REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

VICTORIA MANUFACTURING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

CTA Case No. 8187

Members:
UY, *Chairperson*
and
FABON-VICTORINO, *JJ.*

Promulgated:
JUN 28 2013 ; 3:07 p.m.

x - x

DECISION

UY, J.:

Before the Court is a Petition for Review filed by petitioner, Victoria Manufacturing Corporation, against respondent, Commissioner of Internal Revenue, praying to set aside, for lack of factual and legal basis, the Formal Letter of Demand dated January 4, 2010, as well as the Assessment Notices finding petitioner liable for : (1) deficiency income tax amounting to P17,364,188.94; (2) deficiency value-added tax (VAT) in the amount of P2,231,665.27; and (3) deficiency expanded withholding tax (EWT) amounting to P388,893.70 all for taxable year 2006.

THE FACTS

Petitioner Victoria Manufacturing Corporation is a domestic corporation organized and existing under Philippine laws, with principal office at Ever-Gotesco Compound, Ortigas Avenue Extension, Barangay Sta. Lucia, Pasig City.[1]

[1] Par. 2, Joint Stipulation of Facts (JSF), Docket, pp. 96 to 97.

On the other hand, respondent is the duly appointed head of the Bureau of Internal Revenue (BIR) vested with authority to administer all laws pertaining to internal revenue taxes and has the jurisdiction to decided disputed tax assessments. She holds office at the 5th Floor, BIR National Office Building, Diliman, Quezon City.[2]

Records show that on August 22, 2007, respondent issued Letter of Authority No. 00065134, authorizing Revenue Officer Lilibeth M. Nazario to examine petitioner's books of accounts and other accounting records. As a result of this investigation, respondent sent a Notice for Informal Conference to petitioner.[3]

Subsequently, respondent issued a Preliminary Assessment Notice,[4] assessing petitioner for alleged deficiency income tax, deficiency VAT, and deficiency expanded withholding tax for taxable year 2006,[5] as follows:

I. DEFICIENCY INCOME TAX			
			AMOUNT
Net Income per return			P 3,030,054.00
Add:	Adjustments per investigation:		
	Undeclared sales/income	P 17,475,424.92	
	Income payments not subjected to withholding	2,414,051.00	
	Unaccounted sources of income	11,757,702.80	31, 647,178.72
Taxable income per investigation			P 34,677,232.72
Income tax due thereon (35%)			P 12,137,031.45
Less: Allowable tax credits/payments:			
Prior year's excess credits		P 520,611.00	
Income tax payments per returns		88,108.00	
Creditable tax withheld per BIR Form No. 2307		1,058,097.00	
Total		P 1,666,816.00	
Less: Excess tax credits carried over to the Succeeding year		652,861.00	1,013,955.00
Deficiency income tax			P 11,123,076.45
Add: 20% Interest p.a. (04.17.07 to 12.04.09)			5,863,232.63
TOTAL AMOUNT DUE			P **16,986,309.08**

II. DEFICIENCY VALUE-ADDED TAX (VAT)					
					AMOUNT
Taxable sales/receipts per VAT returns					P129,546,681.95
Add:	Adjustments per investigation:				
	Unaccounted sources of income				11,757,702.80
Taxable sales/receipts per investigation					P141,304,384.75
Output tax due thereon:					
January		₱ 11,305,006.02	10%	P 1,130,500.60	
February - December 2006		129,999,378.78	12%	15,599,925.45	P 16,730,426.06
Less: Allowable tax credits/payments:					
VAT payments per ITS				P 2,427,807.00	

[2] Par. 3, Joint Stipulation of Facts (JSF), Docket p. 97.
[3] Exhibit "4", BIR Records, p. 535.
[4] Exhibit "B", Docket, pp. 126 to 128; Exhibit "5", Docket, pp. 25 to 27.
[5] Pars. 4 and 8, JSF, Docket, p. 97.

Current input tax	13,603,071.19	
Total	P16,030,878.19	
Less: Excess input tax credits carried over to the succeeding period	690,482.55	15,340,395.64
Deficiency valued-added tax		P 1,390,030.42
Add: 20% Interest p.a. (01.26.07 to 12.04.09)		794,411.90
TOTAL AMOUNT DUE		**P 2,184,442.32**

III. DEFICIENCY EXPANDED WITHHOLDING TAX (EWT)			
	AMOUNT	**EWT RATE**	**EWT DUE**
Superintendence	P2,414,051.00	10%	P 241,405.10
Less: EWT remittances per returns			
Deficiency EWT			P 241,405.10
Add: 20% Interest p.a. (01.16.07 to 12.04.09)			139,287.44
TOTAL AMOUNT DUE			**P 380,692.54**

On December 21, 2009, petitioner filed a Letter of Protest dated December 17, 2009[6] against the Preliminary Assessment Notice.[7]

Thereafter, respondent issued a Formal Letter of Demand with attached Assessment Notices all dated January 4, 2010 against petitioner for alleged deficiency income tax, deficiency VAT, and deficiency EWT in the amounts of ₱17,364,188.94, ₱2,231,665.27, and ₱388,893.70, respectively, for taxable year 2006,[8] computed as follows:

I. DEFICIENCY INCOME TAX			
			AMOUNT
Net Income per return			P 3,030,054.00
Add:	Adjustments per investigation:		
	Undeclared sales/income	P 17,475,424.92	
	Income payments not subjected to withholding	2,414,051.00	
	Unaccounted sources of income	11,757,702.80	31, 647,178.72
Taxable income per investigation			P 34,677,232.72
Income tax due thereon (35%)			P 12,137,031.45
Less: Allowable tax credits/payments:			
	Prior year's excess credits	P 520,611.00	
	Income tax payments per returns	88,108.00	
	Creditable tax withheld per BIR Form No. 2307	1,058,097.00	
Total		P 1,666,816.00	
Less: Excess tax credits carried over to the Succeeding year		652,861.00	1,013,955.00
Deficiency income tax			P 11,123,076.45
Add: 20% Interest p.a. (04.17.07 to 02.04.10)			6,241,112.49
TOTAL AMOUNT DUE			**P 17,364,188.94**

II. DEFICIENCY VALUE-ADDED TAX (VAT)			
			AMOUNT
Taxable sales/receipts per VAT returns			P129,546,681.95
Add:	Adjustments per investigation:		
	Unaccounted sources of income		11,757,702.80
Taxable sales/receipts per investigation			P141,304,384.75

[6] Exhibit "D", Docket, pp. 135 to 137.
[7] Par. 5, JSF, Docket, p. 97.
[8] Pars. 6 and 8, JSF, Docket, p. 97 and 98, respectively; Exhibit "C", Docket, pp. 129 to 134; and Exhibits "6-1", "6-2", and "6", Docket, pp. 19 to 24.

