joint Stipulation of Facts and Issues submitted on April 30, 2014 was deemed withdrawn.[41]

Meanwhile, upon motion[42] of petitioner, Ms. Ma. Milagros F. Padernal was commissioned as the Independent Certified Public Accountant (ICPA) on May 30, 2014.[43]

On June 27, 2014, the Court issued the Pre-Trial Order[44] which adopted the parties' Joint Stipulation of Facts and Issues and terminated the Pre-Trial.

During the hearing on August 5, 2014, petitioner's counsel and witness failed to appear despite due notice. In the Resolution[45] dated August 5, 2014, the Court deemed waived the presentation of ICPA Milagros F. Padernal, considering the absence of said witness and petitioner's counsel and for failure to file the Judicial Affidavit of ICPA five (5) days before the scheduled hearing.

On August 18, 2014, petitioner filed an Urgent Motion for Suspension of Collection of Tax[46].

On August 22, 2014, petitioner filed a Motion for Reconsideration[47] of the Resolution dated August 5, 2014.

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[38] Docket vol. II, pp. 559-561.
[39] Resolution dated May 13, 2014, Docket vol. II, pp. 1020-1021.
[40] Docket vol. II, pp. 1022-1035.
[41] Resolution dated May 30, 2014, Docket vol. II, pp. 1042-1043.
[42] Docket vol. II, pp. 1006-1008.
[43] Docket vol. II, pp. 1037-1044.
[44] Docket vol. II, pp. 1066-1080.
[45] Docket vol. II, pp. 1116-1117.
[46] Docket vol. II, pp. 1123-1127.
[47] Docket vol. II, pp. 1170-1175.

Meanwhile, the Formal Offer of Petitioner's Evidence on the Motion to Suspend Collection of Tax[48] was filed on August 27, 2014. This was resolved by the Court in the Resolution[49] dated September 2, 2014 and Exhibits "P-1-Motion" to "P-7-Motion" were admitted into evidence.

Thereafter, in the Resolution[50] dated September 11, 2014, the Court granted petitioner's Urgent Motion for Suspension of Collection of Tax subject to a cash bond, GSIS bond or surety bond.

In the Resolution[51] dated October 14, 2014, the Court granted petitioner's Motion for Reconsideration and allowed the presentation of its witness, ICPA Milagros F. Padernal, and admitted her judicial affidavit.

During trial, petitioner presented the following witnesses: Mr. Benedicto G. Antazo[52], its accounting manager; Atty. William Benson S. Gan[53], its tax retainer; and Ms. Ma. Milagros F. Padernal[54], the Court-commissioned ICPA.

Petitioner's Formal Offer of Evidence[55] was filed on February 17, 2015. In the Resolution[56] dated April 15, 2015, the Court admitted most of petitioner's exhibits but denied Exhibits "P-3", "P-8-b", "P-9", "P-9-a", "P-10", "P-17-b" to "P-17-d", "P-19-b" to "P-19-l", "P-20-b", "P-21-e", "P-21-f, "P-21-g", "P-21-h", "P-21-i", "P-21-o", "P-21-p", "P-21-q", "P-21-x", "P-22", "P-22-a", "P-22-b", "P-22-c", "P-22-d", "P-28", "P-40", "P-40-a","P-41", and "P-44" for failure of petitioner to present the original documents for comparison; Exhibit "P-9-1" for failure of petitioner to identify the same during trial; Exhibits "P-41-c", "P-49-13", and "P-113-1-1" for failure to correspond with the exhibits described in petitioner's Formal Offer of Evidence; Exhibits "P-17-e",

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[48] Docket vol. II, pp. 1228-1234.
[49] Docket vol. II, pp. 1259-1260.
[50] Docket vol. II, pp. 1277-1282.
[51] Docket vol. II, pp. 1399-1404.
[52] Minutes of the Hearing dated August 26, 2014 and October 21, 2014, Docket vol. II, pp. 1219-1224 and 1405-1409; Exhibit "P-6-Motion", Judicial Affidavit of Mr. Benedicto G. Antazo, and Exhibit "P-125", Judicial Affidavit of Mr. Benedicto G. Antazo, Docket vol. II, pp. 1129-1141 and 564-614.
[53] Minutes of the Hearing dated August 26, 2014, Docket vol. II, pp. 1219-1224; Exhibit "P-7", Judicial Affidavit of Atty. William Benson S. Gan, Docket vol. II, pp. 1162-1169.
[54] Minutes of the Hearing dated October 30, 2014, Docket vol. II, pp. 1428-1429; Judicial Affidavit of Ms. Ma. Milagros F. Padernal, Docket vol. II, pp. 1181-1217.
[55] Docket vol. III, pp. 1454-1530.
[56] Docket vol. III, pp. 1619-1626.

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"P-22-e" to "P-22-r", "P-22-s", "P-112-3", "P-104-8-1", and "P-108-11-1" for not being found in the records of the case; and Exhibit "P-27-a-1" for failure of petitioner to submit the duly marked exhibit before the Court.

Petitioner then filed a Motion for Reconsideration (On the Resolution of the Court dated 15 April 2015 Denying Admission of some Evidence Offered by Petitioner)[57].

On November 10, 2015, the Petitioner's Supplemental Formal Offer of Evidence[58] was filed. This was resolved by the Court simultaneously with petitioner's Motion for Reconsideration in the Resolution[59] dated January 15, 2016. Thus, Exhibits "P-27-a-1", "P-40", "P-41-c", "P-49-13", "P-104-8-1", "P-113-1-1", "P-126", "P-126-A", "P-127", "P-127-A", and "P-127-B" were admitted into evidence.

Petitioner's documentary evidence are as follows:

Exhibit:	**Description:**
P-1 to P-1-h	The Final Decision on Disputed Assessment with Attached Details of Discrepancies and Audit Result/Assessment Notices dated 8 October 2013
P-2	Secretary's Certificate dated 5 November 2013
P-3	The Preliminary Assessment Notice dated 31 August 2011
P-4	Letter-Protest of petitioner dated 29 September 2011, with attachments marked "A" to "YY", and received by respondent on 4 October 2011
P-4-a	The stamp receipt by respondent
P-5	2008 BIR Forms 2307 issued by Riteway Distributor, Inc. in favor of petitioner covering the period January 2008 to March 2008 duly received by respondent
P-5-1	Stamp receipt by respondent
P-5-a	2008 BIR Forms 2307 issued by Riteway Distributor, Inc. in favor of petitioner covering the period April 2008 to June 2008 duly received by respondent
P-5-a-1	Stamp receipt by respondent
P-5-b	2008 BIR Forms 2307 issued by Riteway Distributor, Inc. in favor of petitioner covering the period July 2008 to December 2008 duly received by respondent
P-5-b-1	Stamp receipt by respondent
P-6	2008 BIR Form 2307 covering the first quarter of 2008 issued by Gerry Commercial, Inc. in favor of petitioner duly received by respondent
P-6-a	Stamp receipt by respondent on 15 April 2009 of the 2008 BIR Form 2307 of Gerry Commercial, Inc.
P-7	Petitioner's Summary of Alpha List of Withholding Taxes for the year 2008

[57] Docket vol. III, pp. 1628-1635.
[58] Docket vol. III, pp. 1674-1681.
[59] Docket vol. III, pp. 1710-1712.

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P-8	Pi, Sy's 2008 BIR Form 2307 issued by the latter in favor of petitioner covering the period January 2008 to March 2008 duly received by respondent
P-8-1	Stamp receipt by respondent on 15 April 2009
P-8-a	2008 BIR Form 2307 issued by Pi, Siy in favor of petitioner covering the period April 2008 to June 2008 duly received by respondent
P-8-a-1	Stamp receipt by respondent on 15 April 2009
P-8-b	2008 BIR Form 2307 issued by Pi, Siy in favor of petitioner covering the period July 2008 to September 2008 duly received by respondent
P-8-c	2008 BIR Form 2307 issued by Pi, Siy in favor of petitioner covering the period October 2008 to December 2008 duly received by respondent
P-8-c-1	Stamp receipt by respondent on 15 April 2009
P-9	2008 BIR Form 2307 issued by Henry Yu in favor of petitioner covering January 2008 to March 2008 duly received by respondent
P-9-1	Stamp receipt by respondent on 15 April 2009
P-9-a	2008 BIR Form 2307 issued by Henry Yu in favor of petitioner covering April 2008 to June 2008 duly received by respondent
P-9-b	2008 BIR Form 2307 issued by Henry Yu in favor of petitioner covering January 2008 to December 2008 duly received by respondent
P-9-b-1	Stamp receipt by respondent
P-10	The BIR Certificate of Registration of Gem Stationery, Inc.
P-11	2008 BIR Forms 2307 of Gem Stationery for the period January to March 2008
P-11-a	2008 BIR Forms 2307 of Gem Stationery for the period April to June 2008
P-11-b	2008 BIR Forms 2307 of Gem Stationery for the period July to September 2008
P-11-c	2008 BIR Forms 2307 of Gem Stationery for the period October to December 2008
P-12	Petitioner's Reconciliation of Net Income per Books against Taxable Income for the year 2008
P-13	Audited Financial Statements of Petitioner for 2006
P-13-a	Stamp receipt by respondent
P-14	Annual ITR of petitioner for 2006
P-14-a	Stamp receipt by respondent
P-15	The Certificate of Filing of Articles of Merger and Plan of Merger of petitioner and Wellington Ty and Brothers, Inc.
P-16	Cash voucher of petitioner dated 29 April 2008 showing payment to RFM Corporation
P-17	Official Receipt bearing O.R. No. 002422 issued by RFM Corporation in favor of petitioner
P-17-a	Debit Memo dated 16 April 2008 for the amount of US$82,820.09
P-17-b to P-17-e	Supporting documents
P-18	Cash voucher of petitioner dated 26 September 2008 showing payment to RFM Corporation – Flour Division
P-19	Official Receipt bearing O.R. No. 002860 issued by RFM Corporation – Flour Division in favor of petitioner
P-19-a	Debit Memo dated 21 August 2008 for the amount of US$13,414.39
P-19-b to P-19-l	Supporting documents
P-20	Journal voucher of petitioner dated 3 June 2008
P-20-a	Debit Memo dated 3 June 2008 for the amount of US$4,013.15

P-20-b	Debit Memo dated 16 April 2008 for the amount of US$82,820.09
P-21	Petitioner's List of Additional Certificate of Creditable Tax withheld BIR Form 2307 for the year 2008
P-21-a	2008 BIR Form 2307 of Gargantos Teresita for January 2008 to March 2008
P-21-a-1	Stamp receipt by BIR
P-21-b	2008 BIR Form 2307 of Gargantos Teresita for April 2008 to June 2008
P-21-b-1	Stamp receipt by BIR
P-21-c	2008 BIR Form 2307 of Gargantos Teresita for July 2008 to September 2008
P-21-c-1	Stamp receipt by BIR
P-21-d	2008 BIR Form 2307 of Gargantos Teresita for October to December 2008
P-21-d-1	Stamp receipt by BIR
P-21-e	2008 BIR Forms of Huang, James, Jr. for July 2008 to September 2008
P-21-f	2008 BIT Forms of Huang, James, Jr. for October 2008 to December 2008
P-21-g	2008 BIR Forms 2307 of Lewin Construction Supply for July 2008 to September 2008
P-21-h	2008 BIR Forms 2307 of Lewin Construction Supply for October to December 2008
P-21-i	2008 BIR Forms 2307 of Lewin Construction Supply for October 2008 to December 2008
P-21-j	2008 BIR Form 2307 issued by Lao, Nancy in favor of petitioner covering July 2008 to December 2008
P-21-k	2008 BIT Form 2307 of Mega Plywood Corporation for July 2008 to September 2008
P-21-k-1	Stamp receipt by BIR
P-21-l	2008 BIR Forms 2307 of Metrobank-Divisoria for October 2008
P-21-l-1	Stamp receipt by BIR dated 15 April 2009
P-21-m	2008 BIR Forms 2307 of Metrobank-Divisoria for November 2008
P-21-m-1	Stamp receipt by BIR
P-21-n	2008 BIR Forms 2307 of Metrobank-Divisoria for December 2008
P-21-n-1	Stamp receipt by BIR
P-21-o	2008 BIR Forms 2307 of Shecom Industrial & Construction Supply for January 2008 to March 2008
P-21-p	2008 BIR Forms 2307 of Shecom Industrial & Construction Supply for July 2008 to September 2008
P-21-q	2008 BIR Forms 2307 of Shecom Industrial & Construction Supply for October to December 2008
P-21-r	2008 BIR Forms 2307 of Malabon Loglife Trading Corp.
P-21-r-1	Stamp receipt by BIR
P-21-s	2008 BIR Form 2307 of Far East Agricultural Supply for April 2008 to June 2008
P-21-s-1	Stamp receipt by BIR
P-21-t	2008 BIR Form 2307 of Far East Agricultural Supply for October 2008 to December 2008
P-21-t-1	Stamp receipt by BIR dated 15 April 2009
P-21-u	2008 BIR Forms 2307 of Premium Feeds Mfg Corp for January 2008 to March 2008
P-21-u-1	Stamp receipt by BIR dated 15 April 2009
P-21-v	2008 BIR Forms 2307 of Premium Feeds Mfg Corp for October 2008 to December 2008
P-21-v-a	Stamp receipt by BIR dated 15 April 2009
P-21-v-1	2008 BIR Forms 2307 of Premium Feeds Mfg Corp for April 2008 to June 2008

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P-21-v-1-a	Stamp receipt by BIR dated 15 April 2009
P-21-w	2008 BIR Form 2307 of Liberty Commodities Corp for 1 November 2008 to 30 November 2008
P-21-x	2008 BIR Form 2307 of Liberty Commodities Corp for 1 December 2008 to 31 December 2008
P-21-y	2008 BIR Form 2307 of Monde Nissin Corporation duly received by respondent on 15 April 2009
P-21-y-a	Stamp receipt by respondent
P-22	Cash voucher of petitioner for payee Edgar Alcover dated 18 January 2008
P-22-a	Service Invoice bearing No. 1184 dated 11 January 2008 (Annex RR-1 of Letter Protest)
P-22-b	Official Receipt bearing O.R. No. 1603 dated 18 January 2008
P-22-c	Letter dated 11 January 2008 from Leonardo R. Alcover-Contractor
P-22-d to P-22-r	Petitioner's Job Report Form from 2 January 2008 to 8 January 2008
P-22-s	Leonardo R. Alcover daily Time Record from 2 January 2008 to 8 January 2008
P-23	Petitioner's cash voucher dated 25 January 2008 payment to Maynilad Water Services, Inc.
P-23-a	Maynilad Billing Statement for the amount of Php47,404.91
P-23-b	2008 BIR Form 2307 issued by petitioner in favor of Maynilad for the 2nd month of the 1st quarter of 2008
P-23-c	Maynilad Billing Statement for the amount of Php52,219.09 with attached provisional receipt No. 06-00024242 issued by Maynilad
P-23-d	Maynilad Provisional Receipt No. 06-00024242
P-23-e	2008 BIR Form 2307 issued by petitioner in favor of Maynilad
P-24	The billing statement of Meralco Tutuban Branch for the amount of Php3,987.95
P-24-a	Official receipt of Meralco Tutuban Branch bearing O.R. No. 0000598397
P-24-b	2008 BIR Forms 2307 issued by petitioner in favor of Meralco
P-25	The Directors Compensation per GL
P-26	The Transmittal Form of respondent showing receipt by the latter of the 2008 BIR Form 1604-F of petitioner for the 2nd Sem in January 230, 2009
P-26-a	The Alpha List of Regular Suppliers by Top 10,000 Corporations for the 2nd Sem of 2008 consisting of four pages stamped received by respondent on 30 January 2009
P-27	The 2008 BIR Form 1604-E of petitioner stamped received by respondent on 19 February 2009
P-27-a	The Filing Reference No. ____________
P-27-a-1	Petitioner's 2008 BIR Form 1604-E Schedule 4 Alpha List of Payees subject to Expanded Withholding Tax as of 31 December 2008 consisting of 9 pages all duly stamped received by respondent on 19 February 2009
P-27-b	The Filing Reference No. for the taxable Period covering December 2008
P-27-b-1	Petitioner's 2008 BIR Form 1601E - Scheduled 1, Alpha List of Payees from whom Taxes were Withheld for the Month of December 2008 consisting of 2 pages
P-27-c	The Filing Reference No. for the taxable Period covering November 2008
P-27-c-1	Petitioner's 2008 BIR Form 1601E - Schedule 1, Alpha List of Payees from whom Taxes were Withheld for the Month of November 2008 consisting of 2 pages
P-27-d	The Filing Reference No. for the taxable Period covering October 2008

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P-27-d-1	Petitioner's 2008 BIR Form 1601E - Schedule 1, Alpha List of Payees from whom Taxes were Withheld for the Month of October 2008 consisting of 2 pages
P-27-e	The Filing Reference No. for the taxable Period covering September 2008
P-27-e-1	Petitioner's 2008 BIR Form 1601E -Schedule 1, Alpha List of Payees from whom Taxes were Withheld for the Month of September 2008 consisting of 2 pages
P-27-f	The Filing Reference No. for the taxable Period covering August 2008
P-27-f-1	Petitioner's 2008 BIR Form 1601E – Schedule 1, Alpha List of Payees from whom Taxes were Withheld for the month of August 2008 consisting of 2 pages
P-27-g	The Filing Reference No. for the taxable Period covering July 2008
P-27-g-1	Petitioner's 2009 BIR Form 1601E – Schedule 1, Alpha List of Payees from whom Taxes were Withheld for the Month of July 2008 consisting of 2 pages
P-27-h	The Filing Reference No. for the taxable Period covering June 2008
P-27-h-1	Petitioner's 2009 BIR Form 1601E – Schedule 1, Alpha List of Payees from whom Taxes were Withheld for the Month of June 2008 consisting of 2 pages
P-27-i	The Filing Reference No. for the taxable Period covering May 2008
P-27-i-1	Petitioner's 2009 BIR Form 1601E – Schedule 1, Alpha List of Payees from whom Taxes were Withheld for the Month of May 2008 consisting of 2 pages
P-27-j	The Filing Reference No. for the taxable Period covering April 2008
P-27-j-1	Petitioner's 2009 BIR Form 1601E – Schedule 1, Alpha List of Payees from whom Taxes were Withheld for the Month of April 2008 consisting of 2 pages
P-27-k	The Filing Reference No. for the taxable Period covering March 2008
P-27-k-1	Petitioner's 2009 BIR Form 1601E – Schedule 1, Alpha List of Payees from whom Taxes were Withheld for the Month of March 2008 consisting of 2 pages
P-27-l	The Filing Reference No. for the taxable Period covering February 2008
P-27-l-1	Petitioner's 2009 BIR Form 1601E – Schedule 1, Alpha List of Payees from whom Taxes were Withheld for the Month of February 2008 consisting of 2 pages
P-27-m	The Filing Reference No. for the taxable Period covering January 2008
P-27-m-1	Petitioner's 2009 BIR Form 1601E – Schedule 1, Alpha List of Payees from whom Taxes were Withheld for the Month of January 2008 consisting of 2 pages
P-28	Respondent's Formal Letter of Demand dated 4 November 2011 with attached Details of Discrepancies
P-29	Petitioner's Letter-Protest dated 22 November 2011 to respondent's Formal Letter of Demand duly stamped received by respondent
P-29-a	The stamp receipt of respondent
P-30	Petitioner's Supplemental Letter-Protest dated 16 August 2012 duly stamped received by respondent with attached BIR Ruling No. DA-204-06
P-30-a	Stamp receipt of respondent
P-31	O.R. No. 42556 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008

P-31-a	O.R. No. 42767 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008
P-31-b	O.R. No. 42324 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008
P-31-c	O.R. No. 42463 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008
P-31-d	O.R. No. 42860 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008
P-31-e	O.R. No. 42980 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008
P-31-f	O.R. No. 43121 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008
P-31-g	O.R. No. 43210 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008
P-31-h	O.R. No. 43362 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008
P-31-i	O.R. No. 43517 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008
P-31-j	O.R. No. 43611 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008
P-31-k	O.R. No. 42510 Rental Receipt issued by petitioner to Riteway Distributor for the year 2008
P-32	Sales Invoice No. 71091 dated 10 March 2008 issued by petitioner to Gerry Commercial for the amount of Php3,330,000.00
P-32-a	Sales Invoice No. 71095 dated 10 March 2008 issued by petitioner to Gerry Commercial for the amount of Php270,000.00
P-33	O.R. No. 42336, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-a	O.R. No. 42337, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-b	O.R. No. 42436, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-c	O.R. No. 42435, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-d	O.R. No. 42663, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-e	O.R. No. 42664, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-f	O.R. No. 42740, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-g	O.R. No. 42739, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-h	O.R. No. 42812, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-i	O.R. No. 42811, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-j	O.R. No. 43017, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-k	O.R. No. 43016, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-l	O.R. No. 43184, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-m	O.R. No. 43185, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-n	O.R. No. 43347, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-o	O.R. No. 43348, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008

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P-33-p	O.R. No. 43419, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-q	O.R. No. 43420, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-r	O.R. No. 43561, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-s	O.R. No. 43560, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-t	O.R. No. 43661, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-u	O.R. No. 43660, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-v	O.R. No. 42537, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-33-w	O.R. No. 42538, Rental Receipt issued by petitioner for rental payment made by Pi, Siy for the year 2008
P-34	O.R. No. 42291 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-a	O.R. No. 42675 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-b	O.R. No. 42736 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-c	O.R. No. 42823 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-d	O.R. No. 43026 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-e	O.R. No. 43192 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-f	O.R. No. 43328 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-g	O.R. No. 43411 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-h	O.R. No. 43559 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-i	O.R. No. 43662 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-j	O.R. No. 43760 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-k	O.R. No. 43951 Rental Receipt issued by petitioner to Henry Yu for the year 2008
P-34-l	Rental Receipt No. 42342 dated January 31, 2008
P-35	O.R. No. 41876 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008
P-35-a	O.R. No. 42493 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008
P-35-b	O.R. No. 42600 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008
P-35-c	O.R. No. 42710 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008
P-35-d	O.R. No. 42815 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008
P-35-e	O.R. No. 42998 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008
P-35-f	O.R. No. 43166 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008
P-35-g	O.R. No. 43343 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008
P-35-h	O.R. No. 43430 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008
P-35-i	O.R. No. 43596 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008

