REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

AJINOMOTO PHILIPPINES CORPORATION, *Petitioner,* -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**C.T.A. CASE NO. 7877** Members: BAUTISTA, Chairperson, PALANCA-ENRIQUEZ, and COTANGCO-MANALASTAS, JJ. **Promulgated:** DEC 11 2012 11:35 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Ajinomoto Philippines Corporation (hereafter "petitioner") praying for the nullification of the Assessment and Formal Demand for payment of deficiency Income Tax of ₱181,164,275.04, Value-Added Tax of ₱24,974,439.13, Expanded Withholding Tax of ₱45,403,934.34, Withholding Tax on Compensation of

₱5,985,020.16 and Fringe Benefit Tax of ₱30,582,321.15, or the aggregate amount of ₱288,109,989.82, all for fiscal year ending March 31, 2005.

THE PARTIES

Petitioner Ajinomoto is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 331 Ajinomoto Building, Sen. Gil Puyat Avenue, Makati City.

On the other hand, respondent Commissioner of Internal Revenue (hereafter "CIR") is the official authorized under *Section 4 of the National Internal Revenue Code of 1997* to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction of this Court.

THE FACTS

The facts, as culled from the records, are as follows:

On March 31, 2005, petitioner filed with the BIR its Annual Income Tax Return for the fiscal year ending March 31, 2005.

On June 17, 2008, Marco M. Perez ("Mr. Perez") executed a Waiver of the Defense of Prescription under the Statute of Limitations under the *NIRC of 1997, as amended*, which was received by respondent on June 25, 2008.

On December 5, 2008, petitioner received an undated letter from respondent informing petitioner that the results of investigation of its internal revenue taxes for fiscal year ending March 31, 2005 had been submitted with proposed assessment.

On December 11, 2008, respondent provided petitioner a copy of the Waiver, which was accepted by Atty. Romulo L. Aguila.

On December 16, 2008, petitioner received a Preliminary Assessment Notice ("PAN") for deficiency Income Tax, VAT, Expanded Withholding Tax, Withholding Tax on Compensation and Fringe Benefit Tax for fiscal year ending March 31, 2005.

On December 22, 2008, petitioner received the Formal Letter of Demand and Assessment Notices, dated December 15, 2008, requiring petitioner to pay the following deficiency taxes:

Income Tax	P181,164,275.04
Value-Added Tax	24,974,439.13
Expanded Withholding Tax	45,403,934.34
Withholding Tax on Compensation	5,985,020.16
Fringe Benefit Tax	30,582,321.15

The Details of Discrepancy and Assessment Notices, are as follows:

INCOME TAX Assessment No. IT-FY 3.2005-000230		
	MCIT	RCIT
Taxable Income	P919,454,291.00	P17,522,302.00

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Adjustments:		
Debits to sale (per gl by object Account, p. 1338)	345,230,400.12	345,230,400.12
Undeclared GP based on understated Importation	11,371,086.49	11,371,086.49
Gross income subject to MCIT	1,276,055,777.61	374,123,788.61
Tax Rate	2%	32%
Tax due	25,521,115.55	119,719,612.35
Less: Creditable tax withheld/tax payments		
Creditable tax withheld-form 2307	6,688,255.00	
Tax payments	13,790,845.00	
	20,479,100.00	
Carry over to succeeding period	2,090,414.18	
	18,388,685.82	
Less: prior years 2307 353,306.70		
Unsupported 4,729,179.00	5,082,485.70	13,306,200.12
Basic tax still due		106,413,412.23
Interest fr. 7.16.05-12.13.08		74,725,862.81
Compromise penalty for non compliance with RMC 13-82 for failure to register books of accounts per Referral No. LTAD-LQ001-10-08 dated 10.12.2006 (p.818)		25,000.00
Total amount due and collectible		P181,164,275.04

VALUE ADDED TAX Assessment No. VAT-FY 3.2005-000273		
Taxable sales per VAT returns		3,474,484,828.26
Add: Exempt sales		6,638,959.26
Gross sales subject to VAT		3,481,123,787.52
Output tax		348,112,378.75
Less: Allowable Input Tax		
Local input tax	P164,043,140.72	
Input tax on Importation	67,784,720.00	
Total	231,827,860.72	
Less: a. disallowance of input tax due to non-compliance on invoicing requirements: Non-VAT P419,176.97 Not in data base 14,049.59	433,226.56	
b. unsupported input tax on importation-no IEIRD	3,779,609.00	
c. overclaimed input tax on machinery and equipment		

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(should be capitalized)	6,800,689.39	220,814,335.77
VAT payable		127,298,042.98
Less: VAT payments		113,023,093.70
Deficiency VAT		14,274,949.28
20% interest 4.25.05 to 12.31.08		10,674,489.85
Compromise penalty – non submission of SLS and SLP (per DPQAD certification)		25,000.00
Total amount due and collectible		P24,974,439.13

EXPANDED WITHHOLDING TAX Assessment No. EWT-FY 3.2005-000243	
Basic tax still due	P25,889,724.82
Interest fr. 4.16.05-12.13.08	19,489,209.52
Compromise penalty	25,000.00
Total amount due and collectible	45,403,934.34

WITHHOLDING TAX ON COMPENSATION Assessment No. WC-FY 3.2005-000141	
Income payments still subject to withholding tax	P10,626,026.43
Tax rate	32%
Basic tax due	3,400,328.46
Interest fr. 4.16.05-12.31.08	2,559,691.70
Compromise penalty	25,000.00
Total amount due and collectible	P5,985,020.16

FRINGE BENEFIT TAX Assessment No. FBT-FY 3.2005-000066	
Total fringe benefits given	36,085,752.83
Grossed-up monetary value	53,067,283.57
Fringe benefits	16,981,530.74
Total fringe benefits per FBT returns	-
Deficiency FBT	16,981,530.74
Surcharge	4,245,382.69
Interest from 4.16.06-12.31.08	9,330,407.72
Compromise penalty	25,000.00
Total amount due and collectible	P30,582,321.15

On January 5, 2009, petitioner protested the Preliminary Assessment Notice, received by petitioner on December 16, 2008, and Formal Letter of Demand, received on December 22, 2008.

On February 2, 2009, petitioner received the Final Decision, dated January 23, 2009, denying petitioner's request for cancellation of the deficiency tax assessment.

On March 3, 2009, petitioner filed the instant Petition for Review.

On April 13, 2009, respondent filed her answer, alleging special and affirmative defenses: the right of respondent to assess petitioner for deficiency taxes did not prescribe in view of the execution of a waiver extending the period of assessment; the PAN, Formal Letter of Demand and Final Decision on Disputed Assessment were issued in accordance with law, rules and jurisprudence.

On April 30, 2009, petitioner filed a "Reply" to respondent's Answer alleging that: the Head Revenue Executive Assistant ("HREA") is not authorized to sign the waiver of the Statute of Limitations under *Revenue Delegation Authority Order No. 05-01.* The revenue official expressly authorized to sign the waiver in cases of large taxpayers is the Assistant Commissioner ("ACIR"), and HREA is certainly not ACIR. The authority to execute and sign a waiver cannot be merely implied from the job title of the person executing and signing the waiver. Petitioner cannot be deemed to have acquiesced to defects of the notarial acknowledgment of the purported waiver since it gained knowledge of the said defects only on December 11, 2008. The BIR did not follow the provisions of *Revenue Regulations No. 12-99*. The PAN was issued even before the expiration of the 15-day period granted by the *NIRC of 1997, as amended*, and *RR 12-99* for the Notice of Informal Conference. Likewise, the Formal Letter of Demand was received by petitioner even before the lapse of the 15-day period for the petitioner to respond to the PAN. Hence, respondent did not follow the procedure prescribed in *RR 12-99*.

Petitioner presented Rommel Arroyo, Salome Luber, Roxanne Cerezo, Katherine Constantino, and Jemardi Orendez, as witnesses, and documentary evidence.

On January 8, 2010, pursuant to *CTA Administrative Circular No. 01-2010, dated January 5, 2010*, "Implementing the Fully Expanded Membership in the Court of Tax Appeals", this case was transferred to the Third Division of this Court.

On the other hand, respondent presented Revenue Officer Felina Guimbao and Group Supervisor Melinda Ann Perez, as witnesses. However, as regards Felina Guimbao, respondent was deemed to have waived the right to present said witness in a Resolution dated July 18, 2011. Respondent also presented documentary evidence, marked as *Exhibits "1" to "7"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated February 15, 2012.

Both parties were granted thirty (30) days from notice within which to file their simultaneous memoranda. After which, the case shall be deemed submitted for decision.

Both parties having filed their respective memorandum, the case was deemed submitted for decision on April 24, 2012.

ISSUES

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

I

WHETHER THE RIGHT OF RESPONDENT COMMISSIONER TO ASSESS THE ALLEGED DEFICIENCY TAXES HAS PRESCRIBED.

II

WHETHER THE REQUIREMENTS OF SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE AND REVENUE REGULATIONS NO. 12-99 WERE COMPLIED WITH.

III

WHETHER AJINOMOTO WAS INFORMED OF THE FACTUAL AND LEGAL BASES OF THE DEFICIENCY TAX ASSESSMENTS.

IV

WHETHER THE DEFICIENCY TAX ASSESSMENTS HAVE FACTUAL AND LEGAL BASES.

Petitioner's Arguments

Petitioner contends that respondent's right to assess deficiency taxes for fiscal year ending March 31, 2005 has prescribed considering that: (a) petitioner filed the pertinent tax returns for fiscal year ending March 31, 2005, but no deficiency tax assessments were issued within three (3) years from the date of filing of the said returns; (b) the purported waiver was invalid and did not extend the prescriptive period within which the respondent may issue deficiency tax assessments since (i) the purported waiver was executed without any written notarized authority from the board of directors of petitioner, (ii) the purported waiver was not signed by the duly authorized representative of the respondent, (iii) the purported waiver failed to indicate the date of acceptance by the BIR, (iv) petitioner was furnished a copy of the purported waiver beyond the 3-year period prescribed under the NIRC; (c) petitioner is not estopped from assailing the validity of the purported waiver; and in order to expedite the issuance of deficiency tax assessment before the purported extended date of prescriptive period, the BIR issued the notice of informal conference, PAN, FAN and Final Decision without regard to petitioner's right to due process under *Section 228 of the NIRC of 1997, as amended*, and *Revenue Regulations No. 12-99*.

