REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

THIRD DIVISION

PHILIPPINE FABRIC CARE, INC., *Petitioner,*	**C.T.A. CASE NO. 7824**
	Members:
-versus-	BAUTISTA, Chairperson, PALANCA-ENRIQUEZ, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** OCT 12 2012 2:48 p.m.

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

A taxpayer who has availed of the Improved Voluntary Assessment Program ("IVAP") shall not be audited, except upon prior authorization and approval of the CIR when there is strong evidence or finding of understatement in the payment of a taxpayer's correct tax liability by more than thirty percent (30%). Letters of Authority/Audit Mission Notices, Letter Notices, Taxpayer Verification Notices and Mission Orders shall be cancelled and withdrawn for IVAP availments with issued Certificate of Qualification.

THE CASE

This is a Petition for Review filed by Philippine Fabric Care, Inc. (hereafter "petitioner") praying for the cancelation and setting aside of the Formal Letter of Demand issued on January 15, 2007 and the Letter of the Bureau of Internal Revenue ("BIR") demanding petitioner to pay immediately its tax liability under Formal Letter of Demand issued on January 15, 2007, and received by petitioner on July 16, 2008.

THE PARTIES

Petitioner Philippine Fabric Care, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, primarily engaged in rendering laundry services, with principal office address at No. 10 Manggahan Street, Bagumbayan, Quezon City. Petitioner may be served with summons and other court processes at Bernaldo Mirador and Directo Law Offices, counsel for petitioner, at Unit 1807, Cityland 10 Tower 1, 6815 Ayala Avenue, Makati City, Metro Manila.

On the other hand, respondent Commissioner of Internal Revenue (hereafter "CIR") is the Chief of the BIR, the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and enforcement of all forfeitures, penalties and fines connected with such taxes. She may be served with summons and other court processes at the 7th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.

THE FACTS

The facts, as stipulated upon by the parties, and as culled from the records, are, as follows:

On August 13, 2004, respondent issued a Letter of Authority No. 00071713, authorizing Revenue Officer Jose De Mesa, under supervision of Group Supervisor Fritz Buendia of Revenue District Office No. 040 – Revenue Region No. 7, to examine/audit petitioner's all internal revenue taxes for the period from January 1, 2003 to December 31, 2003.

On December 29, 2006, petitioner availed and complied with the requirements of the IVAP, in relation to its Withholding Taxes on Compensation and Expanded Withholding Taxes, pursuant to *Revenue Regulations No. 18-2006,* dated September 26, 2006, issued by the Secretary of Finance upon the Recommending Approval of respondent's predecessor in office.

On December 27, 2006, respondent issued a Preliminary Assessment Notice ("PAN"), which was received by petitioner on January 10, 2007, assessing petitioner of deficiency internal revenue taxes for taxable year 2003, in the total amount of P8,039,001.01, inclusive of interest and compromise penalties, to wit:

Particulars	**October**
Income Tax	Php7,685,282.52
Withholding taxes on compensation	288,583.26
Expanded withholding taxes	65,135.23
Total Deficiency Taxes	Php8,039,001.01

On January 19, 2007, petitioner received a Formal Letter of Demand and Assessment Notice No. 40-691, both dated January 15, 2007, assessing petitioner of deficiency internal revenue taxes, inclusive of interest and compromise penalty, in the total amount of P8,223,011.10, detailed, as follows:

DEFICIENCY INCOME TAX		
Taxable income per return		P74,511.40
Add: adjustment/discrepancies per investigation		
Unaccounted debits to accounts receivable	P12,128,737.37	
Income payments not subject to EWT	883,517.64	
Disallowed expenses	188,872.45	
Unaccounted security and janitorial services	844.00	
Salaries and wages not subject to WT	2,311,132.07	