Output tax due thereon:				
January	P 11,305,006.02	10%	P 1,130,500.60	
February-December 2006	129,999,378.78	12%	15,599,925.45	P 16,730,426.06
Less: Allowable tax credits/payments:				
VAT payments per ITS			P 2,427,807.00	
Current input tax			13,603,071.19	
Total			P16,030,878.19	
Less: Excess input tax credits carried over to the succeeding period			690,482.55	15,340,395.64
Deficiency valued-added tax				P 1,390,030.42
Add: 20% Interest p.a. (01.26.07 to 02.04.10)				841,634.85
TOTAL AMOUNT DUE				**P 2,231,665.27**

III. DEFICIENCY EXPANDED WITHHOLDING TAX (EWT)			
	AMOUNT	**EWT RATE**	**EWT DUE**
Superintendence	P 2,414,051.00	10%	P 241,405.10
Less: EWT remittances per returns			
Deficiency EWT			P 241,405.10
Add: 20% Interest p.a. (01.16.07 to 02.04.10)			147,488.60
TOTAL AMOUNT DUE			**P 388,893.70**

Petitioner received the subject Formal Letter of Demand and the attached Assessment Notices on January 7, 2010.[9] On February 5, 2010, petitioner filed a Letter of Protest[10] dated January 29, 2010 against the Formal Letter of Demand.[11]

As shown by the Transmittal Letter dated March 25, 2010, [12] petitioner transmitted documents in support of the protest against the Formal Letter of Demand to respondent on April 6, 2010.

On November 2, 2010, petitioner filed a Petition for Review before this Court, alleging, *inter alia*, that respondent did not act upon petitioner's protest letter within the prescribed one hundred eighty (180)-day period, the last day of which fell on October 3, 2010[13].

In her Answer[14] filed on December 28, 2010, respondent raised the following special and affirmative defenses:

"6. All presumptions are in favor of the correctness of the Assessment;

[9] Par. 6, JSF, Docket, p. 97.
[10] Exhibit "E", Docket, p. 138.
[11] Par. 7, JSF, Docket, p. 97.
[12] Exhibit "F", Docket, p. 146.
[13] Par. 6, Petition for Review, Docket, p. 3.
[14] Docket, pp. 62 to 64.

7. The Assessment/Demand Letter No. F43-355B dated 4 January 2010 for the year 2006 against the petitioner was issued in compliance with the provisions of section 228 of the National Internal Revenue Code, as amended and in accordance to existing Revenue Rules and Regulations relative to the right of the taxpayer/petitioner to be informed of the factual and legal bases upon which the assessment was made.

8. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment.

9. The herein petitioner failed to submit complete documents in support of their protest.

10. Verification disclosed an undeclared sales/income arising from the discrepancy on total amount of sales per books as compared to the amount declared in the financial statements and the unreported miscellaneous income hence the discrepancy amounting to P17,475,424.92 is subject to income tax pursuant to Section 31 and 27 of the NIRC of 1997, as amended.

11. Verification also disclosed that the petitioner failed to subject certain income payments to withholding tax as required under RR No. 2-98, as amended, thus disallowed as deductions from gross income pursuant to Section 34(K) of the NIRC, as amended.

12. Verification likewise disclosed that petitioner have inventories and miscellaneous income which were not accurately reported in the financial statements.

13. The deficiency value-added tax assessment is premised on the finding that the petitioner has an undeclared income, assessed pursuant to the provisions of Sec. 106 and 108 of the NIRC.

14. The 20% interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC.

15. The 25% surcharge has been imposed pursuant to the provisions of Section 248 (A) of the NIRC."

During trial, both parties presented their respective oral and documentary evidence. Petitioner presented Alicia L. Acoba and Ria S. De Asis as witnesses. On the other hand, respondent presented her sole witness, Revenue Officer Lilibeth Nazario.

On October 3, 2012, the case was submitted for decision after petitioner and respondent filed their Memorandum on July 25, 2012 and September 26, 2012, respectively.[15]

Hence, this Decision.

THE ISSUES

As stated in the Pre-Trial Order dated May 20, 2011[16], the following are the stipulated issues, to wit:

"1. Whether or not the assessment made by the Respondent in its Formal Letter of Demand is without legal or factual basis;

2. Whether or not petitioner failed to submit documents in support of their protest;

3. Whether or not the petitioner is liable for deficiency income tax amounting to Seventeen Million Three Hundred Sixty-Four Thousand One Hundred Eighty-Eight Pesos and 94/100 (Php17,364,188.94) for taxable year 2006;

4. Whether or not the petitioner is liable for deficiency value-added tax amounting to Two Million Two Hundred Thirty-One Thousand Six Hundred Sixty-Five Pesos and 27/100 (Php2,231,665.27) for taxable year 2006; and

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[15] Resolution dated October 13, 2012, Docket, pp. 846 to 847.
[16] Docket, pp. 394 to 403, at pp. 396 to 397

5. Whether or not the petitioner is liable for deficiency expanded withholding tax amounting to Three Hundred Eighty-Eight Thousand Eight Hundred Ninety-Three Pesos and 70/100 (Php388,893.70) for taxable year 2006."

We summarize the foregoing issues into three (3) main issues, namely:

1. Whether or not the assessment stated in the Formal Letter of Demand has factual and legal bases;

2. Whether or not petitioner failed to submit documents in support of its protest; and

3. Whether or not petitioner is liable for deficiency income tax in the amount of Php17,364,188.94; for deficiency VAT in the amount of Php2,231,665.27; and for deficiency EWT in the amount of Php388,893.70, all for taxable year 2006 .