Respondent CIR's Counter-Arguments

Respondent counter-argues that its right to assess petitioner of the internal revenue tax liabilities for fiscal year ending March 31, 2005 had not yet prescribed, the deficiency tax assessments have factual and legal bases and were issued in accordance with *Section 228 of the NIRC of 1997, as amended, and Revenue Regulations 12-99*, and in the absence of proof to the contrary, petitioner is liable for the deficiency tax assessments for fiscal year ending March 31, 2005 because the presumption under the law is in favor of the correctness of tax assessments.

THE COURT'S RULING

The petition is partly meritorious.

First Issue: Prescription

In cases of assessment of internal revenue taxes, *Section 203 of the NIRC of 1997, as amended*, provides, as follows:

> "SEC. 203. Period of Limitation Upon Assessment and Collection. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filling of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Pursuant to the above provision, as a general rule, internal revenue taxes shall be assessed, within three (3) years after the last day prescribed by law for the filing of the return, or the day the return was filed, if the same was filed beyond the period prescribed by law. The assessment referred to herein is the Formal Assessment Notice, which is the official BIR action demanding the settlement of a taxpayer's liability.

In this case, petitioner was being assessed of (a) Income Tax of ₱181,164,275.04; (b) Value-Added Tax of ₱24,974,439.13; (c) Expanded Withholding Tax of ₱45,403,934.34; (d) Withholding Tax on Compensation of ₱5,985,020.16; and (e) Fringe Benefit Tax of ₱30,582,321.15, all for fiscal year ending March 31, 2005.

(a) as regards Income Tax, *Section 77 (B) of the NIRC of 1997, as amended*, provides:

"SEC. 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax. –

xxx xxx.

(B) Time of Filing the Income Tax Return. – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15^{th}) day of April, or on or before the fifteenth (15^{th}) day of the fourth (4^{th}) month following the close of the fiscal year, as the case may be."

Records show that petitioner filed its Annual Income Tax Return for fiscal year ending March 31, 2005 on July 14, 2005 *(Exhibit "A")* and paid the income tax due thereon *(Exhibits "M" to "P")*. Pursuant to the above-quoted *Section 77*, petitioner had until July 15, 2005 within which to file its Annual Income Tax Return for fiscal year ending March 31, 2005 and pursuant to *Section 203*, respondent had three (3) years from July 15, 2005 or until July 15, 2008 within which to assess petitioner of deficiency income tax.

(b) as regards Value-Added Tax, *Section 114 of the NIRC of 1997, as amended*, provides:

"SEC. 114. Return and Payment of Value-added Tax. –

(A) In General. – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

xxx xxx."

Records show that petitioner filed its Quarterly VAT Return and paid the corresponding VAT thereof, to wit:

Quarter	**Date of Filing of Quarterly VAT Return and Payment of VAT thereof**
First Quarter	July 23, 2004 *(Exhibits "B", "B-4", "Q", "U" and "U-1")*
Second Quarter	October 25, 2004 *(Exhibits "B-1", "B-5", "R", "U-2" and "U-3")*
Third Quarter	January 24, 2005 *(Exhibits "B-2", "B-6", "S", "U-4" and "U-5")*
Fourth Quarter	April 22, 2005 *(Exhibits "B-3", "B-7", "T", "U-6" and "U-7")*

Pursuant to the aforesaid *Section 114*, petitioner had until the following dates to file its Quarterly VAT Returns:

Quarter	**Date of Actual Filing of Quarterly VAT Return**	**Deadline to File Quarterly VAT Returns**
First Quarter	July 23, 2004	July 25, 2004
Second Quarter	October 25, 2004	October 25, 2004
Third Quarter	January 24, 2005	January 25, 2005
Fourth Quarter	April 22, 2005	April 25, 2005

Applying *Section 203 of the same Code*, respondent had three (3) years, or until the following dates to assess petitioner of deficiency Value-Added Tax:

Quarter	**Deadline to Assess deficiency VAT**
First Quarter	July 25, 2007
Second Quarter	October 25, 2007

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Third Quarter	January 25, 2008
Fourth Quarter	April 25, 2008

(c) as regards Expanded Withholding Tax and Creditable Withholding Tax, *Section 4(1) of Revenue Regulations 06-01,* amending pertinent provisions of *Revenue Regulations 1-98, 2-98, as amended, and 7-95, as amended*, provides:

> "SEC. 4. Time for Filing of Withholding Tax and Value-Added Tax Returns and the Payment of Taxes Due Thereon. – The time for filing of the various tax returns as indicated below and the payment of the taxes due thereon shall be revised in accordance with the appropriate amendments to the existing regulations, as presented below.
>
> (1) Sections 2.58(A)(2) and 2.81 of Revenue Regulations No. 2-98, as amended, are hereby further amended to read as follows:
>
> 'SECTION 2.58 RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.
>
> (A) Monthly return and payment of taxes
>
> xxx xxx.
>
> (2) WHEN TO FILE –
>
> (a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payment should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year.

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(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above.

xxx xxx."

(c.1) Expanded Creditable Withholding Tax – Records show that petitioner electronically filed its Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) ("BIR Form 1601-E") for fiscal year ending March 31, 2005, and paid the expanded withholding taxes due thereon, as follows:

Month	**Date of Filing of Monthly Expanded Creditable Withholding Tax Return**
April 2004	May 14, 2004*(Exhibits "D", "D-12" and "W")*
May 2004	June 14, 2004*(Exhibits "D-1", "D-13" and "W-1")*
June 2004	July 14, 2004 *(Exhibits "D-2", "D-14" and "W-2")*
July 2004	August 13, 2004*(Exhibits "D-3", "D-15" and "W-3")*
August 2004	September 14, 2004*(Exhibits "D-4", "D-16" and "W-4")*
September 2004	October 13, 2004*(Exhibits "D-5", "D-17" and "W-5")*
October 2004	November 12, 2004*(Exhibits "D-6", "D-18" and "W-6")*
November 2004	December 14, 2004*(Exhibits "D-7", "D-19" and "W-7")*
December 2004	January 14, 2005*(Exhibits "D-8", "D-20" and "W-8")*
January 2005	February 14, 2005 *(Exhibits "D-9", "D-21" and "W-9")*
February 2005	March 14, 2005 *(Exhibits "D-10", "D-22" and "W-10")*
March 2005	April 14, 2005 *(Exhibits "D-11", "D-23" and "W-11")*

Pursuant to the above *Section 4(1) of Revenue Regulations 06-01,* taxpayers, whether large or non-large, who availed of the electronic filing and payment of creditable and final withholding taxes shall have a deadline of fifteen (15) days from the end of each month to electronically file the applicable withholding tax returns and pay the taxes due thereon, except for those taxes withheld for the month of December of each year, which shall be filed if thru EFPS on or before January 20 of the following year.

Applying *Section 203 of the NIRC of 1997, as amended*, the deadlines to file petitioner's expanded creditable withholding tax for fiscal year ending March 31, 2005, are as follows, and from said deadlines, respondent has three (3) years to assess petitioner of deficiency expanded creditable withholding tax, to wit:

Month	**Deadline to File Expanded Creditable Withholding Tax Return thru EFPS**	**Deadline to Assess Deficiency Expanded Creditable Withholding Tax**
April 2004	May 15, 2004	May 15, 2007
May 2004	June 15, 2004	June 15, 2007
June 2004	July 15, 2004	July 15, 2007
July 2004	August 15, 2004	August 15, 2007
August 2004	September 15, 2004	September 15, 2007
September 2004	October 15, 2004	October 15, 2007
October 2004	November 15, 2004	November 15, 2007
November 2004	December 15, 2004	December 15, 2007
December 2004	January 20, 2005	January 20, 2008
January 2005	February 15, 2005	February 15, 2008
February 2005	March 15, 2005	March 15, 2008
March 2005	April 15, 2005	April 15, 2008

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(c.2) as regards Withholding Tax on Compensation – Records show that petitioner electronically filed its Monthly Remittance Return of Income Taxes Withheld on Compensation ("BIR Form 1601-C") for fiscal year ending March 31, 2005, and paid the expanded withholding taxes due thereon, as follows:

Month	**Date of Filing of Withholding Tax on Compensation Return**
April 2004	May 14, 2004*(Exhibits "E", "E-12" and "X")*
May 2004	June 14, 2004*(Exhibits "E-1", "E-13" and "X-1")*
June 2004	July 14, 2004 *(Exhibits "E-2", "E-14" and "X-2")*
July 2004	August 16, 2004*(Exhibits "E-3", "E-15" and "X-3")*
August 2004	September 14, 2004*(Exhibits "E-4", "E-16" and "X-4")*
September 2004	October 13, 2004*(Exhibits "E-5", "E-17" and "X-5")*
October 2004	November 12, 2004*(Exhibits "E-6", "E-18" and "X-6")*
November 2004	December 14, 2004*(Exhibits "E-7", "E-19" and "X-7")*
December 2004	January 20, 2005*(Exhibits "E-8", "E-20" and "X-8")*
January 2005	February 14, 2005 *(Exhibits "E-9", "E-21" and "X-9")*
February 2005	March 14, 2005 *(Exhibits "E-10", "E-22" and "X-10")*
March 2005	April 14, 2005 *(Exhibits "E-11", "E-23" and "X-11")*

Pursuant to the above *Section 4(1) of Revenue Regulations 06-01,* taxpayers, whether large or non-large, who availed of the electronic filing and payment of income taxes withheld on compensation shall have a deadline of fifteen (15) days from the end of each month to electronically file the applicable withholding tax returns and pay the taxes due thereon, except for those taxes withheld for the month of December of each year,

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which shall be filed if thru EFPS on or before January 20 of the following year.