Qw

Unsupported taxes and licenses	14,964.00	15,528,067.53
Taxable income per investigation		P15,602,578.93
Income tax due thereon (32%)		P4,992,825.26
Add: Unsupported tax credits/MCIT carried over to next year		
Prior year's excess tax credits	P275,269.04	
Tax payments	248,463.60	
Tax credits per BIR form 2307	291,017.84	
Total	814,750.48	
Less: Disallowed tax credits	P43,268.13	
Excess of MCIT over normal income tax	79,943.91	
Excess tax credits carried over the ff. year	P710,962.92	
	P834,174.96	P19,424.48
Deficiency income tax		P5,012,249.74
Add: 20% interest p.a. from 04.16.04 to 02.15.07		2,842,563.55
Total Amount Due		**P7,854,813.29**

DEFICIENCY WITHHOLDING TAX ON COMPENSATION		
Withholding tax due on salaries and wages		P780,486.73
Less: Withholding tax remitted		
Remittances per 160 - C returns	P877,182.17	
Less: Overremittance claimed per 2003 Dec. 1601 - C amended return	248,767.11	628,415.06
Deficiency Withholding Tax on Compensation		P152,071.67
Add: 25% Surcharge		38,017.92
20% Interest p.a. from 01.16.04 to 02.15.07		93,826.14
Total Amount Due		**P283,915.73**

DEFICIENCY EXPANDED WITHHOLDING TAX			
Account Name	Amount	Tax Rate	Tax Due
Rental Expense	P141,252.00	5%	P7,062.60
Professional Fees	21,444.45	10%	2,144.45
Management and Consultancy Fee	47,620.45	10%	4,762.05
Commission	648,599.29	10%	64,859.93
Security Services	342,427.57	2%	6,848.55
Property Maintenance	903,023.00	2%	18,060.46
EWT due			103,738.03
Less: Remittance per Returns			61,510.04
Deficiency EWT			42,227.99
Add: 20% Interest p.a. from 01.16.04 to 02.15.07			26,054.09
Total Amount Due			**P68,282.08**

(Schedule "A" Formal Letter of Demand)

Compromise penalty for non-filing/payment of withholding tax on compensation	P16,000.00

On February 19, 2007, petitioner filed an administrative protest, together with the supporting documents on the aforesaid Formal Letter of Demand and Assessment Notices on the ground of lack of factual and legal basis.

In response to said protest, respondent issued a Tax Verification Notice No. 00027867, dated March 13, 2007, which was received by petitioner.

After investigation, respondent found due from petitioner deficiency income tax, withholding tax on compensation, and expanded withholding tax in the amount of P7,854,813.29, P283,915.73, and P68,282.08, respectively, for taxable year 2003. Assessment Notices and demand were sent to, and received by petitioner, who failed and refused to pay.

On July 16, 2008, petitioner received an undated letter from respondent, through the Assistant Regional Director, Dr. Marina C. De Guzman of Revenue Region No. 7 Quezon City, reiterating that a Formal Letter of Demand and Assessment Notices for the collection of the alleged internal revenue taxes were sent and demanded petitioner to pay said tax liability, within fifteen (15) days from receipt thereof on July 16, 2008, or until August 15, 2008.

On August 15, 2008, petitioner filed the instant Petition for Review.

On September 19, 2008, respondent filed a "Motion to Admit Answer", which the Court granted in a Resolution dated September 24, 2008.

In her answer, respondent, by way of Special and Affirmative Defenses, alleged:

> "6. The assessment has not yet prescribed, and that Section 228, NIRC (R.A. No. 8424) is now the controlling provision, thus, the assessment against the petitioner has also become final, executory and demandable, the right to file of this petition having prescribed on September 16, 2007.

7. That in consonance with Revenue Regulation No. 18-2006, the petitioner may claim the benefits offered therein only with respect to the Withholding Tax on Compensation and the Expanded version as appearing in the Certificate of Qualification.

8. That assuming for the sake of argument that the assessment has not yet become final and demandable, the findings of discrepancies as stated in detail in the Details of Discrepancies/Assessments (Annex "A", hereof) are well grounded on the provisions of the Tax Code and are based on the facts as gathered from the records and books of accounts of the petitioner, that the said findings of discrepancies now bases of the deficiency assessment was not effectively rebutted/disputed by the petitioner even upon receipt of the Preliminary Assessment Notice on January 10, 2007, and moreover upon the receipt of the Final Assessment Notice on January 19, 2007.