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P-35-j	O.R. No. 43673 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008
P-35-k	O.R. No. 43796 Rental Receipt issued by petitioner to Dr. Han Liong Lao for the year 2008
P-36	O.R. No. 41875 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-36-a	O.R. No. 42492 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-36-b	O.R. No. 42598 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-36-c	O.R. No. 42709 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-36-d	O.R. No. 42813 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-36-e	O.R. No. 42997 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-36-f	O.R. No. 43142 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-36-g	O.R. No. 43335 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-36-h	O.R. No. 43429 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-36-i	O.R. No. 43594 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-36-j	O.R. No. 43672 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-36-k	O.R. No. 43795 Rental Receipt issued by petitioner to Dr. Gem Stationery for the year 2008
P-37	O.R. No. 02948 Rental Receipt issued by petitioner to JCM Resources Corp. for year 2008
P-37-a	O.R. No. 02943 Rental Receipt issued by petitioner to JCM Resources Corp. for the year 2008
P-37-b	O.R. No. 02921 Rental Receipt issued by petitioner to JCM Resources Corp. for the year 2008
P-37-c	O.R. No. 02907 Rental Receipt issued by petitioner to JCM Resources Corp. for the year 2008
P-37-d	O.R. No. 02738 Rental Receipt issued by petitioner to JCM Resources Corp. for the year 2008
P-37-e	O.R. No. 02739 Rental Receipt issued by petitioner to JCM Resources Corp. for the year 2008
P-37-f	O.R. No. 02705 Rental Receipt issued by petitioner to JCM Resources Corp. for the year 2008
P-37-g	O.R. No. 02588 Rental Receipt issued by petitioner to JCM Resources Corp. for the year 2008
P-37-h	O.R. No. 42906 Rental Receipt issued by petitioner to JCM Resources Corp. for the year 2008
P-37-i	O.R. No. 02552 Rental Receipt issued by petitioner to JCM Resources Corp. for the year 2008
P-37-j	O.R. No. 02422 Rental Receipt issued by petitioner to JCM Resources Corp. for the year 2008
P-37-k	O.R. No. 02402 Rental Receipt issued by petitioner to JCM Resources Corp. for the year 2008
P-38	Certificate of Filing of Amended Articles of Incorporation of petitioner dated 5 April 2004
P-38-a	The Amended Articles of Incorporation of petitioner
P-39	TCT No. 350644 of the Register of Deeds of Manila registered in the name of petitioner
P-39-a	Real Property Tax Declaration No. C-02701000 registered in the name of petitioner covering the land described in TCT No. 350644 of the Register of Deeds of Manila

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P-39-b	Real Property Tax Declaration No. C-02701001 registered in the name of petitioner covering the improvement on the land covered by TCT No. 350644 of the Register of Deeds of Manila
P-39-c	O.R. no. 0497678 issued by the Office of the City Treasurer of Manila
P-39-c-1	O.R. No. 0497679 issued by the Office of the City Treasurer of Manila
P-39-c-2	O.R. No. 0533494 issued by the Office of the City Treasurer of Manila
P-39-c-3	O.R. No. 0533495 issued by the Office of the City Treasurer of Manila
P-39-c-4	O.R. No. 0545743 issued by the Office of the City Treasurer of Manila
P-39-c-5	O.R. No. 0545744 issued by the Office of the City Treasurer of Manila
P-39-c-6	O.R. No. 0564452 issued by the Office of the City Treasurer of Manila
P-39-c-7	O.R. No. 0564453 issued by the Office of the City Treasurer of Manila
P-40	Wellington Employees' Retirement Benefit Plan dated 10 10 January 1989
P-40-a	Certification/Letter of respondent dated 29 May 1990
P-41	Breakdown of 2008 Management Bonus of petitioner
P-41-a	Cash Voucher of Petitioner dated 13 April 2009 payee BIR
P-41-b	2008 BIR Form 1601-E of the petitioner
P-41-c	BIR e-receipt for 1601E for the taxable period covering March 2009
P-41-d	BPI Express Link receipt with filing reference number 20900002896036
P-41-e	BIR e-receipt for tax payment for Salustiana Tan
P-41-f	Petitioner's cash voucher dated 13 April 2009 for the amount of Php9,543,099.52
P-41-g	2009 BIR Form 1601-C of petitioner
P-41-h	BPI Express Link receipt with filing reference number 10900002890226
P-41-i	BIR e-receipt for tax payment for Salustiana Tan
P-42	Stock Certificate issued by Makati Sports Club, Inc.
P-42-a	Proprietary Membership Certificate issued by Valle Verde Country Club, Inc.
P-42-b	Stock certificate issued by the Palicpican Sports and Beach Club Incorporated
P-43	Petitioner's Audited Financial Statements for the year 2008 duly received by respondent on 15 April 2009
P-43-a	Stamp receipt of respondent on the 2008 AFS
P-43-b	2008 Annual Income Tax Return of petitioner
P-43-c	Stamp receipt by respondent
P-44	BIR Form 2307 of Manual Stationery for April 2008 stamped received by respondent
P-45	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) of JCM Corporation for the 1st quarter of CY 2008
P-46	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) of JCM Corporation for the 2nd quarter of CY 2008
P-47	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) of JCM Corporation for the 3rd quarter of CY 2008
P-48	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) of JCM Corporation for the 4th quarter of CY 2008
P-49	Summary of BIR Form No. 2307 traced to Subsidiary Ledgers, Sales Invoices and Official/Rental Receipts for CY 2008
P-49-1 to P-49-9-1, P-49-9-2 to	Subsidiary Ledgers of Customers under Assessment

P-49-10, P-49-11-1 to P-49-11-2 P-49-13, P-49-2-1 to P-49-2-4, P-49-3-1 to P-49-3-b, P-49-4-1 to P-49-4-7, P-49-5-2 to P-49-5-4, P-49-7-2 to P-49-7-8, P-49-8-1 to P-49-8-3	Sales Invoices issued to Gerry Commercial during CY 2008
P-49-2-5, P-49-3-6, P-49-4-8, P-49-5-5 to P-49-5-8, P-49-6-1, P-49-6-2, P-49-7-9, P-49-7-10, P-49-8-4	Official Receipts issued to Gerry Commercial during CY 2008
P-49-12 and P-49-12-1	Rental Receipts for CY 2008
P-49-5-1	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) of Gerry Commercial Inc. for the 2nd quarter of CY 2008
P-49-7-1	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) of Gerry Commercial Inc. for the 3rd quarter of CY 2008
P-50	Schedule of Rental Income for CY 2008
P-51	General Journal Book for Real Estate Division for CY 2008
P-52	Sales Books for CY 2008
P-53	General Ledger – Sales – Flours for CY 2008
P-54	General Ledger – Rental Income for CY 2008
P-55	Summary of Rental Income Traced to General Journal Book, General Ledger, Annual Audited Financial Statements and Annual Income Tax Return for CY 2008
P-56	Summary of Sales of Flour Traced to General Journal Book General Ledger, Annual Audited Financial Statements and Annual Income Tax Return for CY 2008
P-57	Summary of Comparison of Checks Received from Meralco against Amount of Income Recognized in General Ledger, Annual Income Tax Return for CYs 2005, 2006, 2007 and 2008
P-58	Meralco Refund Letter dated December 9, 2005
P-58-1	Schedule of Checks Received from Meralco – Wellington Flour Mill Division
P-59	Schedule of Checks Received from Meralco – Wellington Real Estate Division
P-60	Journal Entry No. 2 in General Journal Book of Unearned Interest Income – Meralco
P-61	Annual Audited Financial Statements for CY 2005
P-62	Annual Income Tax Return for CY 2005
P-62-1	Reconciliation of Net Income per Books against Taxable Income of Petitioner for the year ended December 31, 2005
P-65	Summary of Disallowed Light and Power and Water Expenses for the Maintenance of Wellington Building Situated at Condesa St., Binondo, Manila Traced To General Ledger, Check Vouchers and Billing Invoices

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P-65-1 to P-65-5	Cash Vouchers for CY 2008
P-65-1-1 to P-65-5-1	Billing Invoices for CY 2008
P-66	General Ledger of Light and Power Expense
P-67	General Ledger of Water Expense
P-68	Summary of Disallowed Light and Power for Maintenance of the Building Situated in Ylaya, San Nicolas Traced To General Ledger, Check Vouchers and Billing Invoices
P-69	Summary of Disallowed Taxes, Licenses and Fees Traced to General Ledger, Check Vouchers and Originating Documents
P-69-1	Cash Voucher for CY 2008
P-69-1-1	Supporting Documents – CTC 2007117667 of Wellington Ty & Brothers, Inc.
P-70	General Ledger – Taxes, Licenses and Fees for CY 2008
P-71	Summary of Disallowance of Miscellaneous Expense Traced to Cash Vouchers, Official Receipts, Debit Memos, Telegraphic Transfers, and Invoices
P-72	Summary of Comparison between Summary of Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) and Certificate of Tax Withheld at Source (BIR Form No. 2307)
P-72-1 to P-72-238	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for CY 2008
P-73	Schedule of Association Dues and Electricity and Water Reimbursements from Tenants
P-73-1 to P-73-486 P-73-487 to P-73-982 P-73-983 to P-73-1344	Rental Receipts for CY 2008
P-74	Summary of Light and Power and Water Expenses Traced to Cash Vouchers, Billing Invoices, General Ledger for CY 2008
P-74-1 to P-74-88	Cash Vouchers/Journal Vouchers for CY 2008
P-74-1-1 to P-74-88-1	Billing Invoices
P-75	Cash Receipts Book – Real Estate Division for CY 2008
P-76	Working Schedule – Light Accounts Receivable for CY 2008
P-77	Working Schedule – Water Accounts Receivable for CY 2008
P-78	Summary of Light and Power and Water Bill Reimbursements Traced to Rental Receipts, Cash Receipts, Book and General Ledger for CY 2008
P-79	General Ledger – Light Accounts Receivable
P-80	General Ledger – Water Accounts Receivable
P-81	Summary of Association Dues Collected from Tenants Traced To Rental Receipts, Cash Receipts Book, General Journal Book, and General Ledger for CY 2008
P-82	Working Schedule – Receivable Others for CY 2008
P-83	General Ledger – Miscellaneous Income for CY 2008
P-84	General Ledger – Accounts Receivable – Others for CY 2008
P-85	Dividend Income Received From PLDT Shares Traced To Journal Voucher, General Journal Book, General Ledger and Dividend Check for CY 2008
P-85-1	Journal Voucher No. 09-138 dated September 30, 2008 regarding Dividend Income
P-85-2	PLDT Dividend Check
P-86	General Ledger – Dividend Income for CY 2008
P-87	Summary of Comparison of BIR Form No. 2550M and 2550Q Traced to Cash Receipts Book and General Ledgers

P-87-1 to P-87-2, P-87-4 P-87-5, P-87-7, P-87-8, P-87-10, P-87-11	Monthly Value-Added Tax Returns (BIR Form No. 2550M) for CY 2008
P-87-3, P-87-6, P-87-9, P-87-12	Quarterly Value-Added Tax Returns (BIR Form No. 2550Q) for CY 2008
P-88	General Ledger – Rental Income (FMD) for CY 2008
P-89	General Ledger – Rental Income (RED) for CY 2008
P-90	Summary of Disallowed Input Tax Credit Due to Invoicing Requirements Traced against Cash Vouchers/Journal Vouchers, Official Receipts and Billing Invoices/Statement of Accounts
P-90-1 to P-90-2	Cash Vouchers for CY 2008
P-90-1-1 to P-90-1-1	Official Receipts issued by Edgar Alcover for CY 2008
P-90-1-2 to P-90-2-2	Statement of Account by Edgar Alcover for CY 2008
P-90-3 to P-90-26	Official Receipts issued by Maynilad for CY 2008
P-91	Schedule of Deficiency On Withholding Tax Compensation as Per BIR Assessment
P-92	Summary of Non-Employees Directors Fees Traced Against Cash Vouchers And Alphalist Of Payees Subject to Expanded Withholding Tax
P-92-1 to P-92-44	Cash Vouchers for CY 2008
P-93	Summary of Retirement Benefit Expense Traced To Cash Voucher/General Journal Book, General Ledger, AAFS and Reconciliation of Net Income Per Books Against Taxable Income
P-93-1 to P-93-4	Cash Vouchers for CY 2008
P-93-5	Journal entry in General Journal Book of Retirement Benefits Expense for CY 2008
P-94	General Ledger – Retirement Benefits Expense for CY 2008
P-95	General Ledger – Management Bonus for CY 2007
P-96	Summary Of Management Bonus For CY 2007 Paid in CY 2008 Traced To General Ledger, Cash Voucher And Supporting Schedule Of Directors/Management Bonus To Be Paid
P-97	Summary of Management Bonus For CY 2007 Paid in CY 2008 Traced To BIR Form No. 1604-E For CY 2008
P-98	Summary Of Management Bonus For CY 2007 Paid in CY 2008 Traced To BIR Form No. 1604-CF – For CY 2008
P-99	Summary of Management Fees for CY 2008 Paid in CY 2009 Traced To General Ledger And Cash Vouchers And Supporting Schedule Of Directors/Management Bonus To Be Paid
P-100	General Ledger – Management Bonus for CY 2008
P-101	Summary Of Management Bonus for CY 2008 Paid In CY 2008 Paid in CY 2009 Traced To BIR Form No. 1604-E For CY 2009
P-102	Summary of Management Bonus For CY 2008 Paid In CY 2009 Traced To BIR Form No. 1604-CF For CY 2009
P-102-1	BIR Form No. 1604-CF For CY 2009
P-103	Cash Voucher No. 03-49 dated March 28, 2008

a

P-103-1	OR Number A 035-0004809 dated March 31, 2008 issued by Metropolitan Bank and Trust Company
P-104	Summary of Documentary Stamp Tax and other Bank Charges Not Subjected to Expanded Withholding Tax Traced to Journal Vouchers, Supporting Documents and General Ledger
P-104-1-1, P-104-3-1, P-104-9-1, P-104-13-1, P-104-16-1, P-104-17-1 P-104-25-1, P-104-27-1, P-104-32-1, P-104-33-1, P-104-36-1	Settlement Advice for CY 2008
P-104-6-1, P-104-7-1, P-104-10-1, P-104-21-1, P-104-22,1, P-104-26-1, P-104-26-1, P-104-28-1	Letter of Credit Advice for CY 2008
P-104-34-1, P-104-35-1	Credit Memos for CY 2008
P-104-5-1, P-104-12-1, P-104-15-1, P-104-19-1	Sale of Foreign Transaction Sheet for CY 2008
P-104-2-1, P-104-12-1, P-104-15-1, P-104-19-1	Sale of Foreign Transaction Sheet for CY 2008
P-104-2-1, P-104-4-1, P-104-8-1, P-104-14-1, P-104-20-1	Foreign Telegraphic Transfers for CY 2008
P-105	General Ledger of Bank Charges – Rebates (FMD) for CY 2008
P-106	General Ledger of Bank Charges (FMD) for CY 2008
P-107	General Ledger of Lighterage – ISLOFF for CY 2008
P-108	Summary of Reimbursement of Security Services and Representation and Entertainment Expenses Traced to Cash Vouchers/Journal Vouchers, Official Receipts and Billing Invoices/Statements of Accounts
P-108-1 to P-108-7, P-108-10, P-108-21	Cash Vouchers for CY 2008
P-108-8, P-108-9, P-108-11 to P-108-20, P-108-22	Journal Vouchers for CY 2008
P-108-1-1 to P-108-10-1, P-108-21-1	Official Receipts for CY 2008
P-108-1-2, P-108-1-3,	Billing Invoices for CY 2008

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P-108-2-2 to P-108-8-2, P-108-9-1 to P-108-22-1	
P-108-9-1, P-108-12-1 to P-108-20-1 and P-108-22-1	Statement of Accounts for CY 2008
P-109	Summary of Quarterly Input Tax Allocation Pertaining to Purchase of Services Not Subjected to Expanded Withholding Tax Traced to Journal Vouchers and Supporting Documents
P-109-1 to P-109-4	Journal Vouchers for CY 2008
P-109-1-1 to P-109-4-1	Supporting Schedule of Quarterly VAT-Exempt Input Tax
P-110	Summary of Documentary Stamp Tax and Local Government Tax Not Subjected to Expanded Withholding Tax Traced to Cash Vouchers/Journal Vouchers, Official Receipts, Statement of Accounts and Other Supporting Schedules For CY 2008
P-110-2 to P-110-11, P-110-13	Cash Vouchers for CY 2008
P-110-1, P-110-12, P-110-1-1, P-110-12-1	Journal Vouchers and Other Supporting Schedules for CY 2008
P-110-2-1 to P-110-7-1, P-110-9-1, P-110-10-1, P-110-11-1, P-110-13-1	Official Receipts for CY 2008
P-110-2-2 to P-110-11-2, P-110-13-2	Statements of Account for CY 2008
P-111	Cash Voucher for CY 2008
P-111-1	Official Receipt for CY 2008
P-111-2	Application for Manager's Check
P-111-3	Letter from Custom Broker
P-111-4	Computation Sheet of Philippines Port Authority – Port Management Office – Limay
P-112	Cash Voucher for CY 2008
P-112-1	Official Receipt for CY 2008
P-112-2	Billing from Philippine Association of Flour Millers, Inc. (PAFMI)
P-112-3	Letter from Philippine Foremost Milling Corporation
P-113	Summary of Seminar Fees for Training and Development not Subjected to Expanded Withholding Tax Traced to Cash Vouchers and Official Receipts for CY 2008
P-113-1 to P-113-7-1	Cash Vouchers for CY 2008
P-113-1-1 to P-113-7-1	Official Receipts for CY 2008
P-114-1 to P-114-2	Cash Vouchers for CY 2008
P-114-1-1	Supporting schedule – Christmas giveaways
P-114-2-1	Acknowledgement Receipt by Security Guards of Christmas giveaways
P-115	Summary of Monthly Usage of Factory Supplies, Mechanical and Electrical Spare Parts Not Subjected to Expanded Withholding Tax Traced to Journal Vouchers and Monthly

L

	Schedule of Spare Parts and Factory Supplies Usages for CY 2008
P-115-1 to P-115-8	Journal Vouchers for CY 2008
P-115-1-1 to P-115-8-1	Monthly Schedule of Spare Parts and Factory Supplies Usages
P-116	Summary of Quarterly Input Tax Allocation Pertaining to Purchase of Goods not Subjected to Expanded Withholding Tax Traced to Cash Vouchers/Journal Vouchers, Official Receipts, Sales Invoices for CY 2008
P-116-1 to P-116-20	Vouchers Payable for CY 2008
P-116-1-1 to P-116-6-1, P-116-8-1 to P-116-11-1, P-116-13-1, P-116-15-1 to P-116-16-1, P-116-19-1 to P-116-20-1	Official Receipts for CY 2008
P-116-1-2 to P-116-6-2, P-115-7-1, P-116-8-2, P-116-9-1, P-116-10-2 to P-116-11-2, P-116-12-1, P-116-13-2, P-116-13-3, P-116-14-1, P-116-15-2, P-116-16-2, P-116-17-1, P-116-18-1, P-116-19-2, P-116-20-2	Sales Invoices for CY 2008
P-117	Summary of Membership Fees, Dues, and Assessments Traced to Cash Vouchers/Journal Vouchers and Supporting Documents for CY 2008
P-117-1, P-117-2, P-117-4	Journal Vouchers for CY 2008
P-117-3, P-117-5	Cash Vouchers for CY 2008
P-117-3-1 and P-117-5-1	Official Receipts for CY 2008
P-117-4-1	Invoice
P-117-1-1 and P-117-2-1	Other schedules
P-118	General Ledger of Transportation and Travelling for CY 2008
P-119	Summary of Transportation and Travel Expense Traced to Cash Vouchers/Journal Vouchers, Statements of Account, Official Receipts issued by the Petitioner to its Officers and General Ledger for CY 2008
P-119-1-1 to P-119-11-1, P-119-13-1, P-119-14-1, P-119-17-1,	Statement of Account from Gasoline Station for CY 2008

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P-119-19-1 to P-119-23-1, P-119-26-1 to P-119-30-1, P-119-32-1 to P-119-35-1, P-119-39-1, P-119-40-1, P-119-42-1 to P-119-44-1, P-119-47-1, P-119-48-1, P-119-50-1, P-119-51-1, P-119-53-1, P-119-56-1, P-119-58-1, P-119-61-1, P-119-64-1, P-119-66-1, P-119-67-1, P-119-69-1, P-119-70-1	
P-119-12-1, P-119-18-1, P-119-24-1, P-119-31-1, P-119-36-1, P-119-41-1, P-119-49-1, P-119-55-1, P-119-68-1	Statement of Account from Legal Counsel Station for CY 2008
p-119-15 to P-119-16, P-119-25, P-119-37, P-119-38, P-119-45, P-119-52, P-119-59, P-119-60, P-119-65, P-119-71	Official Receipts issued by the Petitioner Station for CY 2008
P-120	General Ledger – Representation and Entertainment Expense for CY 2008
P-121	Summary of Representation Expense Per General Ledger Traced to Cash Voucher/Journal Voucher, Statement of Account/Official Receipts for CY 2008
P-121-1, P-121-2, P-121-4 to P-121-6, P-121-8, P-121-10, P-121-12 to P-121-13, P-121-15, P-121-16, P-121-19 to P-121-24, P-121-26 to	Cash Vouchers for CY 2008

P-121-29, P-121-31, P-121-32, P-121-34, P-121-35, P-121-37 to P-121-40	
P-121-3, P-121-7, P-121-9, P-121-11, P-121-14, P-121-17, P-121-18, P-121-25, P-121-30, P-121-33, P-121-36, P-121-41	Journal Vouchers for CY 2008
P-121-1 to P-121-41-1	Statement of Accounts/Official Receipts for CY 2008
P-122	Cash Voucher No. 4-27 dated April 4, 2008
P-122-1	Official Receipt No. 595093 dated April 16, 2008
P-122-2	Statement of Account No. 50766 dated April 10, 2008
P-122-3	Service Invoice No. 349771 dated March 27, 2008
P-123	Independent Computation of Improperly Accumulated Earnings Tax
P-124	Note 14 – Retained Earnings AAFS for CY 2008
P-125	The original Judicial Affidavit of Mr. Benedicto G. Antazo dated 5 May 2014 consisting of 51 pages
P-125-a	The name and signature of Mr. Benedicto G. Antazo
P-126	The original Part 1 of 1 of the Report of the Independent Certified Public Accountant, Ms. Milagros Padernal
P-126-a	Name and signature of Ms. Padernal
P-126-b	The original Part 2 of 2 of the ICPA Report
P-127	The original Judicial Affidavit of Ms. Milagros Padernal
P-127-a	The name and signature of Ms. Milagros Padernal in her Judicial Affidavit

Thereafter, respondent presented Revenue Officers Reynoso C. Bravo[60] and Carolyn Mendoza[61].

Respondent filed his Formal Offer of Documentary Evidence[62] on June 30, 2016. In the Resolution[63] dated August 8, 2016, the Court admitted respondent's Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "R-16", "R-16-a", "R-17", and "R-17-a".

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[60] Minutes of the Hearing dated June 2, 2016, Docket vol. III, pp. 1721-1724; Exhibit "R-16", Judicial Affidavit of Revenue Officer Reynoso C. Bravo, Docket vol. I, pp. 457-461.
[61] Minutes of the Hearing dated June 2, 2016, Docket vol. III, pp. 1721-1724; Exhibit "R-17", Judicial Affidavit of Revenue Officer Carolyn Mendoza, Docket vol. I, pp. 508-511.
[62] Docket vol. III, pp. 1733-1739.
[63] Docket vol. III, pp. 1753-1754.