Applying *Section 203 of the NIRC of 1997, as amended*, the deadlines to file petitioner's income taxes withheld on compensation for fiscal year ending March 31, 2005, are as follows, and from said deadlines, respondent has three (3) years to assess petitioner of deficiency expanded creditable withholding tax, to wit:

Month	**Deadline to File Withholding Tax on Compensation Return thru EFPS**	**Deadline to Assess Deficiency Withholding Tax on Compensation**
April 2004	May 15, 2004	May 15, 2007
May 2004	June 15, 2004	June 15, 2007
June 2004	July 15, 2004	July 15, 2007
July 2004	August 15, 2004	August 15, 2007
August 2004	September 15, 2004	September 15, 2007
September 2004	October 15, 2004	October 15, 2007
October 2004	November 15, 2004	November 15, 2007
November 2004	December 15, 2004	December 15, 2007
December 2004	January 20, 2005	January 20, 2008
January 2005	February 15, 2005	February 15, 2008
February 2005	March 15, 2005	March 15, 2008
March 2005	April 15, 2005	April 15, 2008

In sum, the last day to assess petitioner of the following deficiency taxes should be: (a) income tax, on July 15, 2008; (b) deficiency value-added tax, on April 25, 2008; (c.1) expanded creditable withholding tax, on

April 15, 2008; and (c.2) income taxes withheld on compensation, on April 15, 2008.

Records show, however, that the Formal Assessment Notices for deficiency income tax, value-added tax, expanded creditable withholding tax and income taxes withheld on compensation, together with the Formal Letter of Demand, were issued only on December 15, 2008, and received by petitioner on December 22, 2008, more than five (5) months after the BIR's right to issue the assessment notices had prescribed. Clearly, said assessment notices were issued beyond the three (3)-year prescriptive period.

Waiver of the Statue of Limitation

However, *Section 222 (b) of the NIRC of 1997, as amended*, provides for an exception to the period of limitation, as follows:

> "SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
>
> xxx xxx.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

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In the instant case, records show that petitioner, thru Marco M. Perez, executed a Waiver of the Statute of Limitations on June 17, 2008, extending the period to assess to December 31, 2008 *(Exhibit "F")*.

In the recent case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation, 640 SCRA 241-244*, the Supreme Court ruled that the following are the requisites for a valid waiver:

> "1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ________ 19 ___', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
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> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
>
> 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of

> the period agreed upon in case a subsequent agreement is executed.
>
> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

Applying the foregoing ruling to the present case, after a careful perusal of the waiver, we find the following defects:

First, the waiver was executed by Mr. Perez without any written notarized authority from the board of directors of petitioner. Petitioner, being a juridical entity, it acts only through its duly authorized representative, either through its Board of Directors, or through its officers duly authorized by the board. Considering that Mr. Perez is petitioner's Section Manager *(Exhibits "F" and "Y")* and there is no proof that Mr. Perez was duly authorized by the board to sign the waiver for the petitioner, and considering further that petitioner is denying to have authorized Mr. Perez to sign the waiver *(Exhibit "Y")*; then, it is evident that the waiver was indeed executed without written authority from the Board.

Second, the waiver failed to indicate the date of acceptance by the BIR. The need to indicate the date of acceptance is to fix with certainty if the waiver was actually agreed upon before the expiration of the three-year prescriptive period *(Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, 447 SCRA 230)*. Since a waiver is not a unilateral act of the taxpayer, but in fact and in law an agreement between the taxpayer and the BIR, the agreement by the BIR should be made prior to the expiration of the three-year prescriptive period. Accordingly, the date of acceptance is a requisite for determining whether the waiver was validly perfected before the expiration of the original three-year period *(Commissioner of Internal Revenue vs. FMF Development Corporation, 556 SCRA 709)*.

Third, petitioner was furnished a copy of the waiver only on December 11, 2008, beyond the three-year prescriptive period to assess under the NIRC. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement *(Philippine Journalists, Inc. vs. Commissioner of Internal Revenue, 447 SCRA 231)*. A waiver is an agreement executed for the purpose of extending the period to assess. *Section 222 (b) of the NIRC of 1997, as amended,* provides that both the Commissioner and the taxpayer should have agreed in writing to the assessment after the period prescribed in *Section 203*. Hence, the perfection of an agreement depends upon the concurrence of the offer and the acceptance. Settled is the rule that no contract shall arise unless the acceptance of the contract is communicated to the offeror *(The Insular Life Assurance Company, Ltd. vs. Asset Builders Corporation, 442 SCRA 162)*.

Finally, the waiver was not signed by the duly authorized representative of the BIR. The aforequoted fourth requisite provides that the CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. *Revenue Memorandum Order 20-90* provides that for tax cases involving more than P1,000,000.00, the revenue officer authorized to sign the waiver is only the Commissioner of Internal Revenue. While *Revenue Delegation Authority Order No. 05-01 ("RDAO 05-01")* delegates the authority to sign and accept the Waiver of the Defense of Prescription under the Statute of Limitations; however, for large taxpayers cases, it is the Assistant Commissioner of Internal Revenue ("ACIR") of the large taxpayers service who is authorized to sign and accept the waiver.

A perusal of the waiver shows that the waiver was accepted by Romulo Aguila, Jr., OIC – Head Revenue Executive Assistant of the Large Taxpayers Service – Regular. The OIC - Head of Revenue Executive Assistant of the Large Taxpayers Service is definitely not the ACIR of the Large Taxpayers Service; but, a rank lower than the ACIR. Since *RDAO 05-*

01 is a delegation of the authority of the Commissioner to sign and accept the waiver, then only the named revenue officers duly authorized thereof must act in behalf of the Commissioner. The OIC - Head of Revenue Executive Assistant of the Large Taxpayers Service being not the duly authorized representative named in *RDAO 05-01* to sign and accept the waiver, then said waiver cannot be considered to have been validly accepted by the BIR.

In the case of *Commissioner of Internal Revenue vs. FMF Development Corporation, 556 SCRA 709*, the Supreme Court invalidated the waiver therein for not having been signed by the proper signatory of the BIR.

Considering that the waiver executed between the petitioner and respondent is defective, then pursuant to the afore-quoted ruling of the Supreme Court, the periods to assess the deficiency income tax, value-added tax, expanded creditable withholding tax and income taxes withheld on compensation were not extended. Consequently, the Formal Assessment Notices for deficiency income tax, value-added tax, expanded creditable withholding tax and income taxes withheld on compensation, having been issued only on December 15, 2008, beyond the three (3)-year prescriptive period, said Assessment Notices are null and void.

d) as regards Fringe Benefit Tax, *Section 2.33 (A), 2nd paragraph of Revenue Regulations 3-98* provides:

> "SEC. 2.33. SPECIAL TREATMENT OF FRINGE BENEFITS
>
> (A) Imposition of Fringe Benefits Tax – xxx
>
> The tax imposed under Sec. 33 of the Code shall be treated as a final income tax on the employee which shall be withheld and paid by the employer on a calendar quarterly basis as provided under Sec. 57 (A) (Withholding of Final Tax on certain Incomes) and Sec. 58 A (Quarterly Returns and Payments of Taxes Withheld) of the Code.
>
> xxx xxx."

While *Section 58 of the NIRC of 1997, as amended,* provides:

> "SEC. 58. Returns and Payment of Taxes Withheld at Source. –
>
> (A) Quarterly Returns and Payments of Taxes Withheld. – Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.
>
> The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

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> The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter xxx."

There is nothing in the record which shows that petitioner filed a Quarterly Remittance Return of Final Income Taxes Withheld (On Fringe Benefits Paid to Employees Other than Rank and File) (BIR Form 1603). Even the CIR in the computation of petitioner's deficiency fringe benefit tax in the Formal Letter of Demand *(Exhibit "J")* and in the letter to petitioner for informal conference *(Exhibit "2", p. 6)*, did not find any fringe benefit tax quarterly remittance return filed by petitioner for fiscal year ending March 31, 2005. Even the Court-commissioned ICPA's computation of petitioner's deficiency fringe benefit tax *(Annex 34 of Exhibit "ZZZ")* did not show any quarterly remittance return of final income taxes withheld on fringe benefits paid to employees other than rank and file or payment of petitioner on fringe benefit tax. Accordingly, *Section 222 (a) of the NIRC of 1997, as amended*, which provides:

> "SEC. 222. – Exception as to Period of Limitation of Assessment and Collection of Taxes. –
>
> In the case of false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission xxx", is applicable to the assessment for fringe benefit tax.

will apply to the assessment for fringe benefit tax as regards the period to assess, which is ten (10) years from the date of discovery of the omission.

Considering that the Formal Assessment Notice was issued on December 15, 2008, then the same was issued within the ten (10)-year prescriptive period.

Petitioner was assessed of fringe benefit tax in the amount of ₱30,582,321.15, computed, as follows:

Total fringe benefits given	₱36,085,752.83
Grossed-up monetary value (total fringe benefits given divided by 68%)	53,067,283.57
Fringe benefits (grossed-up monetary value multiplied by fringe benefit tax rate of 32%)	16,981,530.74
Total fringe benefits per FBT returns	-
Deficiency FBT	₱16,981,530.74
Surcharge	4,245,382.69
Interest from April 16, 2005 to December 31, 2008	9,330,407.72
Compromise penalty	25,000.00
Total amount due and collectible	₱30,582,321.15

The basic deficiency fringe benefit tax of ₱16,981,530.74 was computed, as follows:

Cost of Goods Sold:		
Factory Rent – land	₱10,544,153.28	
Factory Rent – Japanese staff	2,990,000.00	
S-grade housing	4,545,556.53	
S-grade car	4,578,606.04	
Repairs and maintenance – vehicles (P1,141,433.44 x 50%)	570,716.67	

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Depreciation – vehicles (P1,943,934.61 x 50%)	971,967.31	
Representation – others	3,565,684.96	
Total	27,766,684.79	
Fringe benefit rate	50%	
Fringe benefits	13,883,342.40	
Factory rent – Japanese staff	2,980,000.00	
Total Fringe Benefits – Cost of Goods Sold	₱16,863,342.40	
Operating Expenses:		
Representation – others	₱3,565,684.96	
Depreciation – vehicles (P17,641,692.40) x 50%	8,820,846.20	
Total	12,386,531.16	
Fringe benefit rate	50%	
Fringe benefits	6,193,265.58	
Rental – Japanese staff	5,100,000.00	
Miscellaneous – house subsidy	3,273,716.60	
Miscellaneous – Japanese child tuition	1,351,891.20	
Miscellaneous – drivers wages	1,507,497.26	
Membership dues and subscription	1,796,039.79	19,222,410.43
Total fringe benefits given		36,085,752.83
Grossed up monetary value		53,067,283.57
Fringe benefits		₱16,981,530.74

We will discuss the deficiency assessment of FBT in *seriatim*:

A. Factory Rent – Land

The BIR subjected this account to a 50% FBT rate to arrive at the "Total Fringe Benefits-Cost of Sales" amount. The related "fringe benefit given" for this account amounted to ₱5,272,076.64 (₱10,544,153.28 x 50%).