9. The assessment for deficiency income tax is valid and in accordance with law;

10. The burden of proof is upon the petitioner to prove that the assessment issued by the respondent is indeed null and void."

Petitioner presented Eleanor B. Grande and Sonny Bonilla, as witnesses, and documentary evidence, marked as *Exhibits "A" to "E", "G",* and *"I" to "P",* inclusive of their submarkings, which were admitted by the Court, except for *Exhibits "C" to "C-1"*, which were denied admission for failure of petitioner to present the original copies thereof for comparison, in a Resolution dated October 28, 2010.

On the other hand, respondent presented Mercedes R. Estalilla, as witness, but failed to formally offer documentary evidence.

On December 16, 2011, upon motion of counsel for petitioner, the Court considered respondent to have waived the right to formally offer her documentary evidence. Thereafter, the parties were granted thirty (30) days from notice to file their simultaneous memoranda, afterwhich, the case shall be deemed submitted for decision.

On January 18, 2012, petitioner filed a "Manifestation" stating that after thoroughly considering the report and recommendation of the Independent Certified Public Accountant duly appointed and commissioned by the Court, in relation to the tax assessment covering the taxable year 2003, petitioner paid the remaining deficiency income tax amounting to P1,838,460.20 on June 29, 2010, as evidenced by the Deposit Slip and Payment Form, both dated June 29, 2010 *(Annexes "A" and "B", "Manifestation")*.

On January 20, 2012, petitioner filed its "Memorandum", while respondent failed to file her "Memorandum".

On January 31, 2012, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the issues for this Court's consideration are:

I

WHETHER OR NOT THE ASSESSMENT FOR ALLEGED DEFICIENCY INTERNAL REVENUE TAXES OF THE RESPONDENT AMOUNTING TO P8,223,011.10 IS CLOTHED WITH LEGAL AND FACTUAL BASIS.

II

WHETHER OR NOT PETITIONER IS LIABLE FOR: (1) DEFICIENCY INCOME TAX IN THE AMOUNT OF P7,854,813.29; (2) DEFICIENCY WITHHOLDING TAX ON COMPENSATION IN THE AMOUNT OF P283,915.73; AND (3) DEFICIENCY WITHHOLDING TAX EXPANDED IN THE AMOUNT OF P68,282.08.

III

WHETHER OR NOT RESPONDENT'S ASSESSMENT HAS LEGAL BASIS CONSIDERING THAT PETITIONER HAS AVAILED AND QUALIFIED UNDER THE IMPROVED VOLUNTARY ASSESSMENT PROGRAM OF THE BIR UNDER REVENUE REGULATIONS NO. 18-2006 DATED SEPTEMBER 26, 2006.

THE COURT'S RULING

The petition is partly meritorious.

For an orderly resolution of the case, we deem it necessary to first resolve the assessments for deficiency withholding tax on compensation in the amount of P283,915.73 and deficiency expanded withholding tax in the amount of P68,282.08.

Deficiency Withholding Tax on Compensation

Respondent CIR contends that petitioner failed to properly withhold and remit the corresponding withholding tax, due from petitioner's employees' taxable compensation income; hence petitioner was assessed under *Revenue Regulations 2-98, as amende*d, to wit:

DEFICIENCY WITHHOLDING TAX ON COMPENSATION		
Withholding tax due on salaries and wages		P780,486.73
Less: Withholding tax remitted		
Remittances per 160 - C returns	P877,182.17	
Less: Overremittance claimed per 2003 Dec. 1601 - C amended return	248,767.11	628,415.06
Deficiency Withholding Tax on Compensation		P152,071.67
Add: 25% Surcharge		38,017.92
20% Interest p.a. from 01.16.04 to 02.15.07		93,826.14
Total Amount Due		**P283,915.73**

Deficiency Expanded Withholding Tax

Respondent contends that various income payments of petitioner were not subjected to expanded withholding tax, as required under *RR 2-98, as amended*, to wit:

DEFICIENCY EXPANDED WITHHOLDING TAX			
Income Payment	Per F/S	Per A/L	Not subjected to EWT
Rental	P141,252.00	-	P141,252.00
Professional Fees	21,444.45	8,944.50	12,499.95
Management and Consultancy Fee	47,620.45	-	47,620.45
Commission	648,599.29	501,725.60	146,873.69
Security Services	342,427.57	343,272.00	-
Property Maintenance	903,023.00	178,879.00	724,144.00
Total			P1,072,390.09

DEFICIENCY EXPANDED WITHHOLDING TAX			
Account Name	Amount	Tax Rate	Tax Due
Rental Expense	P141,252.00	5%	P7,062.60
Professional Fees	21,444.45	10%	2,144.45
Management and Consultancy Fee	47,620.45	10%	4,762.05
Commission	648,599.29	10%	64,859.93
Security Services	342,427.57	2%	6,848.55
Property Maintenance	903,023.00	2%	18,060.46
EWT due			103,738.03
Less: Remittance per Returns			61,510.04
Deficiency EWT			42,227.99
Add: 20% Interest p.a. from 01.16.04 to 02.15.07			26,054.09
Total Amount Due			**P68,282.08**

On the other hand, petitioner alleges that it availed of the IVAP under *RR 18-2006*, hence, the assessment against it should be rendered moot and academic.

Records show that on December 29, 2006, petitioner availed of the IVAP, as regards the Withholding Taxes on Compensation *(Exhibits "B" to*

"B-2") and Expanded Withholding Tax *(Exhibits "A" to "A-2")* before petitioner received the Preliminary Assessment Notice from the respondent on January 10, 2007 *(par. 5, Joint Stipulations of Facts and Issues, and par. 8, Answer).*

On April 12, 2007, respondent issued a Certificate of Qualification stating that petitioner has availed of the provisions under *Revenue Regulations 18-2006* and is entitled to the privilege of the last priority in the audit and investigation of its WC – Withholding Taxes on Compensation and WE – Expanded Withholding Taxes, for the period 2003 *(Exhibit "G").*

Revenue Regulations 18-2006 grants a last priority in audit and investigation to all internal revenue taxes covering taxable years ending December 31, 2005 and fiscal year ending on any day not later than June 30, 2006 and all prior years, including one-time transactions, such as estate tax, donor's tax, capital gains tax, final withholding tax, expanded withholding tax and documentary stamp tax on the transfer, sale, exchange or disposition of assets to any person, natural or juridical, including estates and trusts liable to pay any of the above-cited internal revenue taxes for the above specified periods who, due to inadvertence or otherwise, erroneously paid his/its internal revenue tax liabilities or failed to file tax returns/pay taxes, except the following instances:

a) Taxpayers who have already been issued a PAN and/or FAN on or before the effectivity of these regulations with respect to the internal revenue taxes applicable to the taxable period(s) covered by the PAN or FAN;

b) Persons under investigation as a result of verified information filed by a Tax Informer under Section 282 of the NIRC, duly processed and recorded in the BIR Official Registry Book on or before the effectivity of these regulations;

c) Tax fraud cases filed and pending in the Department of Justice or in the courts for adjudication;

d) Those with unpaid tax liability, as admitted and reflected in the books of accounts/records, or financial statements and tax returns of the covered period, with respect to the tax type covered by the said admitted tax liability, unless they first pay the same;

e) Cases handled by the BIR under the Run After Tax Evader ("RATE") Program;

f) Cases in which LNs were issued, where the discrepancy in sales exceeds 30% of sales of base year or the discrepancy in purchases exceeds 30% of the purchases of the base year.

Section 2 of RR 18-2006 provides that a taxpayer who has availed of the IVAP shall not be audited, except upon prior authorization and approval of the CIR, when there is strong evidence or finding of understatement in the payment of a taxpayer's correct tax liability by more than thirty percent (30%), as supported by a written report of the appropriate office stating in detail the facts and the law on which such finding is based: Provided, however, that any IVAP payment should be allowed as tax credit against the deficiency tax due, if any, in case the concerned taxpayer has been subjected to tax audit.