Petitioner's arguments

Petitioner argues that the assessments for deficiency income tax, deficiency VAT, and deficiency EWT are void for lack of factual and legal bases.

According to petitioner, the assessment for deficiency taxes in the subject Preliminary Assessment Notice with attached detail of discrepancy and Formal Letter of Demand is void as it is in violation of Sec 228 of the National Internal Revenue Code and Section 3.1.4 of Revenue Regulations No. 12-99 because it failed to state the facts on which the assessment is made, specifically how the alleged discrepancy of the amount of Seventeen Million Four Hundred Seventy - Five Thousand Four Hundred Twenty- Four Pesos and 92/100 (P 17,475,424.92) was derived, or what exactly is the said discrepancy comprised of.

Petitioner points out that the alleged discrepancy actually pertains to output tax and sales returns allowances, which should have naturally been excluded in the computation of petitioner's taxable sales.

Petitioner further claims that it is not liable also for deficiency value added tax in the amount of P2,231,665.27 for the alleged unaccounted income amounting to P11,757,702.80, which is comprised of inventory and Meralco refund. Petitioner asserts that there is no legal or factual basis to consider petitioner's packaging, factory and spare parts inventory for taxable year 2005 and Meralco refund as unaccounted income, subject to income tax or value-added tax.

Petitioner contends that the inventories amounting to P9,883,294.00, which respondent considered as undeclared source of income, was reflected in petitioner's financial statements as packaging, factory and spare parts inventory for taxable year 2005 and such were used and consumed. Petitioner further argues that, even assuming arguendo, that packaging, factory and spare parts beginning inventory was not reported as beginning inventory in the cost of goods manufactured and sold, this should not result in additional income tax. Non-inclusion of the inventory in the cost of goods manufactured and sold would allegedly have resulted in a smaller deduction in the taxable income for 2006, and if such was the case, it then paid more income tax than what was actually due.

With regard to the MERALCO refund as part of the undeclared sources of income, petitioner avers that the MERALCO refund was not made by any actual payment of cash to petitioner but through monthly deductions from their monthly MERALCO bills subject to twenty-five percent (25%) withholding tax already.

Likewise, petitioner also contends that the assessment made by respondent in its Formal Letter of Demand with regard to the deficiency expanded withholding tax amounting to P388,893.70 for its failure to subject its superintendence to expanded withholding tax under Revenue Regulations No. 2-98 is without legal or factual basis. Petitioner argues that it is not subject to expanded withholding tax under said Revenue Regulation because the amount pertaining to "superintendence" was paid to petitioner's employees with supervisory responsibilities, and not to other professionals or contractors.

In fact petitioner's superintendence expense actually refers to salaries, 13th month pay, other compensation, as well as, the SSS and Philhealth contributions, and union dues of the latter group, the supervisory employees of petitioner, which have been properly subjected to withholding tax on compensation.

Respondent's arguments

Respondent counter - argues that the assessment upon petitioner was based on the very document submitted by petitioner. The undeclared sales/income was found in the handwritten book of the taxpayer in the course of audit conducted by the examiner.

Respondent alleges that her witness was able to point out that superintendence was indicated as a separate expense account from salaries and allowances in the statement of cost of goods manufactured and sold, and therefore should be subject to withholding tax.

Respondent contends that as shown in petitioner's Financial Statements for 2005 and 2006, the amount of P9,883,294 (part of unaccounted sources of income) described as packaging, factory and spare parts inventories for taxable year 2005 was not declared as part of beginning inventory for taxable year 2006. This amount should have been part of the asset which was not declared and therefore unaccounted.

As regards the MERALCO refund, respondent claims that it was received/applied for taxable year 2006, and as defined under Section 32 of the 1997 Tax Code, as amended, it should be considered as part of gross income.

THE COURT'S RULING

It is a well-settled rule under Section 228 of the NIRC of 1997, as amended, that the taxpayer must be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void. Provisions of the said Section 228 which are pertinent to the issues raised in this case, read as follows:

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

Moreover, Section 3.1.4 of Revenue Regulations (RR) No. 12-99 requires as follows:

> "3.1.4. *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void**. xxx" *(Emphasis supplied)*

Based on the foregoing legal provisions, whenever the Commissioner of Internal Revenue or her authorized representative finds that proper taxes should be assessed, it is mandated that the taxpayer be first notified about the findings of the Commissioner or her authorized representative . The manner by which the taxpayer is to be notified shall be in writing, stating therein, the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Petitioner insist that the assessment for deficiency taxes in the subject Preliminary Assessment Notice with attached detail of discrepancy and Formal Letter of Demand are void as these failed to state the facts on which the assessments for deficiency taxes were made.

Hence, We shall carefully examine the pertinent portions of the Details of Discrepancies, quoted hereunder for easy reference:

"**I. DEFICIENCY INCOME TAX**

a. ***Undeclared sales/income (P17,475,424.92)*** – Verification disclosed an undeclared sales/income arising from the discrepancy on total amount of sales per books as compared to the amount declared in the financial statements and the unreported miscellaneous income derived from the Company's refund from Meralco, hence, the discrepancy amounting to P17,475,424.92 is subject to income tax pursuant to Sections 31 and 27 of the NIRC of 1997, as amended.

	Amount
Sales per investigation	P 262,123,000.92
Sales per financial statements	244,647,576.00
Undeclared sales/income	**P 17,475,424.92**

b. ***Income payments not subjected to withholding tax (P2,414,051.00)*** – Verification disclosed that you failed to subject your superintendence to expanded withholding tax as required under Revenue Regulation No. 2-98, as amended, thus, disallowed as deductions from your gross income pursuant to Section 34(K) of the NIRC of 1997, as amended.

c. ***Unaccounted sources of cash (P11,757,702.80)*** – Verification disclosed that you have inventories and miscellaneous income which were not accurately reported in the FS. The discrepancy, as computed below, is considered as unaccounted source of cash which led to the inference that part of your income have not been declared as enunciated by the Court in the case of Perez vs. CTA & CIR L-10507 dated May 30, 1958. Therefore, the amount is added in your reported taxable income pursuant to Section 31 NIRC of 1997, as amended.