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A perusal of the detailed GL account 53402 - Factory Rent – Land *(Exhibit "SS")* discloses that this account is composed of the following charges:

(1) Rental Expense in the total amount of ₱8,000,000.00, representing the annual cost of lease for certain real properties located in Bulacan, Pasig City and San Juan, as evidenced by the Lease Contract *(Exhibit "TT")* between Union Ajinomoto Realty Corporation and Union Ajinomoto, Inc.[1]; and

(2) Rental expense in the amount of ₱2,544,153.26 which pertains to a reclassification expense, as evidenced by the downloaded journal entry JE-82306 *(Exhibit "WW")* from GL account 63604 *(Exhibit "SS-14")*. The original entry for the said amount in GL 63604 was evidenced by downloaded journal entry 82291 *(Exhibit "WW-1")* which was made to offset a loan receivable with rent.

A.1) As regards the rental expense in the amount of ₱8,000,000.00, the Lease Contract provides that petitioner shall use and occupy the leased premises for its lawful business purposes including but not limited to the owning, holding and operating of petitioner's plant(s) and/or building(s).

The BIR Certificate of Registration shows that petitioner has established plant/offices in Bulacan and San Juan *(Exhibits "VV" and "VV-1")*. On the other hand, the use of the Pasig lot for business operation was

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[1] Former name of Petitioner as evidenced by the SEC Certificate of Filing of Amended Articles of Incorporation presented as Exhibit UU.

supported by the payment of business tax and real property taxes for the said location *(Exhibit "V-2")*.

Considering that these rental payments were for real properties used by petitioner for its operation, then, these rental payments do not fall under the definition of fringe benefits given by the employer to an employee. Accordingly, the rental expense in the amount of P8,000,000.00 should not be subjected to a deficiency fringe benefit tax.

A.2) As regards the rental expense in the amount of ₱2,544,153.26, which is a reclassification expense, we agree with the Court-commissioned ICPA that in the absence of documentary evidence in support of said journal entry, the rental expense of ₱2,544,153.26 shall remain subject to fringe benefit tax of ₱598,624.30, computed, as follows:

Factory Rent – Land	₱2,544,153.26
x Fringe Benefit Rate	50%
Fringe Benefit Base	₱1,272,076.63
Grossed up Monetary Value (over 68%)	₱1,870,700.93
x Fringe Benefit Tax Rate	32%
Fringe Benefit Tax	**₱ 598,624.30**

B. Factory Rent – Japanese Staff

Based on the undated letter *(Exhibit "H")* of Atty. Romulo Aguila, the OIC-Head Revenue Executive Assistant of the BIR's Large Taxpayers Service-Regular section, we agree with the Court-commissioned ICPA that

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respondent used the account Factory – Rent Japanese Staff twice in her assessment, although with different amounts. Initially, it was shown as the second item under Cost of Sales, but with a higher amount of ₱2,990,000.00 as against the GL *(Exhibit "SS-1")* and Trial Balance *(Exhibit "CC", p. 11)* of ₱2,880,000.00. This amount was subjected to a 50% FBT rate to arrive at the "Total Fringe Benefit – Cost of Sales" amount. The related "fringe benefit given" for this account amounted to ₱1,495,000.00 (₱2,990,000x50%). Secondly, it was shown as the last item added to arrive at the "Total Fringe Benefits – Cost of Sales" amount. The BIR reflected a higher amount of ₱2,980,000.00 as against the GL and Trial Balance amount of ₱2,880,000.00. This amount was subjected anew at 100% of its balance.

An examination of the detailed GL account 53510 - Factory Rent – Japanese Staff *(Exhibit "SS-1")* shows that this account is composed of the following charges:

(1) Rental expense in the amount of ₱960,000.00, representing the annual cost of lease for a condominium unit to be used by Mr. Tanigawa, as evidenced by the Agreements to Extend Contract of Lease between Davao Motor Sales Co. and the petitioner *(Exhibits "TT-1" and "TT-2")*.

(2) Rental expense in the amount of ₱960,000.00, representing the annual cost of lease for a condominium unit to be used by Mr. Tamura, as evidenced by the copy of Contract of

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Lease between River Oaks Realty Corporation and the petitioner *(Exhibits "TT-3" and "TT-13")*.

(3) Rental expense in the amount of ₱960,000.00, representing the annual cost of lease for a residential house to be used by Mr. Shiraishi, as evidenced by the Renewal of a Contract of Lease between CCMC Development Corporation and the petitioner *(Exhibit "TT-4")*.

Based on the contracts, the residential units leased by petitioner for its Japanese employees were not adjacent to the business or factory of the petitioner. Accordingly, we agree with the Court-commissioned ICPA that these rental payments are subject to fringe benefit tax of ₱677,647.06, computed, as follows:

Rent - Japanese Staff	₱ 2,880,000.00
x Fringe Benefit Rate	50%
Fringe Benefit Given	₱ 1,440,000.00
Gross up Monetary Value	₱ 2,117,647.06
x Fringe Benefit Tax Rate	32%
Fringe Benefit Tax	**₱ 677,647.06**

C. S-Grade Housing and S-Grade Car

C.1) The BIR derived the amount of ₱4,545,556.53 as basis of S-Grade Housing Loan from the S-Grade Housing loan account balance of ₱3,097,984.26 with GL Account No.13171 *(Exhibit "CC", p. 4)* and the loan payments made during the year amounting to ₱1,447,572.27, as summarized in *Annex "46"* of the ICPA Report *(Exhibit "ZZZ")*.

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The BIR subjected to 50% the amount of ₱4,545,556.53 to arrive at the "fringe benefits" amount. The related "fringe benefit given" for this account amounted to ₱2,272,778.26 (₱4,545,556.53 x 50%).

C.2) On the other hand, the BIR derived the amount of ₱4,578,606.04 as basis of S-Grade Car Loan from the S- Grade Car loan account balance of ₱3,038,278.95 with GL Account No.13172 *(Exhibit "CC", p. 4)* and the loan payments made during the year amounting to ₱1,540,327.09, as summarized in *Annex "46"* of the ICPA Report *(Exhibit "ZZZ")*.

The BIR subjected to 50% the amount of ₱4,578,606.04 to arrive at the "fringe benefits" amount. The related "fringe benefit given" for this account amounted to ₱2,289,303.02 (₱4,578,606.04 x 50%).

Pursuant to *Section 33(B)(5)*, as implemented by *Section 2.33(B)(5) of Revenue Regulations No. 03-98*, if the employer lends money to his employee free of interest or at a rate lower than twelve per cent (12%), such interest foregone by the employer or the difference of the interest assumed by the employee and the rate of twelve per cent (12%) shall be treated as a taxable fringe benefit.

However, in the absence of supporting documents that would show that the amounts of ₱4,545,556.53 and ₱4,578,606.04 pertain to the

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respective S-Grade Housing and Car loan amount and not to the interest foregone by the employer, the entire amount representing the GL account balance of ₱3,097,984.26 and ₱3,038,278.95 for S-Grade Housing and Car account, respectively, are subject to FBT of ₱728,937.47 and ₱714,889.17, respectively, computed, as follows:

	S-Grade Housing	S-Grade Car
Balance	₱3,097,984.26	₱3,038,278.95
x Fringe Benefit Rate	50%	50%
Fringe Benefit Given	₱1,548,992.13	₱1,519,139.48
Gross up Monetary Value	₱2,277,929.60	₱2,234,028.65
x Fringe Benefit Tax Rate	32%	32%
Fringe Benefit Tax	**₱ 728,937.47**	**₱ 714,889.17**

D. Repairs and Maintenance - Vehicles

The basis of the BIR computation of the amount of ₱1,141,433.44 was derived from the GL Account 53110 – Repairs and Maintenance – Vehicle *(Exhibit "CC", p. 10)*. The related fringe benefit given for this account was computed by subjecting 50% of the said amount to a 50% fringe benefit rate, thus, amounted to ₱285,358.36 (₱1,141,433.44 x 50% = ₱570,716.72 x 50%).

A careful examination of the supporting documents *(Exhibits "FFF" to "FFF-38" and "GGG" to "GGG-55")* of the repairs and maintenance expense shows that only the amount of ₱216,915.71 was duly supported with receipts

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in the name of the petitioner and does not partake of the nature of personal expense attributable to the employee, as summarized below:

Exhibit No.	Payee	Cash Invoice / OR No.	Amount
FFF	100 Ortigas Tire Trading Corp.	227	₱ 3,969.09
FFF-1	100 Ortigas Tire Trading Corp.	236	8,372.73
FFF-2	New Capitol Tire Trading Corp.	14112	4,300.00
FFF-3	100 Ortigas Tire Trading Corp.	583	2,144.00
FFF-4	100 Ortigas Tire Trading Corp.	801	7,700.00
FFF-8	Archie Auto Parts & Services	10502	150.00
FFF-12	Manta Industrial Sales	23206	338.18
FFF-24	100 Ortigas Tire Trading Corp.	249	1,710.91
FFF-28	Manta Industrial Sales	23406	1,877.27
FFF-28	Manta Industrial Sales	23407	900.00
FFF-28	Manta Industrial Sales	23408	618.18
FFF-28	Manta Industrial Sales	23409	473.64
FFF-28	Manta Industrial Sales	23419	804.55
FFF-29	Wheelman Commercial Sales	0028	1,059.09
FFF-30	Wheelman Commercial Sales	0040	886.36
FFF-30	Wheelman Commercial Sales	0046	886.36
FFF-30	Wheelman Commercial Sales	0047	886.36
FFF-30	Wheelman Commercial Sales	0055	9,159.09
FFF-31	100 Ortigas Tire Trading Corp.	584	7,654.00
GGG	100 Ortigas Tire Trading Corp.	481	5,155.45
GGG-1	100 Ortigas Tire Trading Corp.	485	12,536.36
GGG-3	A-J Tire Supply	1450	4,872.73
GGG-4	Wheelman Commercial Sales	0004	1,818.18
GGG-4	Wheelman Commercial Sales	0005	1,053.64
GGG-4	Wheelman Commercial Sales	0006	156.36
GGG-4	Wheelman Commercial Sales	0007	3,272.73
GGG-5	Wheelman Commercial Sales	0023	8,918.18
GGG-5	Wheelman Commercial Sales	0024	1,045.45
GGG-5	Wheelman Commercial Sales	0025	13,554.55
GGG-6	Andy's Auto Electrical Services	0352	2,027.27
GGG-7	Wheelman Commercial Sales	0039	1,704.55
GGG-7	Wheelman Commercial Sales	0041	3,518.18
GGG-7	Wheelman Commercial Sales	0043	1,652.73