Respondent formally offered the following exhibits, to wit:

Exhibit:	**Description:**
R-1	Matrix of Computation for Deficiency Taxes for taxable year 2008
R-2	Memorandum dated November 4, 2011
R-3	Formal Letter of Demand
R-4	Details of Discrepancies
R-5	Audit Result/Assessment Notice for deficiency Income Tax
R-6	Audit Result/Assessment Notice for deficiency Value Added Tax
R-7	Audit Result/Assessment Notice for Withholding Tax-Compensation
R-8	Audit Result/Assessment Notice for deficiency Final Withholding Tax
R-9	Audit Result/Assessment Notice for deficiency Withholding Tax-Expanded
R-10	Audit Result/Assessment Notice for deficiency Fringe Benefits Tax
R-11	Audit Result/Assessment Notice for deficiency Improperly Accumulated Earnings Tax
R-12	Audit Result/Assessment Notice for Compromise Penalty
R-13	Memorandum of Assignment dated February 28, 2013
R-14	Memorandum Report dated September 18, 2013
R-15	Final Decision on Disputed Assessment with attached Details of Discrepancies
R-16	Judicial Affidavit of Revenue Officer Reynoso C. Bravo
R-16-a	Signature of Affiant Revenue Officer Reynoso C. Bravo
R-17	Judicial Affidavit of Revenue Officer Carolyn V. Mendoza
R-17-a	Signature of Affiant Carolyn V. Mendoza

On September 1, 2016, respondent filed a Manifestation[64] stating that in lieu of filing a Memorandum, he is adopting his Answer dated January 20, 2014 as his Memorandum. Meanwhile, the Petitioner's Memorandum[65] was filed on September 8, 2016. Thus, in the Resolution[66] dated September 16, 2016, the instant Petition for Review was declared submitted for decision.

The parties stipulated the following issue[67] for resolution of this Court:

> Whether or not petitioner is liable for deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, fringe benefit tax, improperly accumulated earnings tax, and compromise penalty for the taxable year ending December 31, 2008.

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[64] Docket vol. III, pp. 1755-1757.
[65] Docket vol. III, pp. 1761-1820.
[66] Docket vol. III, p. 1824.
[67] Joint Stipulation of Issues, Joint Stipulation of Facts and Issues (JSFI), Docket vol. II, p. 1023.

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Before going into the merits, the Court shall determine first the timeliness of the filing of the Petition for Review.

Section 228 of the NIRC of 1997, as amended, provides:

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

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Based on the foregoing provision, petitioner had thirty (30) days from receipt of respondent's FDDA[68] on October 8, 2013 or until November 7, 2013 within which to file an appeal before this Court. Clearly, petitioner timely filed the instant Petition for Review with this Court on November 7, 2013.

Considering that the instant Petition for Review was filed on time, this Court has jurisdiction to take cognizance of the same pursuant to Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282.[69]

The Court shall now determine the merits of each of the deficiency tax assessments.

I. Compromise Penalties

The Court finds it proper to resolve the issue on the imposition of compromise penalties before proceeding to the deficiency taxes as it can be observed from the FDDA that all deficiency taxes were assessed with compromise penalties.

Respondent imposed compromise penalties on the following items:[70]

Deficiency income tax	₱ 25,000.00
Deficiency VAT	25,000.00
Deficiency WTC	25,000.00
IAET	25,000.00
Deficiency EWT	16,000.00
Deficiency FBT	20,000.00
Failure to file list of regular suppliers pursuant to RMO 1-90	25,000.00
Total assessed compromise fees	**₱161,000.00**

[68] Exhibit "R-15", BIR Records, pp. 1568-1574.
[69] SEC. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial.
[70] Exhibit "R-15", BIR Records, pp. 1572-1574.

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Pursuant to RMO No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court cannot compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties with respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[71] Absent a showing that the taxpayer consented to the compromise penalty, its imposition should be deleted. The imposition of a compromise penalty without the taxpayer's conformity is illegal and unauthorized.[72]

II. Deficiency Income Tax

Respondent computed the deficiency income tax assessment for taxable year 2008 in the amount of ₱7,839,508.02 as follows:[73]

Taxable income per return		₱ 262,996,076.00
Add: Adjustments		
Unreported revenue - CWT vs reported sales		4,361,149.40
Disallowed costs & expenses		
a. Amortization of interest	₱ 1,694,553.00	
b. Light, water and taxes and licenses	130,502.15	
c. Miscellaneous	3,791,869.41	5,616,924.56
Taxable income per audit		₱ 272,974,149.96
Income tax due (35%)		₱ 95,540,952.49
Tax credits/Payments per return	₱ 92,048,626.00	
Disallowed creditable tax 2307	686,554.81	91,362,071.19
Deficiency income tax		₱ 4,178,881.30
Add: Interest until October 31, 2013	₱ 3,635,626.73	
Compromise penalty	25,000.00	3,660,626.73
Total deficiency income tax		**₱ 7,839,508.02**

Based on this computation, petitioner disputes the following assessment items:

A. Unreported revenue - CWT vs. reported sales	₱4,361,149.40

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71 *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.,* G.R. Nos. L-12928 and L-12932, March 31, 1962.

72 *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.,* G.R. No. L-35266, January 21, 1991.

73 Exhibit "R-15", BIR Records, p. 1574.

B. Disallowed costs and expenses	5,616,924.56
C. Disallowed creditable tax 2307	₱ 686,554.81

A. Unreported revenue – CWT vs. reported sales – ₱4,361,149.40

Respondent's comparison between petitioner's Summary List of Sales (SLS) vs. Summary Alpha List of Withholding Taxes (SAWT) showed alleged unreported sales/revenue of petitioner in the amount of ₱5,006,149.40. However, petitioner's subsequent submission of proof that the amount of ₱645,000.00 was a result of multiple issuance of Certificates of Creditable Tax Withheld (BIR Forms No. 2307) by its client/customer, San Miguel Properties Inc. (SMPI), led to the reduction of the alleged unreported sales/revenue to ₱4,361,149.40 for which a deficiency income tax was assessed by respondent pursuant to Section 32 of the NIRC of 1997, as amended.[74]

Below are the details of the alleged unreported revenues of ₱4,361,149.40:[75]

Name of Tenant/Customer	Nature of Payment	Undeclared Income
Manuel Stationery, Inc.	Rental payments for 2008	₱ 313,372.80
The French Baker, Inc.	Sales of flour for 2008	3,214,285.00
Pi, Siy	Rental payments for 2008	42,679.44
Yu, Henry	Rental payments for 2008	81,315.03
Lao, Hian Long	Rental payments for 2008	700,222.00
Monde Denmark Nissin	Collection on sales made in 2007	127.28
Malabon Longlife Trading Corp.	Collection on sales made in 2007	(2.15)
JCM Resources Corp.		9,150.00
		₱4,361,149.40

A.1. Manuel Stationery, Inc. – ₱313,372.80

Petitioner explained that the registered name of Manuel Stationery, Inc., which is renting #621 Wellington Building, Condesa St., Binondo, Manila, was encoded twice in the SAWT for calendar year (CY) 2008[76] under the registered name's column for line item numbers 40 and 41 with reported rental payments of ₱312,847.00 and ₱313,372.80, respectively.

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[74] Exhibit "R-15", BIR Records, p. 1570.
[75] Par. 13, Petitioner's Memorandum, Docket vol. III, p. 1766; BIR Records, p. 1126.
[76] Exhibit "P-7", Docket vol. III, p. 1535.

According to petitioner, the registered name for line item number 41 in the SAWT should have been encoded as Riteway Distributor, which was renting #625 Wellington Building, Condesa St., Binondo, Manila, and ultimately issued the corresponding BIR Forms No. 2307[77]. Monthly rental payments of Riteway Distributor for the CY 2008 totalling ₱313,372.80 were properly supported by Official Receipts[78] (ORs).[79]

The assessment is cancelled.

Indeed, the monthly rentals totaling ₱313,374.60 reflected per the supporting ORs, which tally with those shown in BIR Forms No. 2307 save for a minor difference of ₱1.80, pertain to payments made to petitioner by Riteway Distributor for CY 2008.

Petitioner also presented its subsidiary ledger of rental income from Riteway Stationery which shows a total amount of ₱313,374.60.[80] The same figure under the name Riteway Distributor was traced to the Schedule of Rental Income[81], yielding a total of ₱61,975,894.23 for CY 2008. This rental income of ₱61,975,894.23 was properly recorded in petitioner's books and formed part of petitioner's reported rental income per Audited Financial Statements (AFS) and Annual Income Tax Return (AITR) for the year 2008 in the respective amounts of ₱62,910,755.00[82] and ₱61,987,894.00[83] as shown by the following reconciliation made by the Court-commissioned ICPA, Ms. Ma. Milagros F. Padernal:[84]

Per Schedule of Rental Income	₱ 61,975,894.23
Per General Journal Book (GJB)	62,898,755.32
The difference pertains to the non-inclusion of the petitioner in its Schedule of Rental Income recorded in the GJB pertaining to the accrual of rental income on non-cancellable leases	₱ (922,861.09)
Per GJB	₱ 62,898,755.32
Per General Ledger (GL) of Rental Income	62,898,755.32

[77] Exhibits "P-5" to "P-5-b", Docket vol. II, pp. 645-647.
[78] Exhibits "P-31" to "P-31-k", Docket vol. II, pp. 869-874.
[79] Par. 14(a), Petitioner's Memorandum, Docket vol. III, p. 1767.
[80] Exhibit "P-49-1".
[81] Exhibit "P-50 (2/6)".
[82] Exhibit "P-43", Docket vol. II, p. 966.
[83] Exhibit "P-43-b, Section A, Schedule 1, line 40, Docket vol. II, p. 1003.
[84] Exhibit "P-55".

Difference	₱	-
Per GL of Rental Income	₱	62,898,755.32
Per Rental Income in AFS		62,910,755.00
The difference pertains to the rental income of the petitioner in its flour mill division recorded as part of miscellaneous income but recognized for financial reporting as rental income[85]	₱	(11,999.68)
Per Rental Income in AFS	₱	62,910,755.00
Per Rental Income in AITR		61,987,894.00
The difference pertains to accrual of rental income on non-cancellable leases recorded in AFS for financial reporting purposes but considered as deferred rental income (non-taxable reconciling item) per AITR[86]	₱	922,861.00

A.2. The French Baker, Inc. – ₱3,214,285.00

Petitioner explained that the registered name The French Baker, Inc., instead of Gerry Commercial, was erroneously encoded in the SAWT for CY 2008[87].

Petitioner pointed out that in the first quarter of CY 2008, Gerry Commercial issued BIR Form No. 2307[88] indicating under income payment column – second month of the quarter, that it had paid petitioner the amount of ₱3,214,285.00. Petitioner collected this amount and issued OR No. 61394 dated February 26, 2008[89] representing sale of flour to Gerry Commercial for the quarter.[90]

The Court noted that the gross amount collected per OR No. 61394 is ₱3,596,000.00, which yields only to a ₱3,210,714.29[91], net of VAT, as basis for the EWT. Based on the ICPA's verification, there was an erroneous pick up of the amount in the originating Provisional Receipt (PR) No. 45395[92] as ₱3,563,857.15, gross of VAT and net of EWT of ₱32,142.85, hence, arriving at the gross amount of ₱3,596,000.00 in the OR. However, based on the PR, the correct amount should be ₱3,567,857.15, gross of VAT and net of EWT of ₱32,142.85, with gross total of ₱3,600,000.00 (₱3,567,857.17 +

[85] Exhibit "P-88".
[86] Exhibit "P-12", Docket vol. II, p. 664.
[87] Exhibit "P-7", Docket vol. III, p. 1536.
[88] Exhibit "P-6", Docket vol. II, p. 648.
[89] Exhibit "P-49-3-6 (1/2)".
[90] Par. 14(b), Petitioner's Memorandum, Docket vol. III, pp. 1767-1768.
[91] ₱3,596,000.00 x 12/112 = ₱3,210,714.29
[92] Exhibit "P-49-3-6 (2/2)".

32,142.85) which would tally with the aggregate total of the amounts billed in the corresponding sales invoices[93]. Taking away the VAT component from ₱3,600,000.00 would yield to ₱3,214,285.71[94] sales amount, thereby matching the amounts in the SAWT and BIR Form No. 2307.

However, a perusal of the supporting sales invoices[95] shows that the amount of ₱3,214,285.00 pertains to petitioner's sales of flour, delivered and billed to Gerry Commercial in December 2007.

As disclosed in Note 2[96] of petitioner's AFS as of and for the years ended December 31, 2008 and December 31, 2007, petitioner recognized its sales when the significant risks and rewards of ownership of the goods have been passed to the buyer. This means that petitioner, in recording and reporting its sales, adopted the accrual method of accounting, *i.e.*, sale/revenue was recognized in the period it was earned irrespective of whether the payment was received or not.

Thus, the assessed amount of ₱3,214,285.00 pertains to petitioner's sale in 2007 but which was collected only in 2008. Since the sales amount of ₱3,214,285.00 is outside the period covered by the present assessment, the deficiency income tax assessment thereon is cancelled.

A.3. Pi, Siy - ₱42,679.44

Petitioner explained that Pi Siy, who is renting Units 429A and 427D of the former Pasay building located in Pasay City for a monthly rental of ₱32,526.00 and ₱10,152.52, respectively, or a total monthly rental of ₱42,678.52 and which, in turn, equates to a total annual rental of ₱512,142.24.

Petitioner stated that on this basis, Pi, Siy issued in its favor quarterly BIR Forms No. 2307 corresponding to the amount of annual rental income. The said rental payments of Pi, Siy were likewise covered by official receipts[97] duly issued by petitioner and that the total

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[93] Exhibits "P-49-3-1" to "P-49-3-5".
[94] ₱3,600,000 x 12/112 = ₱3,214,285.71, difference of ₱0.71 due to round down.
[95] Exhibits "P-49-3-1" to "P-49-3-5".
[96] Exhibit "P-43", Docket vol. II, p. 970.
[97] Exhibits "P-33" to "P-33-w", Docket vol. II, pp. 877-888.

rental income was properly and duly reflected in the SAWT[98] for CY 2008.[99]

Petitioner likewise presented the subsidiary ledgers of rental income from units 429A and 427D by Pi, Siy showing monthly income of ₱35,526.00 and ₱10,152.52, respectively.[100] The annual totals amounting to ₱390,312.00 and ₱121,830.24, respectively, were traced to the Schedule of Rental Income[101] and ultimately to the AFS and AITR.[102]

Based on the Court's examination of the BIR records, respondent picked up a lower amount of total rental income from Pi, Siy from petitioner's schedule of "Rental Revenue-2008" which amounted only to ₱469,463.76.[103] Thus, resulting in a finding of undeclared revenue of ₱42,679.44 when it compared the income declaration in the SAWT amounting to ₱512,142.24.[104]

However, it was found that the reason for the lower total reflected in the schedule of "Rental Revenue-2008" was that the income for the month of February 2008 amounting to ₱42,678.52 was erroneously encoded in the line named Siy Seng, instead of with Pi, Siy.[105] As such, said amount was not forwarded to the annual total for Pi, Siy, which was the basis of respondent in comparing with the income declaration per SAWT.

Verily, petitioner was able to prove that there was no undeclared income from Pi, Siy. Thus, respondent's assessment must be removed.

A.4. Yu, Henry – ₱81,315.03

Petitioner averred that respondent never provided details nor did she explain how the alleged difference amounting to ₱81,315.03 was determined.

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[98] Exhibit "P-7", Docket vol. III, p. 1535.
[99] Petitioner's Memorandum, par. 14(c), Docket vol. III, p. 1768.
[100] Exhibits "P-49-9-1" and "P-49-9-2".
[101] Exhibit "P-50 (5/6)".
[102] Exhibit "P-55".
[103] BIR Records, p. 826.
[104] BIR Records, p. 1126.
[105] BIR Records, p. 830.

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Nonetheless, petitioner explained that Mr. Henry Yu issued separate BIR Forms No. 2307 for the first and second quarters of CY 2008 totaling ₱4,878.90, covering income payments of ₱97,578.00 on rental in those quarters.[106]

Petitioner stated that at year-end 2008, it received another BIR Form No. 2307 in the amount of ₱9,757.80 covering income payments of ₱195,156.00 from Mr. Yu for the whole year of CY 2008, including the rental payments for the first two quarters that were already covered by the previous BIR Forms from Mr. Yu.[107]

Petitioner stressed that the monthly rental payments of Mr. Yu for CY 2008 for Unit 427 of the former Pasay building amounting to ₱16,263.00, or equivalent to an annual rental of ₱195,156.00, were adequately supported by rental receipts[108] and properly reported in the SAWT[109] for CY 2008.[110]

A scrutiny of petitioner's subsidiary ledger of rental income from Unit 427 rented by Henry Yu (Yu Bon Po) shows a monthly rent of ₱16,263.00.[111] The annual total amounting to ₱195,156.00 was traced to the Schedule of Rental Income[112]. As discussed earlier under Section A.1, the aggregate rental income of ₱61,975,894.23 per Schedule of Rental Income was reported in petitioner's AFS and AITR for CY 2008.[113]

Evidently, there was no undeclared income from Henry Yu. Thus, respondent's assessment on this item was erroneous and improper.

A.5. Lao, Hian Long – ₱700,222.00

Petitioner alleged that Dr. Lao, Hian Long is a medical practitioner renting Room 617 of its Wellington Building situated at Condesa St., Binondo, Manila for a monthly rental of ₱27,415.08. In

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106 Exhibits "P-9" to "P-9-a", Docket vol. II, pp. 656-657.
107 Exhibit "P-9-b", Docket vol. II, p. 658.
108 Exhibits "P-34" to "P-34-k", Docket vol. II, pp. 889-894.
109 Exhibit "P-7", Docket vol. III, p. 1536.
110 Par. 14(d), Petitioner's Memorandum, Docket vol. III, pp. 1768-1769.
111 Exhibit "P-49-10".
112 Exhibit "P-50 (5/6)".
113 Exhibit "P-55".

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addition, Dr. Lao owns Gem Stationery, Inc. which occupies Room 613 of petitioner's Wellington Building for a monthly rental of ₱26,447.18.

It is further alleged that Dr. Lao and Gem Stationery, Inc. consolidated their income payments using Dr. Lao's TIN in the quarterly BIR Form No. 2307 issued to petitioner for CY 2008 and that petitioner consolidated the rental income received from Dr. Lao and Gem Stationery, Inc. in its SAWT for CY 2008 under the name of Dr. Lao.

According to petitioner, the amount of income payment reflected in the quarterly BIR Form No. 2307 corresponds to the amount reported in the SAWT for the CY 2008.[114]

Petitioner likewise presented the subsidiary ledgers of rental income from units 613 and 617 by Gem Stationery and Dr. Hian Long Lao, respectively, showing monthly income of ₱26,447.18 and ₱27,415.08.[115] The annual totals amount to ₱317,366.16 and ₱328,980.96, respectively, or an aggregate sum of ₱646,347.12, which were traced to the Schedule of Rental Income[116] and ultimately to the AFS and AITR.[117]

However, it was observed from the records that the total of these rentals from Gem Stationery and Dr. Lao amounting to ₱53,862.26 was consolidated in one row under the name Gem Stationery Inc. in the schedule of "Rental Revenue-2008" which was used by respondent in arriving at his findings.[118] The rentals shown in said schedule was equivalent to 13 months or ₱700,209.38.[119]

Further, Gem Stationery, Inc. and Lao, Hian Long issued only one BIR Form No. 2307 with TIN 000-328-739-000 evidencing their fact of withholding from the rental income payments made to petitioner. The quarterly BIR Forms No. 2307 reflected income payments totaling ₱700,221.96,[120] which tally with the amount

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[114] Par. 14(e), Petitioner's Memorandum, Docket vol. III, p. 1769.
[115] Exhibits "P-49-11-1" to "P-49-11-2".
[116] Exhibit "P-50 (2/6)".
[117] Exhibit "P-55".
[118] BIR Records, p. 831.
[119] BIR Records, p. 827.
[120] Exhibits "P-11" to "P-11-c", Docket vol. II, pp. 660-663.

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declared in the SAWT for CY 2008 under the name Lao, Hian Long with TIN 000-328-739-000.[121]

Notwithstanding that Gem Stationery, Inc. and Lao, Hian Long issued only one BIR Form No. 2307 with regard to their income payments to petitioner for the year 2008, the fact remains that petitioner properly declared its rental income from Gem Stationery, Inc. and Lao, Hian Long totaling ₱646,347.12 in its AITR for the same year. Hence, respondent's deficiency income tax assessment on this item is cancelled.

A.6. Monde Denmark Nissin – ₱127.28
A.7. Malabon Longlife Trading Corp. – (₱2.15)

Petitioner did not dispute these assessments, hence, must be left undisturbed.

A.8. JCM Resources Corp. – ₱9,150.00

Petitioner explained that JCM Resources Corp., the company that is renting Unit 252 Plaza Lorenzo Ruiz in Binondo, Manila for a monthly rental of ₱9,150.00, paid 13 monthly rentals in CY 2008 as shown by the official receipts issued by petitioner, which include rental for the month of December 2007.[122] However, the total quarterly BIR Form No. 2307 received from JCM Resources Corp. in CY 2008 was only for 12 monthly rental payments amounting to ₱109,800.00[123], corresponding to the rental income recognized by petitioner in CY 2008. Petitioner did not include the payment for December 2007 rental of ₱9,150.00.[124]

Petitioner likewise presented the subsidiary ledger of rental income from Unit 252 by JCM Resources, Inc. showing monthly income of ₱9,150.00.[125] The annual total rent of ₱109,800.00 was traced to the Schedule of Rental Income[126] and ultimately to the AFS and AITR[127].

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[121] Exhibit "P-7", Docket vol. III, p. 1535.
[122] Exhibits "P-37" to "P-37-k", Docket vol. II, pp. 907-912.
[123] Exhibits "P-45" to "P-48".
[124] Par. 14(f), Petitioner's Memorandum, Docket vol. III, p. 1770.
[125] Exhibit "P-49-13".
[126] Exhibit "P-50 (1/6)".
[127] Exhibit "P-55".

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Indeed, the amount of ₱9,150.00 pertains to petitioner's December 2007 rental income[128], which is outside the period covered by the present assessment. Thus, the deficiency income tax assessment thereon must be stricken down.

In sum, only the assessment for the following items in the amount of ₱125.13 shall be upheld:

Name of Tenant/Customer	Undeclared Income
Malabon Longlife Trading Corp.	₱ (2.15)
Monde Denmark Nissin	127.28
	₱125.13

B. Disallowed costs and expenses – ₱5,616,924.56

As stated in the Details of Discrepancies attached to the FDDA, respondent's disallowance of Amortization of Interest Expense amounting to ₱1,694,553.00; Light, Water and Taxes and Licenses amounting to ₱130,502.15 and Miscellaneous Expenses amounting to ₱3,791,869.41 were the result of reconciliation/comparison made between the claimed expenses per ITR versus the corresponding expenses per analysis of submitted documents. Said expenses were disallowed pursuant to Section 34 of the NIRC of 1997, as amended.[129]

B.1. Amortization of interest – ₱1,694,553.00

Petitioner asserted that the said amount actually pertains to the deferred interest income received by petitioner from MERALCO as part of the refund that petitioner received from said company.