Moreover, the audit of taxpayers shall automatically be suspended upon filing of application and payment of the IVAP amount. However, if the audit case is prescribing within six (6) months from date of application and payment of the IVAP, the availment should be evaluated by the investigating office, within 5 days from receipt of the payment, to determine its qualification. If after evaluation, the taxpayer has been disqualified under these regulations, the audit shall be revived and should proceed accordingly.

Letters of Authority/Audit Mission Notices, Letter Notices, Taxpayer Verification Notices and Mission Orders shall be cancelled and withdrawn for IVAP availments with issued Certificate of Qualification.

The suspension of audit/investigation and cancellation of the authority to audit/investigate, shall be on a per taxable year/period and on a per tax type basis or only on the kind of tax covered by the IVAP availment.

Considering that petitioner is not covered by the above enumerated exceptions, and considering that the Certificate of Qualification issued to petitioner states that petitioner is entitled to the privilege of the last priority in the audit and investigation of its WC – Withholding Taxes on Compensation and WE – Expanded Withholding Taxes, for the period 2003, then pursuant to *Section 2 of RR 18-2006*, the Letter of Authority pertaining to Withholding Taxes on Compensation and Expanded Withholding Taxes are hereby ordered cancelled and withdrawn. Accordingly, the Assessment Notices for deficiency Withholding Taxes on Compensation and Expanded Withholding Taxes are hereby cancelled and set aside.

However, since the cancellation of the authority to audit/investigate is on a per tax type basis or only pertains to the kind of tax covered by the

IVAP availment *(2nd to the last paragraph, Section 2, RR 18-2006)*, then only the assessments for deficiency Withholding Tax on Compensation and Expanded Withholding Tax shall be cancelled. As regards the assessment for deficiency Income Tax, the same is hereby maintained, but subject to our evaluation.

Deficiency Income Tax

The deficiency Income Tax assessment of P7,854,813.29 arose from the following findings of the respondent:

1. Unaccounted debits to Accounts Receivable	P12,128,737.37
2. Income payments not subjected to EWT	883,517.64
3. Disallowed expenses	188,872.45
4. Unaccounted Security and Janitorial Services	844.00
5. Salaries and Wages not subjected to WT	2,311,132.07
6. Unsupported taxes and licenses	14,964.00

1.) Unaccounted debits to Accounts Receivable of P12,128,737.37

Respondent contends that verification of the books of accounts of petitioner discloses that there were unaccounted debit movement per Accounts Receivable-Trade account, which were considered as undeclared sales, thereby resulting to understatement of petitioner's taxable income. Hence, petitioner was assessed under *Section 31*, in relation to *Section 32 of the NIRC of 1997, as amended*, to wit:

Sales reported per VAT Returns	
Taxable sales	P8,839,766.20
Zero-rated sales	26,671,752.20
Total	P35,511,518.40
Total debits to Accounts Receivable-Trade	P51,826,637.00
Less: Accounts Receivable-Trade, beginning (net of VAT)	7,531,867.00
Total debits to Accounts Receivable-Trade during the year	P44,294,770.00
Less: VAT component on taxable sales	883,976.62
Total debits to Accounts Receivable-Trade (Net of VAT)	43,410,793.38
Less: Sales per ITR	31,282,056.01
Unaccounted debits to Accounts Receivable-Trade	P12,128,737.37

As regards the unaccounted debits to Account Receivable-Trade in the amount of P12,128,737.37, we agree with the findings of the Court-Commissioned Independent Certified Public Accountant ("ICPA") that the unaccounted debits to Accounts Receivable-Trade amounts only to P198,090.74 for the following reasons: 1) the total debits during the year per general ledger amounted to P36,951,630.80 *(Schedule A of Final ICPA Report, Exhibit "O" and Exhibits "K" to K-102)*; and 2) there were double entries in the debits in the general ledger in the total amount of P4,587,507.43 *(Schedule B of Final ICPA Report, Exhibit "O")*, broken down, as follows:

Creditable withholding taxes *(Schedule C of Final ICPA Report, Exhibit "O" and Exhibits "L" to "L-15")*	P296,268.76
Debit double entries due to Subsidiary Ledger/Tar Adjustment *(Schedule D of Final ICPA Report, Exhibit "O" and Exhibits "M" to "M-12")*	2,583,355.65

Credit double entries due to Subsidiary Ledger/Tar Adjustment *(Schedule E of Final ICPA Report, Exhibit "O" and Exhibits "N" to "N-3")*	267,370.26
Reclassifications *(Schedule F of Final ICPA Report, Exhibit "O")*	310,202.00
Double entries due to reclassification *(Schedule G of Final ICPA Report, Exhibit "O")*	310,202.00
Reversal entries *(Schedule H of Final ICPA Report, Exhibit "O")*	820,108.76
	P4,587,507.43

Based on the above findings, the total debits to Accounts Receivable-Trade should be computed, as follows:

Total debits to Accounts Receivable-Trade during the year	P36,951,630.80
Less: Double entries (as computed above)	4,587,507.43
Total debits to Accounts Receivable-Trade (net of VAT)	P32,364,123.37

The unaccounted debits to Accounts Receivable-Trade therefore, should be computed, as follows:

Total debits to Accounts Receivable-Trade during the year	P32,364,123.37
Less: VAT component on taxable sales	883,976.62
Total debits to Accounts Receivable-Trade (net of VAT)	P31,480,146.75
Less: Sales per ITR	31,282,056.01
Unaccounted debits to Accounts Receivable-Trade	**P198,090.74**

2. Income payment not subjected to EWT in the amount of P883,517.64

Respondent contends that the following income payments were not subjected to expanded withholding tax; hence, disallowed as deductions from gross income, pursuant to *Section 34 (K) of the NIRC of 1997, as amended*:

Professional Fees	P12,499.95
Commission	146,873.69
Property Maintenance	724,144.00
Total	P883,517.64

On the other hand, petitioner counter-argues that the professional fees assessed by the respondent as subject to EWT pertain to income payments to petitioner's counsel and other firms, which are general professional partnership duly registered with the SEC, and thus not subject to EWT, pursuant to *Section 26 of the NIRC of 1997, as amended*; while, the commissions amounting to P146,873.69 is a typographical error in the Alphalist having been attributed to Ms. Cecilia Tardecilla, when it actually pertains to payments to petitioner's employees in return for their favorable recommendation of some clients to petitioner, which were subjected to expanded withholding tax – commission, instead of that on compensation; and the property maintenance of P724,144.00 is attributable to petitioner's purchases of supplies and materials and not as income payments to primary service contractors.

Though we agree with petitioner that income payments to general professional partnerships duly registered with the SEC are not subject to

EWT, pursuant to *Section 26 of the NIRC of 1997, as amended*, we cannot accept petitioner's bare allegations. Basic is the rule that mere allegation is not evidence, and is not equivalent to proof *(Baygar, Sr. vs. Panontongan, 581 SCRA 580)*. Well-settled is the rule that the party alleging has the burden of substantiating his allegation by preponderance of evidence and any allegation or assertion not so substantiated is, at best, self-serving statement or declaration which is inadmissible in evidence for being hearsay *(Victory Liner, Inc. vs. Court of Appeals, 293 SCRA 378)*. Thus, petitioner's contention that the amount of P12,499.95 pertains to professional fees paid to general professional partnerships cannot be sustained, for other than the said testimony, petitioner presented no evidence to substantiate the same.

The same is true as regards petitioner's contention that commissions amounting to P146,873.69 pertain to payments to petitioner's employees in return for their favorable recommendation of some clients to petitioner, which were subjected to expanded withholding tax – commission, instead of that on compensation, and property maintenance of P724,144.00, being attributable to petitioner's purchases of supplies and materials, and not as income payments to primary service contractors.