GGG-7	Wheelman Commercial Sales	0050	1,309.09
GGG-10	K-Square Petron Services	01405	1,914.55
GGG-11	K-Square Petron Services	01668	4,304.55
GGG-12	K-Square Petron Services	01669	8,296.36
GGG-13	K-Square Petron Services	01836	5,446.38
GGG-14	K-Square Petron Services	02151	2,407.27
GGG-15	K-Square Petron Services	02250	2,185.45
GGG-16	K-Square Petron Services	02424	1,175.45
GGG-17	K-Square Petron Services	2581	19,960.61
GGG-18	K-Square Petron Services	2857	7,183.64
GGG-24	Honda Cars Makati, Inc	0121203	15,707.54
GGG-37	Joe Radiator Repair Shop	25304	650.00
GGG-42	Joe Radiator Repair Shop	2567	2,115.00
GGG-43	J. Fernando Auto Supply	835280	60.00
GGG-46	Manta Industrial Sales	23391	1,718.18
GGG-47	Manta Industrial Sales	23420	5,218.18
GGG-48	Manta Industrial Sales	23236	8,772.73
GGG-49	Manta Industrial Sales	23260	1,790.91
GGG-51	RFG Battery Inc	9865	11,523.64
TOTAL			**₱ 216,915.71**

Hence, only the amount of ₱216,915.71 should be excluded from fringe benefit tax. The remaining amount of ₱462,258.87 repairs and maintenance is subject to fringe benefit tax of ₱108,766.79, computed as follows:

Repairs and Maintenance - Vehicles [(1,141,433.44-216,915.71) x 50%]	₱462,258.87
x Fringe Benefit Rate	50%
Fringe Benefit Given	₱231,129.43
Gross up Monetary Value	₱339,896.22
x Fringe Benefit Tax Rate	32%
Fringe Benefit Tax	**₱108,766.79**

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E. Depreciation – Vehicles under Cost of Sales

The basis of the BIR computation of the amount of ₱1,943,934.61 was derived from the GL Account 53240 – Depreciation – Vehicle *(Exhibit "CC", p. 11)*. The related fringe benefit given for this account was computed by subjecting 50% of the said amount to a 50% fringe benefit rate, thus, amounted to ₱485,983.65 (₱1,943,934.61 x 50% = ₱971,967.31 x 50%).

Based on the schedule provided by petitioner and the ICPA, the vehicles subjected to depreciation under this account were from the following:

Particular	Depreciation Amount
Assets used in the Petitioner's daily operations	
Fire truck	₱ 454,545.45
Ambulance	99,090.91
Forklifts	309,090.92
Total	**₱ 862,727.28**
Assets used for the Factory's sales, freight, delivery and other plant activities to cargo / mail transport	
Tractor Heads	₱ 189,818.18
Nissan Pathfinder pick up	120,000.00
L-300	118,787.88
Honda Motorcycle	13,545.45
Total	**₱442,151.51**
Assets used for the Factory's sales, freight, delivery and other plant activities relating to passenger transport	
Toyota Revo	₱ 21,201.3
Various Toyota Corolla Altis	374,727.27
Nissan Cefiro	237,272.73
Total	**₱633,201.30**

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Assets recorded under this account that does not qualify to be motor vehicles but petitioner represented that these bicycles were used inside the factory for inter-department transactions	
Various bicycles	**5,854.55**
Total Depreciation subjected to fringe benefit by the BIR	**₱1,943,934.64**

(Exhibit "ZZZ", p. 64).

However, only the following assets with the related depreciation expense of ₱791,080.09 were verified to be owned by the petitioner and do not partake of the nature of personal expense attributable to a particular employee:

Particular	Plate No.	Exhibit No.	Depreciation Amount
Assets used in the Petitioner's daily operations			
Ambulance	XDK-786	WWW-3	**₱ 99,090.91**
Assets used for the Factory's sales, freight, delivery and other plant activities to cargo / mail transport			
Tractor Heads	WMA-569	WWW	90,909.09
Tractor Heads	URM-550	WWW-1	98,909.09
L-300	XRC-597	WWW-4	59,393.94
L-300	XRN-267	WWW-5	59,393.94
Total			**308,606.06**
Assets used for the Factory's sales, freight, delivery and other plant activities relating to passenger transport			
Toyota Revo	XSG-632	WWW-7	21,201.30
Toyota Corolla Altis	WTB-686	WWW-2	124,909.09
Nissan Cefiro	XEE-473	WWW-6	237,272.73
Total			**383,383.12**
Total Depreciation not subject to fringe benefit tax			**₱791,080.09**

Accordingly, only the remaining depreciation expense under the cost of sales account of ₱576,427.27 is subject to fringe benefit tax of ₱135,629.95, computed, as follows:

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Depreciation - Vehicle [(1,943,934.63-791,080.09) x 50%]	₱ 576,427.27
x Fringe Benefit Rate	50%
Fringe Benefit Given	₱ 288,213.64
Gross up Monetary Value	₱ 423,843.58
x Fringe Benefit Tax Rate	32%
Fringe Benefit Tax	**₱ 135,629.95**

F. Representation – Others - under Cost of Sales and Operating Expense

We agree with the Court-commissioned ICPA's findings that the BIR erroneously used as basis in the computation of representation under "Cost of Sales" the representation amount of ₱3,565,684.96 recorded under GL 63110, instead of the amount per GL53953 in the amount of ₱2,261,030.95. The Representation – Others *(Exhibit "CC", p. 15)* was included anew in the computation of fringe benefit under "Operating Expenses". Accordingly, the basis used by the BIR was higher by ₱1,304,654.01 (₱3,565,684.96 less ₱2,261,030.95).

The alleged "fringe benefits given" for this account was computed at 50% of the total balance per GL 63110. Therefore, the related "fringe benefits given" for this account amounted to ₱1,782,842.48 (₱3,565,684.96 x 50%).

Based on the examination of the supporting documents *(Exhibits "AAAA" to "AAAA-64", "BBBB" to "BBBB-85", "TTT" to "TTT-105" and "UUU" to*

"UUU-45") submitted, only representation expense under the "Cost of Sales" and "Operating Expense" in the amounts of ₱118,752.47 and ₱220,881.39 *(Annex 56 of Exhibit "ZZZ")*, respectively, were duly supported with receipts in the name of the petitioner and do not partake of the nature of personal expense attributable to the employees. Hence, only the said amounts should be excluded from the fringe benefit tax. The other representation expense under "Cost of Sales" and "Operating Expense" of ₱2,261,030.95 and ₱3,565,684.96, respectively, remain subject to fringe benefit tax of ₱504,065.52 and ₱787,012.61, respectively, computed, as follows:

	Cost of Sales	**Operating Expenses**
Representation Expense per GL	₱ 2,261,030.95	₱ 3,565,684.96
Less: Duly Receipted	118,752.47	220,881.39
Representation – Others	₱ 2,142,278.48	₱3,344,803.57
x Fringe Benefit Rate	50%	50%
Fringe Benefit Given	₱ 1,071,139.24	₱1,672,401.79
Gross up Monetary Value	₱ 1,575,204.76	₱2,459,414.40
x Fringe Benefit Tax Rate	32%	32%
Fringe Benefit Tax	**₱ 504,065.52**	**₱787,012.61**

G. Depreciation – Vehicles under Operating Expense

The basis of the BIR's computation in the amount of ₱17,641,692.40 was derived from the GL account 63540 – Depreciation Vehicles *(Exhibit "CC", p. 15)*. The alleged "fringe benefits given" for this account was initially computed by multiplying the account by 50%. Thereafter, the product was subjected to the fringe benefit rate of 50% to arrive at the "Total fringe

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benefits-operating expenses" amount. The related "fringe benefits given" for this account amounted to ₱4,410,423.10 (₱17,641,692.40 x 50% = ₱8,820,846.20 x 50%).

The vehicles subjected to depreciation under this account and as assessed by the BIR to be subjected to fringe benefit tax were from the following:

Particular	Depreciation Amount
Trucks and commercial vehicles subjected to depreciation used by the petitioner for sales, freight, delivery and other plant activities relating to cargo transport:	
Various Mitsubishi Canter	₱ 4,753,704.55
Various Mitsubishi FE635 and FE515	3,182,818.18
Various Mitsubishi L300 FB	2,970,363.64
Various Isuzu trucks	2,736,212.12
Various Suzuki Carry all	222,654.55
Various Mitsubishi Adventure	1,517,393.94
Mitsubishi Leader and van	299,545.45
Various Toyota Tamaraw FX	173,454.54
Total	**15,856,146.97**
Vehicles used by sales personnel in the conduct of sales operations:	
Various Toyota Altis / Corollas	**1,338,636.37**
Vehicles used for passenger transport. Petitioner represented that these vehicles were used by office personnel as well as local and foreign visitors for official business purposes:	
Toyota Camry	230,909.09
Toyota Super Grandia	216,000.00
Total	**446,909.09**
Total Depreciation subjected to fringe benefit by the BIR	**₱17,641,692.43**

(Exhibit "ZZZ", p. 58).