	Amount
Inventories	P 9,883,294.00
Meralco refund – miscellaneous income	1,874,408.80
Unaccounted sources of income	**P 11,757,702.80**
	==============

II. DEFICIENCY VALUE-ADDED TAX (VAT)

Unaccounted source of cash (P11,757,702.80) – As per analysis presented on item I.c. above, wherein the discrepancy is considered as unaccounted income, hence, the same shall be subject to VAT pursuant to Sections 106 to 108 of the NIRC of 1997, as amended.

III. DEFICIENCY EXPANDED WITHHOLDING TAX (EWT)

Verification disclosed that you failed to subject your superintendence to EWT as discussed in I.b. above, hence, you are hereby assessed pursuant to Revenue Regulations No. 2-98, as amended."

A perusal of the contents of the aforequoted Details of Discrepancies would show that the subject assessment sufficiently complies with legal requirements necessitating that it must state the law and the facts upon which it is based. As such, petitioner is considered to have been properly informed of the factual and legal bases of the subject assessment for deficiency income tax, deficiency VAT, and deficiency EWT, all for taxable year 2006. Consequently, the assailed assessment was validly issued subject to the Court's further evaluation of the correctness of the same.

We shall now resolve the second issue which is: whether or not petitioner failed to submit documents in support of its protest as required under Section 228 of the NIRC of 1997, as amended.

We answer in the affirmative.

As provided under Section 228 of the NIRC of 1997, a taxpayer who receives an assessment for deficiency tax/es, may protest against the same administratively, by filing a request for reconsideration or reinvestigation with the Bureau of Internal Revenue, within thirty (30) days from receipt of the assessment. It shall be in such form and manner as may be prescribed by implementing rules and regulations. Thereafter, within sixty (60) days from the filing of the protest, **all relevant supporting documents** must be submitted, otherwise, the assessment shall become final.

The term "relevant supporting documents" was explained by the Supreme court in the case of ***Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc***.[17] as follows:

> "The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit."

Clearly from the foregoing, the relevant supporting documents that a taxpayer must submit in support of its administrative protest against an assessment of the BIR shall pertain to documents that the taxpayer deems necessary to sufficiently dispute said tax assessment. Although the Commissioner or her authorized examiner is allowed to request for the submission of additional documents from the taxpayer, the former cannot dictate upon the latter what documents to submit.

In the instant case, it appears that on April 6, 2010, petitioner transmitted relevant documents in support of its protest against the assessment as evidenced by the Transmittal Letter[18] dated March 25, 2010. The Court finds the foregoing submission as sufficient compliance with the requirement to submit relevant supporting documents. As mentioned earlier, the BIR cannot impose what type of supporting documents should be submitted by a protesting taxpayer. Otherwise, the taxpayer will be at the mercy of the BIR examiner because the latter may require the protesting taxpayer to submit documents that it cannot produce.

Lastly, We shall resolve the third issue as to whether or not petitioner is liable for deficiency income tax, VAT, and EWT for taxable year 2006.

1) <u>Deficiency Income Tax</u>

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[17] G.R. no. 172045-46, June 16, 2009
[18] Exhibit "F", docket, p. 146

Petitioner was assessed for deficiency income tax for taxable year 2006 in the amount of P17,364,188.94, computed as follows:[19]

Net income per return		P 3,030,054.00
Add: Adjustments per investigation		
Undeclared sales/income	P17,475,424.92	
Income payments not subjected to withholding	2,414,051.00	
Unaccounted sources of income	11,757,702.80	31,647,178.72
Taxable income per investigation		P 34,677,232.72
Income tax due thereon (35%)		P 12,137,031.45
Less: Allowable tax credits/payments:		
Prior year's excess credits	P 520,611.00	
Income tax payments per returns	88,108.00	
Creditable tax withheld per BIR Form No. 2307	1,058,097.00	
Total	P 1,666,816.00	
Less: Excess tax credits carried over to the succeeding year	652,861.00	1,013,955.00
Deficiency income tax		P 1,123,076.45
Add: 20% Interest p.a. (04.17.07 to 02.04.10)		6,241,112.49
Total Amount Due		**P17,364,188.94**

As indicated above, the deficiency income tax assessment arose from the adjustments made by respondent on petitioner's taxable income and disallowance of tax credits, to wit:

a. Undeclared sales/income	P 17,475,424.92
b. Income payments not subjected to withholding	2,414,051.00
c. Unaccounted sources of income	11,757,702.80
d. Excess tax credits carried over to the succeeding year	P 652,861.00

The Court will discuss each of the aforesaid items.

a. Undeclared sales/income - P17,475,424.92

Respondent's examiner found that the sales per petitioner's books differ from the sales per petitioner's financial statements and purported the discrepancy as undeclared sales/income, to wit:[20]

Sales per investigation	P 262,123,000.92
Sales per financial statements	244,647,576.00
Undeclared sales/income	**P 17,475,424.92**

[19] Exhibit "C"
[20] Exhibit "C", Details of Discrepancies

Petitioner avers that the difference of P17,475,424.92 pertains to output tax in the amount of P15,107,754.80 and sales returns and discounts in the amount of P2,367,850.12.[21]

An examination of petitioner's audited financial statements[22] disclose that the amount of P244,647,576.00 was reported as sales. However, as correctly pointed out by petitioner, respondent's examiner lifted the following sales figures, except for the month of April, from petitioner's sales book for the year 2006, to wit:

MONTH	TOTAL SALES
January	P 23,043,208.70
February	21,765,004.24
March	22,832,815.83
April	18,844,658.00
May	24,427,230.11
June	17,862,534.36
July	18,720,105.88
August	18,527,404.88
September	19,961,901.51
October	22,688,207.11
November	29,058,977.22
December	24,390,953.08
TOTAL	**P262,123,000.92**

In her testimony, respondent's examiner admitted that the foregoing included output taxes, thus:[23]

"JUSTICE VICTORINO:
You are trying to establish here that the entries in the Summary of Sales prepared by the examiner are the same as those appearing in the document you presented then except for the month of April?

ATTY. BARTOLOME:
Yes, your Honors.