Petitioner claimed that the said interest income was already recognized as income in the year 2006 as shown in Note 5 of its AFS with attached AITR for the year 2006.

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[128] Exhibit "P-37-k", Docket vol. II, p. 912.
[129] Exhibit "R-15", Details of Discrepancies, BIR Records, p. 1570.

Allegedly, such fact was also established in the Reconciliation of Net Income per Books against Taxable income of petitioner for the year ending December 31, 2008.[130]

This was clarified by the ICPA in her report[131] dated July 14, 2014, stating that in CYs 2005 and 2006, petitioner received letters[132] from Meralco informing petitioner that it has qualified for refund under the Meralco Phase IVB of the Refund approved by the Energy Regulatory Board, then Commission, in the latter's Order dated July 11, 2005, referred to as ERC Case No. 2001-243. The letter received by petitioner in CY 2005 pertains to the Meralco refund of the Flour Mill Division (FMD) while the letter received in CY 2006 pertains to the Real Estate Division (RED).

Petitioner was entitled to refund as customer with active contracts. It opted for the issuance of twenty-one (21) post-dated checks (PDCs) payable to it for the gross refund amount of ₱17,507,695.50 and ₱1,136,400.72 for its Flour Mill and Real Estate Divisions, respectively.

Petitioner initially recorded in its books of accounts the related receivables pertaining to the Meralco refund of ₱17,507,695.50 and ₱1,136,400.72 in 2005 and 2006, respectively, which were the fair value amounts at the time of transaction. After initial recognition of the receivables, as required by Philippine Accounting Standard [PAS] 39, *Financial Instruments: Recognition and Measurement*, the receivables were subsequently measured for financial reporting purposes at amortized cost using the effective interest method,[133] since these were non-current and non-interest bearing receivables. As such, the unearned interest income that resulted from subsequently stating the receivables at fair value using the effective interest method was recognized as a non-current liability and not recognized as part of income in the financial statements.

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[130] Par. 21, Petitioner's Memorandum, Docket vol. III, p. 1773.
[131] Exhibit "P-127", pp. 6-7.
[132] Exhibit "P-58".
[133] Par. 46. After initial recognition, an entity shall measure financial assets, including derivatives that are assets, at their fair values, without any deduction for transaction costs it may incur on sale or other disposal, except for the following financial assets:
(a) loans and receivables as defined in paragraph 9, which shall be measured at amortized cost using effective interest method; xxx *(Philippine Financial Reporting Standards (PFRS), Philippine Institute of Certified Public Accountants (PICPA), Part II of II, p. 1154.)*
Par. 9. *Loans and receivables* are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market, xxx *(Id. at p. 1143.)*

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Unearned interest income was being amortized and recorded as interest income in the financial statements over a period of five years based on the PDCs received by petitioner. However, the balance of unearned interest income of ₱3,710,035.55 as of December 31, 2006 was reported as part of petitioner's taxable income as shown in Reconciliation of Net Income per Books against Taxable Income of petitioner in the AITR for the year ended December 31, 2006. In CY 2008, the corresponding interest income recognized in the financial statements amounted to ₱1,694,553.00 and was shown as non-taxable reconciling item in the AITR for CY 2008,[134] since this amount was part of the taxable income already reported by petitioner in CY 2006.

The assessment is cancelled.

Petitioner's AFS for the year 2006 shows that a total of ₱3,710,035.55 unearned interest was recognized and was deducted from the face value of the Meralco refund in order to state it at fair value as of December 31, 2006. Note 5 of the 2006 AFS disclosed the details of the Meralco refund stated at fair value, which is summarized as follows:[135]

Current portion:	
Net amount presented in Note 5 of AFS	₱ 3,000,843.00
Unearned interest	550,413.00
Gross amount	₱ 3,551,256.00
Non-current portion:	
Net amount presented in Note 5 of AFS	₱ 7,494,146.00
Unearned interest	3,159,622.55
Gross amount	₱ 10,653,768.55
Totals:	
Net amount	₱ 10,494,989.00
Unearned interest	3,710,035.55
Gross amount	₱ 14,205,024.55

The unearned interest as of December 31, 2006 amounting to a total of ₱3,710,035.55 was only recognized as such for financial accounting purposes in order to present its receivables from Meralco

[134] Exhibit "P-43", Reconciliation of Net Income per Books Against Taxable Income as of December 31, 2008, Docket vol. II, p. 999.
[135] Exhibit "P-13", Docket vol. II, p. 683.

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at amortized cost[136] in compliance with PAS 39. Thus, it is clear that, for financial accounting purposes, no income was recognized for said amount in the year 2006.

However, for tax purposes in the year 2006, the same amount must already be subjected to income tax as it is already considered as income following the accrual method of accounting, where income is reportable when all the events have occurred that fix the taxpayers right to receive the income, and the amount can be determined with reasonable accuracy.[137] This right to receive was already established through the letter from Meralco informing petitioner of its refund.

This difference in treatment between finance and taxation constitutes a temporary difference which gives rise to a deferred tax asset (DTA) in petitioner's books.

A DTA is the deferred tax consequence attributable to a future deductible amount and operating loss carryforward. A DTA arises when, among others, the taxable income is higher than accounting income because of timing differences.[138] As in this case, the unearned interest of ₱3,710,035.55 is properly includible in the taxable income in the current period (2006), hence, is higher than the accounting income. However, such amount will only be included in the accounting income of future periods (including 2008) when said unearned interest is amortized yearly.

PAS 12, *Income Taxes*, provides that a DTA shall be recognized for all deductible temporary differences to the extent that it is probable that taxable profit will be available against which the deductible temporary difference can be utilized.[139] Such is the case in this

[136] The amortized cost of a financial asset or financial liability is the amount at which the financial asset or financial liability is measured at initial recognition minus principal repayments, plus or minus the cumulative amortization using the effective interest method of any difference between the initial amount and the maturity amount, and minus any reduction (directly or through the use of an allowance account) for impairment or uncollectibility.
The effective interest method is a method of calculating the amortized cost of a financial asset or financial liability (or group of financial assets or financial liabilities) and of allocating the interest income or interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial instrument or, when appropriate, a shorter period to the net carrying amount of the financial asset or financial liability. xxx *(PFRS, PICPA, Part II of II, p. 1143.)*

[137] *Filipinas Synthetic Fiber Corporation vs. Court of Appeals*, G.R. Nos. 118498 and 124377, October 12, 1999.

[138] Financial Accounting, Vol. 2, 2012 Ed., Valix, Peralta, Valix, p. 481.

[139] PFRS, PICPA, Part I of II, p. 526.

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particular transaction, hence, its income tax consequence amounting to ₱1,298,512 (₱3,710,035.55 x 35%) was recognized as part of petitioner's deferred income tax assets for the year 2006 in the AFS, as reflected in Note 16, which is net out with the deferred income tax liabilities.[140]

The concept of recognizing a DTA from a certain income transaction connotes that the taxpayer should remit the corresponding income tax now, but it may apply such advance remittance of income tax when the time comes that the income item is already to be recognized in the books. This recognition of deferred taxes only concerns the taxpayer's books in order to comply with the requirements of PAS 12, *Income Taxes*, but not with the BIR. The BIR is only concerned as to the remittance of the income tax at the time the transaction becomes taxable in accordance with the NIRC of 1997, as amended.

The DTA for this particular transaction amounting to ₱1,298,512.00 is reduced in the subsequent periods as it is correspondingly applied on each year that the unearned interest is being amortized and recognized as interest income.

This gradual reduction in and corresponding application of the DTA in the amortization of interest in the subsequent years can be demonstrated as follows:

Year	**DTA from Unearned Interest Income from Meralco Refund**[141]	**Income Tax Rate**	**Gross Value of Unearned Interest**[142] [143]	**Change (Accretion of Interest)**[144]
2006	₱1,298,512.00	35%	₱3,710,034.29	
2007	1,178,287.00	35%	3,366,534.29	₱ 343,500.00
2008	501,594.00	30%	1,671,980.00	₱1,694,554.29

It is to be noted that petitioner used 30% income tax rate in computing the DTA from the remaining balance of unearned interest

[140] Exhibit "P-13", Docket vol. II, p. 689.
[141] Exhibits "P-13" and "P-43", Notes to Financial Statements, Note 16, Docket vol. II, pp. 689 and 993.
[142] Exhibits "P-13" and "P-43", Notes to Financial Statements, Note 5, Docket vol. II, pp. 683 and 986.
[143] Differences in figures due to rounding off.
[144] Exhibits "P-13" and "P-43", Notes to Financial Statements, Note 5, Docket vol. II, pp. 683 and 986.

as of December 31, 2008. This is because the income tax rate of 30% already takes effect on January 1, 2009 pursuant to Section 27 of the NIRC of 1997, as amended. As such, the income tax consequence of the remaining balance of unearned interest as of the end of 2008, which is still to be amortized in the future periods, must already be at 30%.

It can be observed from the above table that the accretion of interest in 2008 amounting to ₱1,694,554.29 is also the same amount being disallowed by respondent in the amount of ₱1,694,553.00 (with the slight difference due to rounding off) as deduction from the "Net Income per Books" in petitioner's Reconciliation[145] of Net Income Per Books Against Taxable Income for the calendar year ended December 31, 2008.

Evidently, the assessed amount of ₱1,694,553.00 formed part of the ₱3,710,035.55 unearned interest recognized by petitioner in its books in 2006. However, as we have stated earlier, following petitioner's accrual method of accounting, the entire amount of ₱3,710,035.55 represents petitioner's taxable income for 2006. Considering so, the amount of ₱1,694,553.00 also pertains to taxable year 2006, which is outside the period covered by the present assessment. Hence, respondent's deficiency income tax assessment on the amount of ₱1,694,553.00 is cancelled.

B.2. Light, water and taxes and licenses – ₱130,502.15

The disallowed expenses comprised of the following:[146]

Nature of Expense	Amount Claimed
Meralco and Maynilad Water Services Billings for the maintenance of the Wellington Building situated at Condesa St., Binondo, Manila	₱ 116,588.77
Meralco Billings for the maintenance of the building situated at Ylaya, San Nicolas	7,461.12
Taxes, licenses and fees paid to the City Treasurer's Office of Quezon City	6,452.26
TOTAL	**₱130,502.15**

[145] Exhibit "P-43", Docket vol. II, p. 999.
[146] Exhibit "P-127", p. 8.

B.2.1. Meralco and Maynilad Water Services Billings at Condesa St. – ₱116,588.77

Respondent's main reason for the disallowance was that the electric and water billings were not under the name of petitioner but under the name of Salustiana Dee.[147]

Section 2.57.3 of Revenue Regulations (RR) No. 02-98, as amended by RR No. 30-2003, provides that **all income payments** which are required to be subjected to withholding tax **shall be subject to the corresponding withholding tax rate to be withheld by the person having control over the payment and who, at the same time, claims the expenses,** [*e.g.*, payments to utility companies which are required to be subjected to withholding tax shall likewise be subjected to withholding tax **even if the meter or billing statement (*e.g.*, electric or water meter or the telephone bill) is not in the name of the payor, as long as valid proof that payment of a particular expense is being shouldered by the afore-mentioned payor (*i.e.*, contract between the registered user of the meter and the payor)**; payments made by persons who are sharing portion of the bill which is in the name of another person as long as he is a duly constituted withholding agent and shall only withhold on the portion of the expense being shouldered by him].

Gleaning from this, petitioner is entitled to claim electricity and water expenses even if the billings were named under Salustiana Dee, if it is shown that the same were incurred in the conduct of petitioner's business and it was petitioner which made the payments.

The ICPA recommended that out of the ₱116,588.77 disallowance, the amount of ₱83,436.31 should be allowed as deductible expense since it is supported by cash vouchers and billing documents[148]; that it was incurred and paid by petitioner in carrying on and is directly attributable to the operation of its business for the year 2008; and that petitioner was able to provide supporting documents[149] on the ownership of the land and building.[150]

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[147] BIR Records, p. 1529.
[148] Exhibits "P-65-1" to "P-65-5".
[149] Exhibit "P-39", Docket vol. II, p. 922; Exhibits "P-39-a" to "P-39-c-7", Docket vol. II, pp. 926-937.
[150] Exhibit "P-127", p. 9.

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However, we find the cash vouchers submitted by petitioner to be insufficient to prove the fact of payment of the amount of ₱83,436.31. In the case of *Towne and City Development Corporation vs. Court of Appeals, et al.*[151], 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."

While there was an official receipt[152] supporting the water expense of ₱64,727.55, it cannot be verified from the same document whether it was petitioner that actually paid the amount of ₱64,727.55. Since the official receipt is also under the name of Salustiana Dee, petitioner should have submitted corroborating evidence such as returned paid check, bank statement, or any other document by which the Court can ascertain that it was petitioner which actually made the subject payment.

Therefore, the Court upholds the disallowance of petitioner's claimed light and water expenses in the amount of ₱116,588.77.

B.2.2. Meralco Billings at Ylaya, San Nicolas – ₱7,461.12

Petitioner asserted that the said expense should be allowed because the said building and the land on which it is standing are both owned by petitioner as a consequence of the merger between petitioner and Wellington Ty and Bros., Inc. (WTBI) as shown by the Certificate of Filing of the Articles and Plan of Merger[153] between petitioner and WTBI, with petitioner as the surviving corporation.[154]

Allegedly, as a result of the merger, the properties previously owned by WTBI, including the property in Ylaya Street, San Nicolas

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[151] G.R. No. 135043, July 14, 2004.
[152] Exhibit "P-65-5-1".
[153] Exhibit "P-15", Docket vol. II, p. 698.
[154] Par. 28, Petitioner's Memorandum, Docket vol. III, pp. 1776-1777.

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and the appurtenant electric meter, were recognized in the accounts of petitioner in CY 2008. Petitioner argued that the electricity expense it incurred and paid relative to the electric meter previously owned by WTBI is a valid expense of petitioner. Furthermore, the units of the said property are allegedly being leased out by petitioner to its tenants and the electric billing of ₱7,641.12 that was disallowed by the BIR pertains to the maintenance and operation of Unit 758A of said property, which is being occupied by petitioner as its administration office for the Ylaya property.[155]

Respondent, however, reiterated the assessment since he noted that the merger happened in June 2009, not in 2008.[156]

The Court agrees with respondent. The merger was only approved by the Securities and Exchange Commission on June 5, 2009.[157] Neither does petitioner's AFS for 2008 contain any disclosure which would indicate that it already incorporated WTBI's accounts in its own books in that year. In fact, WTBI still remained as petitioner's Investment in Shares of Stock of a Subsidiary as of December 31, 2008,[158] which all the more proves that the accounts of WTBI was not yet included in petitioner's books in 2008.

Still being separate entities during the year 2008, there should have been an existing lease contract between petitioner and WTBI for Unit 758A in 2008, which would show petitioner's occupancy or utilization of the area where it claims the corresponding electricity expense.

Further, petitioner merely submitted the cash vouchers and billing invoices from Meralco to substantiate the electricity expense, but only to the extent of ₱1,417.49.[159] However, there were no official receipts and other documents such as returned paid checks, bank statement, etc. to show petitioner's actual payment of the same.

Accordingly, the disallowance for light expense amounting to ₱7,641.12 must remain in totality.

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155 Exhibit "P-127", p. 9.
156 BIR Records, p. 1529.
157 Exhibit "P-15", Docket vol. II, p. 698.
158 Exhibit "P-43", Notes to Financial Statements, Notes 2 and 7, Docket vol. II, pp. 970 and 987.
159 Exhibits "P-68" and "P-68-1".

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B.2.3. Taxes, licenses and fees – ₱6,452.26

Petitioner asserted that the taxes, licenses and fees paid to the City Treasurer of Quezon City should be allowed as the same were paid in consequence of the merger of petitioner with WTBI where petitioner is the surviving entity.[160]

On the other hand, respondent maintained that the merger only took effect in June 2009, not in 2008.

Based on the ICPA's verification of the supporting cash voucher and Community Tax Certificate (CTC), it was found that the CTC was in the name of WTBI.[161]

However, based on our findings in the previous item, WTBI still remained a separate entity in 2008 since the merger was only approved on June 5, 2009. Thus, the taxes, licenses and fees amounting to ₱6,452.26 cannot be attributed to petitioner and must be disallowed.

To sum up, the entire ₱130,502.15 disallowance of petitioner's claimed expenses for light, water and taxes and licenses is upheld.

B.3. Miscellaneous expense – ₱3,791,869.41

Said miscellaneous expenses in the amount of ₱3,791,869.41 pertains to the pro-rated share of petitioner in the lawyer's and arbitrator's fees in the amount of ₱3,791,869.41 in connection with a suit filed against petitioner, RFM Corporation and three other corporations in Columbia when the said five corporations co-loaded their wheat on a vessel that figured in an accident while on course. As a result of which, the said five corporations were sued and they were forced to secure the services of a counsel.

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[160] Par. 29, Petitioner's Memorandum, Docket vol. III, p. 1778.
[161] Exhibits "P-69" to "P-69-1".

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RFM Corporation advanced the payments to their counsel and the other four corporations, petitioner included, paid their proportionate share on the lawyer's fees to RFM Corporation.[162]

Respondent, in maintaining the assessment, averred that petitioner lacked substantiation in order to comply with Section 34(A)(1)(b) of the Tax Code. Petitioner failed to present proof that it was indeed one of the parties in an arbitration case, to merit its claim of sharing in payment of lawyer and arbitration fees.[163]

The assessment is cancelled.

Through the various documents it submitted such as cash vouchers[164], journal voucher[165], debit memos[166] and official receipts[167] issued by RFM Corporation (RFM), petitioner was able to prove that in 2008 it paid RFM the amount of ₱3,791,869.41 representing petitioner's pro-rated share of the lawyer's and arbitrator's fees advanced by RFM in connection with the MV "HAI Kang"s case. Since the said fees were incurred and paid in relation to petitioner's flour business, the same constitute valid deductible expenses against petitioner's taxable income for the year 2008. Below is the detailed breakdown of the amount of ₱3,791,869.41:

Exhibit	Per Cash Vouchers	Exhibit	Per Official Receipts/ Journal Voucher	Exhibit	Per Debit Memos
"P-16"	₱ 3,342,132.30	"P-17"	₱ 3,342,132.30	"P-17-a"	US$ 79,235.00
"P-18"	449,737.11	"P-19"	624,574.00	"P-19-a"	13,414.39
		"P-20"	(174,836.89)	"P-20-a"	(4,013.15)
	₱3,791,869.41		**₱3,791,869.41**		**US$ 88,636.24**

To recapitulate, the Court sustains respondent's disallowance of petitioner's claimed expenses for light, water and taxes and licenses in the entire amount of ₱130,502.15.

[162] Par. 31, Petitioner's Memorandum, Docket vol. III, p. 1779.
[163] BIR Records, p. 1529.
[164] Exhibits "P-16" and "P-18", Docket vol. II, pp. 700 and 708.
[165] Exhibit "P-20", Docket vol. II, p. 724.
[166] Exhibits "P-17-a" and "P-19-a", Docket vol. II, pp. 702 and 710.
[167] Exhibits "P-17" and "P-19", Docket vol. II, pp. 701 and 709.

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C. Disallowed creditable tax withheld – ₱686,554.81

Respondent disallowed petitioner's claimed creditable withholding taxes (CWT) aggregating to ₱654,304.81 for the latter's failure to submit copies of certificates (BIR Form No. 2307) in violation of Section 2.58.3 of RR No. 02-98. However, the said disallowance was further adjusted to reflect the multiple certificates claimed from San Miguel Properties Inc. (SMPI) amounting to ₱32,250.00, as discussed in item No. 1. Hence, the total disallowance of creditable withholding taxes claimed amounted to ₱686,554.81.[168]

To refute said assessment, petitioner presented the 2008 SAWT[169] and corresponding 2008 BIR Forms No. 2307[170] issued by its tenants and customers, which were examined by the ICPA.

Out of the total tax credits being claimed by petitioner in its AITR amounting to ₱5,053,041.00,[171] tallying with the total amount of tax withheld in the 2008 SAWT,[172] the Court finds that the amount of ₱366,045.30 should be disallowed, detailed as follows:

	Amount of Claimed CWT	Exhibit
No BIR Form No. 2307		
Alu-Mart Aluminum Glass Supply	₱ 1,626.30	
Columbia Merchandising	39,743.11	
Furniture Group Inc.	1,819.07	
JCM Resources Corp	457.50	
Lewin Construction Supply	4,878.90	
Manuel Stationery Inc.	3,910.58	
Maresville Exhibit & Trading Inc	1,210.56	
Mega Plywood Inc.	14,593.00	
Meralco	1,185.81	
Metrobank	121,550.00	
Shecom Ind'l & Const Supplies	8,602.98	
WDJ Enterprises	15,113.78	
Co, Willy	13,469.85	
Huang Jr., James	1,837.50	
Sy, Rosa	11,604.12	
Ong, Helen	1,566.30	
To, Go Bun	15,673.68	

[168] Exhibit "R-15", Details of Discrepancies, BIR Records, p. 1570.
[169] Exhibit "P-7", Docket vol. III, pp. 1534-1536.
[170] Exhibits "P-72-1" to "P-72-238" and "P-8" to "P-9-b", Docket vol. II, pp. 652-658.
[171] Exhibit "P-43", Line Nos. 30C and 30D, Docket vol. II, p. 1002.
[172] Exhibit "P-7", Docket vol. III, p. 1536.

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Ty, Uy Chuan		17,729.66	
Subtotal	***₱***	***276,572.70***	
Petitioner is the payor per BIR Form 2307			
Long Life Canvass	₱	73,904.04	"P-72-77" to "P-72-80"
Gargantos, Teresita		15,568.56	"P-72-189" to "P-72-192"
Subtotal		***89,472.60***	
Total	**₱**	**366,045.30**	

All considered, petitioner's basic deficiency income tax liability must be reduced to ₱411,765.45, as re-computed below:

Taxable income per return		₱ 262,996,076.00
Add: Adjustments		
Unreported revenue - CWT vs. reported sales		₱ 125.13
Disallowed Light, water and taxes and licenses		130,502.15
Taxable income per audit		₱ 263,126,703.28
Income tax due (35%)		₱ 92,094,346.15
Less: Tax credits/Payments per return	₱92,048,626.00	
Disallowed creditable tax 2307	366,045.30	91,682,580.70
Basic deficiency income tax		**₱ 411,765.45**

II. Deficiency Value-added Tax

Respondent's deficiency VAT assessment is reproduced hereunder:[173]

Sale of Flour		₱ 1,580,054,037.50
Sale of Animal Feed		126,879,984.00
Rental Income		62,910,755.32
Unreported Revenue		4,361,149.40
Other Income		3,214,287.19
Total Sales/Revenue		₱ 1,777,420,213.41
Less: Exempt Sales		134,239,179.64
Total VATable Receipts		₱ 1,643,181,033.77
Output Tax		₱ 197,181,724.05
Input Tax per Return	₱ 13,412,139.88	
Less: Disallowed Input Tax	455,176.82	12,956,963.06

[173] FDDA, Exhibit "R-15", BIR Folder 3, p. 1574.