As evidenced by the Land Transportation Office Registrations *(Exhibits "XXX" to "XXX-24")*, only the following were ascertained to be registered in the name of the petitioner and do not partake of the nature of personal

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expense attributable to a particular employee, hence should not be subjected to fringe benefit tax:

Particular	Exhibit No.	Depreciation Amount
Trucks and commercial vehicles subjected to depreciation used by the petitioner for sales, freight, delivery and other plant activities relating to cargo transport:		
Mitsubishi Canter		
WFX-666	XXX-8	₱ 122,909.09
WLV-980	XXX-9	122,909.09
WSS-430	XXX-26	143,727.27
WFX-350	XXX-120	143,727.27
WSS-490	XXX-27	143,727.27
WFX-550	XXX-121	143,727.27
WSS-420	XXX-28	143,727.27
WCS-580	XXX-118	114,000.00
WSS-460	XXX-29	143,727.27
WSS-450	XXX-30	143,727.27
WSS-470	XXX-31	143,727.27
XDF-416	XXX-34	145,545.45
XDF-426	XXX-38	124,363.64
XDF-436	XXX-40	145,545.45
XDY-479	XXX-43	145,545.45
XDY-319	XXX-45	124,363.64
XJU-435	XXX-88	153,909.09
XJG-665	XXX-75	153,909.09
XJY-420	XXX-47	153,909.09
XJY-410	XXX-49	153,909.09
XKK-636	XXX-50	153,909.09
XJY-517	XXX-51	134,727.27
XJY-890	XXX-54	153,909.09
XJY-870	XXX-55	152,000.00
XKY-325	XXX-85	135,681.82
XKY-496	XXX-56	135,681.82
XRC-635	XXX-87	6,242.42
XRC-635	XXX-87	100,000.00
XRC-738	XXX-61	77,424.24
XRC-708	XXX-62	87,500.00

XRC-509	XXX-65	75,000.00
XRC-509	XXX-65	4,681.82
XRC-660	XXX-66	62,500.00
XRN-820	XXX-69	37,500.00
XRN-820	XXX-69	2,340.91
XRN-840	XXX-70	37,500.00
XRN-840	XXX-70	2,340.91
XSC-537	XXX-119	37,500.00
XSC-537	XXX-119	2,340.91
XSC-550	XXX-71	33,181.82
XSC-540	XXX-72	37,500.00
		₱4,280,098.45
Mistubishi FE635 and FE515		
WEG-367	XXX-107	142,000.00
WLV-961	XXX-102	142,000.00
WFZ-648	XXX-110	122,000.00
WLV-879	XXX-1	142,000.00
WEG-437	XXX-108	142,000.00
WLV-941	XXX-100	142,000.00
WLV-920	XXX-3	142,000.00
WLV-950	XXX-4	142,000.00
WFZ-666	XXX-5	122,909.09
WFZ-668	XXX-109	122,909.09
WLV-550	XXX-7	122,909.09
WGD-666	XXX-10	122,909.09
WFX-444	XXX-110	122,909.09
WMS-580	XXX-12	137,272.73
WMS-601	XXX-93	137,272.73
WMS-599	XXX-14	137,272.73
XDF-446	XXX-33	145,545.45
XDF-435	XXX-81	124,363.64
XDY-641	XXX-95	124,363.64
XDY-643	XXX-76	124,363.64
		2,661,000.01
Mitsubishi L300/ FB		
WLT-131	XXX-94	75,090.91
WDW-666	XXX	86,363.64
WLV-549	XXX-2	86,363.64
WLV-789	XXX-6	75,090.91
WMS-480	XXX-13	76,181.82

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WMS-699	XXX-15	87,636.36
WSS-510	XXX-21	96,727.27
WSS-570	XXX-22	96,727.27
WSS-480	XXX-23	96,727.27
WSS-650	XXX-24	96,727.27
WSS-640	XXX-25	96,727.27
XDF-431	XXX-99	96,000.00
XDF-463	XXX-101	96,000.00
XDF-456	XXX-35	96,000.00
XDF-409	XXX-41	96,000.00
XDY-469	XXX-122	96,000.00
XJU-405	XXX-86	97,272.73
XJU-445	XXX-82	97,272.73
XJG-324	XXX-77	97,272.73
XJF-397	XXX-52	97,272.73
XKW-510	XXX-53	97,272.73
XJW-101	XXX-96	100,000.00
XNN-664	XXX-90	84,848.49
XNN-694	XXX-117	84,848.49
XSB-589	XXX-74	25,454.55
XSB-599	XXX-116	25,454.55
		2,257,333.36
Isuzu trucks		
WNM-984	XXX-89	107,272.73
WDU-561	XXX-112	154,545.45
WRG-330	XXX-17	154,545.45
XAE-447	XXX-20	114,000.00
XDE-379	XXX-36	171,818.18
XDE-359	XXX-37	171,818.18
XDE-400	XXX-39	171,818.18
XGP-750	XXX-48	178,727.27
XPK-654	XXX-111	138,636.36
XRH-487	XXX-57	124,772.73
XRH-487	XXX-57	13,363.64
XRH-493	XXX-114	97,045.45
XRH-493	XXX-114	10,393.94
XRA-359	XXX-59	97,045.45
XRA-339	XXX-60	97,045.45
XRH-486	XXX-63	83,181.82
XRA-329	XXX-64	83,181.82

XPM-972	XXX-115	83,181.82
		2,052,393.92
Suzuki Carry all		
XHT-945	XXX-83	74,218.18
XHT-941	XXX-92	74,218.18
		148,436.36
Mitsubishi Adventure		
XDY-477	XXX-42	105,454.55
XDY-461	XXX-97	105,454.55
XDY-931	XXX-113	105,454.55
XDY-436	XXX-44	105,454.55
XHN-664	XXX-79	106,363.64
XNN-684	XXX-78	95,151.52
XPR-248	XXX-58	76,121.21
XRC-680	XXX-68	47,575.76
XRN-830	XXX-73	28,545.45
		775,575.78
Mitsubishi Leader and van		
WMS-691	XXX-104	145,636.36
XKK-245	XXX-84	153,909.09
XRC-860	XXX-67	3,106.06
		302,651.51
Total		**12,477,489.39**
Vehicles used by sales personnel in the conduct of sales operations:		
Toyota Altis / Corollas		
WNM-450	XXX-16	99,090.91
WPT-656	XXX-18	117,454.55
WPT-959	XXX-19	117,454.55
XAK-505	XXX-80	124,909.09
XCW-811	XXX-91	123,090.91
XDM-551	XXX-106	123,090.91
XHV-636	XXX-46	97,818.18
XHA-131	XXX-103	97,818.18
XHA-121	XXX-98	97,818.18
XMX-251	XXX-123	80,757.58
XPW-411	XXX-105	64,606.06
		1,143,909.10
Vehicles used for passenger transport. Petitioner represented that these vehicles were used by office personnel as well as local and foreign visitors for official business purposes:		
Toyota Super Grandia		

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XCW-836	XXX-32	216,000.00
Total Depreciation not to be subjected to fringe benefit tax		**₱ 13,837,398.49**

Accordingly, only the remaining depreciation expense of ₱1,902,146.96 is subject to fringe benefit tax of ₱447,563.99, computed, as follows:

Depreciation - Vehicle [(17,641,692.40-13,837,398.49)x50%]	₱ 1,902,146.96
x Fringe Benefit Rate	50%
Fringe Benefit Given	₱ 951,073.48
Gross up Monetary Value	₱ 1,398,637.47
x Fringe Benefit Tax Rate	32%
Fringe Benefit Tax	**₱ 447,563.99**

H. Rental – Japanese Staff

The BIR subjected this account to a 50% fringe benefit rate to arrive at the "Total Fringe Benefits-Cost of Sales" amount. The related "fringe benefit given" for this account amounted to ₱5,272,076.64 (₱10,544,153.28 x 50%). Examination of the detailed GL account 53402 - Factory Rent – Land *(Exhibit "SS")* shows that this account is composed of the following charges:

(1) Rental expense in the amount of ₱390,000.00, representing six months (April to September 2004) lease of an apartment used by Mr. Hayashi. This is evidenced by a copy of the Contract of Lease between CTM Management Corporation and the petitioner for the period January 23, 2004 to July 22, 2004 *(Exhibit "TT-5")*.

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(2) Rental expense in the amount of ₱960,000.00, representing the annual cost of lease of a residential unit used by Mr. Okuda, as evidenced by the original Contract of Lease between the Spouses Vicente and Amelita Villegas and the petitioner for the period November 2, 2003 to November 1, 2004*(Exhibit "TT-6")* and the copy of the Contract of Lease for the period November 2, 2004 to November 1, 2005 *(Exhibit "TT-7")*.

(3) Rental Expense in the amount of ₱960,000.00, representing the annual cost of lease of a condominium unit used by Mr. Takagi, as evidenced by the original Contract of Lease between Ramon B. Ajero and the petitioner for the period March 1, 2004 to February 28, 2005 *(Exhibit "TT-8")*.

(4) Rental Expense in the amount of ₱390,000.00, representing six months (October 2004 to March 2005) lease of a condominium unit used by Mr. Hidaka, as evidenced by the Contract of Lease between CTM Management Corporation and the petitioner for the period October 8, 2004 to October 7, 2005 *(Exhibit "TT-9")*.

(5) Rental Expense in the amount of ₱960,000.00, representing the annual cost of lease of a condominium unit used by Mr. Komatsu. This is supported by a Contract of Lease between Ms. Desiree Ong and Mr. Shunichi Komatsu for the period September 30, 2004 to September 29, 2005 *(Exhibit "TT-10")* with an acknowledgment receipt *(Exhibit "TT-10", p. 8)* from the lessor that the payment was received from the petitioner.

(6) Rental Expense in the amount of ₱720,000.00, representing six months (April to September 2004) lease of a condominium unit used by Mr. Sakai, as supported by a Contract of Lease between Ms. Ester M. Cumagun and Mr. Yoshihiko Sakai for the period April 18, 2003 to April 17, 2004 *(Exhibit "TT-11")* with an acknowledgment receipt *(Exhibit "TT-11", p. 7)* from the Lessor that the payment was received from Mr. Sakai.

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(7) Rental Expense in the amount of ₱720,000.00, representing six months (October 2004 to March 2005) lease of condominium unit used by Mr. Kagaya, as supported by the Contract of Lease between Ms. Ester Cumagun and Mr. Yoshihiko Sakai for the period April 18, 2004 to April 17, 2005 *(Exhibit" TT-12")*.

Based on the contracts, the residential/condominium units leased by petitioner for its Japanese employees were not adjacent to the business or factory of the petitioner. Accordingly, these rental payments are subject to a fringe benefit tax of ₱1,764,705.88, computed, as follows:

	Lease Contract between Lessor and Petitioner	**Lease Contract between Lessor and Japanese Staff**	**Total**
Monetary value of fringe benefit:			
Condominium unit for Mr. Hiyashi	390,000.00		
Residential unit for Mr. Okuda	960,000.00		
Condominium unit for Mr. Takagi	960,000.00		
Condominium unit for Mr. Hidaka	390,000.00		
Condominium unit for Mr. Komatsu		960,000.00	
Condominium unit for Mr. Sakai		720,000.00	
Condominium unit for Mr. Kagaya		720,000.00	
Total Monetary Value of Fringe Benefit	2,700,000.00	2,400,000.00	
x Fringe Benefit Portion	50%	100%	
Fringe Benefit Given	1,350,000.00	2,400,000.00	3,750,000.00
Grossed Up Monetary Value			5,514,705.88
x Fringe Benefit Rate			32%
Fringe Benefit Tax Due			**₱1,764,705.88**

I. Miscellaneous Expense – Housing Subsidy

The basis of the BIR computation in the amount of ₱3,273,716.60 was derived from the GL Account 64474 – Misc Exp – Housing Sub *(Exhibit*

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"CC", p. 16). The "fringe benefits given" for this account was computed at its full amount of ₱3,273,716.60.