Q. So, Ms. Witness, do you confirm that the figures are the same?

[21] Exhibit "D"
[22] Exhibit "G", Statements of Income, docket, p. 165
[23] TSN dated February 7, 2012, pages 43-46

MS. NAZARIO:
A. Yes.

ATTY. BARTOLOME:
Q. In your Summary of Sales, is it correct that you included the output tax of the petitioner in your computation of total sales?

xxx xxx xxx

MS. NAZARIO:
A. Yes.

ATTY. BARTOLOME:
Are you aware that the amounts you copied for your Summary of Sales also includes the Sales Return and allowances of the petitioner?

xxx xxx xxx

MS. NAZARIO:
A. No."

Based on petitioner's sales book for the year 2006, output tax amounted to P15,025,437.95, broken down as follows:

EXHIBIT	MONTH	OUTPUT TAX
DD	January	P 1,027,727.82
CC	February	1,092,640.71
BB	March	1,602,845.12
AA	April	1,430,541.54
Z	May	1,801,394.07
Y	June	1,264,393.90
X	July	973,697.16
W	August	1,096,722.85
V	September	907,549.88
U	October	1,182,234.97
T	November	1,589,387.41
S	December	1,056,302.52
TOTAL		**P15,025,437.95**

Pursuant to Section 105 of the NIRC of 1997, as amended, VAT is an indirect tax which may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. The VAT is payable to the BIR by petitioner and does not form part of its gross income. Thus, respondent erroneously included the output VAT of P15,025,437.95 as part of petitioner's taxable sales for the year 2006.

Similarly, under Section 27(A) of the NIRC of 1997, as amended, sales returns and allowances are deductible from the corporate taxpayer's gross sales. In other words, the sales returns and allowances recorded per petitioner's sales book for the year 2006 in the amount of P1,163,443.81, broken down below, are proper deductions from petitioner's 2006 gross sales.

		Sales Returns and Discounts					
Exh.	**Month**	**Export**	**Embroidery**	**Knitting**	**Hook & Eye**	**Finishing**	**Total**
DD	Jan.	-	-	-	-	-	-
CC	Feb.	-	-	-	-	-	-
BB	Mar.	-	-	-	-	-	-
AA	Apr.	-	-	-	-	-	-
Z	May	-	-	-	-	-	-
Y	June	-	-	-	-	-	-
X	July	-	-	-	-	-	-
W	Aug.	-	-	-	-	-	-
V	Sep.	-	-	-	-	-	-
U	Oct.	107,282.45	1,535.30	132,391.72	-	860.19	242,069.66
T	Nov.	25,154.70	20,949.60	130,631.04	17,646.21	27,573.97	221,955.52
S	Dec.	346,532.78	4,038.06	322,333.26	8,367.59	18,146.94	699,418.63
TOTAL		**P478,969.93**	**P26,522.96**	**P585,356.02**	**P26,013.80**	**P46,581.10**	**P1,163,443.81**

It should be noted that there is a difference of P446,260.82 in the gross sales for the year 2006 as reflected per respondent's schedule, and as recorded per petitioner's sales book, and the same can be traced to petitioner's sales for the month of April 2006, thus:

	April	**Total**
Per sales book	P 19,290,919.30	P 262,569,261.74
Per examiner's schedule	18,844,658.00	262,123,000.92
Difference	**P 446,261.30**	**P 446,260.82**

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Respondent's examiner erroneously indicated in her schedule a lower sales amount of P18,844,658.00 instead of P19,290,919.30 sales recorded per sales book for the month of April. As a result, the total gross sales figure of P262,123,000.92 used by respondent is understated by P446,260.82.

After deducting the output tax of P15,025,437.95 and sales returns and allowances of P1,163,443.81 from the gross sales per sales book of P262,569,261.74, petitioner's net sales per sales book amounted to P246,380,379.98, which when compared with the P244,647,576.00 sales reported per petitioner's financial statements, there remains a discrepancy in the amount of P1,732,803.98. Since petitioner failed to account for the discrepancy of P1,732,803.98, the same shall be considered as undeclared sales and petitioner shall be liable of the corresponding basic deficiency income tax. Below is the computation of the undeclared sales of P1,732,803.98:

Total sales per sales book		P262,569,261.74
Less: Output tax	P15,025,437.95	
Sales returns & allowances	1,163,443.81	16,188,881.76
Net sales per sales book		P246,380,379.98
Sales per FS/ITR		244,647,576.00
Undeclared sales		**P1,732,803.98**

b. Income payments not subjected to withholding tax - P2,414,051.00

Based on the finding that petitioner's "Superintendence" expense in the amount of P2,414,051.00 was not subjected to EWT as required under Revenue Regulations No. 2-98, as amended, respondent disallowed the amount of P2,414,051.00 as deduction from petitioner's gross income pursuant to Section 34(K) of the NIRC of 1997, as amended.

Petitioner argues that the account "Superintendence" pertains to payments to its employees with supervisory responsibilities and as such, was subjected to withholding tax on compensation.[24]

Petitioner's accountant, Alicia L. Acoba, and its Human Resources Department Personnel Assistant, Ria de Asis, explained that petitioner's payroll is divided into the following categories:[25]

[24] Exhibit "ZZZ", Item No. 25; Exhibit "AAAA", Item No. 6
[25] Exhibits "BBB" to "YYY"

1. Direct Labor (DL);
2. Indirect Labor (IL);
3. Office Staff (OS); and
4. Supervisory Employees (X).

As represented, the account "Superintendence" includes salaries, 13th month pay, other compensation, SSS and PhilHealth contributions, and union dues of petitioner's supervisory employees. Specifically, per alphalist of employees attached to the Annual Information of Income Taxes Withheld on Compensation for the year 2006, petitioner's employees who are paid for "Superintendence" are the following:[26]