Value Added Tax Due		₱ 184,224,760.99
Less: Payments & Credits per Return		182,802,078.65
Deficiency Value Added Tax		₱ 1,422,682.34
Add: Increments		
Interest until October 31, 2013	₱ 1,351,548.23	
Compromise penalty	25,000.00	1,376,548.23
Total Deficiency Value Added Tax		**₱ 2,799,230.57**

Based on this computation, petitioner summarized the assessment items into the following:[174]

Deemed unreported revenue - see item 2 under Income Tax		₱4,361,149.40
Deemed unreported other income		3,214,287.19
Difference of rental income per AAFS and per 2550Q for CY 2008		
Per AAFS	₱62,910,755.32	
Per 2550Q	62,423,634.45	487,120.87
		₱8,062,557.46
Value-added tax rate		12%
		₱ 967,506.90
Disallowed input tax		455,176.82
Basic tax assessment		₱1,422,683.72
Interest and surcharge		1,376,548.23
		₱2,799,231.95
Difference due to rounding off		(1.38)
Assessment per BIR		₱2,799,230.57

A. Deemed unreported revenue – ₱4,361,149.40

This was based on the same finding under the deficiency income tax assessment that respondent's comparison of petitioner's SLS vs. SAWT for the year 2008 revealed an alleged unreported revenue in the amount of ₱4,361,149.40. Citing Sections 106 and 108 of the NIRC of 1997, as amended, respondent assessed petitioner of the corresponding deficiency VAT.

However, as discussed earlier, petitioner was able to account for the discrepancy of ₱4,361,149.40 save for a very minimal amount of ₱125.13. Consequently, the deficiency VAT assessment shall be cancelled except that pertaining to the amount of ₱125.13.

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[174] Par. 37, Petitioner's Memorandum, Docket vol. III, p. 1782.

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B. Deemed unreported other income – ₱3,214,287.19

The alleged unreported income of petitioner in the total amount of ₱3,214,287.19 comprises of the following:[175]

Nature	Amount
Monthly reimbursements from tenants for Meralco bills (electricity) for the entire year of 2008	₱ 1,687,150.00
Monthly reimbursements from tenants for Maynilad bills (water) for the entire year of 2008	819,245.79
Monthly collection of association dues from tenants	380,698.40
Parking fees	316,000.00
Dividend from PLDT preferred shares	11,193.00
TOTAL	**₱3,214,287.19**

B.1. Monthly reimbursements from tenants for Meralco and Maynilad bills – ₱1,687,000.00 and ₱819,245.79, totaling ₱2,506,395.79; Association dues – ₱380,698.40

Petitioner emphasized that pursuant to Section 105 of the NIRC of 1997, as amended, only persons who, "in the course of trade of business, sells, barters, exchanges, leases goods or properties, renders services, xxx shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code."

The amount of ₱2,506,395.79 allegedly comprises of reimbursements from petitioner's tenants after petitioner itself advances the payment of the utility bills for electricity and water.

Petitioner pointed out that its Articles of Incorporation[176] clearly shows that it is not engaged in the business of selling light/power and water to its tenants.[177]

As for the alleged unreported revenue in the amount of ₱380,698.40, petitioner argued that the same does not constitute

[175] Par. 40, Petitioner's Memorandum, Docket vol. III, p. 1783.
[176] Exhibits "P-38" and "P-38-a", Docket vol. II, pp. 913-921.
[177] Pars. 41 to 42, Petitioner's Memorandum, Petitioner's Memorandum, Docket vol. III, pp. 1783-1784.

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income since it was used primarily and exclusively for the maintenance and operation of the Wellington Building it leased out.

Since said association dues are not clearly income derived by petitioner from the conduct of its business, the same, therefore, is not subject to VAT pursuant to Section 105 of the Tax Code.[178]

The assessment is upheld.

Mere reimbursements-at-cost (*i.e.*, without any mark-up or profit element to the lessor) for shared expenses such as utilities and other maintenance expenses of the leased areas, do not constitute income but are amounts held in trust by the lessor for the service providers. Thus, they should not form part of the taxable gross receipts of the lessor provided that the input tax pertaining to the share of the tenants on the shared cost was not claimed, VAT is not passed on the tenants and the same are receipted separately using NON-VAT Official Acknowledgment Receipts.

However, records[179] show that petitioner claimed and recognized in its books, the entire input VAT on the Meralco and Maynilad billings, hence, benefitting itself of the input VAT on the share of the tenants in the utilities expense. On this score alone, the amounts billed by petitioner for reimbursements must be subject to output VAT.

When these expenses were subsequently billed to its tenants, petitioner charged not only the cost but also the 12% VAT billed by the service providers. Thus, these were not purely reimbursements-at-cost transactions.

Moreover, upon collection of these expenses from its tenants, petitioner issued VAT official receipts instead of Non-VAT Official Acknowledgment Receipts. Thus, granting for the sake of argument that the amounts subsequently billed by petitioner to its tenants were purely at cost, the fact that petitioner issued VAT official receipts makes petitioner rightfully liable to pay output VAT on the amounts collected from its tenants for electricity and water expenses.

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[178] Par. 45, Petitioner's Memorandum, Docket vol. III, p. 1786.
[179] Exhibits "P-73-1" to "P-73-486" and "P-74" to "P-74-88-1".

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It bears stressing that the VAT imposed on the sale of goods or properties and sale of services and use or lease of properties under Sections 106 and 108 of the NIRC of 1997, as amended, is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. Thus, for the same transaction, the output VAT of the seller becomes the input VAT of the purchaser. The only means of communicating this shifting is the VAT-registered official receipt (in the case of sale/purchase of services and use or lease of properties) or sales invoice (in the case of sale/purchase of goods or properties) issued in accordance with Sections 113 and 237 of the same Code.

In the case of *Panasonic Communications Imaging Corporation of the Philippines (Formerly Matsushita Business Machine Corporation of the Philippines) vs. Commissioner of Internal Revenue*[180], the Supreme Court explained how the output-input mechanism works under the VAT system, to wit:

> "The VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is **invoice-based**, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports. For example, when a seller charges VAT on its sale, it issues an invoice to the buyer, indicating the amount of VAT he charged. For his part, if the buyer is also a seller subjected to the payment of VAT on his sales, he can use the invoice issued to him by his supplier to get a reduction of his own VAT liability. The difference in tax shown on invoices passed and invoices received is the tax paid to the government. In case the tax on invoices received exceeds that on invoices passed, a tax refund may be claimed."

To ensure proper payment of taxes, the invoicing requirements under the VAT law and regulations should be strictly complied with as these were designed to create an orderly VAT system without prejudice both to the taxpayers and the government.

Considering the foregoing, respondent's deficiency VAT assessment on the amount of ₱2,506,395.79 collected by petitioner for electricity and water expenses is upheld.

[180] G.R. No. 178090, February 8, 2010

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With regard to the association dues charged to tenants,[181] the same shall likewise be subjected to VAT since these were recorded and reported by petitioner itself as Miscellaneous Income. [182]

B.2. Parking fees – ₱316,000.00

As stated by the ICPA in her report, petitioner agreed to pay the VAT due on the ₱316,000.00 parking fees.[183]

B.3. Dividend from PLDT preferred shares – ₱11,193.00

Petitioner claimed that the amount of ₱11,193.00 represents dividend received on its PLDT shares. Being an intercorporate dividend which is not subject to income tax, the same is thus not subject to VAT which warrants the reversal of respondent's VAT assessment thereon.[184]

Petitioner submitted a copy of the transmittal letter from PLDT for the check amounting to ₱11,193.00 representing the cash dividend on the common stock on the holdings appearing in petitioner's name in the share records as at close of business on 2008/08/22.[185]

The Court agrees with petitioner. Pursuant to Sections 106 and 108 of the NIRC of 1997, as amended, VAT is imposed upon a sale of goods or properties, sale of services or use/lease of properties. Since the said dividend income does not pertain to any of the transactions subject to VAT, the related deficiency VAT assessment should be cancelled and withdrawn.

To summarize, petitioner's deemed unreported other income which must be subjected to deficiency VAT is reduced to ₱3,203,094.19 (₱3,214,287.19 less ₱11,193.00).

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[181] Exhibit "P-81".
[182] Exhibits "P-82" and "P-83".
[183] Exhibit "P-127", p. 14.
[184] Pars. 46 to 47, Petitioner's Memorandum, Docket vol. III, pp. 1786-1787.
[185] Exhibit "P-85-2".

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C. Deemed rental income per AAFS and per 2550Q for CY 2008 – ₱487,120.87

The aforesaid amount of ₱487,120.87 is allegedly the difference in the rental income as reported in the AFS of petitioner and as declared in its four Quarterly VAT Returns (BIR Form No. 2550Q) for CY 2008.

The Court finds respondent's assessment proper.

In relation to Section 108 of the NIRC of 1997, as amended, relevant portions of RR No. 16-05 are quoted hereunder:

> "SEC. 4.108-1. *VAT on the Sale of Services and Use or Lease of Properties.* – Sale or exchange of services, as well as **the use or lease of properties**, as defined in Sec. 108 (A) of the Tax Code shall be **subject to VAT, equivalent to 10%**[186] **of the gross receipts (excluding VAT)**.
>
> SEC. 4.108-2. *Meaning of 'Sale or Exchange of Services'.* – The term *'sale or exchange of services'* means the performance of all kind of services in the Philippines for others for a fee, remuneration or consideration, whether in kind or in cash, including those performed or rendered by the following:
>
> xxx xxx xxx
>
> (3) **lessors of property**, whether personal or **real**;" (*Emphasis supplied*)

Clearly, from the foregoing, the 12% VAT on the lease of properties is based on gross receipts defined in the same regulations, as follows:

> "SEC. 4.108-4. *Definition of Gross Receipts.* – *'Gross receipts'* refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, **rental** or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments **actually or**

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[186] Effective February 1, 2006 the VAT rate was increased from 10% to 12% (Revenue Memorandum Circular No. 7-06).

constructively received during the taxable period for the services performed or to be performed for another person, excluding VAT." (*Emphasis supplied*)

On the other hand, for financial reporting purposes, petitioner recognizes rental revenues using the accrual method of accounting and in compliance with PAS 17[187], *i.e.*, revenue is recognized when it is earned and not necessarily, when the money is actually or constructively received.

Accordingly, the revenue per AFS may not coincide with that per VAT returns. Petitioner's adoption of the accrual method of accounting (*i.e.*, revenue is reported in the period it is earned regardless of whether it has been received or not) for financial reporting/income tax purposes and the cash method of accounting (*i.e.*, revenue is reported based on gross receipts/collection) for VAT purposes, may result in a timing difference in the recognition of its revenues. However, petitioner failed to establish that the ₱487,120.87 discrepancy in its reported revenues was brought about by such timing difference.

Per the ICPA's verification, petitioner's Monthly and Quarterly VAT Returns for 2008 shows VATable rental receipts totaling ₱55,064,439.01 and VAT-exempt rental receipts totaling ₱7,359,195.64, or a total of ₱62,423,634.65.[188]

It was noted that the VAT returns which the ICPA used as basis for her findings were manually filed with the BIR. However, these total rental receipts were noted to be consolidated with the flour and feeds sales in the VAT returns which were electronically filed by petitioner.[189]

Petitioner's declared gross receipts from rent per VAT returns in the amount of ₱62,423,634.65 when compared with that reported per petitioner's AFS in the amount of ₱62,910,755.00[190] reveals a discrepancy in the amount of ₱487,120.35, which the ICPA reconciled as follows:[191]

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187 Exhibit "P-43", Notes to Financial Statements, Note 2, p. 2, Docket vol. II, p. 970.
188 Exhibits "P-87-1" to "P-87-12"; summarized by the ICPA in Exhibit "P-87".
189 BIR Records, pp. 622-645.
190 Exhibit "P-43", Statement of Income for the year ended December 31, 2008, Docket vol. II, p. 966.
191 Exhibit "P-87".

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Rent accounts receivable (Real Estate Division), beginning of year		₱ 2,142,403.73
Less: Rent accounts receivable (Real Estate Division), end of year		1,652,031.80
Movement of accounts receivable at year end:		490,371.93
a. Rental income earned by Flour Mill Division	₱(12,000.00)	
b. Rental income not subjected to VAT	(15,744.37)	
c. Rent income pertaining to 2008 but already paid during 2007	(72,501.03)	
d. Accrual of accounts receivable – noncurrent	(877,246.90)	(977,492.30)
Total adjustments		**₱(487,120.37)**

As clearly indicated above, the rental income of ₱15,744.37 under letter b was not subjected to VAT. However, as to the other reconciling items under letters a, c and d in the respective amounts of ₱12,000.00 ₱72,501.03 and ₱877,246.90, petitioner failed to submit proof such as billing invoices and official receipts and other documents in order for this Court to ascertain that these do not represent rental collections in 2008.

Thus, respondent's deficiency VAT assessment on the ₱487,120.87 discrepancy in petitioner's rental revenues is sustained.

D. Disallowed input tax – ₱455,176.82

Invoking the invoicing and accounting requirements under Sections 110 and 113 of the NIRC of 1997, as amended, respondent disallowed petitioner's claimed input taxes in the amounts of ₱285,437.61 and ₱169,739.21 or an aggregate sum of ₱455,176.82.[192]

Based on petitioner's analysis, the composition of the disallowed input tax could be as follows:[193]

	Amount	
Particulars	**Transaction**	**Input VAT**
a. Input tax from domestic purchases of flour bags, cotton thread and admixture exclusively used for flour		₱285,437.61
b. Disallowed input tax from various transactions due to invoicing requirements as follows:		
(1) ACV Enterprises	₱ 1,430.36	
(2) Antonio B. Paulino	42,737.64	
(3) Cherry Foodarama	3,571.00	
(4) Edgar Alcover	35,924.16	
(5) Globe Telecom	26,821.50	

192 Exhibit "R-15", Details of Discrepancies, BIR Records, p. 1569.
193 Exhibit "P-127", p. 16.

(6) IUBI Insurance Intermediary	15,842.50	
(7) Maynilad Water Services, Inc.	1,072,028.97	
(8) Meralco	61,084.98	
(9) Metrobank	1,785.71	
(10) UCPB General Insurance Co.	151,438.20	
(11) Vienna Café	1,828.42	
	1,414,493.44	169,739.21
Total		₱455,176.82

From the above breakdown, petitioner only contests letter (a) and letter (b)(4), (7) and (8)[194].

D.1. Input tax from domestic purchases of flour bags, cotton thread and admixture exclusively used for flour – ₱285,437.61

According to petitioner, it made domestic purchases of flour bags, cotton thread and admixtures exclusively used for flour in the total amount of ₱2,788,213.00. Petitioner explained that since these were exclusively used for flour, it allocated all input VAT credits derived from all said purchases to its flour sales that are subject to VAT.

The disallowance of ₱285,437.61 purportedly resulted from respondent's improper allocation of the ₱2,788,213.00 input tax credits to the VAT-exempt sales of petitioner.[195]

The assessment is retained.

Petitioner failed to present the relevant invoices of the alleged purchases of ₱2,788,213.00 which were exclusively attributable to its flour sales; hence, we cannot verify the validity of petitioner's claim.

D.2. Disallowed input tax related to the following purchases:

Edgar Alcover	**₱ 35,924.16**
Maynilad Water Services, Inc.	**1,072,028.97**
Meralco	**61,084.98**

[194] Exhibit "P-127", par. 12(b), p. 17; Pars. 52-53, Petitioner's Memorandum, Docket vol. III, p. 1789.

[195] Par. 52, Petitioner's Memorandum, Docket vol. III, p. 1789.

The ICPA verified the invoices[196] and ORs[197] submitted by petitioner to substantiate the input VAT from the above purchases and summarized her findings in Exhibit "P-90".

The aforesaid documents failed to meet the invoicing requirements under Sections 113(A)(2) and (B)(4) of the NIRC of 1997, as amended, and as implemented by Section 4.114-1(A)(2) and (B)(3) of RR No. 16-05, as amended.

It was noted that the VAT ORs[198] supporting petitioner's purchases of services from Edgar Alcover amounting to ₱35,924.16 were issued under the name of Wellington Flour Mills and not under the name of petitioner, while the ORs[199] submitted for its claimed Maynilad purchases do not indicate petitioner's TIN. On the other hand, petitioner failed to submit ORs with respect to its Meralco purchases[200].

There being no sufficient evidence presented by petitioner to refute respondent's disallowance of input VAT credits amounting to ₱455,176.82, the same must be upheld in totality.

All the foregoing considered, petitioner is found to be liable for deficiency VAT but in the reduced amount of ₱898,017.64, as computed below:

Deemed unreported revenue		₱ 125.13
Deemed unreported other income		3,203,094.19
Difference of rental income per AFS and per BIR Form No. 2550Q		
Per AFS	₱62,910,755.32	
Per BIR Form No. 2550Q	62,423,634.45	487,120.87
Total VATable receipts		₱3,690,340.19
VAT rate		12%
VAT due		₱ 442,840.82
Add: Disallowed input VAT		455,176.82
Basic deficiency VAT		**₱898,017.64**

[196] Exhibits "P-74-63-1" to "P-74-87-1" and "P-65-5-1".
[197] Exhibits "P-90-3" to "P-90-26".
[198] Exhibits "P-90-1-1" and "P-90-2-1".
[199] Exhibits "P-90-3" to "P-90-26"
[200] Exhibit "P-127", p. 18.

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III. Deficiency Withholding Tax on Compensation

Respondent computed the deficiency WTC assessment as follows:[201]

Total compensation subject to withholding tax		₱100,576,708.90
Salaries and wages per alphalist		95,165,505.99
Salaries and wages not subjected to withholding tax		₱ 5,411,202.91
Deficiency withholding tax – compensation (32%)		₱ 1,731,584.93
Add: Increments		
Interest until October 31, 2013	₱1,645,005.68	
Interest on management bonus paid and remitted on 4-13-2009	444,658.32	
Compromise penalty	25,000.00	2,114,664.00
Deficiency withholding tax - compensation		**₱3,846,248.94**

Respondent's verification disclosed that petitioner's claimed salaries and wages, direct and indirect labor aggregating to ₱100,576,708.80 was ₱5,411,202.91 higher than that reflected in the Alphalist submitted by petitioner amounting to ₱95,165,505.99. Said discrepancy was therefore subjected to deficiency withholding tax by respondent pursuant to Sections 78, 79 and 80 of the NIRC of 1997, as amended.

Likewise, respondent imposed interest amounting to ₱444,658.32 on the alleged late remittance of withholding tax on compensation (management bonus for 2008) paid and remitted on April 13, 2009, pursuant to Revenue Memorandum Order No. 1-90, as amended.[202]

The alleged ₱5,411,202.91 unreported salaries and wages comprised of the following:[203]

	Per Petitioner's Reconciliation		
Particulars	**BIR Assessment**	**Per Return**	**Difference**
a. Director's compensation	₱ 460,000.00	₱ 240,000.00	₱ 220,000.00
b. Retirement benefits of petitioner's employee	1,669,384.00	846,460.79	822,923.21

[201] Exhibit "R-15", p. 1573.
[202] Exhibit "R-15", Details of Discrepancies, BIR Records, p. 1569.
[203] Par. 55, Petitioner's Memorandum, Docket vol. III, p. 1791.

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c. Accrued management bonus	37,218,049.02	33,585,889.82	3,632,159.20
d. Other employee benefits	736,123.57	-	736,123.57
e. Other accounts	60,493,152.31	60,493,152.31	-
	₱ 100,576,708.90	₱ 95,165,502.92	**₱5,411,205.98**

A. Director's compensation – ₱220,000.00

Petitioner asserted that the alleged unreported director's compensation in the amount of ₱220,000.00 is not subject to withholding tax on compensation because the said amount was due to the directors of petitioner who were not its employees.[204]

Petitioner presented the Schedule of Director's Compensation per GL which shows the following information:[205]

DIRECTORS EMPLOYEES OF THE CORP				
NAME OF DIRECTOR	**RATE PER MONTH**		**TOTAL**	**TOTAL PER GL**
Salustiana Tan	₱5,000.00	12 months	₱60,000.00	
Felicisima Sia	5,000.00	12 months	60,000.00	
Welison Ty	5,000.00	12 months	60,000.00	
Wilfrido Ty	5,000.00	12 months	60,000.00	
total - Directors employees of the corp. (subj. to w/tax wages)				**₱240,000.00**
DIRECTORS NOT EMPLOYEES OF THE CORP				
Lily Ang	5,000.00	12 months	60,000.00	
Leticia Dee	5,000.00	12 months	60,000.00	
William Ty	5,000.00	12 months	45,000.00	
Washington Ty	5,000.00	12 months	55,000.00	
total - Directors not employees of the corp. (subj. to EWT)				**220,000.00**
				₱460,000.00

The enlisted individuals were present in the List of Directors/Officers disclosed in petitioner's General Information Sheet (GIS) for the year 2008, which was filed with the Philippine Securities and Exchange Commission on April 10, 2008.[206]

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[204] Par. 56, Petitioner's Memorandum, Docket vol. III, p. 1791.
[205] Exhibit "P-25", Docket vol. II, p. 775.
[206] BIR Records, p. 324.

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The GIS further indicates that Lily Ang, William Ty and Washington Ty were not designated as officers of the corporation, while Leticia Dee was the elected Honorary Chairman.

Payments to said directors totaling ₱220,000.00 were subjected to EWT and were traced to the Alphalist for the year 2008 with ATC Codes WI091 or WI090 – Fees of Directors Who are not Employees of the Company.[207]

However, it was noted that income payments to Lily Ang, William Ty and Washington Ty were higher by ₱1,796,036.87 each as compared to their respective Director's Compensation. This difference was accounted for as Director's Bonus which will be discussed in Section C.

Indeed, petitioner was able to properly account for the assessed difference of ₱220,000.00 and must thus be deducted from the deficiency WTC assessment.

B. Retirement benefits of petitioner's employees – ₱822,923.21

The assessed amount of ₱822,923.21 is the difference between the ₱1,669,384.00 retirement benefit cost recognized by petitioner in its AFS for the year 2008[208] and the ₱846,460.79 retirement benefits paid out by petitioner for the same year.[209]

The assessment is cancelled.

Section 79(A) of the NIRC of 1997, as amended, as implemented by Section 2.79(A) of RR No. 02-98, as amended, mandates the withholding of tax on compensation, as follows:

> "SEC. 79. *Income Tax Collected at Source.* –
>
> (A) *Requirement of Withholding.* – **Every employer making payment of wages shall deduct and withhold**

[207] Exhibit "P-27-a-1", Docket vol. II, pp. 784-792.
[208] Exhibit "P-43", Notes to Financial Statements, Notes 13 and 15, Docket vol. II, pp. 990-991.
[209] Exhibit "P-43", Notes to Financial Statements, Note 15, Docket vol. II, p. 991.

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upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however*, That no withholding of a tax shall be required where the total compensation income of an individual does not exceed the statutory minimum wage, or Five thousand pesos (P5,000.00) per month, whichever is higher." *(Emphasis supplied)*

"SECTION 2.79. *Income Tax Collected at Source on Compensation Income.*

(A) *Requirement of Withholding.* – **Every employer must withhold from compensations paid**, an amount computed in accordance with these regulations. Provided, that no withholding of tax shall be required where the total compensation income of an individual does not exceed the statutory minimum wage or five thousand pesos (P5,000.00) monthly (sixty thousand pesos (P60,000.00) a year), whichever is higher." *(Emphasis supplied)*

Clearly, from the foregoing law and regulations, the liability of the employer to withhold tax on its employees' compensation arises upon payment of the compensation and not upon mere accrual thereof.

The ₱1,669,384.00 being assessed by respondent pertains to the accrued retirement benefit cost or expense of petitioner for the year 2008.[210]

Petitioner has a funded defined benefit retirement plan. The cost of providing benefits under the defined benefit plan is determined using the projected unit credit method.[211] This is as prescribed by PAS 19, *Employee Benefits*, where the components of the employee benefit expense that will be recognized for a period under a defined benefit plan are as follows:

a. Current service cost
b. Interest cost
c. Expected return on plant assets

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[210] Exhibit "P-43", Notes to Financial Statements, Notes 13 and 15, Docket vol. II, pp. 990-991.
[211] Exhibit "P-43", Notes to Financial Statements, Note 2, Docket vol. II, p. 975.

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d. Actuarial gains and losses, as required in accordance with the entity's accounting policy
e. Past service cost
f. The effect of any curtailments or settlements.[212]

Thus, it is very clear that retirement benefits expense recognized in the income statement is not the same as the retirement benefits paid. Hence, it was improper for respondent to use the retirement benefits cost per AFS as a reckoning point to compare with the actual retirement benefits paid per return in order to arrive at an assessment.

The retirement benefits paid during the year 2008 only amounted to ₱846,461.00 as disclosed in petitioner's AFS.[213] This is the same amount found by respondent in petitioner's WTC returns. As such, there is no deficiency WTC from retirement benefits of petitioner's employees.

C. Accrued management bonus – ₱3,632,159.20

Petitioner argued that respondent did not state the details for the ₱37,218,049.02 assessment for accrued management bonus and as such petitioner is at a loss as to how respondent came about with the alleged difference of ₱3,632,159.20 management bonus, on the basis of which petitioner was assessed deficiency WTC.

It is further alleged that the actual management bonus paid by petitioner to its management employees for the year 2008 is only ₱33,438,543.13 and not ₱37,218,049.02, and the withholding tax due thereon was duly paid by petitioner.[214]

The assessment is partially upheld.

As found by the ICPA, petitioner accrued ₱40,410,830.00 worth of management bonus in 2007, which was paid in 2008[215]. Said amount is broken down as follows:[216]

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[212] Financial Accounting, Vol. 2, 2012 Ed., Valix, Peralta, Valix, p. 556.
[213] Exhibit "P-43", Notes to Financial Statements, Note 15, Docket vol. II, p. 991.
[214] Pars. 61 and 62, Petitioner's Memorandum, Docket vol. III, pp. 1794-1795.
[215] Exhibits "P-95", "P-96" and "P-96-1-1" to "P-96-3-1".
[216] Exhibit "P-96".

Total management bonus subject to expanded withholding tax	₱ 5,926,921.73
Management bonus subject to 32% compensation withholding tax	33,585,889.82
Management bonus not subject to tax	898,018.44
	₱40,410,829.99

It can be observed that out of the total management bonus paid in 2008, only ₱33,585,889.82 was subjected to WTC as this pertains to management bonus for petitioner's employees. They comprise of the members of the Board of Directors of petitioner who were at the same time employees of petitioner as noted earlier under subsection A and Victorino Yao, who was petitioner's Accounting Manager during the time of respondent's audit, as can be gleaned from an affidavit executed on July 10, 2009[217].

Said payments were traced to the Alphalist of Employees attached to BIR Form No. 1604-CF for the year 2008.[218]

With regard to the management bonus of ₱5,926,921.73, the same is subject to EWT instead of WTC as it pertains to income payments made to individuals who were not petitioner's employees.[219]

As to the management bonus of ₱898,018.44 allegedly not subject to tax, it was indicated in the summary[220] that the said amount was paid to De Guzman and Celis Law Office; however, the Court cannot ascertain the veracity thereof without the supporting official receipt.

In the absence of proof that that the amount of ₱898,018.44 was paid to non-employees or is exempt from withholding tax, the deficiency WTC assessment thereon is upheld.

[217] BIR Records, p. 752.
[218] Exhibit "P-98-1 (5/16)".
[219] Exhibit "P-27-a-1", Docket vol. II, pp. 784-792 and Exhibit "P-97".
[220] Exhibit "P-96".

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D. Other employee benefits – ₱736,123.57

Petitioner did not delve on this item neither did it present any evidence to refute the same, hence, its assessment must not be disturbed.

E. Interest on management bonus paid and remitted on 4-13-2009 – ₱444,658.32

Petitioner asserted that although the management bonus was approved and accrued in the year 2008, the distribution/allocation to the beneficiaries thereof and the amount pertaining to each of them, which is based on percentage of the net profit before income tax, had to be determined after audit of the year 2008 Financial Statements. The said bonus was paid to employees only on May 8 and June 8, 2009, and the corresponding withholding taxes were remitted on April 13, 2009.

Since the said management bonus for 2008 was paid to recipients thereof on May 8 and June 8, 2009, the remittance of withholding tax was made on time.[221]

Section 2.83.6 of RR No. 2-98 provides that the withholding tax on compensation shall apply to compensation actually or constructively paid. **Compensation is constructively paid within the meaning of these regulations when it is credited to the account of or set apart for an employee so that it may be drawn upon by him at any time although not then actually reduced to possession.** To constitute payment in such a case, the compensation must be credited or set apart for the employee without any substantial limitation or restriction as to time or manner of payment or condition upon which payment is to be made, and must be made available to him so that it may be drawn upon at any time, and its payment brought with his control and disposition. A book entry, if made, should indicate an absolute transfer from one account to another. If the income is not credited, but it is set apart, such income must be unqualifiedly subject to the demand of the taxpayer. **Where a corporation contingently credits its employees with a bonus stock, which is not available to such employees until some future date, the mere**

[221] Exhibit "P-29", Docket vol. II, pp. 858-859.

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crediting on the books of the corporation does not constitute payment.

As such, the mere accrual of compensation is not tantamount to constructive payment unless it has already been credited to the employees' bank accounts, ready for their disposal. Therefore, compensation tax is not yet due upon accrual, but upon payment of or transfer of control over the compensation to the employee.

In this case, petitioner accrued a total of ₱33,438,543.13 worth of management bonus in 2008[222] as can be lifted from respondent's audit working papers.[223]

As verified by the ICPA, said amount is broken down as follows:[224]

Total management bonus subject to expanded withholding tax	₱ 4,904,319.61
Management bonus subject to 32% compensation withholding tax	27,791,144.78
Management bonus not subject to tax	743,078.74
	₱33,438,543.13

Of the above ₱33,438,543.13, the amounts of ₱27,791,144.78 and ₱743,078.74 totaling ₱28,534,223.52 are the subject of the deficiency interest being assessed by respondent for late remittance of the corresponding WTC.

Inasmuch as the amount of ₱28,534,223.52 management bonus was merely accrued and had not been paid as of December 31, 2008, petitioner was not obligated to withhold and remit the WTC due thereon in 2008. Accordingly, petitioner cannot be held liable for any deficiency interest on late remittance of WTC corresponding to the management bonus of ₱28,534,223.52 for the year 2008.

In fine, petitioner's employees' compensation in the amount of ₱1,634,142.01, representing the sum of the ₱743,078.74 management bonus allegedly not subject to tax and other employee benefits of ₱736,123.57 should be subjected to deficiency WTC based on the

[222] Exhibit "P-100".
[223] BIR Records, pp. 783 and 815.
[224] Exhibit "P-99".

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graduated tax rates of 5% to 32%. However, the employees to whom the compensation pertained to cannot be individually identified. Hence, the appropriate tax rate to be used should be the effective rate computed based on the total withholding tax on compensation paid divided by the total amount of taxable compensation reported during the year 2008, thus:

Exhibit Reference	No. of Employees	Gross Compensation (a)	Personal Exemption (b)	Net Taxable Compensation (c) = (a) – (b)	Tax Withheld (d)	Effective Tax Rate (e)=(d)÷(c)
"P-98-1 (5/16)"	148	86,772,515.68	10,598,000.00	76,174,515.68	20,832,259.42	
"P-98-1 (6/16)"	7	1,314,126.84	397,000.00	917,126.84	169,712.89	
		88,086,642.52	**10,995,000.00**	**77,091,642.52**	**21,001,972.31**	**27.24%**

Consequently, petitioner is liable to pay basic deficiency WTC for the year 2008 in the amount of ₱445,140.28, computed as follows:

Management bonus allegedly paid to	₱ 898,018.44
Other benefits	736,123.57
Total Employees' Compensation subject to WTC	₱1,634,142.01
Effective Tax Rate	27.24%
Basic deficiency WTC	**₱445,140.28**

IV. Deficiency Expanded Withholding Tax

Respondent assessed petitioner of deficiency EWT for taxable year 2008 in the amount of ₱312,602.06, computed as follows: [225]

Rentals per FS/ITR	₱ 39,194.66	
Rentals per alphalist	1,785.71	
Rentals not subject to EWT	₱ 37,408.95	
Tax due (5%)		₱ 1,870.45
Purchase of services per FS/ITR	₱ 83,288,640.45	
Purchase of services per alphalist	78,662,212.44	
Purchases of services not subjected to EWT	₱ 4,626,428.01	
Tax due (2%)		92,528.56
Purchase of goods/merchandise per FS/ITR	₱ 39,476,386.38	
Purchase of goods/merchandise per alphalist	35,675,926.95	

[225] Exhibit "R-15", BIR Records, p. 1570.

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Purchase of goods/merchandise not subjected to EWT	₱ 3,800,459.43	
Tax due (1%)		38,004.59
Total tax due		132,403.60
Add: Increments		
Interest until October 31, 2013	₱ 125,783.42	
Interest on management bonus remittance	35,667.78	
Interest on late remittance – SLP	2,747.26	
Compromise penalty	16,000.00	180,198.46
Total deficiency tax – expanded		**₱ 312,602.06**

Respondent's reconciliation between petitioner's claimed expenses subject to 1%, 2%, and 5% EWT including domestic purchases of goods and services and rental expenses versus the amount subjected to the same rates per Alphalist of Payees showed a difference of ₱8,464,296.40. Hence, the same was subjected to deficiency EWT to comply with Section 57(B) of the NIRC of 1997, as amended.

Further, interest amounting to ₱35,667.78 was imposed on late remittance of withholding tax on management bonus (2008) subject to EWT, paid and remitted on April 13, 2009 and interest amounting to ₱2,747.26 on late remittance of withholding tax on purchase of goods and services to EWT pursuant to RMO No. 1-90, as amended.[226]

A. EWT on Rentals 5% – ₱1,870.45

Petitioner argued that the BIR did not clarify the nature of the assessment for EWT on rentals. As far as petitioner is concerned, it did not incur any rent expense in CY 2008, except for rental of a safe deposit box with a local bank at an annual rent of ₱1,785.71, which was subjected to EWT and remitted to BIR.[227]

As shown earlier, in arriving at the EWT assessment of ₱1,870.45, respondent compared the alleged rentals per FS/ITR in the amount of ₱39,194.66 with the alleged rentals per alphalist in the amount of ₱1,785.71 and subjected the discrepancy of ₱37,408.95 to 5%.

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[226] Exhibit "R-15", Details of Discrepancies, BIR Records, p. 1569.
[227] Exhibit "P-127", p. 23.

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However, as correctly pointed out by petitioner, it did not declare any rent expense in its AFS[228] and AITR[229] for the year 2008. For lack of factual basis, respondent's assessment on this item must be removed.

B. EWT on Purchase of Services 2% – ₱92,528.56

Petitioner explained that the purchases of services in the amount of ₱4,626,428.01 are composed of the following expenses that are not subject to EWT:[230]

Particulars	Amount of Expense
Documentary stamp tax and bank charges in opening letters of credit (LCs)	₱ 2,392,874.03
Reimbursement of security service and representation and entertainment expenses	1,404,534.88
Quarterly input tax attributable to VAT-exempt transactions reclassified to costs and expenses	289,090.14
Documentary stamp and local government taxes on payment of insurance premium	248,601.22
Purchase of wheat-form in-transit as of end of CY 2007	181,783.74
Annual membership fee to Philippine Association of Flour Millers, Inc. (PAFMI)	64,754.00
Seminar fees for training and development	31,790.00
Various Christmas giveaways to janitors and guards	13,000.00
Total	**₱4,626,428.01**

B.1. Documentary stamp tax and bank charges in opening letters of credit – ₱2,392,874.03

Based on the ICPA's verification, the amount of ₱2,392,874.03 comprises of the following:[231]

(a) ₱1,769,473.59 representing payments for documentary taxes;
(b) ₱598,018.97 represents bank charges and commissions; and
(c) ₱25,381.47 representing other expenses.

[228] Exhibit "P-43", Notes to Financial Statements, Note 12, Docket vol. II, p. 22.
[229] Exhibit "P-43-b", Section D, Schedule 7, line 84, Docket vol. II, p. 1004.
[230] Exhibit "P-127", p. 23.
[231] Exhibit "P-127", p. 24.

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The ICPA recommended that the assessment on DST amounting to ₱1,769,473.59 be reversed since other taxes are not subject to EWT, while the assessment on bank charges and commissions amounting to ₱598,018.97 should be retained since these are considered income payments to the bank, which are subject to EWT. As to the other expenses amounting to ₱25,381.47, the ICPA stated that she was not able to verify the nature of the said payment for petitioner's failure to provide supporting documents.[232]

The Court agrees with the ICPA's finding that the 2% deficiency EWT assessment on the ₱598,018.97 bank charges and commissions must remain.

Under Section 2.57.2(M) of RR No. 02-98, as amended by RR No. 17-03, and as clarified by RMC No. 72-04,[233] interest on loans, service fees, and other charges are considered as payments for services rendered by the banks, hence, subject to 2% EWT.

Petitioner is undoubtedly a large taxpayer as it withholds the corresponding 1% and 2% on local purchases of goods and services, respectively. Thus, services rendered by the banks, being regular suppliers of petitioner, shall be subject to 2% EWT.

The Court likewise agrees with the imposition of 2% deficiency EWT on the unsupported other expenses of ₱25,381.47 in line with the rule that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[234]

However, with regard to the assessed income payment of ₱1,769,473.59, while it is true that documentary stamp taxes are not

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[232] Exhibit "P-127", p. 24.

[233] Q18. Is payment of interest on bank loans by the TTC/GO/LT and other fees paid to the bank subject to the 2% EWT?

A18. Yes. However, payment of interest to OBUs/FCDUs shall be subject to final withholding tax of 10%.

Q19. Is the payment of the principal and interest on loans, service fees and other charges considered as income extended by local banks, quasi-banks and other financial institutions to the TTC/GO/LT subject to the 2% EWT?

A19. Only the interest payments on loans, service fees and other charges considered as income are considered payment for services rendered, hence, subject to 2%EWT. Payment corresponding to the principal amount is not subject to EWT.

[234] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

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subject to EWT, the supporting LC Opening/Amendment Advices, Settlement Advices and Foreign Telegraphic Transfer Application Forms issued by the banks to petitioner[235] are insufficient to prove that the amount of ₱1,769,473.59 actually pertains to DST and not an income payment to the banks. The mere indication on the said documents of the amount of ₱1,769,473.59 as documentary stamp taxes do not per se establish that such amount represents DST remitted to the government. Thus, respondent's assessment on this item is retained.

B.2. Reimbursement on security service and representation and entertainment expense – ₱1,404,534.88.

The income payments of ₱1,404,534.88 allegedly comprised of the following:

Salaries of security guards paid to the security agency	₱ 1,152,182.36
Representation and entertainment expense	252,350.45
Rounding-off difference	2.07
Total	**₱1,404,534.88**

The ICPA was able to verify the nature of the afore-said expenses as she traced the amount of expenses to the cash vouchers (CVs), journal vouchers (JVs), ORs and Billing Invoices.[236]

As for the verified salaries of security guards in the amount of ₱1,152,182.36 paid to the security agency, the same is indeed not subject to EWT. Pursuant to Revenue Memorandum Circular (RMC) No. 39-2007, petitioner is mandated to withhold and remit EWT only on the agency fee, not on the salaries paid to the security guards.[237]

It was noted, however, that all of the Billing Invoices and ORs were issued to Wellington Flour Mills, except for one OR which was issued to petitioner.[238] It was also noted that there was only one OR

[235] Exhibits "P-104-3-1", "P-104-1", "P-104-6-1", "P-104-7-1", "P-104-8-1", "P-104-9-1", "P-104-10-1", "P-104-14-1", "P-104-16-1", "P-104-21-1", "P-104-22-1", "P-104-26-1", "P-104-27-1", "P-104-32-1", "P-104-34-1", "P-104-35-1", and "P-104-36-1".
[236] Exhibits "P-108-1" to "P-108-9".
[237] Par. 71, Petitioner's Memorandum, Docket vol. III, pp. 1800-1801.
[238] Exhibit "P-108-3-1".

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issued for every payment of security guard salaries and agency fee, without presenting the breakdown for each.

This is not in compliance with the documentation requirements under Part V of RMC No. 39-2007, stating that the Security Agency must furnish its Client, on or before January 31 of the year following the year of withholding, a Notarized Certification indicating the names of the guards employed by the Client, their respective TINs, the amount of their salaries and the amount of tax withheld from each. This certification together with the covering Non-VAT Acknowledgment Receipt must be kept on file by the Client as substantiation for the claim of the expense.

Even when the documents presented were issued to petitioner, it, however, failed to present any certification and has no Non-VAT Acknowledgment Receipts from the security agency, as far as the alleged security guard salaries are concerned. The Court has no way to ascertain that the contested amount pertains to salaries of security guards not subject to EWT.

Thus, the security guard salaries amounting to ₱1,152,182.36 remain unsupported as far as petitioner is concerned and the corresponding EWT assessment over the same must remain.

Petitioner likewise failed to present evidence to refute the EWT assessment on representation and entertainment expense amounting to ₱252,350.45, hence, must not be disturbed.

B.3. Quarterly input tax attributable to VAT-exempt transactions reclassified to costs and expenses – ₱289,090.14

Petitioner argued that in regard to the quarterly input tax attributable to VAT-exempt transactions reclassified to cost and expenses in the amount of ₱289,090.14, the said expense was validly verified by the ICPA and recommended that out of the entire amount of ₱289,090.14, the assessment of EWT deficiency on ₱275,783.87 be reversed as the same does in fact pertain to allocation of input tax and as such not subject to EWT.[239]

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[239] Par. 72, Petitioner's Memorandum, Docket vol. III, p. 1801.

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The assessment is partially upheld.

As aptly found by the ICPA, ₱275,783.87[240] of the assessed amount of ₱289,090.14 pertains to input tax allocated to VAT-exempt transactions which was reclassified to costs and expenses[241], hence, not subject to EWT. However, petitioner is liable to pay 2% deficiency EWT on the remaining unsupported amount of ₱13,306.27.

B.4. Documentary taxes on insurance premiums on importations – ₱248,601.22

The ICPA verified that documentary stamp taxes amounting to ₱170,253.09 pertain to insurance on petitioner's importations of wheat, while ₱78,348.33 refer to fire insurance.[242]

The Court observed that ₱144,470.83 of the claimed DST on importation insurance pertains to raw materials in-transit as of end of 2007.[243] These in-transit materials were allegedly received only in 2008, hence, the corresponding insurance and DST expenses were only claimed in 2008. But since the amount of ₱144,470.83 is unsupported by documents proving payment of DST to the government, the same must be subjected to EWT.

Further, it was noted that all the insurance charges (including the claimed DST) were for the account of Wellington Flour Mills based on the supporting Statements of Account. Since the insurance charges do not pertain to petitioner, in effect, the total amount of ₱248,601.22 remains unsupported. As such, the EWT assessment over the whole assessed amount must remain.

B.5. Purchase of wheat-form in-transit as of end of CY 2007 – ₱181,783.74

With regard to the expense of ₱181,783.74, petitioner alleged that the same pertains to payment of wharfage fee on importation

[240] Exhibit "P-127", p. 26.
[241] Exhibits "P-109-1" to "P-109-4".
[242] Exhibits "P-110" and "P-110-1" to "P-110-13".
[243] Exhibits "P-110", footnote a and Exhibit "P-110-1".

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made in December 2007, for which the corresponding EWT was already withheld upon payment of the expense. However, since the importation was still in-transit as of December 31, 2007, the related wharfage fee on the imported goods was adjusted to the Raw Materials – In Transit account and subsequently reversed and recognized as wharfage fee in CY 2008 upon receipt of the imported goods.

Petitioner stated that since the aforesaid expense of ₱181,783.74 was already subjected to EWT in the year ending December 31, 2007 upon payment to the Philippine Ports Authority, as duly verified by the ICPA, the same is no longer subject to EWT.[244]

To support its allegations, petitioner submitted the corresponding CV and OR issued by Philippine Ports Authority, the Request for Manager's Check, and the Computation Sheet.[245] However, nothing in these documents prove that the EWT arising from the transaction was actually remitted to the BIR in December 2007. Without such proof, we are constrained to uphold that the EWT on such transaction was due in 2008 as assessed by respondent.

B.6. Annual membership fee to Philippine Association of Flour Millers, Inc. (PAFMI) – ₱64,754.00

With respect to the amount of ₱64,754.00, petitioner asserts that contrary to the findings of respondent, the same actually pertains to share of petitioner in the industry relief assistance or donation for typhoon victims in Iloilo (through DSWD-6) that was simply billed by PAFMI.

This fact was duly verified by the ICPA when she checked the details of the CV, the OR and the billing of PAFMI[246] supported by the letter of Philippine Foremost Milling Corporation.[247]

Allegedly, the amount of ₱64,754.00 is not an income payment and, as such, is not subject to EWT, which warrants reversal of respondent's assessment of EWT deficiency thereon.[248]

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[244] Par. 74, Petitioner's Memorandum, Docket vol. III, pp. 1802-1803.
[245] Exhibits "P-111" to "P-111-4".
[246] Exhibits "P-112" to "P-112-2".
[247] Exhibit "P-113".
[248] Par. 75, Petitioner's Memorandum, Docket vol. III, p. 1803.

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Petitioner's contention is unmeritorious and does not justify the reversal of respondent's assessment.

Petitioner did not present any proof that said contribution reached the intended beneficiaries. Hence, we cannot verify whether the payment made to PAFMI for the alleged share in the donation to typhoon victims were indeed not in the nature of an income payment and that it did not inure to the benefit of PAFMI. Especially where said transaction was documented with BIR-authorized OR, suggesting that it is in the nature of an income payment. Mere description of the transaction in the OR is self-serving, unless corroborated by supporting documents.

B.7. Seminar fees for training and development – ₱31,790.00

B.8. Various Christmas giveaways to janitors and guards – ₱13,000.00

Petitioner asserts that the foregoing amounts, which do not constitute income payments, as duly verified by the ICPA, are not subject to EWT.[249]

Section 2.57.2(M) of RR No. 02-98, as amended by RR No. 17-03, provides;

> "SECTION 2.57.2. Income Payments Subject to Creditable Withholding Tax and Rates Prescribed Thereon. – xxx
>
> (M) **Income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax.** – xxx
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> xxx The **term 'regular suppliers' refers to suppliers who are engaged in business or exercise of profession/calling with whom the taxpayer-buyer has**

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[249] Par. 76, Petitioner's Memorandum, Docket vol. III, p. 1803.

transacted at least six (6) transactions, regardless of amount per transaction, either in the previous year or current year. The same rules apply to local/resident supplier of services other than those covered by separate rates of withholding tax." *(Emphasis supplied)*

Petitioner is undoubtedly a large taxpayer as it withholds the corresponding 1% and 2% on local purchases of goods and services, respectively. Hence, purchase of services from a regular supplier shall be subject to 2%. This includes seminars or training fees.

Based on the summary prepared by the ICPA, petitioner transacted only once with each of the seven (7) entities to attend at the latter's seminars and trainings during 2008.[250]

However, four (4) of these seminars were attended by Wellington Flour Mills as evidenced by the invitation letters and ORs.[251] Total seminar fees paid for these transactions amounted to ₱8,800.00.

Petitioner paid for Christmas giveaways to janitors and guards in the amounts of ₱3,000.00 and ₱10,000.00, respectively, totaling to ₱13,000.00. In support of these expenditures, petitioner submitted a schedule of Christmas Give-Aways to be Given, which includes those given to Globalink Staff and sixteen (16) security guards.[252]

However, we noted that these giveaways were attributable to Wellington Flour Mills janitors and guards as can be deduced from the letter given by Seventh Fleet Security Services Incorporated to prove distribution of the cash gift, which letter was addressed to Wellington Flour Mills' Personnel Officer,[253] purportedly supporting the schedule of Christmas Give-Aways containing both the amounts given to janitors and security guards.

Since the seminar fees and Christmas giveaways amounting to ₱8,800.00 and ₱13,000.00, respectively, were for the account of another entity, petitioner, in effect, still failed to account for the said expense to the extent of said amounts. Without any controverting

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[250] Exhibit "P-113".
[251] Exhibits "P-113-1" to "P-113-3" and "P-113-7".
[252] Exhibit "P-114-1-1" or "P-114-2-1 (1/2)".
[253] Exhibit "P-114-2-1 (2/2)".

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evidence, the assessment on seminar fees and Christmas giveaways amounting to ₱8,800.00 and ₱13,000.00, respectively, must remain.

In summary, petitioner is liable for 2% deficiency EWT in the amount of ₱86,553.08 on purchase of services amounting to ₱4,327,654.14, as computed below:

Particulars	Amount of Expense
Documentary stamp tax and bank charges in opening letters of credit (LCs)	₱ 2,392,874.03
Reimbursement of security service and representation and entertainment expenses	1,404,534.88
Quarterly input tax attributable to VAT-exempt transactions reclassified to costs and expenses	13,306.27
Documentary stamp and local government taxes on payment of insurance premium	248,601.22
Purchase of wheat-form in-transit as of end of CY 2007	181,783.74
Annual membership fee to Philippine Association of Flour Millers, Inc. (PAFMI)	64,754.00
Seminar fees for training and development	8,800.00
Various Christmas giveaways to janitors and guards	13,000.00
Total	**₱4,327,654.14**
EWT due (2%)	**₱ 86,553.08**

C. EWT on Purchase of Goods 1% – ₱38,004.59

Petitioner averred that the amount of ₱3,800,459.43 is attributable to inventory materials used and recorded as factory supplies, mechanical and electrical supplies, quarterly input tax allocations on VAT exempt sales and various reimbursements that should not be subjected to EWT. The breakdown of said amount is as follows:[254]

Particulars	Amount of Expense
Monthly usage of spare parts and factory supplies issued from the warehouse	₱ 3,184,049.31
Quarterly input tax allocations	500,360.30
Reimbursement of various expenses from petty cash fund, such as transportation of messenger and stationery and office supplies	116,049.82
	₱3,800,459.43

[254] Par. 77, Petitioner's Memorandum, Docket vol. III, p. 1804.

C.1. Monthly usage of spare parts and factory supplies issued from the warehouse – ₱3,184,049.31

With respect to the amount of ₱3,184,049.31, petitioner claimed that the same actually pertains to the monthly adjustments for factory supplies used and recorded to the expense accounts. The purchases of inventories were already subjected to EWT at the time the payments were made to suppliers.[255]

Petitioner explained that it purchases in bulk from the suppliers the required spare parts and supplies and records such purchases as part of it inventory. At the time of payment to its supplier, petitioner withholds the required EWT and remits the same to the BIR. Then, the inventory is stored in petitioner's warehouse where it can be easily accessed and withdrawn by petitioner's employees when the need arises. On a monthly basis, the cost accountant of petitioner provides a monitoring of the monthly usage, which will be the basis for the adjustment to the appropriate expense account.[256]

The ICPA verified these monthly adjustments for factory supplies used and recorded to the expense accounts and were accordingly traced to the JVs and supporting Monthly Schedule of Spare Parts and Factory Supplies Usages.[257]

Petitioner adopts the accrual method of accounting where costs and expenses are only recognized when incurred and not necessarily when they are paid. RR No. 02-98, as amended by RR No. 12-01, recognizes this method when it laid under Section 2.57.4 thereof that the obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first. The term "payable" refers to the date the obligation becomes due, demandable or legally enforceable.

However, petitioner failed to prove its claim that these monthly costing of its factory supplies were indeed already subjected to EWT at the time of payment before the accrual thereof. Mere JVs and

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[255] Par. 78, Petitioner's Memorandum, Docket vol. III, p. 1804.
[256] Exhibit "P-127", p. 29.
[257] Exhibits "P-115" and "P-115-1" to "P-115-8-1".

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supporting schedules are self-serving and does not even prove actual remittance of the corresponding EWT.

As such, respondent's assessment must still remain.

C.2. Quarterly input tax allocations – ₱500,360.30

As correctly verified by the ICPA, the amount of ₱500,360.30 pertains to input tax allocated to petitioner's VAT-exempt transactions and input tax paid on purchases directly attributable to VAT-exempt transactions,[258] hence, not subject to EWT and respondent's assessment thereon must be cancelled.

C.3. Reimbursement of various expenses from petty cash fund, such as transportation of messenger and stationery and office supplies – ₱116,049.82

The ICPA verified that out of the assessed amount of ₱116,049.82, petitioner was only able to provide supporting documents for expenses amounting to ₱1,887.87. Thus, the Court sustains respondent's assessment on the unsupported amount of ₱114,161.95.

With regard to the amount of ₱1,887.87, it was established that the same pertains to input tax allocation, hence, not subject to EWT and respondent's assessment thereon must be removed.

In summary, petitioner is liable for 1% deficiency EWT in the amount of ₱33,000.99 on purchase of goods amounting to ₱3,300,099.13, as computed below:

Particulars	**Amount of Expense**
Monthly usage of spare parts and factory supplies issued from the warehouse	₱ 3,184,049.31
Reimbursement of various expenses from petty cash fund, such as transportation of messenger and stationery and office supplies	116,049.82
Total	**₱3,300,099.13**
EWT Due (1%)	**₱ 33,000.99**

[258] Exhibit "P-127", par. 20(b)(i), p. 30.

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D. Interest on management bonus remittance – ₱35,667.78
Interest on late remittance – SLP – ₱2,747.26

As to the interest in management bonus remittance amounting to ₱35,667.78, such pertains to the accrued management bonus in 2008 due to petitioner's directors not considered as employees which was only paid to them in 2009.

In this case, since the compensation was due to directors not considered as employees of petitioner, we follow the guidelines on remittance of EWT in accordance with Section 2.57.4 of RR No. 02-98, as amended, wherein the obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first.

This is in contrast with the rules on remittance of WTC which must be made only upon actual or constructive payment of the compensation in accordance with Section 2.83.6 of RR No. 02-98, as earlier discussed under the deficiency WTC assessment.

Hence, respondent appropriately assessed petitioner with interest on late payment of EWT on management bonus to directors not considered as employees, since the same should have already been paid upon the accrual of said management bonus in December 2008.

As for the assessed interest on late remittance of EWT on purchases of goods and services amounting to ₱2,747.26, the same must be removed as a new computation of interest would ensue after the final determination of the amount of deficiency EWT due.

All the foregoing considered, we find petitioner liable for deficiency EWT in the reduced basic amount of ₱119,554.07, as computed hereunder:

Nature of Income Payment	Amount Taxable	EWT Rate	EWT
Rentals	₱ -	5%	₱ -
Purchase of services	4,327,654.14	2%	86,553.08
Purchase of goods	3,300,099.13	1%	33,000.99
Total EWT due			**₱119,554.07**

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Likewise, the interest on late remittance of EWT due on management bonus to directors not considered as employees, which was accrued in 2008, amounting to ₱35,667.78, must be upheld.

V. Deficiency Fringe Benefits Tax

Respondent's assessment on petitioner's deficiency FBT is as follows:[259]

Benefits subject to tax	₱ 1,654,441.66	
Grossed-up amount	2,433,002.44	
Fringe benefits tax		₱ 778,560.78
Add: Increments		
Surcharge	₱ 194,640.20	
Interest until October 31, 2013	739,632.74	
Compromise penalty	20,000.00	954,272.94
Total deficiency FBT		**₱ 1,732,833.72**

Fringe benefits tax (32%) amounting to ₱778,560.78 was imposed on the ₱2,433,002.44 grossed-up monetary value of fringe benefits given/granted to its employee/officers amounting to ₱1,654,441.66, pursuant to Section 33 of the NIRC of 1997, as amended.[260]

Membership fees and dues	₱ 53,120.28
Transportation and travelling	1,046,001.23
Representation expenses	387,936.10
Membership dues and assessment	110,237.39
Telephone expenses	48,755.58
Repairs and maintenance	6,356.44
Taxes and licenses	2,034.64
Total expense subject to FBT	**₱ 1,654,441.66**
Grossed-up amount	**₱ 2,433,002.44**

A. Membership fees, dues and assessment – ₱53,120.28 and ₱110,237.39

259 Exhibit "R-15", BIR Records, p. 1572.
260 Exhibit "R-15", Details of Discrepancies, BIR Records, p. 1568.

Petitioner provided a breakdown of the Membership fees, dues and assessment as follows:[261]

Ayala Alabang Village Association (AAVA)	₱ 64,872.00
Philippine Ports Authority (PPA)	5,500.00
Makati Sports Club, Inc. (MSCI)	22,000.00
PICPA Metro Manila Region	3,500.00
AACC Membership	6,035.93
IAOM Membership	9,759.93
Finex Membership	12,833.33
Amortization of other prepaid membership dues	7,852.56
Amortization of other prepaid membership dues	31,003.92
Total	**₱ 163,357.67**

A.1. PICPA, AACC and IAOM Membership

Petitioner averred that the payment of membership dues with Philippine Institute of Certified Public Accountants (PICPA), American Association of Cereal Chemists (AACC) and International Association of Operative Millers (IAOM) are for the membership dues of petitioner's key technical employees who were required by petitioner to be members of the said organizations so as to ensure proper representation of petitioner in the said organizations. This is because the continued membership of the key technical employees of petitioner in said organizations will ensure the continued development of the business of petitioner.

Petitioner argued that it is thus clear that the payment of the said membership dues of its key personnel in said organizations is necessary or ordinary to the business of, and which will necessarily redound to the convenience of and benefit of petitioner and therefore not subject to FBT.[262]

Petitioner presented the PICPA OR amounting to ₱3,500.00 issued to Victorino D. Yao c/o Wellington Investment and Manufacturing Corp.[263] supporting the payment of membership dues. As determined earlier, Victorino Yao was the Accounting Manager of petitioner for taxable year 2008.

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[261] Par. 83, Petitioner's Memorandum, Docket vol. III, p. 1808.
[262] Par. 83, Petitioner's Memorandum, Docket vol. III, p. 1808.
[263] Exhibit "P-117-3-1".

Also presented was an invoice issued by AACC International, charging Elizabeth T. Alquillera, Chief Chemist of Wellington Flour Mills, with total membership renewal fee amounting to US$311.00 and the corresponding bank telegraphic transfer documents to process the payment.[264] Its peso conversion amounted to ₱15,583.55, inclusive of bank charges. Out of this amount, only ₱1,652.05 was charged to the Membership Dues and Assessment expense account.[265]

Section 33(A) of the NIRC of 1997, as amended, clearly states that a final tax of thirty-two percent (32%) effective January 1, 2000 and thereafter, is imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees) by the employer, whether an individual or a corporation **(unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer).**

Indeed, the employment of licensed professionals is necessary for any business in order to ensure that only qualified individuals are in place to perform highly technical jobs which is demanded by the business. As in this case, the employment of a licensed CPA and chemist ensures that petitioner's finances are properly monitored or flour manufacturing processes are properly done according to the set regulatory standards. As such, it is necessary for petitioner to incur costs in order to ensure the continuous and up to date competencies of these hired professionals which are acquired by making them members of their respective accredited professional organizations.

It is not incurred merely to grant convenience to petitioner's hired professionals, but it is a necessity for them to keep themselves up to date with the standards, which in turn will inure to the benefit or advantage of petitioner which utilizes their competencies. As such, it is not one of the expenses subjected to FBT.

However, we note that the AACC invoice was issued to Elizabeth T. Alquillera, Chief Chemist of Wellington Flour Mills. It is evident that it was issued to a different entity, not to petitioner. But then, Elizabeth

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264 Exhibit "P-117-4-1".
265 Exhibit "P-117-4".

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T. Alquillera was listed as one of petitioner's employees in its Alphalist of Employees as of December 31, 2008 With No Previous Employer Within the Year.[266]

Nevertheless, even if Elizabeth T. Alquillera was listed as one of petitioner's employees in 2008, petitioner failed to prove that the latter was able to derive benefit from the former's membership in the AACC organization. The disclosure of a different employer in the AACC invoice leads us to doubt as to whether petitioner actually benefited from the transaction.

As such, only petitioner's payment of membership dues, fees and assessment to PICPA amounting to ₱3,500.00 must be removed from deficiency FBT assessment.

As for IAOM Membership, petitioner did not present any evidence to support its refutations over the assessed amount of ₱9,759.93, hence, must remain.

A.2. MSCI Membership

For the membership fees and dues paid to the Makati Sports Club, Inc., it is alleged that petitioner itself is the member in said organization as shown by the Propriety Membership Certificate[267] issued in favor of petitioner. Being not in favor of any employee of petitioner, it is not subject to FBT.[268]

It was observed that the Propriety Membership Certificate was issued in the name of Wellington Flour Mills, not to petitioner. Since the membership is under a different entity, the expenditure for the same is not attributable to petitioner. As such, the amount of ₱22,000.00 remains unsupported, hence, must be subjected to FBT due to lack of controverting evidence.

A.3. AAVA, PPA and Finex Membership and Amortization of other prepaid membership dues

[266] Exhibit "P-98-1" (2/16).
[267] Exhibit "P-42", Docket vol. II, p. 960.
[268] Petitioner's Memorandum, Docket vol. III, p. 1808.

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The assessment over the remaining membership dues and fees were not contested by petitioner, hence, will not be disturbed.

As for the amortization of other prepaid membership dues, petitioner merely presented amortization schedules to support the same, which deserve scant consideration for being self-serving without any corroborating supporting documents.

To sum up, the Court finds that petitioner should be held liable for deficiency FBT for membership dues, fees and assessment amounting to ₱159,857.67, as re-computed below:

Ayala Alabang Village Association (AAVA)	₱ 64,872.00
Philippine Ports Authority (PPA)	5,500.00
Makati Sports Club, Inc. (MSCI)	22,000.00
PICPA Metro Manila Region	-
AACC Membership	6,035.93
IAOM Membership	9,759.93
Finex Membership	12,833.33
Amortization of other prepaid membership dues	7,852.56
Amortization of other prepaid membership dues	31,003.92
Total	**₱159,857.67**

B. Transportation and travel – ₱1,046,001.23

Petitioner claimed that the same pertains to gasoline expenses of petitioner's officers in going to and from meetings with petitioner's customers, suppliers, various government agencies and others, and are supported by invoices and receipts in the name of petitioner, which were recorded in the books under Transportation and Travelling (FMD). As such, the expenses are required by the very nature of petitioner's business and/or necessary thereto and thus, are not subject to FBT.[269]

Section 33(B) of RR No. 03-98, which was issued to implement Section 33 of the NIRC of 1997, as amended, provides as follows:

"(2) *Expense account* –

[269] Par. 84, Petitioner's Memorandum, Docket vol. III, pp. 1808-1809.

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(a) In general, expenses incurred by the employee but which are paid by his employer shall be treated as taxable fringe benefits, **except when the expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the employee.**

(b) Expenses paid for by the employee but reimbursed by his employer shall be treated as taxable benefits except only when the expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the said employee.

(c) Personal expenses of the employee (like purchases of groceries for the personal consumption of the employee and his family members) paid for or reimbursed by the employer to the employee shall be treated as taxable fringe benefits of the employee whether or not the same are duly receipted for in the name of the employer.

(d) Representation and transportation allowances which are fixed in amounts and are regular received by the employees as part of their monthly compensation income shall not be treated as taxable fringe benefits but the same shall be considered as taxable compensation income subject to the tax imposed under Sec. 24 of the Code." *(Emphasis supplied)*

The ICPA verified the documents submitted by petitioner to support its claim that the transportation and travel expenses incurred are not subject to FBT.

The total transportation and travel expenses verified by the ICPA, net of those gasoline expenses charged to petitioner's officers, only amounted to ₱979,143.47.[270]

Petitioner disclosed that it has an arrangement with a nearby gasoline station to supply the gasoline requirement of petitioner's officers. The gasoline station bills petitioner on a monthly basis, which are supported by sales invoices and SOAs issued by the former. On the other hand, the officers have fixed gasoline allotments as approved by petitioners. Petitioner charges the officers in excess of allotments

[270] Summarized in Exhibit "P-119".

and records, which are normally settled in cash by the officers. Petitioner issues OR in the name of the officer once collections are received. These were considered as reimbursements of petitioner from the officers that were recorded as reduction in the transportation expense, which means that these were not considered as company expense. As reflected in the GL,[271] these were deductions to the expense account.[272]

However, we found that transportation expense amounting to ₱100.00 was not supported by any invoice or OR.[273]

Indeed, petitioner was able to properly substantiate that the transportation and travel expenses amounting to ₱979,043.47 were necessary to the trade or business of the employer and not personal expenses of its officers, hence, must not be subject to FBT. Whereas, the unaccounted and unsubstantiated expenses amounting to ₱66,957.76 must remain.

C. Representation expenses – ₱387,936.10

Petitioner stated that these representation expenses, which were incurred in entertaining and meeting with its customers and suppliers, should not be subjected to FBT.

Moreover, petitioner alleged that the aforesaid amount of representation expense is within the ceiling of 0.50% of net sales of petitioner pursuant to Revenue Regulations No. 10-2002 and therefore deductible from petitioner's gross income. Hence, said expense should not be subjected to FBT.[274]

The Court notes that the ceiling set for the deductibility of representation expenses under RR No. 10-02 finds no relevance in the present issue. The issue herein is whether or not said expense is subject to FBT pursuant to RR No. 03-98 and not its deductibility pursuant to RR No. 10-02. Further, nothing in RR No. 10-02 provides for the exemption from FBT if the representation expense is within the set ceiling.

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[271] Exhibit "P-118".
[272] Exhibit "P-127", p. 34.
[273] Exhibit "P-119-46".
[274] Par. 85, Petitioner's Memorandum, Docket vol. III, pp. 1810-1811.

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The ICPA was able to verify only a total of ₱385,490.97 worth of representation expense.[275] Out of this amount, the following were noted upon examination of the supporting documents:

Supplier	Amount	Exhibit No.
OR issued to Anthony Lawrence C. Ty		
Valle Verde Country Club	₱ *3,549.00*	P-121-23-1
OR issued to Welison D. Ty		
Emperor Court	*7,629.56*	P-121-15-1
OR unreadable or without name of payor		
Not available	2,200.43	P-121-26-1
Sincerity Café and Restaurant	1,162.32	P-121-31-1
Not available	3,517.57	P-121-35-1
Not available	910.71	P-121-38-1
Subtotal	₱ *7,791.03*	
ORs/SOAs issued to Wellington Flour Mills		
Not available	₱ 1,280.00	P-121-1-1
Belen Malinao Canteen Services	10,862.00	P-121-3-1
Belen Malinao Canteen Services	10,304.00	P-121-7-1
Country Noodles Pansit Malabon	939.29	P-121-8-1
Makati Sports Club Inc.	22,000.00	P-117-5
Belen Malinao Canteen Services	7,481.00	P-121-9-1
Belen Malinao Canteen Services	8,755.00	P-121-11-1
Muy Hong Snack House	2,520.00	P-121-13-1
Belen Malinao Canteen Services	8,644.00	P-121-14-1
Makati Sports Club Inc.	2,000.00	P-121-16-1
Belen Malinao Canteen Services	13,748.00	P-121-17-1
Belen Malinao Canteen Services	11,865.00	P-121-18-1
Aling Tonang's Palabok Meals	973.21	P-121-20-1
O's Kitchen Corp	3,633.04	P-121-22-1
Country Noodles Pansit Malabon	915.18	P-121-24-1
Belen Malinao Canteen Services	10,724.00	P-121-25-1
LY Royal Food Corp	8,642.86	P-121-27-1
Makati Sports Club Inc.	500.00	P-121-28-1
Our Little Store	1,875.00	P-121-29-1
Belen Malinao Canteen Services	14,173.00	P-121-30-1
Makati Sports Club Inc.	1,800.00	P-121-32-1
Belen Malinao Canteen Services	15,582.00	P-121-33-1
Makati Sports Club Inc.	500.00	P-121-34-1
Belen Malinao Canteen Services	12,147.00	P-121-36-1
Not available	15,151.79	P-121-37-1
Belen Malinao Canteen Services	11,375.00	P-121-41-1
Subtotal	₱ *198,390.37*	
Grand Total	**₱ ₱217,359.96**	

[275] Summarized in Exhibit "P-121".

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Being under the name of a different entity (Wellington Flour Mills), the ORs/SOAs amounting to ₱198,390.37 are not attributable to petitioner. As such, said amount remain unsupported, hence, must be subjected to FBT due to lack of controverting evidence.

The OR issued to Welison Ty amounting to ₱7,629.56 must be subjected to FBT since it was issued to petitioner's officer. While the OR issued to Anthony Lawrence Ty amounting to ₱3,549.00 must also be upheld due to petitioner's failure to prove that Anthony Lawrence Ty is not a managerial employee.

As for the unreadable ORs or those bearing no name of payor amounting to ₱7,791.03 and the remaining unsupported representation expenses amounting to ₱2,445.13 (₱387,936.10 less ₱385,490.97), the corresponding deficiency FBT must be upheld for petitioner's failure to satisfactorily refute respondent's findings.

To sum up, petitioner is made liable for deficiency FBT on representation expenses, but only in the amount of ₱219,805.09:

OR/SOAs issued to Wellington Flour Mills	₱ 198,390.37
OR issued to Welison D. Ty	7,629.56
OR issued to Anthony Lawrence C. Ty	3,549.00
OR unreadable or without name of payor	7,791.03
Unsupported representation expense	2,445.13
TOTAL	**₱219,805.09**

D. Repairs and maintenance – ₱6,356.44

It is represented that the expenses for repairs and maintenance of petitioner's vehicles in the amount of ₱6,356.44 were necessary in the conduct of petitioner's business and incurred by petitioner in CY 2008.[276]

In support of its claim, petitioner presented the Service Invoice which states that the vehicle owner is petitioner, the Statement of Account, and the OR.[277]

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[276] Par. 87, Petitioner's Memorandum, Docket vol. III, pp. 1812-1813.
[277] Exhibits "P-122-1" to "P-122-3".

Thus, pursuant to RR No. 03-98, the expenditure for said repairs and maintenance shall not be subjected to FBT as it was receipted in the name of petitioner. Further, the ownership of the vehicle is with petitioner. Considering these factors, it can be concluded that the corresponding repair and maintenance cost of a company vehicle is a necessary expense for petitioner and not for the personal benefit of its officers.

E. Telephone expenses – ₱48,755.58
Taxes and licenses – ₱2,034.64

Petitioner asserted that these expenses pertain to mobile phone bills of its president for the year 2008. The said phone was issued to the said officer of petitioner so that he can be easily reached and/or contacted by the other officers/employees of petitioner and vice versa. So clearly, the payment of said mobile phone bills is for the benefit of petitioner and not of the latter's president and is therefore not subject to FBT.[278]

However, petitioner was not able to present any evidence to support its allegations; hence, the assessment must not be disturbed.

As for the taxes and licenses amounting to ₱2,034.64, since petitioner did not contest said amount nor provided any evidence to refute the assessment, the same must remain.

In summary, petitioner is found to be liable for deficiency FBT, but in the reduced basic amount of ₱234,075.64:

Membership fees, dues and assessment	₱	159,857.67
Transportation and travelling		66,957.76
Representation expenses		219,805.09
Telephone expenses		48,755.58
Repairs and maintenance		-
Taxes and licenses		2,034.64
Total expense subject to FBT	**₱**	**497,410.74**
Grossed-up amount	**₱**	**731,486.38**
Fringe benefits tax	**₱**	**234,075.64**

[278] Par. 86, Petitioner's Memorandum, Docket vol. III, p. 1812.

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VI. Improperly Accumulated Earnings Tax

Improperly accumulated earnings tax of 10% was imposed by respondent on petitioner's accumulated retained earnings amounting to ₱1,653,545.28 pursuant to Section 29 of the NIRC of 1997, as amended:[279]

Taxable income for the year		₱262,996,076.00
Interest income already subjected to final tax		39,605,609.00
Dividend income already subjected to final tax		31,021.00
Total income before tax		₱302,632,706.00
Less:		
Income tax paid	₱92,048,626.60	
Dividend declared for the year	194,048,626.60	286,097,253.20
Tax base		₱ 16,535,452.80
Improperly accumulated earnings tax (10%)		**₱1,653,545.28**

Petitioner contended that it really cannot afford to declare dividends during the year 2008. This is because, and as duly noted as well by the examiner of respondent and as likewise clearly indicated in petitioner's AFS for the year 2008, petitioner's cost of goods sold alone already amounted to ₱1,399,159,307 and operating expenses amounted to ₱156,205,141.[280] On that basis, petitioner could not possibly distribute all of its earnings as it will need all funds it can have to purchase supplies and materials, and to finance the operation and expansion of the business of petitioner.

It is further argued that, as indicated in the primary purpose of petitioner's Articles of Incorporation, it is not merely a holding or investment company but in fact a manufacturing company that requires substantial working capital to finance its operations.

Lastly, petitioner stressed that, as clearly indicated in the Balance Sheet of its 2008 AFS, petitioner's paid-up capital for the year ending December 2008 is ₱524,845,700.00[281], which is way below the 100% accumulation of earnings threshold pursuant to RR No. 02-01 and therefore not subject to IAET.[282]

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[279] FDDA, Exhibit "R-15", BIR Records, Folder 3, pp. 1568 and 1573.
[280] Statements of Income, Exhibit "P-43", Docket vol. II, p. 966.
[281] Exhibit "P-43", Docket vol. II, p. 965.
[282] Par. 89, Petitioner's Memorandum, Docket vol. III, p.1814.

Section 29(B)(1) of the NIRC of 1997, as amended, provides that the 10% IAET shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

This is being implemented by RR No. 02-01, where Section 2 thereof states that the touchstone of the liability is the purpose behind the accumulation of the income and not the consequences of the accumulation. Thus, if the failure to pay dividends is due to some other causes, such as the use of undistributed earnings and profits for the reasonable needs of the business, such purpose would not generally make the accumulated or undistributed earnings subject to the tax. However, if there is a determination that a corporation has accumulated income beyond the reasonable needs of the business, the 10% IAET shall be imposed.

This is usually the case when the corporation's retained earnings are allowed to accumulate more than its paid-up capital stock.

In this case, petitioner's total retained earnings as of December 31, 2008 amounted to ₱1,039,137,359.00, which is 49% more than its paid-up capital amounting to ₱52,845,700.00. This led respondent to its IAET assessment.

Section 3 of RR No. 02-01 clarified that an accumulation of earnings or profits (including undistributed earnings or profits of prior years) is unreasonable if it is not necessary for the purpose of the business, considering all the circumstances of the case. To determine the "reasonable needs" of the business in order to justify an accumulation of earnings, these regulations adhere to the so-called "Immediacy Test" under American jurisprudence as adopted in this jurisdiction. Accordingly, the term "reasonable needs of the business" are hereby construed to mean the immediate needs of the business, including reasonably anticipated needs. In either case, the corporation should be able to prove an immediate need for the accumulation of the earnings and profits, or the direct correlation of anticipated needs to such accumulation of profits. Otherwise, such accumulation would be deemed to be not for the reasonable needs of the business, and the penalty tax would apply.

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Under Section 3 of RR No. 02-01, the following constitute accumulation of earnings for the reasonable needs of the business:

a. Allowance for the increase in the accumulation of earnings up to 100% of the paid-up capital of the corporation as of Balance Sheet date, inclusive of accumulations taken from other years;

b. Earnings reserved for definite corporate expansion projects or programs requiring considerable capital expenditure as approved by the Board of Directors or equivalent body;

c. Earnings reserved for building, plants or equipment acquisition as approved by the Board of Directors or equivalent body;

d. Earnings reserved for compliance with any loan covenant or pre-existing obligation established under a legitimate business agreement;

e. Earnings required by law or applicable regulations to be retained by the corporation or in respect of which there is legal prohibition against its distribution; and

f. In the case of subsidiaries of foreign corporations in the Philippines, all undistributed earnings intended or reserved for investments within the Philippines as can be proven by corporate records and/or relevant documentary evidence.

In this regard, petitioner's AFS for the year 2008 disclosed that it made two appropriations of retained earnings, summarized as follows:[283]

Date of BOD Approval	Amount	Purpose
December 18, 2008	₱ 275,000,000.00	For future development of Company's properties
February 27, 2003	325,000,000.00	For the development of the Company's real estate properties
	₱600,000,000.00	

Petitioner's purpose for appropriation satisfies letter (c) of the enumeration of reasonable needs of the business under RR No. 02-01.

[283] Exhibit "P-43", Notes to Financial Statements, Note 14, Docket vol. II, p. 991.

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However, we find it absurd that from the time of the appropriation of ₱325,000,000.00 in February 27, 2003, it remained unutilized until December 31, 2008 or for more than five (5) years. Neither did petitioner present any concrete plans or implementation for such alleged development of its real estate properties. This only brings us to a presumption that there was no actual development of petitioner's real estate properties which took place in those 5 years and that petitioner merely appropriated for such purpose to avoid imposition of IAET.

The same holds true with the appropriation made by petitioner in December 2008 amounting to ₱275,000,000.00. From the time it made the appropriation until November 2013, when petitioner appealed the subject assessments before this Court, several years had already lapsed. However, petitioner failed to present documentary proof as to the implementation of its development/expansion plan.

To reiterate, Section 3 of RR No. 02-01 prescribes the "Immediacy Test" in determining what constitutes the reasonable needs of business to justify earmarking of earnings. Under this test, petitioner must be able to prove an *immediate need* for the accumulation of its earnings or profits, or the direct correlation of anticipated needs to such accumulation of profits. The non-utilization of petitioner's appropriated earnings only proves that there was no immediate need for such appropriation/accumulation.

In the case of *Cyanamid Philippines, Inc. vs. The Court of Appeals, et al.*[284], the Supreme Court held that the accumulated profits must be used within a reasonable time after the close of the taxable year, thus:

> "In order to determine whether profits are accumulated for the reasonable needs of the business to avoid the surtax upon shareholders, it must be shown that the controlling intention of the taxpayer is manifested at the time of accumulation, not intentions declared subsequently, which are mere afterthoughts. Furthermore, **the accumulated profits must be used within a reasonable time after the close of the taxable year**. In the instant case, petitioner did not

[284] G.R. No. 108067, January 20, 2000.

> establish, by clear and convincing evidence, that such accumulation of profit was for the immediate needs of the business.
>
> In *Manila Wine Merchants, Inc. vs. Commissioner of Internal Revenue*, we ruled:
>
>> 'To determine the 'reasonable needs' of the business in order to justify an accumulation of earnings, the Courts of the United States have invented the so-called 'Immediacy Test' which construed the words 'reasonable needs of the business' to mean the immediate needs of the business, and it was generally held that if the corporation did not prove an immediate need for the accumulation of the earnings and profits, the accumulation was not for the reasonable needs of the business, and the penalty tax would apply. (*Mertens, Law of Federal Income Taxation*, Vol. 7, Chapter 39, p. 103).'"

While the laws and regulations in prescribing the IAET provide taxpayers a leeway so as not to hinder expansion of their businesses, it cannot be used to circumvent the purpose for which such taxes are imposed.

Considering the foregoing, respondent's assessment for deficiency IAET in the amount of ₱1,653,545.28 is upheld.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner for taxable year 2008 covering deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, fringe benefits tax and improperly accumulated earnings tax are **AFFIRMED but with modifications**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **FOUR MILLION SEVEN HUNDRED FORTY-SEVEN THOUSAND TWO HUNDRED SEVEN PESOS AND 68/100 (₱4,747,207.68)** representing basic deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, fringe benefits tax and improperly accumulated earnings tax, increment for late remittance of EWT on management bonus to directors not considered as employees and the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Interest	Surcharge	Total
Income Tax	₱ 411,765.45		₱ 102,941.36	₱ 514,706.81
Value-Added Tax	898,017.64		224,504.41	1,122,522.05
Withholding Tax on Compensation	445,140.28		111,285.07	556,425.35
Expanded Withholding Tax	119,554.07		29,888.52	149,442.59
Fringe Benefits Tax	234,075.64		58,518.91	292,594.55
Improperly Accumulated Earnings Tax	1,653,545.28		413,386.32	2,066,931.60
Subtotal	**₱3,762,098.36**		**₱940,524.59**	**₱4,702,622.95**
Increment for late remittance of EWT on management bonus to directors not considered as employees		₱ 35,667.78	₱ 8,916.95	₱ 44,584.73
Subtotal		**₱35,667.78**	**₱ 8,916.95**	**₱ 44,584.73**
Total	**₱3,762,098.36**	**₱35,667.78**	**₱949,441.54**	**₱4,747,207.68**

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, value-added tax, withholding tax on compensation, expanded withholding tax, fringe benefits tax and improperly accumulated earnings tax computed from the following dates until full payment thereof pursuant to Section 249(B) of the NIRC, as amended:

Tax Type	Basic Tax	Deficiency Interest Computed From
Income Tax	₱ 411,765.45	April 15, 2009
Value-added Tax	898,017.64	January 25, 2009
Withholding Tax on Compensation	445,140.28	January 15, 2009
Expanded Withholding Tax	119,554.07	January 15, 2009
Fringe Benefits Tax	234,075.64	January 15, 2009

Improperly Accumulated Earnings Tax	1,653,545.28	January 15, 2010[285]

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱4,747,207.68 and on the deficiency interest which have accrued as afore-stated in (a) computed from October 31, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

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

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

[285] Section 6 of RR No. 02-01.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

WELLINGTON INVESTMENT AND MANUFACTURING CORPORATION, Petitioner,	**CTA CASE NO. 8726**
	Members:
	DEL ROSARIO, *P.J., Chairperson*
	UY, *and*
- versus -	**MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	SEP 14 2017 ; 4:00pm

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I hesitate to give my assent to the *ponencia* of my esteemed colleague, the Honorable Cielito N. Mindaro-Grulla, partially granting the Petition for Review filed by petitioner Wellington Investment and Manufacturing Corporation and affirming with modifications the assessments issued against petitioner for the taxale year 2008.

Records disclose that the assessments sprung from the Letter of Authority (LOA) No. 2008-00033724 issued by respondent, through Zenaida G. Garcia, OIC-ACIR, Large Taxpayer's Service, which authorized **Revenue Officers (RO) Allan Maniego, Joel Aguila, Jose Ma. Hernandez, Myrna Ramirez and Cleotefel Parungao, and Group Supervisor Gloria Liza Samoy**, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2008. Based on the evidence presented by respondent, it appears that the audit and examination of petitioner for 2008 was conducted or continued by ROs, other that those named in the LOA.

I note that in the Judicial Affidavit[1] of **RO Reynoso C. Bravo**, he admitted that the audit and examination of petitioner's books of accounts and other records for the year 2008 was assigned to his Group. On the other hand, **RO Carolyn V. Mendoza** confirmed in her Judicial Affidavit[2] that a Memorandum of Assignment dated February 28, 2013[3] was issued to her for the continuation of the conduct of the examination and investigation of petitioner's books of accounts and other accounting records for the taxable year 2008. There is, however, nothing in the parties' Joint Stipulation of Facts and Issues,[4] the Pre-Trial Order,[5] and the Exhibits submitted by the parties which would show the fact that a **new LOA was issued in favor of RO Bravo or RO Mendoza to conduct the audit and examination of petitioner for the taxable year 2008.**

While petitioner failed to raise the issue of lack of authority of RO Bravo and RO Mendoza to conduct the audit, I am of the view that the Court is not precluded from considering this issue as the absence of a valid LOA renders an assessment intrinsically void. A void assessment bears no fruit, and it is settled that estoppel cannot operate to give an effect to an assessment which is void *ab initio.*

On this point, the teachings in ***Acebedo Optical Company, Inc. vs. The Honorable Court of Appeals***[6] is most enlightening:

> "Xxx xxx xxx. The fact that petitioner acquiesced in the special conditions imposed by the City Mayor in subject business permit does not preclude it from challenging the said imposition, which is *ultra vires* or beyond the ambit of authority of respondent City Mayor. ***Ultra vires* acts or acts which are clearly beyond the scope of one's authority are null and void and cannot be given any effect. The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires*.**"

Moreover, very recently, in ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.***,[7] the Supreme Court

[1] Exhibit R-16.
[2] Exhibit R-17.
[3] Exhibit R-13.
[4] CTA Division Docket, pp. 559-561; 1022-1035.
[5] CTA Division Docket, pp. 1066-1080.
[6] G.R. No. 100152, March 31, 2000.
[7] G.R. No. 183408, July 12, 2017.

reiterated that the CTA can resolve the issue on the authority of the ROs to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda, *viz.*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 4 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax appeals, the CTA is not bound by the issued specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > 'SECTION 1. Rendition of judgment. – x x x
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.'
>
> The above section is clearly worded. **On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda**. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." (Boldfacing supplied)

For want of valid LOA, ***Lancaster*** ultimately resolved to declare the assessment void, *viz.*:

> "In sum, and considering the foregoing premises, we find no cogent reason to overturn the assailed decision and resolution of the CTA. As the CTA decreed, Assessment Notice LTAID II IT-98-00007, dated 11 October 2002, in the amount of P6,466,065.50 for deficiency income tax should be cancelled and set aside. **<u>The assessment is void for being issued without valid authority</u>**. Furthermore, there is no legal justification for the disallowance of Lancaster's expenses for the purchase of tobacco in February and March 2008." (Boldfacing and underscoring supplied)

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In other words, although the parties did not specifically put into issue the authority of RO Bravo and RO Mendoza to continue the investigation that ultimately led to the issuance of the present disputed tax assessments, I submit that the Court has the authority to rule upon matters which are vital in the disposition of the case; otherwise, the Court would abdicate its primary objective which is the just resolution of disputes brought before it.[8]

In the present case, the crux of the controversy revolves on whether petitioner may be held liable for deficiency taxes subject of the assessment issued by respondent. **The issue about the ROs' authority to conduct audit necessarily relates thereto as its absence makes the assessment a nullity.** The importance of the ROs' authority to conduct the audit cannot be over-emphasized as it goes into the issue of the validity of the assessment.

On this score, the Supreme Court's pronouncement in ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue***[9] on the matter of the authority of ROs who conducted the audit and examination of the taxpayer is instructive, *viz.*:

> ***"The absence of an LOA violated MEDICARD's right to due process***
>
> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.** It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. **An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
>
> xxx xxx xxx
>
> **Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be**

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[8] *Ramona T. Logronio vs. Roberto Taleseo,* G.R. No. 134602, August 6, 1999.
[9] G.R. No. 222743, April 5, 2017.

undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority**.

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In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. xxx xxx xxx.

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (Emphasis and underscoring ours)

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xxx xxx xxx. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: **to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary**

> **taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.**
>
> **That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the case</u>. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void</u>.**" *(Citations omitted; boldfacing and underscoring supplied)*

In the aforequoted case, the Supreme Court declared as void the disputed assessment for lack of an LOA authorizing the ROs to examine the taxpayer's books of account and other accounting records.

To be sure, the National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring an authority from the **CIR or from his duly authorized representatives** before an examination of a taxpayer may be made.[10] Section 6 of the NIRC provides:

> "**SEC. 6**. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* - (A) *Examination of Returns and Determination of Tax Due* - After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize** the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however;* That failure to file a return shall

[10] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

not prevent the Commissioner from authorizing the examination of any taxpayer. xxx" *(Boldfacing supplied)*

A BIR officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

"SEC. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **<u>pursuant to a Letter of Authority</u>** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Boldfacing and underscoring supplied)*

RMO No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

"D. Preparation and issuance of L/As.

1. All L/As for cases selected and listed pursuant to RMO No. 36-90 to be audited in the revenue regions shall be prepared and signed by the Regional Director (RD).

2. The Regional Director shall prepare and sign the L/As for returns recommended by the RDO for assignment to the ROs, indicating therein the name and address of the taxpayer, the name of the RO(s) to whom the L/A is assigned, the taxable period and kind of tax; after which he shall forward the same to the RDO or Chief, Assessment Branch, who in turn shall indicate the date of issue of the L/A prior to its issuance.

3. The L/As for investigation of taxpayers by National Office audit offices (including the audit division in the Sector Operations Service and Excise Tax Service) shall be prepared in accordance with the

procedures in the preceding paragraph, by their respective Assistant Commissioners and signed by the Deputy Commissioner concerned or the Commissioner. The L/As for investigation of taxpayer by the intelligence and Investigation Office and any other special audit teams formed by the Commissioner shall be signed by the Commissioner of Internal Revenue.

4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself**." *(Boldfacing supplied)*

RMO No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, **requires the issuance of a new LOA**:

"C. Other policies for issuance of L/As.

1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.

xxx xxx xxx

5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**." *(Boldfacing supplied)*

As aforestated, the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment. In the language of ***CIR vs. Sony Philippines, Inc.***[11]:

[11] G.R. No. 178697, November 17, 2010.

> "Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer** assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> xxx xxx xxx
>
> Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**." *(Boldfacing and underscoring supplied)*

In this case, it is undisputed that ROs Bravo and Mendoza - - the revenue officers who continued the audit and investigation of petitioner's books of accounts and other accounting records - - are not named in LOA No. 2008-00033724.

In his Judicial Affidavit,[12] RO Bravo testified that the audit of petitioner for taxable year 2008 was assigned to their Group, without mentioning or presenting an LOA to corroborate his claim, *viz.*:

> Q9. **Why are you familiar with the tax account of petitioner Wellington?**
>
> A. I am familiar with the tax account of taxpayer because it was assigned to our group for the conduct of examination and investigation of Wellington's books of accounts and other accounting records for taxable year 2008. (Underscoring supplied)

On the other hand, RO Mendoza even recognized in her Judicial Affidavit[13] that the audit was merely re-assigned to her for

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[12] Exhibit R-16.
[13] Exhibit R-17.

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continuance of the investigation of petitioner's books of accounts and accounting records for taxable year 2008, to wit:

> Q7. **Are you familiar with the tax account of petitioner Wellington Investment and Manufacturing Corporation ("Wellington"), for taxable year 2008**?
>
> B. Yes. I am familiar with the tax account of Wellington because it was reassigned to me for the continuation of audit investigation.
>
> Q8. **What is your authority to investigate their account?**
>
> A. A Memorandum of Assignment dated February 28, 2013 was issued to me for the continuation of the conduct of the examination and investigation of the books of accounts and other accounting records of Wellington Investment and Manufacturing Corporation ("Wellington") for all internal revenue taxes for the period January 1, 2008 to December 31, 2008. (Underscoring supplied)

On the basis of the evidence presented by both parties, **no new LOA was issued to RO Bravo and RO Mendoza in relation to the investigation of petitioner's tax liability for taxable year 2008**. Clearly, there exists a procedural infirmity in this case due to the **BIR's failure to issue a new LOA** pursuant to the earlier quoted RMO No. 43-90. **A new LOA issued by respondent or his duly authorized representative is indispensable for RO Bravo and RO Mendoza to continue the audit and investigation of the petitioner**.

Otherwise stated, the examination of petitioner's records by RO Bravo and RO Mendoza, having been made without the required authority as contained in an LOA, makes the disputed assessment a nullity. Being a void assessment, the same bears no fruit.[14]

Finally, unless and until modified by the Supreme Court *En Banc*, the doctrines laid down in *Medicard, Lancaster* and *Sony* should be applied in determining the validity of assessments issued

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[14] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

against taxpayers *sans* any LOA, albeit the issue on the absence thereof is belatedly, if not at all, raised by the taxpayer. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[15]

All told, I VOTE to GRANT the Petition for Review filed by petitioner Wellington Investment and Manufacturing Corporation. The deficiency tax assessments issued against petitioner for the taxable year 2008 should be declared VOID and must perforce be CANCELLED and SET ASIDE.

ROMAN G. DEL ROSARIO
Presiding Justice

[15] *Development Bank of the Philippines v. NLRC*, March 1, 1995, 242 SCRA 59; *Albert v. Court of First Instance of Manila (Branch VI)*, L-26364, May 29, 1968, 23 SCRA 948 cited in the Concurring Opinion of Sandoval-Gutierrez, J., *Raul L. Lambino v. The Commission on Elections*, G.R. No. 174153, October 25, 2006.