Based on the records, the housing subsidy was granted to petitioner's regular personnel requiring transfer of their place of residence as a result of a new work assignment. Subsidy was intended to free the employee from the burden of shouldering rent expenses as a result of a necessary work transfer. Since the fringe benefit was necessary for the trade or business of the petitioner and was more for the convenience or advantage of the employer rather than of the employee, this fringe benefit should not be subjected to fringe benefit tax.

Yet, a perusal of the documents *(Exhibits "HHH" to "HHH-23")* presented before this Court shows that the duly supported housing subsidy granted to supervisors and managers which should not be subjected to fringe benefit tax amounted only to ₱473,750.00, as shown hereunder:

Exhibit No.	Payee	Period	Amount	Total
HHH	Andres Despi	September 2004	₱ 4,900.00	
HHH (4/5)	Andres Despi	November 2004	4,900.00	
HHH (5/5)	Andres Despi	December 2004	4,900.00	**₱ 14,700.00**
HHH-1 (2/4)	Antonio Flores	March 2005	5,100.00	
HHH-1 (2/4)	Antonio Flores	September 2004	5,100.00	
HHH-1 (3/4)	Antonio Flores	February 2005	5,100.00	
HHH-1 (3/4)	Antonio Flores	December 2004	5,100.00	
HHH-1 (4/4)	Antonio Flores	October 2004	5,100.00	**25,500.00**
HHH-2 (2/4)	Reynaldo Calderon	August 2004	4,900.00	
HHH-2 (3/4)	Reynaldo Calderon	September 2004	4,900.00	

HHH-2 (4/4)	Reynaldo Calderon	November 2004	4,900.00	**14,700.00**
HHH-4 (2/5)	Jerry Luy	September 2004	5,000.00	
HHH-4 (2/5)	Jerry Luy	March 2005	5,000.00	
HHH-4 (3/5)	Jerry Luy	December 2004	5,000.00	
HHH-4 (3/5)	Jerry Luy	January 2005	5,000.00	
HHH-4 (4/5)	Jerry Luy	February 2005	5,000.00	
HHH-4 (4/5)	Jerry Luy	October 2004	5,000.00	
HHH-4 (5/5)	Jerry Luy	November 2004	5,000.00	**35,000.00**
HHH-6 (2/6)	Rex Degala	January 2005	5,000.00	
HHH-6 (2/6)	Rex Degala	June 2004	5,000.00	
HHH-6 (3/6)	Rex Degala	July 2004	5,000.00	
HHH-6 (3/6)	Rex Degala	September 2004	5,000.00	
HHH-6 (4/6)	Rex Degala	August 2004	5,000.00	
HHH-6 (4/6)	Rex Degala	March 2005	5,000.00	
HHH-6 (5/6)	Rex Degala	December 2004	5,000.00	
HHH-6 (5/6)	Rex Degala	November 2004	5,000.00	
HHH-6 (6/6)	Rex Degala	October 2004	5,000.00	
HHH-6 (6/6)	Rex Degala	May 2004	5,000.00	**50,000.00**
HHH-7(3/3)	Roberto Chua	April 2004	7,000.00	**7,000.00**
HHH-8 (2/7)	Eduardo Ang	January 2005	6,000.00	
HHH-8 (2/7)	Eduardo Ang	December 2004	6,000.00	
HHH-8 (3/7)	Eduardo Ang	October 2004	6,000.00	
HHH-8 (3/7)	Eduardo Ang	November 2004	6,000.00	
HHH-8 (4/7)	Eduardo Ang	February 2005	6,000.00	
HHH-8 (4/7)	Eduardo Ang	March 2005	6,000.00	
HHH-8 (5/7)	Eduardo Ang	July 2004	6,000.00	
HHH-8 (5/7)	Eduardo Ang	June 2004	6,000.00	
HHH-8 (6/7)	Eduardo Ang	September 2004	6,000.00	
HHH-8 (6/7)	Eduardo Ang	May 2004	6,000.00	
HHH-8 (7/7)	Eduardo Ang	April 2004	6,000.00	
HHH-8 (7/7)	Eduardo Ang	August 2004	6,000.00	72,000.00
HHH-16 (2/8)	May Abergas	April 2004	5,600.00	
HHH-16 (3/8)	May Abergas	June 2004	5,600.00	
HHH-16 (4/8)	May Abergas	August 2004	5,600.00	
HHH-16 (5/8)	May Abergas	September 2004	5,600.00	
HHH-16 (6/8)	May Abergas	November 2004	5,600.00	
HHH-16 (8/8)	May Abergas	December 2004	5,600.00	33,600.00
HHH-17 (2/5)	Vener Paragili	June 2004	7,000.00	
HHH-17 (3/5)	Vener Paragili	September 2004	8,000.00	
HHH-17 (4/5)	Vener Paragili	November 2004	8,000.00	
HHH-17 (5/5)	Vener Paragili	December 2004	8,000.00	31,000.00
HHH-18 (2/5)	Raul Anacin	April 2004	8,000.00	
HHH-18 (3/5)	Raul Anacin	June 2004	8,000.00	
HHH-18 (4/5)	Raul Anacin	September 2004	8,000.00	

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HHH-18 (5/5)	Raul Anacin	November 2004	8,000.00	32,000.00
HHH-19 (2/6)	Benny Ong	March 2004	4,000.00	
HHH-19 (2/6)	Benny Ong	September 2004	4,000.00	
HHH-19 (3/6)	Benny Ong	July 2004	4,000.00	
HHH-19 (3/6)	Benny Ong	June 2004	4,000.00	
HHH-19 (4/6)	Benny Ong	May 2004	4,000.00	
HHH-19 (4/6)	Benny Ong	February 2005	4,000.00	
HHH-19 (6/6)	Benny Ong	March 2005	5,000.00	
HHH-19 (6/6)	Benny Ong	February 2005	5,000.00	34,000.00
HHH-21 (1/3)	Gil Gonzales	May 2004	7,000.00	
HHH-21 (2/3)	Gil Gonzales	April 2004	7,000.00	
HHH-21 (2/3)	Gil Gonzales	June 2004	7,000.00	
HHH-21 (3/3)	Gil Gonzales	March 2005	7,000.00	
HHH-21 (3/3)	Gil Gonzales	August 2004	7,000.00	35,000.00
HHH-22 (1/6)	Francisco Darasin	May 2004	3,750.00	
HHH-22 (1/6)	Francisco Darasin	July 2004	3,750.00	
HHH-22 (2/6)	Francisco Darasin	June 2004	3,750.00	
HHH-22 (2/6)	Francisco Darasin	September 2004	3,750.00	
HHH-22 (3/6)	Francisco Darasin	August 2004	3,750.00	
HHH-22 (3/6)	Francisco Darasin	October 2004	3,750.00	
HHH-22 (4/6)	Francisco Darasin	February 2005	3,750.00	
HHH-22 (4/6)	Francisco Darasin	March 2005	3,750.00	
HHH-22 (5/6)	Francisco Darasin	December 2004	3,750.00	
HHH-22 (5/6)	Francisco Darasin	November 2004	3,750.00	
HHH-22 (6/6)	Francisco Darasin	January 2005	3,750.00	41,250.00
HHH-23 (1/6)	Edwin Chua	April 2004	8,000.00	
HHH-23 (2/6)	Edwin Chua	June 2004	8,000.00	
HHH-23 (3/6)	Edwin Chua	August 2004	8,000.00	
HHH-23 (4/6)	Edwin Chua	September 2004	8,000.00	
HHH-23 (5/6)	Edwin Chua	November 2004	8,000.00	
HHH-23 (6/6)	Edwin Chua	December 2004	8,000.00	48,000.00
TOTAL				**₱473,750.00**

While the remaining amount of ₱2,799,966.60 is subject to a fringe benefit tax of ₱1,317,631.34, computed, as follows:

Fringe Benefit Given	₱ 2,799,966.60
Grossed Up Monetary Value	₱ 4,117,597.94
x Fringe Benefit Rate	32%
Fringe Benefit Tax Due	**₱1,317,631.34**

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J. Miscellaneous Expense – Japanese Child Tuition

The basis of the BIR's computation of fringe benefit given for this account was derived from the GL account 64482 Misc Exp – School Assistance *(Exhibit "CC", p. 17)* amounting to ₱1,351,891.20.

Pursuant to *Section 33(B)(9) of the NIRC of 1997, as amended*, educational assistance granted to the employee or his dependents are fringe benefits. Hence, respondent is correct in subjecting the amount of ₱1,351,891.20 to a fringe benefit tax of ₱636,184.09, computed, as follows:

Fringe Benefit Given	₱	1,351,891.20
Grossed Up Monetary Value	₱	1,988,075.29
x Fringe Benefit Rate		32%
Fringe Benefit Tax Due	**₱**	**636,184.09**

K. Miscellaneous Expense – Driver's Wages

The BIR computed the fringe benefits given for this account at 100% which was derived from the GL account 64485 Misc Exp – Driver's Wages *(Exhibit "CC", p. 17)* with a balance of ₱1,507,407.26.

No supporting documents were presented by petitioner to disprove the findings of the respondent. Hence, the assessment for fringe benefit on this account shall be sustained for which the corresponding fringe benefit tax due amounts to ₱709,368.12, as computed hereunder:

Fringe Benefit Given	₱ 1,507,407.26
Grossed Up Monetary Value	₱ 2,216,775.38
x Fringe Benefit Rate	32%
Fringe Benefit Tax Due	**₱ 709,368.12**

L. Membership Dues and Subscription

Based on the GL, the Membership Dues/Subscription, with account 66425 *(Exhibit "CC", p. 16)* amounts to ₱1,798,539.79. The alleged fringe benefits given for this account amounting to ₱1,796,039.79[2] was computed by the BIR at 100% of the account balance.

A perusal of the supporting documents *(Exhibits "III" to "III-48")* presented before this Court shows that the amount of ₱131,657.79 represents payments for membership dues, subscription of newspapers and specialized magazines or reading materials and internet subscriptions which were duly supported with receipts in the name of the petitioner and do not benefit a particular employee, to wit:

Exhibit No.	Payee	OR No.	Amount
III	Japanese Chamber of Commerce & Industry of the Phils., Inc.	56926	₱33,000.00
III-1	The Japanese Association, Manila, Inc.	20905	32,727.27
III-2	Baguio-Benguet Entrepreneurs & Traders Association	0163	550.00
III-3	Philippine Marketing Association, Inc.	4775	12,000.00
III-4	Philippine Chamber of Food Manufacturers, Inc.	4231	10,181.82
III-5	Marquez News & Magazine Agency	25750	1,527.00
III-6	E.C. Busa Trading & Printing Service	19791	698.18

[2] Ending balance of ₱1,798,539.79 less SGV year-end adjustment of ₱2,500.00.

III-7	E.C. Busa Trading & Printing Service	19762	785.45
III-8	Marquez News & Magazine Agency	26046	1,547.00
III-9	The Freeman Newspaper	119482	100.00
III-10	Marquez News & Magazine Agency	26129	786.00
III-11	The Freeman Newspaper	119507	100.00
III-12	The Freeman Newspaper	119524	100.00
III-13	Marquez News & Magazine Agency	26532	820.00
III-14	E.C. Busa Trading & Printing Service	21328	756.36
III-15	Grandstar News and Magazines	1134	528.00
III-16	The Freeman Newspaper	124319	100.00
III-17	Marquez News & Magazine Agency	26825	811.00
III-18	Grandstar News and Magazines	1618	528.00
III-19	Marquez News & Magazine Agency	26930	786.00
III-20	The Freeman Newspaper	124344	100.00
III-21	E.C. Busa Trading & Printing Service	21662	756.36
III-22	Marquez News & Magazine Agency	27061	820.00
III-23	E.C. Busa Trading & Printing Service	21699	756.36
III-24	E.C. Busa Trading & Printing Service	21830	756.36
III-25	Grandstar News and Magazines	10959	484.00
III-26	Marquez News & Magazine Agency	27299	786.00
III-27	E.C. Busa Trading & Printing Service	22461	785.45
III-28	Marquez News & Magazine Agency	27458	786.00
III-29	Marquez News & Magazine Agency	24997	795.00
III-30	Grandstar News and Magazines	11399	542.00
III-31	E.C. Busa Trading & Printing Service	22498	772.73
III-32	E.C. Busa Trading & Printing Service	22621	741.82
III-33	Marquez News & Magazine Agency	27710	736.00
III-34	Business World Publishing Corp	150060	3,500.00
III-35	S.R. Manlangit Marketing	0143	3,600.00
III-36	S.R. Manlangit Marketing	0033	3,600.00
III-37	Grandstar News and Magazines	12313	644.00
III-38	Philippine Association of Food Technologists, Inc.	3905	10,000.00
III-39	Mosaic Communication	804	200.00
III-40	Mosaic Communication	653	245.45
III-41	Mosaic Communication	675	252.73
III-42	Mosaic Communication	205	200.00
III-43	Mosaic Communication	242	220.00
III-44	Mosaic Communication	373	200.00
III-45	Mosaic Communication	487	225.45
III-46	Mosaic Communication	1335	247.27

III-47	Mosaic Communication	1423	272.73
III-48	Mosaic Communication	1446	200.00
TOTAL			**₱131,657.79**

Accordingly, the above membership dues/subscription of ₱131,657.79 do not constitute fringe benefits subject to fringe benefit tax. Thus, only the remaining balance of Membership Dues/Subscriptions with no available supporting documents in the amount of ₱1,664,382.00 shall remain subject to fringe benefit tax of P783,238.59, computed, as follows:

Membership Dues/Subscriptions per GL	₱ 1,796,039.79
Less: Duly receipted expenses	131,657.79
Fringe Benefit Given	₱ 1,664,382.00
Grossed Up Monetary Value	₱ 2,447,620.59
x Fringe Benefit Rate	32%
Fringe Benefit Tax Due	**₱ 783,238.59**

In sum, petitioner is liable of deficiency fringe benefit tax, but in the reduced amount of ₱12,392,831.10, computed, as follows:

	Fringe Benefits Given	**Grossed Up Monetary Value**	**Fringe Benefit Tax Due (at 32%)**
Cost of Sales:			
Factory Rent-Land	₱ 1,272,076.63	₱ 1,870,700.93	₱ 598,624.30
Factory Rent-Japanese Staff	1,440,000.00	2,117,647.06	677,647.06
S-Grade Housing	1,548,992.13	2,277,929.60	728,937.47
S-Grade Car	1,519,139.48	2,234,028.65	714,889.17
Repairs and Maintenance-vehicles	231,129.43	339,896.22	108,766.79
Depreciation-vehicles	288,213.64	423,843.59	135,629.95
Representation-others	1,071,139.24	1,575,204.76	504,065.52
Sub-Total	**₱ 7,370,690.55**	**₱10,839,250.81**	**₱ 3,468,560.26**

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Operating Expenses:			
Representation-others	₱ 1,672,401.79	₱ 2,459,414.40	₱ 787,012.61
Depreciation-vehicles	951,073.48	1,398,637.47	447,563.99
Rental-Japanese Staff	3,750,000.00	5,514,705.88	1,764,705.88
Miscellaneous-housing subsidy	2,799,966.60	4,117,597.94	1,317,631.34
Miscellaneous-Japanese Child Tuition	1,351,891.20	1,988,075.29	636,184.09
Miscellaneous-Drivers wages	1,507,407.26	2,216,775.38	709,368.12
Membership dues and subscription	1,664,382.00	2,447,620.59	783,238.59
Sub-Total	**₱13,697,122.33**	**₱20,142,826.96**	**₱ 6,445,704.62**
Total Basic Fringe Benefit Tax			**₱ 9,914,264.88**
Add: 25% Surcharge			2,478,566.22
TOTAL			**₱12,392,831.10**

<u>Second, Third and Fourth Issues</u>

As regards the other issues raised herein whether or not the provisions of *Section 228 of the NIRC of 1997, as amended*, and *Revenue Regulations 12-99* were complied with; whether or not the assessments have factual and legal bases; and whether or not petitioner was informed of the factual and legal bases of the assessment, records show that respondent issued the Notice of Informal Conference, Preliminary Assessment Notice with Details of Discrepancies and Formal Letter of Demand, together with the Details of Discrepancies and Assessment Notices, which were duly received by the petitioner. Though respondent successively issued the Notice of Informal Conference, the Preliminary Assessment Notice and the Formal Letter of Demand, together with the Details of Discrepancies and Assessment Notices, one after another, the fact remains that petitioner has been duly

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notified of the procedures prescribed under *Section 228* and has been informed of the factual and legal bases of the assessments. In fact, petitioner was able to exhaustively protest respondent's assessments in a Letter dated December 23, 2008. Even the Court-commissioned ICPA in his Final and Consolidated Report made mention of the basis of the BIR's computation of the deficiency tax assessments. Had the assessment no factual and legal bases and had petitioner not been properly informed of the said factual and legal bases of the assessment, then the Court-commissioned ICPA and this Court would not have been able to compute the deficiency FBT assessment against the petitioner.

Finally, in the case of *Commissioner of Internal Revenue vs. Menguito*, 565 SCRA 481-482, the Supreme Court ruled that:

> "A post-reporting notice and pre-assessment notice do not bear the gravity of a formal assessment notice. The post-reporting notice and pre-assessment notice merely hint at the initial findings of the BIR against a taxpayer and invites the latter to an 'informal' conference or clarificatory meeting. Neither notice contains a declaration of the tax liability of the taxpayer or a demand for payment thereof. Hence, the lack of such notices inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment notice. In the case of respondent, a formal assessment notice was received by him as acknowledged in his Petition for Review and Joint Stipulation; and, on the basis thereof, he filed a protest with the BIR, Baguio City and eventually a petition with the CTA."

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Pursuant to the foregoing jurisprudence, lack of post-reporting notice or pre-assessment notice inflicts no prejudice to the taxpayer as long as the taxpayer has been properly served a formal assessment notice.

In the instant case, petitioner received not only the Formal Letter of Demand, together with the Details of Discrepancies and Assessment Notices, but it also received the Notice of Informal Conference and Preliminary Assessment Notice. Hence, it cannot be said that petitioner was deprived of its statutory and procedural due process.

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

A. The Formal Letter of Demand, with Formal Assessment Notices:

1) No. IT-FY 3.2005-000230, for deficiency Income Tax, in the amount of ₱181,164,275.04 is hereby ordered **CANCELLED** and **SET ASIDE**, for having been issued beyond the three (3)-year prescriptive period to assess;

2) No. VAT-FY 3.2005-000273, for deficiency Value Added Tax, in the amount of ₱24,974,439.13 is hereby ordered **CANCELLED** and **SET ASIDE**, for having been issued beyond the three (3)-year prescriptive period to assess;

3) No. EWT-FY 3.2005-000243, for deficiency Expanded Withholding Tax, in the amount of ₱45,403,934.34 is hereby ordered **CANCELLED** and **SET ASIDE**, for having been issued beyond the three (3)-year prescriptive period to assess; and

4) No. WC-FY 3.2005-000141, for deficiency Withholding Tax on Compensation, in the amount of ₱5,985,020.16 is hereby ordered **CANCELLED** and **SET ASIDE**, for having been issued beyond the three (3)-year prescriptive period to assess.

B. However, as regards the Formal Letter of Demand with Assessment Notice No. FBT-FY 3.2005-000066, for deficiency Fringe Benefit Tax, in the amount of ₱30,582,321.15, petitioner is liable in the reduced amount of ₱12,392,831.10, representing basic deficiency Fringe Benefit Tax of ₱9,914,264.88, and 25% surcharge of ₱2,478,566.22, as computed above.

In addition, petitioner is liable to pay (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Fringe Benefit Tax of ₱9,914,264.88 computed from April 15, 2005 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 deficiency taxes of ₱12,392,831.10 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from December 31, 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

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