3. Disallowed expenses of P188,872.45

Respondent contends that expenses amounting to P188,872.45 pertain to prior taxable year; hence disallowed as deduction from taxable income, pursuant to *Section 34(A)(1)(a) of the NIRC of 1997, as amended.*

On the other hand, petitioner alleges that the disallowed expenses of P188,872.45 are not prior years expenses, but are current year expenses. Part and parcel of said amount is the rental expense referred to above on the typographical error relating to that of Ms. Cecilia Tardecilla that had been typed as commission instead of being part of the rental expense.

Again, we cannot accept petitioner's bare allegation for other than the said testimony, petitioner presented no evidence to substantiate the same.

4. Unpaid Security and Janitorial Services of P844.00

Respondent contends that security and janitorial services subjected to EWT per alphalist do not coincide with the amount presented on the financial statement, as shown hereunder. Said discrepancy is considered as undeclared income; hence, taxable pursuant to *Section 31 of the NIRC of 1997, as amended.*

Security and Janitorial Services per A/L	P343,272.00
Security and Janitorial Services per F/S	342,428.00
Difference	P844.00

An examination of petitioner's Financial Statements for the year ended December 31, 2003 shows that security and janitorial services expense indeed shows the amount of P342,428.00. Moreover, petitioner did not contest this deficiency finding of the respondent.

5. Salaries and wages not subjected to Withholding Tax of P2,311,132.07

Respondent contends that salaries and wages amounting to P2,311,132.07 were not subjected to withholding tax, as required under *RR 2-98;* hence, disallowed as deductions from gross income, pursuant to *Section 34 (K) of the NIRC of 1997, as amended*, computed, as follows:

Salaries and Wages per F/S	
Salaries, wages and employee's benefits – Cost of Service	P12,655,964.00
Salaries and Allowances – Operating Expenses	2,485,953.01
Total	15,141,917.01
Salaries and Wages per A/L	12,830,784.94
Salaries and Wages not subjected to WT	P2,311,132.07

According to petitioner, the salaries and wages of P2,311,132.07 not subjected to withholding taxes, were actually composed of the following items:

a) *De minimis* benefits aggregating to P914,184.17;

b) Contributions to pension funds in the amount of P465,608.44;

c) Redundancy fees of P581,600.00;

d) 13th month pay and other bonuses of P292,888.45; and

e) Other legitimate business expenses inadvertently booked as part of salaries and wages totaling P177,825.59.

We agree with petitioner that *de minimis* benefits or facilities or privileges furnished or offered by an employer to his employees, provided such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees, are not subject to withholding tax on compensation, pursuant to *Revenue Regulations 005-08*; any amount received by an employee from an employer as a consequence of separation from employment for causes beyond the control of such employee is not subject to income taxation, pursuant to *Section 32 (B) (6) (b) of the NIRC of 1997, as amended*; retirement benefits received by officials and employees of a private firm under a pension plan that has been qualified by the CIR are exempt from all taxes, pursuant to *RA 4917*, as implemented by *Revenue Regulations 01-68*; and 13th month pay and other benefits received by official and employees of public and private entities not exceeding P30,000.00 are exempt from income tax, pursuant to *Section 32 (B) (7) (e).*

However, as heretofore discussed, to be entitled to said exemptions, petitioner must present clear and convincing evidence to substantiate said allegations, for basic is the rule that mere allegations are not equivalent to proof *(Philippine National Bank vs. Court of Appeals, 266 SCRA 136).*

6. Unsupported taxes and licenses of P14,964.00

Taxes and licenses per ITR	P308,576.56
Taxes and licenses per schedule	293,612.56
Unsupported taxes and licenses	P14,964.00

Respondent contends that petitioner failed to support taxes and licenses amounting to P14,964.00; hence, disallowed as deduction from petitioner's gross income, pursuant to *Section 34(A)(b) of the NIRC of 1997, as amended.*

7. Disallowed tax credits of P43,268.13

Respondent contends that the claimed tax credits of P43,268.13 pertain to prior taxable years; hence, disallowed as deduction from petitioner's tax liability, pursuant to *Section 2.58.3 of RR 2-98, as amended*, to wit:

Tax credits claimed per ITR	P291,017.84
Tax credits claimed pertaining to the current year	247,749/71
Disallowed tax credits	P43,268.13

For both the unsupported taxes and licenses of P14,964.00 and disallowed tax credits of P43,268.13, records show that petitioner failed to present evidence to contest respondent's assessment.