	NON-TAXABLE			TAXABLE	
Name	**13th Month, Other Benefits**	**SSS/PHIC Other Cont.**	**Salaries & Other Compensation**	**Salaries & Other Compensation**	**TOTAL**
Romel Belarmino	P 19,432.97	P 8,450.00	P 5,222.31	P 195,011.28	P 228,116.56
Pablo Bilen	27,388.61	6,340.10	5,844.75	110,695.78	150,269.24
Leowill Domasing	25,791.44	5,806.70	3,773.80	102,929.89	138,301.83
Dominador Duenos	25,637.96	5,956.80	3,606.60	105,266.99	140,468.35
Wilfredo Espora	24,190.53	5,619.40	3,391.40	99,167.87	132,369.20
Mark Ian Figuracion	3,893.37	2,462.40	-	52,017.39	58,373.16
Cezar Florece	7,772.19	4,129.30	-	89,358.03	101,259.52
Antonio Gimao	27,673.99	6,315.00	3,896.50	112,679.25	150,564.74
Arleen Jurilla	24,234.70	5,460.90	3,576.40	95,657.74	128,929.74
Mario Liwanagan	25,330.81	5,877.50	3,526.40	104,440.21	139,174.92
Gino Lotino	25,561.08	6,589.90	3,404.00	117,225.52	152,780.50
Eduardo Medrano	24,635.67	5,744.20	5,289.60	99,483.80	135,153.27
Arturo Milano	27,812.38	6,677.60	3,896.50	120,252.26	158,638.74
Ma. Cecilia Navarroza	23,381.03	6,081.50	3,395.00	107,193.91	140,051.44
Rodolfo Rigor	23,601.59	5,381.70	3,416.40	94,215.35	126,615.04
Wilfredo Valera	28,019.98	6,494.30	3,896.60	116,947.93	155,358.81
Jeanne Vengua	23,656.83	5,735.90	3,395.00	100,553.34	133,341.07
Salvador Ramos	-	-	-	-	-
TOTAL	**P388,015.13**	**P 99,123.20**	**P 59,531.26**	**P 1,823,096.54**	**P2,369,766.13**

[26] Exhibits "AAAA", Item 8 and "DDDD"

It should be noted that the name of Salvador Ramos cannot be found in the alphalist of employees. Moreover, petitioner's Payroll Analysis, as summarized below, does not tally with the total amount recorded in the "Superintendence" account:[27]

Exhibit	Period	Salaries and Benefits				
		X-E	X-F	X-H	X-K	Total
BBB	12/22/05 to 1/7/06	P16,713.67	P44,487.69	P16,028.26	P25,781.19	P103,010.81
CCC	1/8/06 to 1/25/06	17,089.54	40,017.55	14,926.61	23,881.24	95,914.94
DDD	1/26/06 to 2/9/06	13,939.33	29,974.59	14,554.04	23,413.76	81,881.72
EEE	2/10/06 to 2/22/06	11,970.40	24,995.18	11,398.86	16,961.94	65,326.38
FFF	2/23/06 to 3/9/06	13,062.21	30,744.06	12,696.53	17,383.72	73,886.52
GGG	3/10/06 to 3/25/06	15,261.38	33,727.70	11,991.96	20,193.85	81,174.89
HHH	3/26/06 to 4/6/06	10,550.39	23,330.71	6,799.39	17,565.43	58,245.92
III	4/7/06 to 4/22/06	15,055.10	34,177.58	10,556.24	24,121.41	83,910.33
JJJ	4/23/06 to 5/9/06	14,159.65	34,183.41	9,881.59	21,505.97	79,730.62
KKK	5/10/06 to 5/25/06	13,766.52	34,921.47	8,982.43	26,535.28	84,205.70
LLL	5/26/06 to 6/8/06	13,179.35	30,093.77	8,152.90	18,725.72	70,151.74
MMM	6/9/06 to 6/24/06	14,544.32	31,444.07	12,668.64	18,274.00	76,931.03
NNN	6/25/06 to 7/8/06	9,737.04	26,880.18	11,330.01	15,890.99	63,838.22
OOO	7/9/06 to 7/25/06	13,681.25	29,101.90	8,619.51	17,377.22	68,779.88
PPP	6/26/06 to 8/9/06	12,989.10	32,813.41	11,365.98	12,176.94	69,345.43
QQQ	8/10/06 to 8/25/06	14,536.74	35,163.64	11,079.68	12,996.69	73,776.75
RRR	8/26/06 to 9/9/06	13,401.07	34,422.28	13,721.42	15,464.47	77,009.24
SSS	9/10/06 to 9/23/06	13,038.92	29,358.12	12,092.48	14,283.14	68,772.66
TTT	9/24/06 to 10/7/06	12,119.51	27,696.32	10,869.54	11,500.31	62,185.68
UUU	10/9/06 to 10/25/06	16,290.18	36,233.07	15,553.30	16,752.60	84,829.15
VVV	10/26/06 to 11/9/06	15,190.95	31,319.27	19,473.51	13,386.34	79,370.07
WWW	11/10/06 to 11/24/06	13,397.77	34,485.31	24,093.34	19,023.53	90,999.95
XXX	11/25/06 to 12/9/06	11,691.58	32,461.07	18,429.22	17,607.23	80,189.10
YYY	12/10/06 to 12/21/06	7,403.15	26,440.49	15,099.08	12,549.56	61,492.28
	TOTAL	**P322,769.12**	**P768,472.84**	**P310,364.52**	**P433,352.53**	**P1,834,959.01**

The Court is not fully convinced by petitioner's explanation pertaining to its "Superintendence" account in the amount of P2,414,051.00. Thus, respondent's finding that the said amount is subject to the 10% EWT rate imposed on payments of professional fees under Section 2.57.2(A) of RR No. 2-98, as amended, shall be upheld in line with the well-settled 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.[28]

Consequently, the amount of P2,414,051.00 shall be disallowed from petitioner's claimed deductible expenses pursuant to Section 34(K) of the NIRC of 1997, as amended, which states that:

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[27] Exhibits "BBB" to ""YYY"

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

"(K) *Additional Requirements for Deductibility of Certain Payments.* - Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, Sections 58 and 81 of this Code."

c. Unaccounted sources of income - P11,757,702.80

The unaccounted sources of income allegedly arose from the following:

Inventories	P 9,883,294.00
Meralco refund – miscellaneous income	1,874,408.80
TOTAL	**P11,757,702.80**

1.) Inventories - P9,883,294.00

Respondent considered as unaccounted source of cash/income the amount of P9,883,294.00, allegedly representing inventories which petitioner did not accurately report in its financial statements. Specifically, the amount of P9,883,294.00 purportedly pertains to packaging, factory and spare parts beginning inventory which were properly reported as current asset but not reported as beginning inventory in the Cost of Goods Manufactured and Sold.[29]

Petitioner claims that respondent's assessment of unaccounted income has no legal and factual bases and the net worth method for determining taxable income is not applicable to the instant case.[30]

The Court agrees with petitioner.

Revenue Audit Memorandum Order No. 1-00 provides:

"**XIII. *Indirect Approach to Investigation***

xxx xxx xxx

[29] Exhibit "1", No. 10(c)
[30] Exhibit "E"

B. ***Net Worth Method***

The fact that the taxpayer's books and records accurately reflect the figures on the income and business tax returns does not prevent the use of the net worth method of proof. The Revenue Officer can still look beyond the 'self-serving declaration' in the taxpayer's books and records and use any evidences available to contravene their accuracy. However, **this net worth method is most often used when one or more of the following conditions prevail:**

1. **The taxpayer maintains no books and records.**
2. **The taxpayer's books and records are not available.**
3. **The taxpayer's books and records are inadequate.**
4. **The taxpayer withholds books and records from investigation/verification by authorized Revenue Officer(s).**

This is a method of reconstructing income which is based on the theory that if the taxpayer's **net worth has increased** in a given year in an amount larger than his reported income, he had understated his income for that year." *(Emphasis supplied)*

In the first place, there has been no representation that the conditions enumerated above were present. Secondly, as aptly stated by petitioner, the net worth method looks into the entire net worth of a taxpayer, not just particular items in his assets or liabilities, like, as in this instance, inventory. Thirdly, the net worth method is applicable if there is an increase in the net worth. An examination of petitioner's comparative audited balance sheets for the years 2005 and 2006 shows that petitioner's net worth actually **decreased** from

P431,672,298.00 in the year 2005 to P397,464,223.00 in the year 2006[31] and that petitioner's "Packaging, factory and spare parts inventories" decreased from P9,883,294.00 in the year 2005 to P3,901,249.00 in the year 2006.[32]

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[31] Exhibits "G" and "3", docket, p. 164
[32] Exhibits "G" and "3", Notes to Financial Statements, December 31, 2006, Note 6, docket, p. 172

Even if the amount of P9,883,294.00 is to be treated as unaccounted source of income, the same will be offset by recording the equivalent amount as Cost of Goods Manufactured and Sold. Consequently, no taxable income will result from the said transaction as illustrated below:

Inventories – added to Petitioner's revenue	P 9,883,294.00
Less: Related cost	9,883,294.00
Taxable income	**P -**

Accordingly, respondent's assessment pertaining to this item should be cancelled.

2.) MERALCO refund - P1,874,408.00

Respondent's examiner likewise assessed petitioner for unaccounted source of income for the monthly refunds it received from MERALCO in the aggregate amount of P1,874,408.00.

Petitioner explains that the MERALCO refund was not made by any actual payment of cash to petitioner but through monthly deductions from its monthly MERALCO bills. The deducted refunds were net of 25% withholding taxes, which were remitted by MERALCO to the BIR.[33]

A summary of petitioner's MERALCO refunds for the year 2006 is shown hereunder:[34]

Exhibit	Period	Service ID No.	Amount of Refund (net of 25% withholding tax)
ZZ	1/18/06 to 2/17/06	800935801-5	P -
YY	1/18/06 to 2/17/06	800935901-8	-
XX	2/17/06 to 3/21/06	800935801-5	-
WW	2/17/06 to 3/21/06	800935901-8	-
VV	3/21/06 to 4/19/06	800935801-5	192,790.20
UU	3/21/06 to 4/19/06	800935901-8	-
TT	4/19/06 to 5/19/06	800935801-5	32,131.70
SS	4/19/06 to 5/19/06	800935901-8	417,121.46
RR	5/19/06 to 6/19/06	800935801-5	32,131.70
QQ	5/19/06 to 6/19/06	800935901-8	59,588.78
PP	6/19/06 to 7/19/06	800935801-5	32,131.70
OO	6/19/06 to 7/19/06	800935901-8	59,588.78

[33] Exhibit "E"; Petitioner's Memorandum
[34] Exhibits "EE" to "ZZ"

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NN	7/19/06 to 8/19/06	800935801-5	32,131.70
MM	7/19/06 to 8/19/06	800935901-8	59,588.78
LL	8/19/06 to 9/19/06	800935801-5	32,131.70
KK	8/19/06 to 9/19/06	800935901-8	59,588.78
JJ	9/19/06 to 10/20/06	800935801-5	32,131.70
II	9/19/06 to 10/20/06	800935901-8	59,588.78
HH	10/20/06 to 11/20/06	800935801-5	32,131.70
GG	10/20/06 to 11/20/06	800935901-8	59,588.78
FF	11/20/06 to 12/20/06	800935801-5	32,131.70
EE	11/20/06 to 12/20/06	800935901-8	59,588.78
		TOTAL	**P1,284,086.72**

As indicated in petitioner's bills for Service ID Nos. 800935801-5 and 800935801-8 for the periods March 21, 2006 to April 19, 2006 and April 19, 2006 to May 19, 2006, respectively, petitioner had the option to claim the subject refund in the form of a check or through automatic credit to its next bill.[35] Based on the monthly MERALCO bills submitted, petitioner opted for the latter. The refunds, net of 25% withholding tax, were deducted from the electric charges billed to petitioner for the current month.

Petitioner points out that because of the MERALCO refund, its deductible expense for electricity was significantly reduced, thus, resulting in more income tax being paid by petitioner for the year 2006.

However, petitioner failed to present documents, such as detailed general ledger, vouchers, trial balance, breakdown of its claimed expense for electricity as appearing in its annual income tax return and other documents which would establish that petitioner actually treated the MERALCO refunds as reduction of its claimed deductible expense for electric consumption for the year 2006. Hence, the MERALCO refund of P1,874,408.00 shall be considered as petitioner's taxable income pursuant to Section 32(A) of the NIRC of 1997, as amended.

E. Excess tax credits carried over to the succeeding year – P652,861.00

Respondent disallowed petitioner's tax credits in the amount of P652,861.00 which were carried over to the succeeding year 2007.

The Court finds the disallowance improper because any tax benefit derived by petitioner from the carry-over of the said amount

[35] Exhibits "VV" and "SS"

redounds to the succeeding year 2007. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In summary, respondent's basic deficiency income tax assessment should be adjusted to P1,501,145.22, computed as follows:

Net income per return		P 3,030,054.00
Add: Adjustments per investigation		
Undeclared sales/income	P 1,732,803.98	
Income payments not subjected to withholding	2,414,051.00	
Unaccounted sources of income	1,874,408.80	6,021,263.78
Taxable income per investigation		P 9,051,317.78
Income tax due thereon (35%)		P 3,167,961.22
Less: Allowable tax credits/payments:		
Prior year's excess credits	P 520,611.00	
Income tax payments per returns	88,108.00	
Creditable tax withheld per BIR Form No. 2307	1,058,097.00	1,666,816.00
Basic deficiency income tax		**P 1,501,145.22**

Deficiency Value-added Tax

Respondent's deficiency VAT assessment against petitioner in the amount of P2,231,665.27 was computed as follows:

Taxable sales/receipts per VAT Returns			P129,546,681.95
Add: Adjustments per investigation:			
Unaccounted sources of income			11,757,702.80
Taxable sales/receipts per investigation			P141,304,384.75
Output tax due thereon:			
January	P 11,305,006.02	0.10	P 1,130,500.60
February-December	129,999,378.78	0.12	15,599,925.45
	P141,304,384.80		P 16,730,426.06
Less: Allowable tax credits/payments:			
VAT payments per ITS		P 2,427,807.00	
Current input tax		13,603,071.19	
Total		P16,030,878.19	
Less: Excess input tax credits carried over to the succeeding period		690,482.55	15,340,395.64
Deficiency value-added tax			P 1,390,030.42
Add: 20% Interest p.a. (1.26.07 to 12.4.09)			841,634.85
Total Amount Due			**P 2,231,665.27**

The deficiency VAT assessment was based on the same finding under the deficiency income tax assessment that inventories amounting to P9,883,294.00 and refunds received by petitioner from MERALCO in the amount of P1,874,408.80, totalling P11,757,702.80, represent petitioner's unaccounted sources of income which should be subjected to VAT pursuant to Sections 106 and 108 of the NIRC of 1997, as amended.

As discussed earlier that respondent's assessment on petitioner's inventories amounting to P9,883,294.00 is devoid of factual and legal bases, the same should not be assessed for deficiency VAT.

As to the MERALCO refund in the amount of P1,874,408.80, the Court finds that the same is not subject to output VAT because the receipt thereof did not arise from either sale of goods or sale of services made by petitioner.

However, because of the MERALCO refunds, petitioner overclaimed its input tax for its MERALCO billings prior to 2006. Consequently, petitioner should have deducted the input tax related to the MERALCO refunds upon receipt thereof in 2006 from its current input taxes on payments for electric consumption.

Records show that other than the MERALCO billing statements[36], petitioner did not present proofs (such as its 2006 monthly/quarterly VAT returns, schedule of input taxes, detailed general ledger and other documents) to show that it claimed a lesser amount of input tax for its electricity expenses for the year 2006 as a result of the automatic crediting of the MERALCO refunds against its current bills for electricity in 2006.

Thus, the Court is constrained to deduct the input tax pertaining to the MERALCO refunds from petitioner's claimed input tax credits for 2006. In the absence of evidence to the contrary, the input tax to be deducted shall be computed at 10%[37] of P1,874,408.80, which is P187,440.88.

In her computation of deficiency VAT assessment, respondent recognized that petitioner had excess input tax credits as of the end of 2006 in the amount of P690,482.55. This figure shall be reduced by the input tax of P187,440.88 related to the MERALCO refunds

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[36] Exhibits "EE" to "ZZ"

[37] Applicable VAT rate during the period covered by the MERALCO refund, *i.e.*, February 1994 to May 2003 (Exhibit "SS", docket, p. 218)

received by petitioner in 2006. Accordingly, petitioner's excess tax credits as of the end of 2006 amounts to only P503,041.67.

Consequently, respondent's deficiency VAT assessment should be cancelled and/or withdrawn.

Deficiency Expanded Withholding Tax

Respondent computed deficiency EWT assessment in the amount of P388,893.70 as follows:

	Amount	EWT Rate	EWT Due
Superintendence	P2,414,051.00	0.10	P 241,405.10
Less: EWT remittance per returns			-
Deficiency EWT			241,405.10
Add: 20% Interest p.a. (1.16.07 to 12.4.09)			147,488.60
Total Amount Due			**P 388,893.70**

As discussed earlier, petitioner has not sufficiently proven that its "Superintendence" account was indeed paid to its employees with supervisory positions. Moreover, it was not able to fully account for and reconcile the amount P2,414,051.00 supposedly subjected to withholding tax on compensation. Consequently, respondent's deficiency EWT assessment should be upheld.

WHEREFORE, in view of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The deficiency VAT assessment issued by respondent against petitioner for taxable year 2006 in the amount of P2,231,665.27 is hereby **CANCELLED** and **WITHDRAWN**. However, the deficiency income tax and EWT assessments for taxable year 2006 are partially **UPHELD** in the modified amount of P2,178,187.91, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	Basic Tax	25% Surcharge	Total
Income Tax	P 1,501,145.22	P 375,286.31	P 1,876,431.53
EWT	241,405.10	60,351.28	301,756.38
Total	**P1,742,550.32**	**P435,637.59**	**P2,178,187.91**

In addition, petitioner is hereby **ORDERED TO PAY** the following:

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of P1,501,145.22 computed from April 15, 2007 and EWT of P241,405.10 computed from January 15, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of P2,178,187.91 and on the deficiency interest which have accrued as afore-stated in (a) computed from February 4, 2010 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
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.

ROMAN G. DEL ROSARIO
Presiding Justice