Equally settled is the rule that 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 BIR examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments *(Commissioner of Internal Revenue vs. Bank of the Philippine Islands, 521 SCRA 386)*. 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. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment *(Commissioner of Internal Revenue vs. Gonzalez, 633 SCRA 171, citing the case of Marcos II v. Court of Appeals 273 SCRA 66-67)*.

All the foregoing considered, we sustain respondent's assessments on (1) income payments not subjected to EWT in the amount of P883,517.64, (2) disallowed expenses in the amount of P188,872.45, (3) unaccounted security and janitorial services in the amount of P844.00, (4) salaries and wages not subjected to withholding tax in the amount of P2,311,132.07, (5) unsupported taxes and licenses in the amount of P14,964.00, and (6) disallowed tax credits in the amount of P43,268.13.

In sum, we find petitioner liable for basic deficiency income tax in the amount of P1,194,442.82, computed, as follows:

Taxable income per return			P74,511.40
Add: adjustment/discrepancies per investigation			
Unaccounted debits to accounts receivable		P198,090.74	
Income payments not subject to EWT		883,517.64	
Disallowed expenses		188,872.45	
Unaccounted security and janitorial services		844.00	
Salaries and wages not subject to WT		2,311,132.07	
Unsupported taxes and licenses		14,964.00	3,597,420.90
Taxable income per investigation			P3,671,932.30
Income tax due thereon (32%)			P1,175,018.34
Add: Unsupported tax credits/MCIT carried over to next year			
Prior year's excess tax credits		P275,269.04	
Tax payments		248,463.60	
Tax credits per BIR form 2307		291,017.84	
Total		814,750.48	
Less: Disallowed tax credits	P43,268.13		
Excess of MCIT over normal income tax	79,943.91		
Excess tax credits carried over the ff. year	P710,962.92	P834,174.96	P19,424.48
Basic Deficiency Income Tax			P1,194,442.82

In addition, petitioner is also liable to pay the amount of P298,610.70, representing 25% surcharge imposed under *Section 248(A)(3) of the NIRC of 1997, as amended.*

Petitioner manifested that on June 29, 2010, it paid the amount of P1,838,460.20 as full payment of its deficiency tax, as evidenced by photocopies of the Deposit Slip and Payment Form both dated June 29, 2010 *(Annexes "A" and "B", Manifestation).* However, considering that petitioner presented mere photocopies of said Deposit Slip and Payment Form, and considering further that there is no breakdown of the paid amount of P1,838,460.20 as to the amounts corresponding to the basic deficiency income tax and surcharge and interest, the Court cannot deduct the same from the outstanding tax liability.

WHEREFORE, premises considered, the present Petition for Review is hereby **PARTLY GRANTED**.

Accordingly:

1) As regards the assessment for Withholding Taxes on Compensation in the amount of P283,915.73 the same is hereby ordered **CANCELLED** in view of petitioner's availment of IVAP under *RR 18-2006*;

2) As regards the assessment for Expanded Withholding Taxes in the amount of P68,282.08, the same is likewise ordered **CANCELLED** in view of petitioner's availment of IVAP under *RR 18-2006*;

3) As regards the assessment for Income Tax, petitioner is liable to pay the total amount of **P1,493,053.52**, representing basic deficiency income tax of P1,194,442.82, and 25% surcharge of P298,610.70, as computed above.

In addition, petitioner is liable to pay the following:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of P1,194,442.82, computed from April 15, 2004 until full payment thereof, pursuant to *Section 249 (B) of the NIRC of 1997, as amended*; and

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of P1,493,053.52, representing the basic deficiency income tax of P1,194,442.82 and 25% surcharge of P298,610.70; and on the 20% deficiency interest which have accrued as afore-stated in paragraph (a), computed from July 16, 2008 until full payment thereof, pursuant to *Section 249 (C) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

On leave
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice