REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GOODYEAR STEEL PIPE CORPORATION, Petitioner,	**CTA CASE NO. 10555**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondents.	Promulgated: DEC 1 0 2024 2:45 p.m.

x---x

DECISION

***FERRER-FLORES, J.*:**

The *Petition for Review* prays for the Court to cancel and set aside the *Final Decision on Disputed Assessment* (FDDA) issued by the **respondent Commissioner of Internal Revenue (CIR)** as well as the assessment for deficiency taxes stated therein in the total amount of **₱274,146,320.46.**[1]

THE PARTIES

Petitioner Goodyear Steel Pipe Corporation (Goodyear) is a domestic corporation duly organized under and by virtue of Philippine law, with principal office address at 128 Quirino Highway, Baesa, Quezon City.[2]

---

1 Statement of the Case, Pre-Trial Order dated September 12, 2022, Docket – Vol. 5, p. 2444.

2 Par. 1, Facts Stipulated by Both Parties, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 5, p. 2429; Exhibit "P-1", USB.

Respondent is the duly appointed CIR empowered to perform the duties of his office, including, among others, acting on disputed assessments as provided by law.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On June 13, 2013, respondent issued the *Letter of Authority* (LOA) LOA-116-2013-00000134/SN: eLA201100007142,[4] authorizing Revenue Officers Shella Samaniego, Rosario Arriola, Reynante Martirez, and Carolyn Mendoza, and Group Supervisor (GS) Rolando Balbido of LT Regular Audit Division I of the Bureau of Internal Revenue (BIR), to examine the books of accounts and other accounting records of petitioner for the period from January 1, 2011 to December 31, 2011.

On February 4, 2014, petitioner executed a *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (First Waiver)*,[5] extending the period to assess until December 31, 2015.[6] The *First Waiver* was accepted by respondent on February 7, 2014.[7]

Subsequently, another *Waiver (Second Waiver)* was executed by petitioner on October 8, 2015,[8] extending the period to assess until December 31, 2016.[9] The *Second Waiver* was accepted by respondent on October 21, 2015.[10]

On June 29, 2016, respondent issued a *Preliminary Assessment Notice (PAN)*,[11] which was received by petitioner on June 30, 2016.[12]

Petitioner then received on August 10, 2016 a *Formal Letter of Demand* dated August 5, 2016 (FLD) with *Details of Discrepancies*,[13] assessing petitioner of alleged deficiency taxes for taxable year (TY) 2011 in

---

3 Par. 2, Facts Stipulated by Both Parties, JSFI, Docket – Vol. 5, p. 2429.
4 Par. 3, *Id.*; Exhibit "P-3", USB; Exhibit "R-1", BIR Records – Folder 1 (Exhibit "R-14"), p. 12.
5 Par. 4, Facts Stipulated by Both Parties, JSFI, Docket – Vol. 5, p. 2430.
6 Exhibit "P-4", USB; Exhibit "R-6", BIR Records – Folder 1 (Exhibit "R-14"), p. 49.
7 Par. 5, Facts Stipulated by Both Parties, JSFI, Docket – Vol. 5, p. 2430.
8 Par. 6, *Id.*
9 Exhibit "P-5", USB; Exhibit "R-7", BIR Records – Folder 1 (Exhibit "R-14"), p. 51.
10 Par. 7, Facts Stipulated by Both Parties, JSFI, Docket – Vol. 5, p. 2430.
11 Par. 8, *Id.*
12 Exhibit "P-6", USB; Exhibit "R-9", BIR Records – Folder 1 (Exhibit "R-14"), pp. 143 to 165.
13 Although the parties stipulated in par. 9, under Facts Stipulated by Both Parties, JSFI (Docket – Vol. 5, p. 2430), that the FLD is dated August 2, 2016, it is actually dated August 5, 2016 as shown in Exhibits "P-9-8" and "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), pp. 193 to 222.

the total amount of ₱203,116,001.85, inclusive of interest and compromise penalties, broken down as follows:

Tax Type	Basic Tax	Interest	Compromise Penalty	Total
Income tax	₱ 51,150,882.49	₱ 45,096,860.24	₱ 50,000.00	₱ 96,247,742.73
Documentary stamp tax (DST)	126,541.00	118,567.18	16,000.00	261,108.18
Value-added tax (VAT)	49,644,757.88	45,972,405.93	50,000.00	95,667,163.81
Withholding tax on compensation (WTC)	4,499,537.03	4,191,349.56	25,000.00	8,715,886.59
Expanded withholding tax (EWT)	1,010,929.78	941,688.01	25,000.00	1,977,617.79
Improperly accumulated earnings tax (IAET)	77,692.63	56,790.12	12,000.00	146,482.75
Failure to supply correct information on tax returns			50,000.00	50,000.00
TOTAL	**₱ 106,510,340.81**	**₱ 96,377,661.04**	**₱ 228,000.00**	**₱ 203,116,001.85**

On September 8, 2016, petitioner filed with the BIR its administrative protest against/request for reinvestigation (Protest/Request) of the FLD via the *letter* dated September 5, 2016.[14] The said protest/request was later supplemented by another *letter* dated November 4, 2016,[15] submitting additional documents to support the same.

On May 20, 2021,[16] petitioner received the FDDA dated May 19, 2021 issued by respondent,[17] denying in part petitioner's administrative protest, and assessing petitioner with the following deficiency taxes for TY 2011, in the total amount of ₱274,146,320.46, broken down as follows:

Tax Type	Basic Tax	Interest	Total
Income Tax	₱ 51,145,877.80	₱ 78,253,193.03	₱ 129,399,070.83
DST	126,492.00	199,857.36	326,349.36
VAT	48,918,428.62	80,857,020.31	129,775,448.93
WTC	4,499,537.03	7,109,268.50	11,608,805.53
EWT	1,010,929.78	1,597,269.04	2,608,198.82
IAET	77,692.63	122,754.36	200,446.99
Compromise penalties (Miscellaneous tax)	-	-	228,000.00
TOTAL	**₱ 105,778,957.86**	**₱ 168,139,362.60**	**₱ 274,146,320.46**

14 Exhibit "P-7", USB.
15 Exhibit "P-8", USB.
16 *Affidavit of Service of Final Decision on Disputed Assessment*, BIR Records – Folder 1 (Exhibit "R-14"), p. 258.;
17 Par. 10, Facts Stipulated by Both Parties, JSFI, Docket – Vol. 5, p. 2430; Exhibit "P-9", USB; Exhibit "R-13", BIR Records – Folder 1 (Exhibit "R-14"), pp. 233 to 256.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on June 21, 2021.[18] The case was initially raffled to this Court's Third Division.

On October 25, 2021, petitioner filed an *Urgent Motion (for Suspension of Collection of Tax)*,[19] to which respondent filed his *Comment/Opposition (Re: Urgent Motion dated 14 October 2021)* on March 14, 2022.[20]

Respondent then posted his *Answer* on January 31, 2022.[21]

On March 14, 2022, respondent transmitted the *BIR Records* for this case, consisting of two (2) folders, to wit: Folder 1 (pages 1-271) and Folder 2 (pages 1-232).[22]

At the hearing held on March 15, 2022 for the *Urgent Motion (for Suspension of Collection of Tax)*, petitioner presented the testimony of its External Auditor, Mr. Alfredo C. Danac.[23] On March 25, 2022, petitioner filed its *Formal Offer of Evidence*,[24] to which respondent submitted his *Comment (On Petitioner's Formal Offer of Evidence on the Urgent Motion to Suspend Tax Collection)* on March 31, 2022.[25]

Subsequently, on May 20, 2022, petitioner filed a *Manifestation and Motion (in relation to the Urgent Motion for Suspension of Collection of Tax)*,[26] stating that respondent persisted in collecting the assessments that are assailed on the *Petition* even though the *Petition* and *Urgent Motion* are pending before the Court. Petitioner moves that the Court resolve the *Urgent Motion* in its favor, and order respondent to suspend all its collection efforts pending resolution of the *Petition*.

---

18 Docket – Vol. 1, pp. 1 to 54.
19 *Id.* at 1867 to 1890.
20 *Id.* at 2230 to 2239.
21 *Id.* at 2196 to 2212.
22 *Compliance* dated March 10, 2022, *Id.* at 2226 to 2228.
23 Exhibit "P-1", *Id.* at 2046 to 2053; Minutes of the hearing held on, and Order dated, March 15, 2022, *Id.* at 2244 to 2246.
24 *Id.* at 2252 to 2258.
25 *Id.* at 2349 to 2351.
26 Docket – Vol. 5, pp. 2355 to 2358.

The Pre-Trial Conference was set and held on June 23, 2022.[27] Prior thereto, petitioner's *Pre-Trial Brief* was filed on June 17, 2022,[28] while respondent filed his *Pre-Trial Brief* on June 20, 2022.[29]

In the Resolution dated September 22, 2022,[30] the Court: (1) admitted petitioner's offered exhibits for its *Urgent Motion*; (2) noted petitioner's *Manifestation*; (3) granted petitioner's *Urgent Motion (for Suspension of Collection of Tax)*; and, (4) ordered the respondent to cease and desist from committing any or all acts to collect the alleged deficiency taxes, provided petitioner files a cash bond or post a surety bond.

On September 30, 2022, petitioner filed an *Omnibus Motion (Re: Resolution dated 22 September 2022)*,[31] praying that the Resolution dated September 22, 2022 be reconsidered and modified to dispense with the requirements to post a bond; or, to grant petitioner an additional fifteen (15) days from receipt of notice within which to comply with the bond requirement. Respondent submitted his *Comment/Opposition (On Petitioner's Motion Omnibus Motion dated 30 September 2022)* on November 4, 2022.[32] In the Resolution dated April 20, 2023,[33] the Court denied petitioner's *Motion* to dispense with the bond requirement, but granted its request for a final 15-day period to comply with the same.

On July 26, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[34] which was admitted and approved by the Court in its Resolution dated August 4, 2022,[35] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated September 12, 2022 was then issued.[36]

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner offered again the testimony of its External Auditor, Mr. Danac.[37]

---

27 Resolution dated March 14, 2022, *Id.* at 2242 to 2243; Minutes of the hearing held on, and Order dated, June 23, 2022, *Id.* at and 2368 to 2389, respectively.
28 *Id.* at 2363 to 2376.
29 *Id.* at 2379 to 2383.
30 *Id.* at pp. 2454 to 2460.
31 Docket – Vol. 6, pp. 2475 to 2484.
32 *Id.* at pp. 2556 to 2561.
33 *Id.* at pp. 2630 to 2632.
34 Docket – Vol. 5, pp. 2429 to 2435.
35 *Id.* at 2441 to 2442.
36 *Id.* at . 2444 to 2451.
37 Exhibit "P-24", Docket – Vol. 6, pp. 2524 to 2552; Minutes of the hearing held on, and Order dated, March 2, 2023, Docket – Vol. 6, pp. 2572, and 2575 to 2576, respectively.

On March 31, 2023, petitioner filed its *Formal Offer of Evidence,*[38] to which respondent submitted his *Comment/Opposition (On Petitioner's Formal Offer of Evidence)* on April 25, 2023.[39] In the Resolution dated July 10, 2023,[40] the Court admitted petitioner's evidence.

In the meantime, pursuant to the Notice of Resolution dated June 1, 2023,[41] this case was transferred to the Second Division of this Court.

For his part, respondent offered the testimony of Revenue Officer (RO) Carolyn V. Mendoza.[42]

On July 27, 2023, respondent filed his *Formal Offer of Evidence*,[43] to which petitioner submitted its *Comment (to Respondent's Formal Offer of Evidence)* on August 3, 2023.[44] In the Resolution dated October 13, 2023,[45] the Court admitted respondent's evidence.

On December 7, 2023, respondent filed a *Manifestation*,[46] stating that he will adopt the arguments stated in the *Answer* in place of the *Memorandum*. Petitioner submitted its *Memorandum* on December 14, 2023.[47]

The present case was considered submitted for decision on December 20, 2023.[48]

THE STIPULATED ISSUES

As stipulated by the parties, the issues for this Court's resolution are as follows, *viz.*:

---

38 *Id.* at 2611 to 2626.
39 *Id.* at 2633 to 2635.
40 *Id.* at 2640 to 2641.
41 *Id.* at p. 2638.
42 Exhibit "R-15", Docket – Vol. 5, pp. 2218 to 2224; Minutes of the hearing held on, and Order dated, July 13, 2023, Docket – Vol. 6, pp. 2642 to 2643.
43 Docket – Vol. 6, pp. 2644 to 2651.
44 *Id.* at 2653 to 2657.
45 *Id.* at 2661.
46 *Id.* at 2666 to 2668
47 *Id.* at 2670 to 2723.
48 Minute Resolution dated December 20, 2023, *Id.* at 2724.

1. Whether or not oetitioner is liable to pay deficiency Income Tax, DST, VAT, WTC, EWT, IAET, and compromise penalty, inclusive of surcharge and interest, for TY 2011 which allegedly amounts to ₱274,146,320.46.

2. Whether or not the petitioner's right to due process of law was violated by the respondent."[49]

Petitioner's arguments:

Petitioner argues that the FDDA issued by respondent is not a valid assessment as it violates its right to due process. Petitioner also claims that, assuming without admitting that the assessment and the FDDA were issued in time and valid in form and substance, it is still not liable for the alleged deficiency income taxes assessed. Lastly, it contends that, assuming without admitting that the FLD and FDDA are valid, it is not liable for deficiency DST, VAT, plus interest for TY 2011 in the amount of ₱129,775,448.93, WTC, EWT, IAET, and compromise penalty.

Respondent's counter-arguments:

Based on his *Answer*, respondent contends that the assessment notices are perfectly valid. He insists that petitioner is liable to pay the deficiency taxes due.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

The Petition for Review was timely filed.

Section 7(a)(1) of RA No. 1125, as amended, provides:

> SEC. 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

---

[49] Pars. 12 and 13, Issues to be Resolved, JSFI, Docket – Vol. 5, p. 2430.

> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx

Pursuant to the last paragraph of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner had 30 days from the receipt within which to appeal the decision of the CIR to the Court of Tax Appeals (CTA). Considering that petitioner received the FDDA on May 21, 2021, the filing of the instant *Petition for Review* on June 21, 2021 was timely made.[50]

The subject FDDA and attached Assessment Notices are void, since they failed to state the definite date for the payment thereof.

Petitioner argues that the FDDA is not a valid assessment as it violates petitioner's right to due process. It avers that the FDDA does not even contain any date purporting to be a definite due date to pay the alleged deficiency taxes due. The portion of the FDDA demanding payment of the deficiency taxes merely states:

> It is required that your aforesaid deficiency tax liabilities be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision.[51]

Petitioner claims that both the FDDA and the attached *Assessment Notices* are dated May 19, 2021. The FDDA, signed by respondent, requested the petitioner to pay the assessed tax liabilities immediately, but the *Assessment Notices*, also signed by respondent, state that the due date of each Notice is March 31, 2021. Thus, petitioner is faced with two (2) conflicting directives from respondent. Petitioner points out that it is inexplicable, if not downright oppressive, for respondent to demand that the petitioner pay on a due date that is set prior to the issuance and receipt by petitioner of the assessment notice ordering such payment. Hence, respondent violated its right to due process for not informing it of a definite and specific due date for payment of the same.

We agree.

[50] June 20, 2021 is a Sunday.
[51] Exhibit "P-9", USB; Exhibit "R-13", BIR Records – Folder 1 (Exhibit "R-14"), at p. 245.

An assessment "refers to the determination of amounts due from a person obligated to make payments."[52] In the context in which it is used in the NIRC of 1997, as amended, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[53]

Moreover, in *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.* (*Pascor* case),[54] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise, *viz.*:

> **An assessment contains not only a computation of tax liabilities, but also a demand for payment <u>within a prescribed period</u>.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx.
>
> xxx xxx xxx
>
> To start with, **an assessment** must be sent to and received by a taxpayer, **and must demand payment of the taxes described therein <u>within a specific period</u>**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20% per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment. *(Emphases and underscoring added)*

Similarly, in *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (*Fitness By Design* case),[55] the Supreme Court ruled as follows:

> **The issuance of a <u>valid</u> formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; <u>it also includes a demand for payment within a period prescribed</u>. Its main purpose is to determine the amount that a taxpayer is liable to pay.**

---

52 *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.
53 *Adamson, et al. vs. Court of Appeals, et al., et seq.*, G.R. Nos. 120935 and 124557, May 21, 2009.
54 G.R. No. 128315, June 29, 1999.
55 G.R. No. 215957, November 9, 2016.

xxx xxx xxx

A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and **must demand payment of the taxes described therein <u>within a specific period</u>**'. *(Emphases and underscoring added)*

Based on the foregoing doctrinal pronouncements, a tax assessment must not only contain a computation of tax liabilities, but must also include a demand for the settlement of a tax liability that is definite and fixed, within a specified period. The absence of such demand renders the assessment invalid.

In the present case, it is clear that in the FDDA,[56] there is a demand for payment when respondent required petitioner to pay the deficiency taxes. The FDDA also indicated the due date, *i.e.* the deficiency tax must be paid immediately upon receipt of the FDDA.

However, the due date reflected in the *Assessment Notices* is "March 31, 2021",[57] albeit the same were issued on May 19, 2021 and only received by petitioner on May 20, 2021.[58] Clearly, the prescribed period stated therein for the payment of the alleged deficiency taxes already lapsed when the FDDA and the corresponding *Assessment Notices* were issued, making it impossible for petitioner to comply therewith; hence, the said due date is deemed invalid, and negates compliance with the requirement that the assessment must contain a demand for payment <u>within a prescribed period</u>.

Moreover, the Court notes that the *Assessment Notices* presented by the petitioner (Exhibit "P-9-1 to "P-9-7")[59] and that of respondent's (Exhibit "R-13")[60] are not completely the same. On one hand, the *Assessment Notices* presented by petitioner have consistent amounts and due date in the upper and lower portions of the said notices. On the other hand, the *Assessment Notices* presented by respondent have different amounts and due dates in the upper and lower portions thereof, to wit:

---

56 Exhibit "P-9", USB; Exhibit "R-13", BIR Records – Folder 1 (Exhibit "R-14"), pp. 233 to 256.
57 Exhibits "P-9-1" to "P-9-7", USB; "R-13", BIR Records – Folder 1 (Exhibit "R-14"), at pp. 238 to 244.
58 Exhibit "R-13", *Id.* at 233 to 256.
59 Exhibits "P-9-1" to "P-9-7", USB.
60 Exhibit "R-13", BIR Records – Folder 1 (Exhibit "R-14"), at pp. 238 to 244.

Assessment Notice No.	Upper Portion of the Assessment Notice		Lower Portion of the Assessment Notice	
	Due Date	**Amount Due**	**Due Date**	**Amount Due**
IT-116-LOA-00000134-11-16-586[61]	March 31, 2021	₱129,399,070.83	December 31, 2020	₱127,864,694.50
DS-116-LOA-00000134-11-16-587[62]	March 31, 2021	₱326,349.36	December 31, 2020	₱322,554.60
VT-116-LOA-00000134-11-16-588[63]	March 31, 2021	₱129,775,448.93	December 31, 2020	₱128,307,896.07
WC-116-LOA-00000134-11-16-589[64]	March 31, 2021	₱11,608,805.53	December 31, 2020	₱11,473,819.42
WE-116-LOA-00000134-11-16-590[65]	March 31, 2021	₱2,608,198.82	December 31, 2020	₱2,577,870.93
IAET-116-LOA-00000134-11-16-591[66]	March 31, 2021	₱200,446.99	December 31, 2020	₱198,116.21

As to *Assessment Notice* No. MC-116-LOA-00000134-11-16-592 presented by respondent,[67] although the total amount due in the upper and lower portion of the said notice are the same–₱228,000.00, the due date indicated in the upper portion–March 31, 2021 differs from the due date indicated in the lower portion–December 31, 2020.

The two different amounts and due dates indicated in the *Assessment Notices* presented by respondent leave the petitioner in a quandary as to how much and when payment should be made. Thus, applying the *Pascor* and *Fitness by Design* cases, there can be no demand for payment when the amount and date due cannot be ascertained. Absent such demand, the FDDA is fatally infirm.

Moreover, whether it be the *Assessment Notices* presented by petitioner or the *Assessment Notices* presented by respondent, both contains an invalid due date. The *Assessment Notices* presented by respondent further failed to indicate a definite amount of tax due, negating compliance with the requirement that the assessment must demand for the settlement of a tax liability that is definite and fixed, within a specified period. Correspondingly, the said *Assessment Notices* likewise suffer infirmity.

---

61 Exhibit "R-13", *Id.* at p. 244.
62 Exhibit "R-13", *Id.* at p. 243.
63 Exhibit "R-13", *Id.* at p. 242.
64 Exhibit "R-13", *Id.* at p. 241.
65 Exhibit "R-13", *Id.* at p. 240.
66 Exhibit "R-13", *Id.* at p. 239.
67 Exhibit "R-13", BIR Records – Folder 1 (Exhibit "R-14"), at p. 238.

Nonetheless, despite the infirmity of the FDDA and the said *Assessment Notices*, the FLD dated August 5, 2016[68] remains valid in the absence of any other ground which may nullify it.

Apropos, in *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et seq.*,[69] the Supreme Court had the occasion to rule that a void FDDA does not *ipso facto* render an assessment void. In resolving the issue of the effects of a void FDDA, the Supreme Court differentiated an assessment from a decision. An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, respondent either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may appeal the decision on the disputed assessment or the inaction of respondent. Hence, an FDDA provides an assessment of respondent but is not the only means that the final tax liability of a taxpayer is fixed.

It was also held in the said case that an assessment differs from a decision. The invalidity of one does not necessarily result to the invalidity of the other. Thus, when the FDDA indicated an invalid date of payment, it did not affect the validity of the FLD *per se*. In the present case, while the FLD August 5, 2016 stated that petitioner is requested to pay the alleged deficiency taxes "within the time shown in the enclosed assessment notice,"[70] the attached *Assessment Notices* therewith[71] clearly indicated the date of payment to be September 10, 2016.[72]

There is no violation of petitioner's right to due process.

Petitioner argues that there was no indication that the PAN or the FDDA was validly received by petitioner.

Section 228 of the NIRC of 1997 mandates the following, *viz.*:

> SEC. 228. *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds that proper**

[68] Although the parties stipulated in par. 9, under Facts Stipulated by Both Parties, JSFI (Docket – Vol. 5, p. 2430), that the FLD is dated August 2, 2016, it is actually dated August 5, 2016 as shown in Exhibits "P-9-8" and "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), pp. 193 to 222.

[69] G.R. Nos. 215534 and 215557, April 18, 2016.

[70] Exhibits "P-9-8" and "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), pp. 193 to 222.

[71] Exhibit "R-11", *Id.* at pp. 216 to 218 and 204 to 207.

[72] *Id.*

taxes should be assessed, he shall first notify the taxpayer of his findings: xxx

xxx xxx xxx

The taxpayer 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.

xxx xxx xxx. *(Emphases added)*

Under the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[73] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[74] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[75] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code.[76]

To implement the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[77] as amended by RR No. 18-2013,[78] provides, in part, as follows:

---

[73] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

[74] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

[75] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

[76] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189 (2006).

[77] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the

SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** –

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 ***Preliminary Assessment Notice*** **(PAN)** – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).

xxx xxx xxx

3.1.3 ***Formal Letter of Demand and Final Assessment Notice (FLD/FAN).*** – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the assessment shall be void* (see illustration in ANNEX 'B' hereof).

xxx xxx xxx

3.1.5 ***Final Decision on a Disputed Assessment (FDDA).*** – The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) that the same is his *final decision.*

3.1.6 ***Modes of Service.*** – **The notice (PAN/**FLD/FAN/**FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:**

(i) **The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found**. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[78] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

(ii) **Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:**

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the

> person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.
>
> Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer. *(Emphases added)*

Based on the foregoing provisions, the service of the PAN and FDDA, among others, may be made through: (1) personal service to the concerned party; (2) substituted service, in specific instances; or, (3) service by mail.

Anent the mode of personal service, the above-quoted provision requires that such service should be done "by delivering personally a copy thereof **to the party** at his registered or known address or wherever he may be found."

With regard to substituted service, the same can be availed of only in specific instances depending on whether the concerned party is present or not, or in case the said party is present, but the same party refuses to receive the notice. **If the party is not present**, <u>the notice may be left at the party's registered or known address, with his/her/its clerk or with a person having charged thereof</u>. **If no person is found in the party's registered or known address**, the ROs concerned shall bring a barangay official and two disinterested witnesses to the address so that they may personally observe and attest to such absence. **Should the party be found at the registered or known address but refuses to receive the notice**, the concerned revenue officers shall bring a barangay official and two disinterested witnesses to the address so that they may personally observe and attest to such refusal. In the latter two cases, the notice shall be given to the said barangay official.

Accordingly, substituted service can be resorted to only: (1) when the party is not present at the registered or known address; (2) when the party is found therein, but refuses to receive the notice; and, (3) if no person is found in the party's registered or known address.

As for the service through registered mail, the same must be made by sending the notice *"with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered."* The registry receipt issued by the post office containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Petitioner claims that the PAN and the FDDA were not served to it, actually or constructively. It further points out that there was no indication that the person to whom the PAN and FDDA was serviced is an authorized representative of petitioner.

A perusal of the PAN dated June 29, 2016 would show that the same was received by a certain Ms. Celia M. Mxxx,[79] an accounting staff, on June 30, 2016.[80] Based on the testimony of RO Carolyn Mendoza, the PAN was personally served to the petitioner, through its authorized representative.[81]

Similarly, based on the records, the FDDA dated May 20, 2021 was received by Ms. Cris Marie Cordero, an accounting personnel, on May 20, 2021.[82] The FDDA was served to petitioner together with its attachments according to RO Mendoza.[83] Based on said facts, it can be surmised that the PAN and FDDA were served through substituted service.

It should be noted that in case the taxpayer is a juridical entity, substituted service may be availed of by serving the notice where the business activities of the taxpayer are conducted, in which case, **<u>the notice may be left with the clerk or person having charge thereof</u>**, as stated in the aforecited Section 3.1.6(ii) of RR No. 12-99, as amended by RR No. 18-2013.

As mentioned earlier, the PAN and the FDDA were respectively received by Ms. Celia M. Mxxx, an accounting staff and Ms. Cris Marie Cordero, an accounting personnel. Petitioner did not categorically deny that these persons are not its employees or that they are not clerks or persons having charge of petitioner's place of business. Moreover, when RO Mendoza testified that these persons were the ones who received the notices and are authorized representatives, there were no objections raised by the petitioner.[84]

---

79 Last name written is illegible.
80 Exhibit "R-9", BIR Records – Folder 1 (Exhibit "R-14"), pp. 143 to 165.
81 Q&A No. 25, Exhibit "R-15", Docket – Vol. 5, p. 2221.
82 Exhibit "R-13", BIR Records – Folder 1 (Exhibit "R-14"), pp. 245 to 256.
83 Q&A No. 34, Exhibit "R-15", Docket – Vol. 6, p. 2223.
84 Transcript of Stenographic Notes (TSN), July 13, 2023, pp. 7 to 9.

Further, based on the testimony of petitioner's witness, Mr. Danac,[85] he actually received the PAN dated June 29, 2016 and the FDDA dated May 19, 2021 from the petitioner after the latter received the same and engaged his firm's services. The pertinent portion of Mr. Danac's testimony is quoted below:

Q5 : *Are you familiar with the Petition filed by the Petitioner to cause the cancellation of the FDDA?*

A5 : Yes, I am familiar with this Petition.

Q6 : *Why are you familiar with this Petition?*

A6 : **I am familiar because the services of our firm Danac and Associates was engaged by the Petitioner after the Bureau of Internal Revenue ('BIR') served the Petitioner with a Preliminary Assessment Notice dated 29 June 2016 (the 'PAN') where the BIR allegedly found the Petitioner to be liable for deficiency taxes for the taxable year 2011.**

xxx xxx xxx

Q16 : *After this LOA was served on the Petitioner, what happened next, if any?*

A16 : The BIR issued its PAN to the Petitioner

Q17 : *How do you know this?*

A17 : **Because I was given a copy of the PAN that I mentioned earlier, among other documents, and which started my engagement with the Petitioner.**

xxx xxx xxx

Q23 : *You testified earlier that the Petitioner engaged your services after it received the PAN. Do you know what deficiency taxes were assessed against the Petitioner in this PAN?*

xxx xxx xxx

Q39 : *Mr. Witness, do know if anything happened after Petitioner sent these letters to the Respondent?*

A39 : Yes, on 20 May 2021 the BIR later sent the Petitioner its Final Decision on Disputed Assessment (FDDA) dated 19 May 2021 (the 'FDDA') with attached Assessment Notices.

Q40 : *How do you know this?*

[85] Exhibit "P-24", Docket – Vol. 6, pp. 2524 to 2552.

A40 : **The Petitioner gave me a copy of the FDDA with attached Assessment Notices shortly upon receipt of the same.** *(Emphases added)*

Based on the foregoing facts, it cannot be denied that petitioner actually received the PAN and the FDDA. On this score, petitioner's right to due process was not violated.

Petitioner is liable for deficiency income tax, VAT, WTC and EWT, but not liable for deficiency DST and IAET, as well as administrative penalties, for TY 2011.

Petitioner is liable for deficiency income tax for taxable year 2011.

Per the FLD, respondent assessed petitioner of deficiency income tax amounting to ₱96,247,742.73, including increments, for the taxable year 2011, thus:[86]

Taxable Income per ITR		₱ 4,989,110.39
Add: Adjustments		
1. Undeclared income	₱ 2,657,699.30	
2. Gross Profit on undeclared sales per SLS vs SAWT vs TPI[87]	16,706,323.56	
3. Gross Profit on undeclared purchases	167,376.30	
4. Gross Profit on undeclared importation	35,356,462.25	
5. Disallowed interest expense	13,245.00	
6. Disallowed separation pay	2,141,666.00	
7. Disallowed expenses for non-withholding of tax	113,460,502.57	170,503,274.98
Total adjusted taxable income		₱ 175,492,385.37
Tax Due		₱ 52,647,715.61
Less: Tax Credits/Payments per Return		
Prior year's excess credit	₱17,757,372.54	
Creditable tax withheld	4,461,148.24	
Excess MCIT Applied this Current Taxable Year	541,161.70	
Total tax credits and payments per return	₱22,759,682.48	
Less: Adjustments		
8. Excess tax credits carried-over to succeeding year	21,262,849.36	1,496,833.12
Basic Deficiency Income Tax		₱ 51,150,882.49

[86] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 222.

[87] Per FLD, actually written as "Gross Profit on undeclared sales per SLS vs SAWT vs LN", the word "LN" was changed to "TPI" for clarity, as the latter word was likewise used in the FDDA, Exhibit "P-9", USB; Exhibit "R-13", BIR Records – Folder 1 (Exhibit "R-14"), pp. 233 to 256.

Add: Penalty/Interest	
Interest at 20% p.a. from 4/16/12 to 9/10/16	45,096,860.24
Total Deficiency Income Tax	**₱96,247,742.73**

The following items, which are discussed in detail hereafter, comprise the foregoing assessment:

1. Undeclared income	₱	2,657,699.30
2. Gross Profit on undeclared sales per SLS vs SAWT vs TPI	₱	16,706,323.56
3. Gross Profit on undeclared purchases	₱	167,376.30
4. Gross Profit on undeclared importation	₱	35,356,462.25
5. Disallowed interest expense	₱	13,245.00
6. Disallowed separation pay	₱	2,141,666.00
7. Disallowed expenses for non-withholding of tax	₱	113,460,502.57
8. Excess tax credits carried-over to succeeding year	₱	21,262,849.36

1) <u>Undeclared income – ₱2,657,699.30</u>

Respondent's examiner found an alleged undeclared income from the difference of petitioner's adjusted declared sales per VAT returns and per income tax return (ITR), computed thus:[88]

Total Sales per VAT Returns		₱525,814,746.81
Add: Additional sales		
Sales per SLS	₱ 529,889,640.19	
Less: Sales per VAT returns	525,814,746.81	4,074,893.38
Total Sales		₱529,889,640.19
Less: Income declared per ITR		
Sales	₱ 524,795,403.17	
Other Income	2,436,537.72	527,231,940.89
Undeclared income subject to income tax		**₱2,657,699.30**

Based on the foregoing, petitioner's declared sales per ITR appears to be lower than its adjusted sales per VAT Returns. Respondent arrived at the adjusted sales by comparing petitioner's sales per Summary List of Sales (SLS) with the sales per VAT returns and found a difference of ₱4,074,893.38.

Petitioner countered that its "Sales Relief is based on Gross Sales" (pertaining to sales per SLS) and the sales reported in the VAT Returns are

[88] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2, (Exhibit "R-14-a"), p. 203.

"net of Sales Returns & Discount."[89] It submitted credit memoranda to the Court in the aggregate amount of ₱3,162,558.65[90] to support its sales returns and discounts. Upon verification, the Court finds the submitted documents to be in order. When such amount is taken into consideration in respondent's computation of undeclared income, it shows that petitioner's sales per ITR for the TY 2011 is higher than what is declared in its VAT Returns by ₱504,859.35, *viz.*:

Total sales per VAT returns			₱525,814,746.81
Add: Additional sales			
Sales per SLS	₱529,889,640.19		
Less: Credit memoranda	(3,162,558.65)	₱526,727,081.54	
Less: Sales per VAT returns		525,814,746.81	912,334.73
Total sales			₱526,727,081.54
Less: Income declared per ITR			
Sales		₱524,795,403.17	
Other Income		2,436,537.72	527,231,940.89
Difference			**(₱504,859.35)**

Thus, seeing that there is no undeclared income, respondent's assessment has no factual basis and is cancelled.

2) *Gross profit on undeclared sales per SLS vs SAWT vs TPI – ₱16,706,323.56*

Respondent compared petitioner's schedule of sales as against the summary list of purchases submitted by its customers, or from third party information (TPI), and found a discrepancy, and then multiplied the same by petitioner's gross profit ratio for the TY 2011 to determine the alleged deficiency taxable income:[91]

Undeclared sales per SLS vs SAWT - Schedule 3	₱ 114,869,618.98
Undeclared sales per SLS vs TPI	11,461,919.73
Total	₱ 126,331,538.71
Multiplied by gross profit ratio (P69,399,944.75/P524,795,403.17)	13%
Gross profit on undeclared sales	**₱16,706,323.56**

Petitioner argues that the TPI used by respondent in computing the discrepancies cannot be considered as factual bases for the assessment as the data gathered by the BIR from TPI sources were not verified.[92]

[89] Exhibit "P-7", USB.
[90] Exhibits "P-10", "P-10-1" to "P-10-88", USB.
[91] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2, (Exhibit "R-14-a"), p. 203.
[92] Pars. 74 to 79, *Memorandum*, Docket – Vol. 6, pp. 2689 to 2694.

The Court finds petitioner's argument with merit.

Pertinent portions of Revenue Memorandum Order (RMO) No. 46-2004,[93] on the Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes state as follows:

> III. Procedures
>
> xxx xxx xxx
>
> **Action on Protested LNs due to TPI discrepancy**
>
> xxx xxx xxx
>
> **3. Obtain Sworn Statements from TPI sources (Annexes 'B' and 'C') attesting to the veracity of the data provided.**
>
> xxx xxx xxx
>
> 4. Provide the taxpayer a brief 'grace period' (no more than ten [10] days) to reconcile the figures in his Sworn Statement against those of the TPI source. *(Emphases added)*

The abovementioned provision confirms that the BIR is required to verify the amounts it obtained from its computerized/third-party matching by securing confirmation or certification from the third-party information source. Records show that there were no such confirmation or certification from the TPI sources. In fact, upon cross examination of respondent's RO Mendoza, she admitted that the "discrepancies need no further verification or validation from the 3rd party".[94]

Without obtaining sworn statements from TPI sources, the data gathered from the computerized/third party matching are left unverified, thus, are not credible, and the resulting assessment is void for lack of factual and legal basis. The Supreme Court has consistently ruled that in order to be valid, an assessment must be based on actual facts supported by credible evidence.[95]

---

[93] SUBJECT: Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers

[94] TSN, July 13, 2023, p. 7.

[95] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

Hence, the assessments for deficiency income arising from undeclared sales per SLS vs. SAWT vs. TPI is cancelled for lack of factual basis.

3) Gross profit on undeclared purchases – ₱167,376.30

4) Gross profit on undeclared importation – ₱35,356,462.25

These assessment items are to be discussed together as they are computed by respondent similarly, as shown hereafter:[96]

3. Gross Profit on undeclared purchases	
Undeclared purchases - Schedule 4	₱ 1,098,306.44
Divided by cost ratio (P455,395,458.42/P524,795,403.17)	87%
Sales on undeclared purchases	₱ 1,265,682.74
Multiplied by gross profit ratio (P69,399,944.72/P524,795,403.17)	13%
Gross profit on undeclared purchases	**₱ 167,376.30**

4. Gross Profit on undeclared importation	
Undeclared importation - Schedule 5	₱ 232,005,549.77
Divided by cost ratio (P455,395,458.42/P524,795,403.17)	87%
Sales on undeclared importation	₱ 267,362,012.02
Multiplied by gross profit ratio	13%
Gross profit on undeclared importation	**₱35,356,462.25**

In addition to using TPI, respondent's similar assessments on petitioner's alleged undeclared purchases and importations are likewise devoid of factual basis.

To be sure, purchases and importations form part of petitioner's cost of sales/services, which may be deducted from its gross income. Relative thereto, it must be noted that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[97]

Also, the Supreme Court ruled in *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*,[98] that:

> The accrual method relies upon the taxpayer's right to receive amounts or its obligation to pay them, in opposition to actual receipt or

---

[96] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 203.
[97] *The Commissioner of Internal Revenue vs. Phoenix Assurance Co., Ltd, et seq.*, G.R. Nos. L-19727 and 19903, May 20, 1965.
[98] G.R. No. 172231, February 12, 2007.

> payment, which characterizes the cash method of accounting. **Amounts of income accrue where the right to receive them become fixed, where there is created an enforceable liability.** Similarly, liabilities are accrued when fixed and determinable in amount, without regard to indeterminacy merely of time of payment.
>
> For a taxpayer using the accrual method, the determinative question is, **when do the facts present themselves in such a manner that the taxpayer must recognize income or expense? The accrual of income and expense is permitted when the all-events test has been met. This test requires: (1) fixing of a right to income or liability to pay; and (2) the availability of the reasonable accurate determination of such income or liability.** *(Emphasis supplied)*

In relation thereto, the Supreme Court sets forth the three elements in the imposition of income tax, to wit:

(1) there must be gain or and profit;
(2) that the gain or profit is realized or received, actually or constructively; and,
(3) it is not exempted by law or treaty from income tax.[99]

It is clear from the foregoing that under the accrual method of accounting, amounts of income accrue where the right to receive them become fixed. In the present case, however, respondent failed to establish petitioner's right to receive income or that the gain or profit is realized or received from the alleged undeclared purchases and importations. Respondent only assumed that the alleged undeclared purchases and importations were sold and then applied petitioner's gross profit ratio for the TY 2011 to determine the supposed taxable income therefrom.

While it is presumed that the assessments are correct, they must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[100]

The Court, thus, finds that the assessments of deficiency income from undeclared purchases and importations lack factual basis and is therefore cancelled.

5. Disallowed interest expense – ₱13,245.00

---

[99] *Commissioner of Internal Revenue vs. The Court of Appeals, et. al.*, G.R. No, 108576, January 20, 1999.

[100] *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation*, G.R. No. L-46644, September 11, 1987, quoting *Collector of Internal Revenue vs. Benipayo*, L-13656, January 31, 1962.

Respondent found that the interest expense claimed by petitioner in its FS/ITR was not reduced by an amount equal to 33% of the interest income subjected to final tax; hence, the amount of ₱13,245.00 is disallowed as a deduction from gross income, computed as follows:[101]

Interest income subjected to final tax per ITR	₱ 32,110.00
Rate net of final tax	80%
Grossed up interest income subjected to final tax	₱ 40,137.50
Rate of reduction	33%
Amount to reduce interest expense under Sec. 34(B) of the NIRC	₱ 13,245.00
Less: Reconciling item per ITR	-
Disallowed interest expense	**₱ 13,245.00**

For this assessment item, petitioner signifies that it is amenable to respondent's findings;[102] therefore, the same is upheld by the Court.

6. Disallowed separation pay – ₱2,141,666.00

Respondent found that petitioner's separation pay amounting to ₱2,141,666.00[103] was not supported with documentary requirements such as Certificate of Exemption, thus, was disallowed pursuant to Section 32(B)(6)(b) of the NIRC of 1997, as amended, and RMO No. 26-2011.[104]

The said provision of law requires two conditions so that the employee benefits may be granted tax exemption:

1) the official or employee is separated from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee (involuntary); and,

2) the official or employee or his/her heirs receives any amount from the employer on account of such separation.

Petitioner counters that it "has a Union in which on their charter separation pay is exempted from withholding tax".[105] Further, petitioner

[101] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 202.
[102] Exhibit "P-7", USB; and par. 98, petitioner's *Memorandum*, Docket – Vol. 6, p. 2698.
[103] Note 27, *Notes to the Financial Statement[s]*, Exhibit "P-2", p. 23, USB.
[104] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 202.
[105] Exhibit "P-7", USB.

cited BIR Ruling No. 131-10 dated December 1, 2010, which was issued to Ms. Nilna L. Martin, who is not one of petitioner's separated employees.[106]

Petitioner also submitted check vouchers in relation to the payment of separation pays made within TY 2011.[107] Examination of the said documents shows that albeit they are unnumbered, they bear the date of issue and signatures of petitioner's general manager and the individual separated employees. The total separation payments made by petitioner for the year 2011 amount to ₱2,156,713.73.[108]

However, petitioner failed to prove that the two conditions for the separation pay to be excluded from gross income and exempt from income tax are present in this case. Thus, the disallowance of petitioner's separation pay in the amount of ₱2,141,666.00 is upheld.

7. Disallowed expenses for non-withholding of tax – ₱113,460,502.57

Respondent disallowed the following expenses for failure to withhold taxes therefrom, *viz.*:[109]

Salaries and wages not subjected to WTC	₱ 32,583,655.48
Income payment not subjected to WE - Schedule 1	80,876,847.09
Disallowed expenses for non-withholding	**₱113,460,502.57**

The salaries and wages not subjected to WTC amounting to ₱32,583,655.48 is computed as follows:[110]

Compensation per FS			
Direct charges - salaries, wages and benefits			₱ 81,074,914.00
Salaries and Wages			7,312,842.00
Other benefits			178,730.00
Total compensation per FS			₱ 88,566,486.00
Compensation per Alphalist	Non-taxable	Taxable	
Sch. 7.1 - Terminated	₱ 2,416,059.90	₱ 1,678,600.35	
Sch. 7.2 - Exempt	8,200.00	72,592.71	
Sch. 7.3 - No previous employer	6,116,324.70	43,444,178.98	
Sch. 7.5 - Minimum wage earners	5,571,873.88	-	
Total compensation per Alphalist	₱14,112,458.48	₱45,195,372.04	59,307,830.52
Compensation not subjected to withholding tax			₱ 29,258,655.48

106 Exhibit "P-8", USB.
107 Exhibits "P-13-1" to "P-13-12", USB.
108 Exhibit "P-13", USB.
109 Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2, (Exhibit "R-14-a"), p. 202.
110 Exhibit "P-9-8", and Exhibit "R-11", *Id.* at 199.

Add: Overclaimed additional exemption - Schedule 2	3,325,000.00
Compensation not subjected to withholding tax per audit	**₱32,583,655.48**

The Court notes that the Direct charges – salaries, wages and benefits per financial statements (FS) in the amount of ₱81,074,914.00 includes separation pay in the amount of ₱2,141,666.00,[111] which was previously disallowed. The amount then should be excluded from the computation of disallowed expenses for non-withholding of tax.

Petitioner argues that ₱29,258,655.48 of the disallowed salaries and wages are payments to People Serve Multi-Purpose Cooperative (People Serve), which is exempt from EWT.[112] It is noted, however, that in its reconciliation attached to its protest, petitioner avers that payments to People Serve amount to ₱18,592,634.17 only. Also, petitioner's total compensation per alphalist amount to only ₱57,674,151.23,[113] as opposed to respondent's ₱59,307,830.52 above (a discrepancy of ₱1,633,679.29).

As proof of People Serve's exemption, petitioner submitted the Certificate of Tax Exemption[114] and the BIR Ruling on the tax exemption of People Serve.[115] Scrutiny of the foregoing documents reveal that the Certificate of Tax Exemption (BIR Form No. 2333-B) of People Serve was issued on January 24, 2012 and was valid for five years or until January 24, 2017.[116] Nevertheless, BIR Ruling No. RR7-003-607 is dated August 15, 2005.[117]

Petitioner likewise submitted check vouchers issued to People Serve with official receipts (OR) and statements of account (SOA) issued by People Serve,[118] which shows total payments made by petitioner to People Serve in the amount of ₱27,815,979.83. Examination of the said documents show that several payments were made in 2011 for services rendered in the year 2010, which should be excluded among others. Hence, only the amount ₱19,980,626.38 can be considered valid expenses for the TY 2011, computed as follows:

[111] Note 27, *Notes to the Financial Statement[s]*, Exhibit "P-2", p. 23, USB.
[112] Exhibit "P-7", USB.
[113] BIR Records – Folder 2 (Exhibit "R-14-a"), p. 43.
[114] Exhibit "P-14", USB.
[115] Exhibit "P-14-1", USB.
[116] Exhibit "P-14", USB
[117] Exhibit "P-14-1", USB.
[118] Exhibits "P-15" to "P-15-34-2", USB.

Total of submitted check vouchers (Exhibit "P-15-1" to "P-15-34-2")		₱ 27,815,979.83
Less:		
Payments pertaining to period covered in the year 2010:		
1. February 25, 2010 Last pay of Heron (Exhibit "P-15-31-2")	₱ 4,909.52	
2. October 8 to 22, 2010 (Exhibit "P-15-30")	1,117,338.36	
3. October 23 to November 7, 2010 (Exhibit "P-15-29")	985,949.30	
4. November 8 to 22, 2010 (Exhibit "P-15-28")	1,116,244.54	
5. November 23 to December 7, 2010 (Exhibit "P-15-27")	1,121,874.08	
6. Portion of payment for December 23 to 31, 2010 (₱921,011.90 x 8/15 days) (Exhibit "P-15-25")	491,206.35	(4,837,522.15)
Check voucher with no breakdown, SOA and OR (Exhibit "P-15-8")		(2,997,831.30)
Total payments to People Serve for services rendered in 2011		**₱19,980,626.38**

Further, petitioner avers that respondent's computation of petitioner's compensation not subjected to withholding tax is flawed, as pointed out by its external auditor Mr. Danac, *viz.*:[119]

Q64: *xxx Do you agree with the BIR's computation?*

A64: No, because I found several errors in the BIR's computation such as the amount of "Direct charges – Salaries, wages and benefits". The BIR included SSS, PhilHealth, and Pag-IBIG contributions amounting to PhP 2,497,094.00 and Re-Rolling Charges of PhP 9,271,679.00, as shown in Note 27 of the Notes to the Petitioner's Audited Financial Statement for 2011. It also included payments made to People Serve Multi-Purpose Cooperative, a cooperative exempt from income tax, in the amount of PhP 18,592,634.17.

xxx xxx xxx

A70: For the next line item, "Salaries and wages", the amount of PhP 7,312,842.00 was arrived at by adding PhP 1,892,628 and PhP 5,420,213 as the total payments for "Selling" and "Administrative", respectively, under Note 27 of the 2011 AFS. However, the wholesale inclusion of this amount again failed to consider the SSS, PhilHealth, and Pag-IBIG payments for these items in the amount of PhP 352,197.00. Thus, the "Salaries and wages" computed in the PAN/FLD/FDDA should be decreased to PhP 6,960,645.00.

Q71: *What is the effect, if any, of these errors that you found on the computation of the BIR?*

A71: Considering the above errors the correct total compensation should only be PhP 57,852,881.83.

---

[119] Exhibit "P-24", Docket – Vol. 6, pp. 2541 to 2543.

Q72: *What significance does this correct total compensation have on the finding of the BIR, if any?*

A72: Since the correct total compensation is PhP 57,852,881.83 and the total compensation per alphalist is PhP 59,307,830.52, then there should be no finding of compensation not subject to withholding tax.

It is noted that petitioner did not explain why the Re-Rolling Charges of ₱9,271,679.00 should not be included. As to the inclusion of petitioner's SSS, PhilHealth, and Pag-IBIG contributions in the computation, the Court finds the same to be in order. It is only proper to include the same as the compensation per alphalist likewise includes the subject contributions under the heading "non-taxable".[120]

Anent the overclaimed additional exemption, petitioner avers that the same is erroneous. Petitioner claims that the amounts reported in its alphalist are true and correct.[121] No additional supporting documents, however, were submitted for the Court to verify.

Thus, considering the foregoing, the adjusted compensation not subjected to withholding tax amounts to ₱10,461,363.10, computed as follows:

Compensation per FS			
Direct charges - salaries, wages and benefits		₱81,074,914.00	
Less: Separation pay already disallowed		2,141,666.00	₱ 78,933,248.00
Salaries and Wages			7,312,842.00
Other benefits			178,730.00
Total compensation per FS			₱ 86,424,820.00
Compensation per Alphalist	Non-taxable	Taxable	
Sch. 7.1 - Terminated	₱ 2,416,059.90	₱ 1,678,600.35	
Sch. 7.2 - Exempt	8,200.00	72,592.71	
Sch. 7.3 - No previous employer	6,116,324.70	43,444,178.98	
Sch. 7.5 - Minimum wage earners	5,571,873.88	-	
Total compensation per Alphalist	₱14,112,458.48	₱45,195,372.04	59,307,830.52
Compensation not subjected to withholding tax			₱ 27,116,989.48
Less: Total payments to People Serve for services rendered in 2011			(19,980,626.38)
Add: Overclaimed additional exemption - Schedule 2			3,325,000.00
Adjusted compensation not subjected to withholding tax per audit			**₱10,461,363.10**

---

[120] Refer to BIR Form No. 1604-C Alphalist Format, columns 7b to 7f. Refer also to the BIR Records – Folder 2 (Exhibit "R-14-a"), p. 43.

[121] Exhibit "P-8", USB.

On the other hand, income payments not subjected to expanded withholding tax in the amount of ₱80,876,847.09 is computed as follows:[122]

EWT Rate	Expenses per FS/ITR	Per Return/Alphalist	Expenses not subjected to EWT
1%	₱ 233,195,849.82	₱ 160,066,395.23	₱ 73,129,454.59
2%	106,930,143.00	100,741,342.76	6,188,800.24
5%	47,430.00	47,430.00	-
10%	3,584,671.00	2,026,078.74	1,558,592.26
TOTAL	**₱343,758,093.82**	**₱262,881,246.73**	**₱80,876,847.09**

Similarly, petitioner argues that the assessment of income payments not subjected to EWT is wrong for including in the computation, expenses that are not subject to EWT, thus:[123]

A73: xxx First, the BIR included the Petitioner's importations in its computation, which are obviously not subject to EWT.

Secondly, the BIR included fuel and oil, which are not subject to EWT. However, with regard to its payment for its power consumption, the Petitioner paid and remitted EWT on its payments to MERALCO.

xxx xxx xxx

A75: Thirdly, the BIR included salaries of security guards which are not subject to withholding.

Out of the total payment made to the Petitioner's security agency, only the agency fee or management should be subject to withholding tax. The rest of the payment are for the salaries of the guards assigned to the premises of the Petitioner.

xxx xxx xxx

A77: Fourth, the BIR included payments to GPPs.

The BIR reasoned that the Petitioner did not submit ORs issued by the general professional partnerships (GPPs) to show these transactions. However, these records are readily available at the Petitioner's offices.

xxx xxx xxx

A79: Fifth, the BIR included petty cash expenses for travel and transport and delivery charges, all of which are reimbursements to personnel, which are not income payments and are thus not subjected to EWT.

---

[122] Exhibit "P-9-8", USB; Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 197.
[123] Exhibit "P-24", Docket – Vol. 6, pp. 2543 to 2545.

The disallowed expenses shall be discussed according to the group of EWT rate.

Expenses subject to 1% EWT

Per respondent's audit, the following expenses are subject to 1% EWT:[124]

Purchases of Direct Materials	₱ 204,848,676.82
Manufacturing overhead:	
Factory supplies	1,071,347.00
Machinery supplies	6,518,655.00
Machinery spare parts supplies	9,017,275.00
Tools supplies	3,050,870.00
Additions to property and equipment	8,689,026.00
Total expenses subject to 1% EWT	₱ 233,195,849.82
Less: Per Return/Alphalist	160,066,395.23
Expenses not subjected to 1% EWT	**₱ 73,129,454.59**

Total purchases of direct materials as reported in Note 25 is ₱457,171,909.00,[125] but respondent's examiner only reflected the amount ₱204,848,676.82 as expenses subject to 1% EWT. Petitioner avers that its local purchases only amount to ₱149,961,865.20. Further, petitioner claims that machinery spare parts in the amount of ₱9,017,275.00 and machinery and equipment amounting to ₱5,336,979.18 are imported from China.[126]

Petitioner submitted commercial invoices and importation documents for the TY 2011 amounting to ₱287,147,911.81.[127] The same was, however, not classified into direct materials purchases, machinery spare parts, or property and equipment. The Court, therefore, cannot ascertain whether or not the importations pertain to the above-mentioned items.

Expenses subject to 2% EWT

Per respondent's audit, the following expenses are subject to 2% EWT:[128]

---

[124] Schedule 1, Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 197.
[125] Note 25, *Notes to the Financial Statement[s]*, Exhibit "P-2", p. 22, USB.
[126] Exhibit "P-8", USB.
[127] Exhibits "P-12" to "P-12-23", USB.
[128] Schedule 1, Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 197.

Manufacturing Overhead:	
Guard fees	₱ 3,742,238.00
Insurance and bond premium	1,120,731.00
Factory maintenance	935,636.00
Power, fuel & oil	50,863,125.00
Ordinary deductions:	
Advertising and promotions	269,523.00
Communication, light and water	885,896.00
Insurance and bond premium	405,703.00
Miscellaneous	280,806.00
Repairs and maintenance - labor or labor & materials	607,932.00
Representation and entertainment	33,397.00
Guard fees	1,871,119.00
Transportation and travel	230,511.00
Christmas compliments	38,948.00
Deliveries and trucking	6,604,911.00
Export expenses	49,224.00
Hotel accommodation	53,054.00
Membership fee	2,400.00
Seminar and service fee	14,200.00
Subscription	206,165.00
Subsistence	95,724.00
Interest	35,313,593.00
Prepayments	1,885,838.00
Additions to property & equipment	1,419,469.00
Total expenses subject to 2% EWT	₱ 106,930,143.00
Less: Per Return/Alphalist	100,741,342.76
Expenses not subjected to 2% EWT	**₱ 6,188,800.24**

Petitioner counters that power, fuel & oil of ₱50,863,125.00 pertains to its power consumption paid to MERALCO and not all are subject to EWT. Petitioner submitted check vouchers with invoices and ORs for electricity bill payments to MERALCO for TY 2011 but only amounting to ₱33,763,734.50.[129] Examination of these documents reveal that 2% EWT in the aggregate amount of ₱675,274.69 have been withheld from all the bill payments.

For the guard fees in the total amount of ₱5,613,357.00, petitioner argues that this pertains to payments to Leopard Integrated Security Services, Inc., a security agency, for salaries of security guards. Petitioner submitted check vouchers with service invoices and official receipts[130] related thereto.

[129] Exhibits "P-16" to "P-16-24-2", USB.
[130] Exhibits "P-17-1" to "P-17-13-1-6", USB.

Per RMC No. 39-07,[131] pursuant to Section 1, Rule XIV of the 1994 Revised Rules and Regulations implementing Republic Act (RA) No. 5487,[132] as amended, "the monies received by the Security Agency representing salaries shall be earmarked and segregated for the said guards, the amount paid by the client representing the salaries of the security guards will not form part of the Security Agency's gross income, and neither will it form part of its taxable gross receipts when actually or constructively received." Clearly, as correctly pointed out by petitioner, not all payments to the security agency are subject to withholding tax as the salaries of the security guards are to be earmarked.

Examination of the supporting documents submitted shows that of the ₱5,613,357.00 total security guard fees, the amount ₱4,972,633.58 is earmarked for the salaries of security guards.[133] Clearly, this amount is not subject to 2% EWT, and should be deducted accordingly.

Other items in respondent's computation are transportation and travel, and subsistence expenses. Petitioner avers that these are given to employees such as messengers and collectors when they are out of the office, and are paid thru the petty cash fund. For this reason, petitioner states that said expenses could not be subjected to EWT.[134] Petitioner submitted check vouchers for petty cash fund replenishments and cash vouchers for petty cash expenses and reimbursements amounting to ₱656,724.10.[135] The expenses paid for therein also include factory supply, medical & dental, telephone, fax & postage, subscription, office supply, miscellaneous, delivery charges, travel & transportation, gasoline/fuel expenses, parking fees, and toll fees, which are of minimal amounts.

The rest of the items which are not protested by petitioner are deemed to be in order in accordance with the presumption of regularity of respondent's assessment.

Expenses subject to 10% EWT

Respondent found the following expenses to be subject to 10% EWT:[136]

---

131 SUBJECT: Clarifying the Income Tax and VAT Treatment of Agency Fees/Gross Receipts of Security Agencies Including the Withholding of Taxes Due thereon.

132 An Act to Regulate the Organization and Operation of Private Detective, Watchmen or Security Guards Agencies, known as "The Private Security Agency Law".

133 Exhibits "P-17", USB.

134 Exhibit "P-8", USB.

135 Exhibits "P-19" to "P-19-53-8", USB.

136 Schedule 1, Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 197.

Management fee	₱ 1,829,263.00
Commissions	1,368,627.00
Professional fees	228,331.00
Brokerage	24,000.00
Medical & Dental	134,450.00
Total expenses subject to 10% EWT	₱ 3,584,671.00
Less: Per Return/Alphalist	2,026,078.74
Expenses not subjected to 10% EWT	**₱1,558,592.26**

Petitioner argues that the foregoing includes payments to general professional partnerships (GPPs) which are not subject to EWT. In support thereof, petitioner submitted check vouchers with statements of account and ORs for payments to other professionals and GPPs.[137] The same documents show that for TY 2011, petitioner paid a total of ₱560,300.00 in professional fees, broken down as follows:

Exhibits	Professional Fees	Amount
"P-18-1" to "P-18-12"	Peter Sandoval	₱ 24,000.00
"P-18-13" to "P-18-24"	Dr. George Eufemio	12,000.00
"P-18-25" to "P-18-25-1"	Dr. June Lim	5,000.00
"P-18-26" to "P-18-27-1"	Dr. Louie Tan	3,000.00
"P-18-28" to "P-18-39-1"	George Sandoval	12,000.00
"P-18-40" to "P-18-41-1"	Dr. Josefina Qua	21,000.00
"P-18-42" to "P-18-43-1"	Cert. Internat'l Phils. Inc.	55,000.00
	Total Professional Fees	**₱ 132,000.00**
	GPPs	
"P-18-44" to "P-18-56"	Danac & Associates	₱ 158,000.00
"P-18-57" to "P-18-113"	Jimeno Cope & David Law Office	117,500.00
"P-18-114" to "P-18-126-2"	Tan Acut Lopez & Pison Law Office	92,800.00
"P-18-127" to "P-18-138-2"	Tan Venturanza Valdez	60,000.00
	Total Professional fees to GPPs	**₱ 428,300.00**
	TOTAL	**₱ 560,300.00**

Pertinent herewith is Section 26 of the NIRC of 1997, as amended, which provides:

> SEC. 26. *Tax Liability of Members of General Professional Partnerships.* — **A general professional partnership as such shall not be subject to the income tax** imposed under this Chapter. Persons engaging in business as partners in a general professional partnership shall be liable for income tax only in their separate and individual capacities.

[137] Exhibits "P-18" to "P-18-138-2", USB.

For purposes of computing the distributive share of the partners, the net income of the partnership shall be computed in the same manner as a corporation.

Each partner shall report as gross income his distributive share, actually or constructively received, in the net income of the partnership. *(Emphasis added)*

Pursuant to the above-mentioned provision, GPPs are not subject to income tax and consequently to withholding tax. In the present case, the income payments to GPPs in the total amount of ₱428,300.00 are not subject to 10% EWT and thus, should be excluded from the assessment computation. It is noted, however, that respondent's examiner erroneously picked up the amount ₱228,331.00, which is the amount of office supplies expense, instead of ₱560,300.00 for professional fees.[138] Hence, professional fees subject to 10% EWT should be reduced by ₱96,331.00 to reflect the correct amount of professional fees subject to 10% EWT of only ₱132,000.00.

Thus, petitioner's expenses amounting to ₱75,151,158.41 should be disallowed for failure to withhold the corresponding EWT therefrom:

	1%	2%	10%	Total
Expenses per FS/ITR	₱ 233,195,849.82	₱106,930,143.00	₱ 3,584,671.00	₱ 343,710,663.82
Less:				
Earmarked for salaries of guards		4,972,633.58		4,972,633.58
Expenses/reimbursements paid thru petty cash fund		656,724.10		656,724.10
Adjustment to reflect correct amount of professional fees subject to EWT			96,331.00	96,331.00
	₱ 233,195,849.82	₱101,300,785.32	₱ 3,488,340.00	₱ 337,984,975.14
Per Return/Alphalist	160,066,395.23	100,741,342.76	2,026,078.74	262,833,816.73
Expenses not subjected to EWT	**₱73,129,454.59**	**₱ 559,442.56**	**₱1,462,261.26**	**₱75,151,158.41**

To summarize, the following expenses amounting to ₱85,612,521.51 is disallowed for petitioner's failure to prove that the same were subjected to the withholding tax, *viz.*:

Salaries and wages not subjected to WTC	₱ 10,461,363.10
Income payment not subjected to WE - Schedule 1	75,151,158.41
Disallowed expenses for non-withholding	**₱ 85,612,521.51**

8. Excess tax credits carried-over to succeeding year – ₱21,262,849.36

M

[138] Note 28, *Notes to the Financial Statement[s]*, Exhibit "P-2", p. 24, USB.

Petitioner's excess tax credits at the end of TY 2011 in the amount of ₱21,262,849.36 was deducted by respondent "considering that the said amount has been forwarded and offset as deduction to the succeeding year".[139] The Court finds this in order, but should be in the correct amount reflected in petitioner's annual ITR which is ₱21,262,949.36.[140]

In sum, petitioner is liable to basic deficiency income tax in the amount of ₱26,330,229.75, computed as follows:

Taxable Income per ITR		₱ 4,989,110.39
Add: Adjustments		
1. Disallowed interest expense	₱ 13,245.00	
2. Disallowed separation pay	2,141,666.00	
3. Disallowed expenses for non-withholding of tax	85,612,521.51	87,767,432.51
Total adjusted taxable income		₱ 92,756,542.90
Tax Due		₱ 27,826,962.87
Less: Tax Credits/Payments per Return		
Prior year's excess credit	₱17,757,372.54	
Creditable tax withheld	4,461,148.24	
Excess MCIT Applied this Current Taxable Year	541,161.70	
Total tax credits and payments per return	₱22,759,682.48	
Less: Adjustments		
4. Excess tax credits carried-over to succeeding year	21,262,949.36	1,496,733.12
Basic Deficiency Income Tax		**₱26,330,229.75**

Petitioner is liable for deficiency VAT for TY 2011.

Respondent assessed petitioner of deficiency VAT amounting to ₱95,617,163.81, including increments, for TY 2011 thus:[141]

Taxable sales per VAT returns		₱519,871,065.31
Add: Adjustments		
1. Taxable sales and other income subject to VAT	₱ 5,492,087.46	
2. Undeclared sales per SLS vs SAWT vs LN	126,331,538.71	
3. Sales on undeclared purchases	1,265,682.74	
4. Sales on undeclared importation	267,362,012.02	
5. Sales not qualified for VAT exemption	5,943,681.50	406,395,002.43
Taxable sales per audit		₱926,266,067.74
Output tax		₱111,151,928.13
Less: Tax credits and payments per VAT returns		
Creditable input tax		

un

[139] Exhibit "P-9-8", USB; Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 202.
[140] Lines 34 to 34B and 37, Exhibit "P-23", USB.
[141] Exhibit "P-9-8", USB; Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), pp. 221 to 222.

Current input tax claimed for the year		₱ 60,828,950.01	
Less: Deductions from input tax			
Input tax deferred for the succeeding period		447,396.87	
Net creditable input tax		₱ 60,381,553.14	
Add: Credits and payments			
VAT withheld on sales to government	₱ 138,745.39		
VAT payments	11,769,491.01	11,908,236.40	
Total tax credits and payments per VAT returns		₱ 72,289,789.54	
Less: Adjustments			
6. Overclaimed input tax		₱ 705,674.74	
7. Disallowed final VAT withheld on sales to government		138,745.39	
8. Disallowed input tax to be deferred for the succeeding period		523,018.65	
9. Disallowed input tax on sale to gov't to be closed to expense		2,403,408.60	
10. Disallowed input tax allocable to exempt sales		687,595.60	
11. Disallowed input tax on non-VAT purchases		601,995.09	
12. Excess credits carried-over to succeeding period		5,722,181.23	
Total		₱ 10,782,619.29	61,507,170.25
Basic deficiency VAT			₱ 49,644,757.88
Add: Penalty/Interest			
20% Interest p.a. from 1/26/2012 to 9/10/2016			45,972,405.93
Total deficiency VAT			**₱95,617,163.81**

The foregoing assessment is comprised of the following items:

1. Taxable sales and other income subject to VAT	₱	5,492,087.46
2. Undeclared sales per SLS vs SAWT vs LN	₱	126,331,538.71
3. Sales on undeclared purchases	₱	1,265,682.74
4. Sales on undeclared importation	₱	267,362,012.02
5. Sales not qualified for VAT exemption	₱	5,943,681.50
6. Overclaimed input tax	₱	705,674.74
7. Disallowed final VAT withheld on sales to government	₱	138,745.39
8. Disallowed input tax to be deferred for the succeeding period	₱	523,018.65
9. Disallowed input tax on sale to gov't. to be closed to expense	₱	2,403,408.60
10. Disallowed input tax allocable to exempt sales	₱	687,595.60
11. Disallowed input tax on non-VAT purchases	₱	601,995.09
12. Excess credits carried-over to succeeding period	₱	5,722,181.23

1. Taxable sales and other income subject to VAT – ₱5,492,087.46

Respondent compared petitioner's sales per ITR with the sales declared in its VAT returns, found a discrepancy of ₱5,492,087.46, and assessed the same as taxable sales and other income subject to VAT:[142]

[142] Exhibit "P-9-8", USB; Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 201.

Sales per ITR		₱ 524,795,403.17
Add: Other taxable income		
Other income	₱ 2,436,537.72	
Additional sales - IT No. 1	4,074,893.38	6,511,431.10
Total sales and other income		₱ 531,306,834.27
Less: Total sales per VAT returns		525,814,746.81
Taxable sales and other income not subjected to VAT		**₱ 5,492,087.46**

Petitioner counters that the foregoing computation is erroneous for the following reasons:[143]

a) "Other Income" in the amount of ₱2,436,537.72 is composed of Meralco refund and warehouse charges, and that no sale took place when these revenues were earned"; and,

b) The amount of ₱4,074,893.38 comes from the first item in the previously discussed deficiency income tax assessment, which is supported by petitioner's credit memoranda.

It also submitted a VAT Analysis for the year 2011.[144] The Court notes that total sales per VAT Returns in petitioner's VAT analysis amount to ₱527,107,431.85, which is higher than per respondent's audit of ₱525,814,746.81. Petitioner, however, did not submit its Quarterly VAT Returns for TY 2011 for the Court to verify the amounts, nor did it submit evidence to prove that its other income pertains to Meralco refund and warehouse charges.

It is an accepted principle that respondent's assessments enjoy the presumption of regularity. If petitioner believes that it is erroneous, it should submit evidence to counter and overcome the same. Here, petitioner failed to substantiate its counter-arguments to respondent's assessment.

Thus, the subject assessment item should be adjusted only to the extent of the substantiated credit memoranda, reducing the assessed amount to ₱2,329,528.81, which determined as follows:

143 A87 to A89, Exhibit "P-24", Docket - Vol. 6, p. 2547.
144 Exhibit "P-21", USB, and BIR Records – Folder 2 (Exhibit "R-14-a"), p. 39 to 42.

Sales per ITR			₱ 524,795,403.17
Add: Other taxable income			
Other income		₱ 2,436,537.72	
Additional sales - IT No. 1	₱ 4,074,893.38		
Less: Credit memoranda	(3,162,558.65)	912,334.73	3,348,872.45
Total sales and other income			₱ 528,144,275.62
Less: Total sales per VAT returns			525,814,746.81
Taxable sales and other income not subjected to VAT			**₱ 2,329,528.81**

2. Undeclared sales per SLS vs SAWT vs LN - ₱126,331,538.71

3. Sales on undeclared purchases - ₱1,265,682.74

4. Sales on undeclared importation - ₱267,362,012.02

These assessment items are to be discussed together as they are all taken from the deficiency income tax assessment items. As previously discussed, the subject assessment items were cancelled for lack of factual basis. Similarly, these assessment items for deficiency VAT is also cancelled for the same reason.

5. Sales not qualified for VAT exemption - ₱5,943,681.50

10. Disallowed input tax allocable to exempt sales - ₱687,595.60

Respondent's audit found that petitioner had exempt sales that did not qualify for exemption pursuant to Sections 106 and 109 of the NIRC of 1997, as amended, in the total amount of ₱5,943,681.50.[145] However, the input tax allocated thereto amounting to ₱687,595.60 is disallowed by respondent:[146]

Total input tax claimed per VAT Returns		₱ 60,828,950.01
Multiplied by ratable portion of the input tax to exempt sales:		
Exempt sales	₱5,943,681.50	
Divided by total sales	₱525,814,746.81	1.13%
Disallowed input tax allocable to exempt sales		**₱ 687,595.60**

In its supplement to the protest, petitioner states that sales in the amount of ₱5,943,681.50 "are Export Sales made by the Company".[147] Petitioner submitted to respondent a schedule of its exportations for TY

[145] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 201.
[146] *Id.* at p. 200.
[147] Exhibit "P-8", USB.

2011 with invoices, commercial invoices, and export declarations in the total amount of ₱9,112,374.58.[148] Examination of the documents show that the amount ₱5,943,681.50 pertain to exportations for the period from April to December 2011, and that the same are indeed not exempt sales but classified as zero-rated sales per the "zero-rated" stamp on the face of petitioner's invoices.

On the other hand, respondent's VAT Returns Summary for TY 2011 shows that petitioner reported the amount of ₱5,943,681.50 as exempt sales, while it did not report any zero-rated sales for the year.[149]

It is notable that petitioner did not submit bills of lading and certificates of inward remittances for the said export sales, as required by Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which reads:

> SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term 'export sales' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

Based on the foregoing provision, in order for an export sale to qualify as zero-rated, the following essential elements must be present:

1. the sale was made by a VAT registered person;
2. there was sale and actual shipment of goods from the Philippines to a foreign country; and,
3. the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

---

[148] BIR Records – Folder 2 (Exhibit "R-14-a"), pp. 2 to 38.
[149] BIR Records – Folder 1 (Exhibit "R-14"), p. 113.

Thus, for petitioner's failure to prove that the subject sales qualify for zero-rating, the Court is constrained to uphold the assessment. Consequently, there being no exempt sales for TY 2011, the disallowance of petitioner's input taxes allocable to exempt sales in the amount of ₱687,595.60 is cancelled.

6. Overclaimed/Unsupported input tax - ₱705,674.74

Respondent's examiner found overclaimed/unsupported input taxes in the amount of ₱705,674.74 computed as follows:[150]

Input tax claimed on current purchases per VAT returns		₱60,828,950.01
Less: Input tax - should be		
Total purchases per VAT returns	₱501,027,293.95	
Multiplied by 12% VAT rate	12%	60,123,275.27
Unsupported input tax		**₱ 705,674.74**

Petitioner assails the amount of ₱501,027,293.95, claiming that the amount is erroneous as "[t]he BIR arrived at a deficiency due to a mistaken computation of figures."[151] Contrary to its claim, its VAT Analysis does not have supporting documents and does not show that there is no unsupported input VAT. The only way to refute respondent's findings is to substantiate the total input tax declared in its VAT returns for TY 2011, which petitioner failed to do.

Hence, the disallowance of overclaimed/unsupported input taxes amounting to ₱705,674.74 is upheld.

7. Disallowed final VAT withheld on sales to government - ₱138,745.39

The amount reported by petitioner in its VAT Returns for final VAT withheld on sales to government amount to ₱138,745.39.[152] Respondent, however, found that such is unsupported.[153]

The Court notes that there was no mention of this assessment item in petitioner's protest or supplement to the protest to the FLD,[154] and petitioner

[150] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 201.
[151] A94, Exhibit "P-24", Docket – Vol. 6, p. 2548.
[152] BIR Records – Folder 1 (Exhibit "R-14"), p. 113.
[153] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 201.
[154] Exhibits "P-7" and "P-8", USB.

did not submit BIR Forms No. 2307 Certificates of Creditable Tax Withheld at Source to substantiate the final VAT withheld.

Consequently, this disallowance remains.

8. Disallowed input tax to be deferred for the succeeding period - ₱523,018.65

Based on petitioner's additions to its Property, Plant & Equipment account, as reported in its Audited Financial Statements (AFS),[155] respondent's examiner computed the amount of input tax thereon and the amount to be deferred for the succeeding period, then compared the same with the actual input tax deferred by petitioner per its quarterly VAT returns for 2011, thus:[156]

Allowable deferred input tax (DIT) from previous return			
Add: Input tax on purchase of depreciable goods > 1M			
Additions to Depreciable Goods		Tax Base	VAT
Land improvement		₱ 1,250,000.00	₱ 150,000.00
Machineries and equipment		5,336,979.00	640,437.48
Factory fixtures		267,704.00	32,124.48
Office building, furniture and fixture		169,469.00	20,336.28
Others		3,084,343.00	370,121.16
Total input tax to be deferred			₱1,213,019.40
Less: Applied deferred input tax			
From previous			
From current			
Land improvement	₱ 150,000.00	x12/60months	₱ 30,000.00
Machineries and equipment	640,437.48	x12/60months	128,087.50
Factory fixtures	32,124.48	x12/60months	6,424.90
Office building, furniture and fixture	20,336.28	x12/60months	4,067.26
Others	370,121.16	x12/60months	74,024.23
Applied deferred input tax on capital goods >1M			₱ 242,603.88
Input tax TO BE deferred			₱ 970,415.52
Input tax deferred for the succeeding period per VAT Returns			447,396.87
Disallowed input tax to be deferred for the succeeding period			**₱523,018.65**

Likewise, there was no mention of this particular assessment item in petitioner's protest or supplement to the protest to the FLD.[157] Petitioner, however, argued that "[t]he BIR did not specify the source or sources which led to the amount of PhP523,018.65." Further, it avers that the correct

---

155 Note 14, *Notes to the Financial Statement[s]*, Exhibit "P-2", p. 18, USB.
156 Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 200.
157 Exhibits "P-7" and "P-8", USB.

amount for input tax deferred for the succeeding period per VAT returns should be ₱878,910.37 per its VAT analysis. This amount is corroborated by Note 10 of petitioner's AFS.[158]

As earlier stated, Section 228 of the NIRC of 1997, as amended, provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

In relation thereto, Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-13, provides that the FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void.*

In the present case, for failure to state where the amounts used in the computation were taken or picked up from, respondent failed to state the facts of the disallowance of input tax to be deferred for the succeeding period amounting to ₱523,018.65. According to the foregoing provision, this failure renders this corresponding part of the assessment void.

9. Disallowed input tax on sale to government to be closed to expense - ₱2,403,408.60

Respondent found that petitioner should charge to expense the following input tax on sale to government, *viz.*:[159]

Input tax attributable to sale to government			
Current creditable input tax		₱60,828,950.01	
Multiplied by ratable portion of the input tax to sale to government			
Sales to government per VAT returns	₱52,608,109.84		
Divided by Total Sales per VAT returns	₱525,814,746.81	10%	₱ 6,085,976.29
Standard (Applied) Input tax			
Sales to government per VAT returns		₱52,608,109.84	
Multiplied by 12% VAT Rate		12%	
Output VAT		₱ 6,312,973.18	
Less: Allowable VAT withheld on sales to Government			
Sales to government per VAT returns	₱ 52,608,109.84		
Multiplied by Final VAT Rate	5%	2,630,405.49	3,682,567.69
Input tax TO BE closed to expense			₱ 2,403,408.60
Input tax closed to expense per VAT Returns			-
Disallowed input tax on sale to gov't to be closed to expense			**₱2,403,408.60**

[158] A97, Exhibit "P-24", Docket – Vol. 6, p. 2549; Note 10, *Notes to the Financial Statement[s]*, Exhibit "P-2", p. 16, USB.

[159] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 200.

In its *Memorandum*, petitioner states that it is amenable to the assessment.[160] Thus, this item of assessment stays.

11. Disallowed input tax on non-VAT purchases – ₱601,995.09

Respondent's audit found that petitioner had the following non-VAT purchases and disallowed the corresponding input tax thereon, for failure to comply with the invoicing requirements set forth under Section 110, in relation to Sections 113 and 237 of the NIRC of 1997, as amended, thus:[161]

NAME	NON-VAT PURCHASES
Ao, Raymund Arceo	₱ 118,400.00
Asia Insurance (Phils.) Corp.	1,376,966.03
Brenntag Ingredients Inc. (Fmr: EAC Industrial Ingred)	573,660.71
Calica, Alma Garcia	90,000.00
Castillo, Gloria Lanto	4,464.29
Constantino, Gina Aguilar	17,248.00
E Global Structure	84,464.28
Electroworld, Inc.	7,321.43
George Sandoval	12,000.00
Globe Telecom, Inc.	20,817.44
Ibe, Irene Galang	29,000.00
Ingasco Incorporated	347,906.89
Jovian Industrial Sales	34,180.00
Orogo, Nonilo Altares	333,995.00
Philippine Ports Authority	190,348.05
Rosales, Emeliana Pelias	14,160.00
Seaford Shipping Lines	1,206,577.65
Sun Magic Marketing	363,242.80
T.S. Lines Ltd.	26,920.54
The Mercantile Insurance Co., Inc.	64,590.81
Treasure Steel Works	100,361.79
Grand Total	₱5,016,625.71
Multiplied by VAT Rate	12%
Unsupported input tax claimed thereon	**₱601,995.09**

Petitioner claims that "the BIR did not indicate the specific transactions and invoices/ORs which it deems to be non-compliant with invoicing requirements. Petitioner posits that the details of the transactions

[160] Par. 171, petitioner's *Memorandum*, Docket – Vol. 6, p. 2716.
[161] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), pp. 200 and 208.

that these alleged purchases refer to should be indicated in order for them to verify or dispute the same with its own documents."[162]

The Court agrees with petitioner. Respondent's schedule clearly lacks the necessary information for the particular item to be identified, such as invoice/OR number and date; hence, this assessment violates petitioner's right to due process and is cancelled.

12. Excess credits carried-over to succeeding period - ₱5,722,181.23

In computing for the input taxes that are to be offset against the output tax due, respondent deducted petitioner's excess input taxes at the end of the fourth quarter in the amount of ₱5,722,181.23 from the total input taxes on current purchases for TY 2011 "considering that the said amount has been forwarded to the succeeding year, pursuant to Section 110 (B) of the Tax Code."[163]

The Court finds this deduction proper as the carried over excess input tax for TY 2011 may have been utilized to offset against any output tax that petitioner may have incurred in the succeeding taxable period. Petitioner likewise failed to proffer any evidence to establish sufficiently that it did not utilize the said input tax carried over to the succeeding period. Thus, if the Court were to allow this without ascertaining that such excess input tax carried over is still available, taxpayers may end up benefiting twice from it, *i.e.*, tax credit against output VAT in the subsequent periods and payment for deficiency VAT at the expense of the government.

In sum, petitioner is liable for deficiency VAT for TY 2011 in the reduced amount of ₱57,533.49, computed thus:

Taxable sales per VAT returns		₱519,871,065.31
Add: Adjustments		
1. Taxable sales and other income subject to VAT	₱ 2,329,528.81	
2. Undeclared sales per SLS vs SAWT vs LN	-	
3. Sales on undeclared purchases	-	
4. Sales on undeclared importation	-	
5. Sales not qualified for VAT exemption	5,943,681.50	8,273,210.31
Taxable sales per audit		₱528,144,275.62
Output tax		₱ 63,377,313.07
Less: Tax credits and payments per VAT returns		
Creditable input tax		

162 A98, Exhibit "P-24", Docket – Vol. 6, p. 2549.
163 Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 200.

Current input tax claimed for the year		₱ 60,828,950.01	
Less: Deductions from input tax			
Input tax deferred for the succeeding period		447,396.87	
Net creditable input tax		₱ 60,381,553.14	
Add: Credits and payments			
VAT withheld on sales to government	₱ 138,745.39		
VAT payments	11,769,491.01	11,908,236.40	
Total tax credits and payments per VAT returns		₱ 72,289,789.54	
Less: Adjustments			
6. Overclaimed input tax		₱ 705,674.74	
7. Disallowed final VAT withheld on sales to government		138,745.39	
8. Disallowed input tax to be deferred for the succeeding period		-	
9. Disallowed input tax on sale to gov't to be closed to expense		2,403,408.60	
10. Disallowed input tax allocable to exempt sales		-	
11. Disallowed input tax on non-VAT purchases		-	
12. Excess credits carried-over to succeeding period		5,722,181.23	
Total		₱ 8,970,009.96	63,319,779.58
Basic deficiency VAT			**₱ 57,533.49**

Petitioner is not liable for DST for TY 2011.

Respondent found that petitioner had certain transactions which were not subjected to DST, hence assessed as follows:[164]

Nature of Transaction	NIRC, as amended	Tax Base	Tax Rate	Tax Due
a) Increase in Capital Stock	Sec. 174/175			
Capital stock, ending		₱33,660,000.00		
Capital stock, beginning		27,792,000.00		
Difference		₱ 5,868,000.00	₱1.00/200	₱ 29,340.00
b) Advances from Stockholders	Sec. 179	38,800,000.00	₱1.00/200	194,000.00
c) Loans	Sec. 179	67,000,000.00	₱1.00/200	335,000.00
d) Rent	Sec. 194	47,430.00	1st ₱2,000.00 = ₱3.00; in excess ₱1.00/₱1,000.00	49.00
Total DST Due				₱ 558,389.00
Total DST Paid				431,848.00
Basic Deficiency DST				**₱ 126,541.00**

The DST assessment is comprised of the following items:

a) Increase in Capital Stock	₱	29,340.00
b) Advances from Stockholders	₱	194,000.00
c) Loans	₱	335,000.00
d) Rent	₱	49.00

164 Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 202.

a) Increase in Capital Stock

Petitioner counters that the increase in capital stock arose from the declaration of stock dividends for which DST in the amount of ₱29,340.00 has been paid.[165] It submitted the Secretary's Certificate informing the Securities and Exchange Commission (SEC) of its stock dividend declaration amounting to ₱5,868,000.00.[166] Petitioner likewise submitted the Documentary Stamp Tax Declaration/Return (BIR Form No. 2000), showing DST payment in the amount of ₱29,340.00.[167]

Examination of the submitted documents shows that the DST due on the issuance of stocks arising from the stock dividends declaration in the year 2011 has been duly paid for. Accordingly, this assessment item is cancelled.

b) Advances from Stockholders

Anent the Advances from Stockholders, the amount ₱38,800,000.00 consists of the following:[168]

	2011	2010
Advances from Stockholders	₱ 12,000,000.00	₱ 12,000,000.00
Advances from JTKC Equities	26,800,000.00	26,800,000.00
Total	**₱38,800,000.00**	**₱38,800,000.00**

Petitioner avers that the amount subjected by respondent to DST is carried-over from the previous TY 2010. In other words, no new transactions were incurred in 2011. Thus, assuming that the DST for the amount being assessed is indeed unpaid, these transactions took place before 2011, thus, taking it outside the coverage of the authority contained in the LOA granted to the revenue officers.[169]

If these advances were subject to DST, the same should be assessed in the year the transaction occurred. Definitely, these advances were not made during TY 2011, the period covered by the LOA of this case.[170]

---

165 Pars. 117 to 118, petitioner's *Memorandum*, Docket – Vol. 6, p. 2705.
166 Exhibit "P-22", USB.
167 Exhibit "P-20", USB.
168 *Statement of Financial Position*, Exhibit "P-2", USB.
169 Pars. 120 to 127, petitioner's *Memorandum*, Docket – Vol. 6, pp. 2706 to 2708.
170 Exhibit "P-3", USB.

Thus, for lack of factual basis, this item of assessment is cancelled.

c) Loans

Petitioner's loans payable account balance for the year 2011 is comprised of loans from the following banks:[171]

RCBC	₱ 31,000,000.00
China Bank	36,000,000.00
Total	**₱67,000,000.00**

Petitioner avers that it is not liable to pay DST on these loans, pursuant to Section 3(c)(4)(a) of RR No. 09-00,[172] which provides:

> SECTION 3. *Mode of Payment and Remittance of the Tax.* —
>
> xxx xxx xxx
>
> (c) *Person liable to remit the DST.* — In general, the full amount of the tax imposed under Title VII of the Code may be remitted by any of the party or parties to the taxable transaction, except in the following cases:
>
> xxx xxx xxx
>
> (4) **When one of the parties to the taxable document or transaction is** included in **any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax** prescribed under Title VII of the Code: Provided, however, that if such entity is exempt from the tax herein imposed, it shall remit the tax as a collecting agent, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding
>
> (a) **A bank, a quasi-bank or non-bank financial intermediary, a finance company,** or an insurance, a surety, a fidelity, or annuity company; *(Emphases added)*
>
> xxx xxx xxx

---

[171] Note 18, *Notes to the Financial Statement[s]*, Exhibit "P-2", p. 20, USB.
[172] SUBJECT: Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.

Clearly, the DST on the loans petitioner got from the banks RCBC and China Bank are not petitioner's liability to remit to the BIR. Hence, this assessment is likewise cancelled.

d) Rent

Petitioner argues that it does not have a rent account.[173] Examination of petitioner's Notes 26 and 28 of its AFS, which contain a breakdown of its manufacturing overhead and operating expenses, respectively, shows the following:[174]

26. MANUFACTURING OVERHEAD:

PARTICULARS		2011
Factory Supplies	₱	1,071,347.00
Guard Fess		3,742,238.00
Insurance & Bond Premium		1,120,731.00
Machinery Supplies		6,518,655.00
Machinery Spare Parts Supplies		9,017,275.00
Management Fee		1,829,263.00
Tools Supplies		3,050,870.00
Power, Fuel & Oil		50,863,125.00
Factory Maintenance		935,636.00
Depreciation		14,994,665.00
TOTAL	**₱**	**93,143,806.00**[175]

xxx xxx xxx

28. OPERATING EXPENSES

PARTICULARS		2011
Selling Expenses -		
Advertising	₱	316,952.99.00
Brokerage Fee		24,000.00
Delivery & Trucking		6,604,911.00
Export Expense		49,224.00
Sales Commission		1,368,627.00
Salaries & Wages - (Note 27)		1,892,628.00
Traveling & Transportation Expenses		230,511.00
Total	**₱**	**10,486,854.00**
General & Administrative Expenses -		
Charitable Contributions	₱	10,000.00

[173] Exhibit "P-8", USB.
[174] Notes 26 and 28, *Notes to the Financial Statement[s]*, Exhibit "P-2", pp. 23 to 24, USB.
[175] Footing error, should be ₱93,143,805.00.

Christmas Compliments		38,948.00
Communication Expense		579,604.00
Documentary Stamps		431,848.00
Employees Welfare & Recreational		178,730.00
Guard Fee		1,871,119.00
Hotel Accommodations		53,054.00
Insurance & Bond Premium		405,703.00
Light & Water		306,292.00
Loss on FOREX		-
Medical & Dental		134,450.00
Miscellaneous		280,806.00
Membership Fee		2,400.00
Office Supplies		228,331.00
Professional Fees		560,300.00
Real Estate Tax - (Note 30)		3,652,802.00
Registration & Documentation		607,932.00
Repairs & Maintenance		19,791.00
Representation & Entertainment		13,606.00
Salaries & Other Compensation - (Note 27)		5,420,213.00
Seminar & Service Fee		14,200.00
Subscription		206,165.00
Subsistence		95,724.00
Taxes & Licenses - (note 29)		4,451,730.00
Depreciation - (Note 31)		1,483,176.00
Total		**₱ 21,046,925.00**[176]
Financing Cost		
Interest & Bank Charges	₱	35,313,593.00
TOTAL EXPENSE	**₱**	**66,847,372.00**[177]

Clearly, petitioner has no rent account. Respondent did not state the factual basis for the alleged rent of ₱47,430.00; thus, respondent's assessment lacks factual basis and is cancelled.

In sum, considering that all the assessment items are cancelled for lack of factual basis, the assessment for deficiency DST in the amount of ₱126,541.00 is likewise cancelled.

Petitioner is liable for WTC and EWT for TY 2011.

Respondent's assessed petitioner of deficiency WTC, *viz.*:[178]

---

176 Footing error, should be ₱21,046,924.00.
177 Footing error, should be ₱66,847,371.00.
178 Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 199.

Tax due per Alphalist			₱ 5,656,312.16
Add: Tax due on compensation not subjected to w/tax			
Compensation not subjected to w/tax		₱29,258,655.48	
Multiplied by w/tax compliance rate			
Tax withheld/remitted	₱5,656,312.16		
Divided by Taxable compensation	₱45,195,372.04	13%	3,661,792.82
Tax due per audit			₱ 9,318,104.98
Less: Credits and payments			
Tax paid			5,656,312.16
W/tax due on compensation not subjected to WC			₱ 3,661,792.82
Add: W/tax due on overclaimed additional exemption - Schedule 2			837,744.21
Basic deficiency W/tax on compensation			**₱4,499,537.03**

Based on the discussion in the deficiency income tax assessment in relation to WTC, the adjusted compensation not subjected to withholding tax amounts to ₱12,603,029.10, after deducting petitioner's payments to People Serve, a tax-exempt cooperative, *viz.*:

Compensation per FS			
Direct charges - salaries, wages and benefits			₱81,074,914.00
Salaries and Wages			7,312,842.00
Other benefits			178,730.00
Total compensation per FS			₱ 88,566,486.00
Compensation per Alphalist	Non-taxable	Taxable	
Terminated	₱ 2,416,059.90	₱ 1,678,600.35	
Exempt	8,200.00	72,592.71	
No previous employer	6,116,324.70	43,444,178.98	
Minimum wage earners	5,571,873.88	-	
Total compensation per Alphalist	₱14,112,458.48	₱45,195,372.04	59,307,830.52
Compensation not subjected to withholding tax			₱ 29,258,655.48
Less: Total payments to People Serve for services rendered in 2011			(19,980,626.38)
Add: Overclaimed additional exemption - Schedule 2			3,325,000.00
Adjusted compensation not subjected to withholding tax per audit			**₱12,603,029.10**

Hence, the basic deficiency WTC amounts to ₱2,415,044.35, computed as follows:

Tax due per Alphalist			₱ 5,656,312.16
Add: Tax due on compensation not subjected to w/tax			
Compensation not subjected to w/tax		₱12,603,029.10	
Multiplied by w/tax compliance rate			
Tax withheld/remitted	₱5,656,312.16		
Taxable compensation	₱45,195,372.04	13%	1,577,300.14
Tax due per audit			₱ 7,233,612.30
Less: Credits and payments			
			5,656,312.16

W/tax due on compensation not subjected to WC	₱ 1,577,300.14
Add: W/tax due on overclaimed additional exemption - Schedule 2	837,744.21
Basic deficiency W/tax on compensation	**₱2,415,044.35**

On the other hand, respondent's assessment for deficiency EWT is as follows:[179]

EWT Rate	Expenses per FS/ITR	Per Return/Alphalist	Expenses not subjected to EWT	EWT Due
1%	₱ 233,195,849.82	₱ 160,066,395.23	₱ 73,129,454.59	₱ 731,294.55
2%	106,930,143.00	100,741,342.76	6,188,800.24	123,776.00
5%	47,430.00	47,430.00	-	-
10%	3,584,671.00	2,026,078.74	1,558,592.26	155,859.23
TOTAL	**₱343,758,093.82**	**₱262,881,246.73**	**₱ 80,876,847.09**	**₱ 1,010,929.78**

Based on the discussion in the deficiency income tax assessment in relation to EWT, the adjusted expenses not subjected to withholding tax amount to ₱75,151,158.41, after deducting amounts for earmarked salaries of guards, expenses/reimbursements paid thru petty cash fund and payments to GPPs:

	1%	2%	10%	Total
Expenses per FS/ITR	₱ 233,195,849.82	₱106,930,143.00	₱ 3,584,671.00	₱ 343,710,663.82
Less:				
Earmarked for salaries of guards		4,972,633.58		4,972,633.58
Expenses/reimbursements paid thru petty cash fund		656,724.10		656,724.10
Adjustment to reflect correct amount of professional fees subject to EWT			96,331.00	96,331.00
	₱ 233,195,849.82	₱101,300,785.32	₱ 3,488,340.00	₱ 337,984,975.14
Per Return/Alphalist	160,066,395.23	100,741,342.76	2,026,078.74	262,833,816.73
Expenses not subjected to EWT	**₱73,129,454.59**	**₱ 559,442.56**	**₱1,462,261.26**	**₱75,151,158.41**

Consequently, the basic deficiency EWT amounts to ₱888,709.52, computed as follows:

EWT Rate	Expenses per FS/ITR	Per Return/Alphalist	Expenses not subjected to EWT	EWT Due
1%	₱ 233,195,849.82	₱ 160,066,395.23	₱ 73,129,454.59	₱ 731,294.55
2%	101,300,785.32	100,741,342.76	559,442.56	11,188.85
10%	3,488,340.00	2,026,078.74	1,462,261.26	146,226.13
TOTAL	**₱337,984,975.14**	**₱262,833,816.73**	**₱75,151,158.41**	**₱ 888,709.53**

[179] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), pp. 197 and 199.

Petitioner is not liable for IAET for TY 2011.

Respondent's investigation disclosed that petitioner accumulated, instead of being distributed through dividends declaration, its retained earnings and profits; hence, it was assessed of IAET of ₱77,692.63 pursuant to Section 29 of the NIRC of 1997, as implemented by RR No. 2-2001 and RMC No. 35-2011, determined as follows:[180]

Taxable Income for the year		₱ 4,989,110.39
Less: Income tax paid/payable for the taxable year	₱ 1,496,733.12	
Dividends actually or constructively paid/issued	-	1,496,733.12
Total		₱ 3,492,377.27
Add: Retained Earnings from prior years		30,944,549.00
Accumulated Earnings as of taxable period under Audit		₱ 34,436,926.27
Less: 100% of paid-up Capital as of taxable year under Audit		33,660,000.00
Improperly Accumulated Taxable Income		₱ 776,926.27
Multiplied by IAET Rate		10%
Improperly Accumulated Earnings Tax		**₱ 77,692.63**

Petitioner avers that on April 8, 2011, its Board of Directors and stockholders declared stock dividends to all stockholders of record as of December 31, 2010 worth ₱5,868,000.00 consisting of 5,868 shares, as evidenced by a Secretary's Certificate dated June 10, 2011. This was submitted to the SEC, along with an analysis of capital structure, reconciliation of retained earnings for dividend declaration, and AFS for the year ended December 31, 2010, and the receipt thereof was duly acknowledged.[181] The Court finds these documents in order.

Thus, when the stock dividends amounting to ₱5,868,000.00 is included in respondent's computation, there is no improperly accumulated earnings to speak of:

Taxable Income for the year		₱ 4,989,110.39
Less: Income tax paid/payable for the taxable year	₱ 1,496,733.12	
Dividends actually or constructively paid/issued	5,868,000.00	7,364,733.12
Total		₱ (2,375,622.73)
Add: Retained Earnings from prior years		30,944,549.00
Accumulated Earnings as of taxable period under Audit		₱ 28,568,926.27
Less: 100% if paid-up Capital as of taxable year under Audit		33,660,000.00
Improperly Accumulated Taxable Income		**₱ (5,091,073.73)**

[180] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 199.
[181] Exhibit "P-22", USB.

It is clear from the foregoing that the IAET assessment lacks factual basis and is therefore cancelled.

Petitioner is not liable for administrative penalties for TY 2011.

Respondent also imposed administrative penalties of ₱228,000.00 for allegedly violating the provisions of Sections 250 and 255 of the NIRC of 1997, as amended, and as implemented by RMO No. 1-90, as amended by RMO No. 19-2007:[182]

Nature of Violation	Amount Suggested Compromise Penalty	
Basic Deficiency Income Tax	₱	50,000.00
Basic Deficiency Documentary Stamp Tax		16,000.00
Basic Deficiency Value Added Tax		50,000.00
Basic Deficiency Withholding Tax on Compensation		25,000.00
Basic Deficiency Expanded Withholding Tax		25,000.00
Basic Improperly Accumulated Earnings Tax		12,000.00
Failure to supply correct information on tax returns		50,000.00
Total Compromise Penalty	**₱**	**228,000.00**

Such imposition cannot be sustained. Under RMO No. 19-2007,[183] "compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer" in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[184] Petitioner never agreed to the payment of a compromise penalty,[185] thus its imposition is cancelled. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[186]

Computation of deficiency tax liabilities.

[182] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 219.
[183] SUBJECT: The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.
[184] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[185] Pars. 195 to 197, petitioner's *Memorandum*, Docket – Vol. 6, p. 2722.
[186] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

In fine, petitioner is liable for the following reduced basic deficiency taxes for TY 2011 as follows:

Income tax	₱ 26,330,229.75
VAT	57,533.49
WTC	2,415,044.35
EWT	888,709.53
Total	**₱ 29,691,517.12**

In addition to the foregoing basic deficiency taxes, petitioner is liable to a penalty of 25% surcharge imposed on the basic deficiency taxes, pursuant to Section 248(A)(3) of the NIRC of 1997, as amended, which provides as follows:

> SEC. 248. *Civil Penalties.* —
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> xxx xxx xxx
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; xxx

Moreover, in accordance with Section 249(B) of the NIRC of 1997, as amended, petitioner is liable to pay deficiency interest at the rate of 20% per annum computed from the date prescribed for its payment until the full payment thereof. With the effectivity of RA No. 10963 (the Tax Reform for Acceleration and Inclusion (TRAIN) Law) on January 1, 2018, however, the 20% deficiency interest shall be computed until December 31, 2017 only.

The TRAIN Law: (i) amended the interest rates in Section 249 of the NIRC of 1997, as amended, (ii) amended the computation of deficiency interest from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by respondent, whichever comes earlier, and (iii) provides that the deficiency and delinquency interest prescribed under Subsections (B) and (C) thereof shall not be imposed simultaneously.

To recall, the FAN issued by respondent states:[187]

[187] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), p. 220.

"In view thereof, **you are requested to pay your aforesaid deficiency tax liability/ies using the BIR Payment Form (BIR Form 0605) through eFPS within the time shown in the enclosed assessment notice.**

The said *Assessment Notices* show a due date of September 10, 2016.[188]

Likewise, pursuant to Section 249(C) of the NIRC of 1997, as amended, petitioner is liable to pay delinquency interest at the rates of:

a) 20% per annum imposed on the total basic deficiency tax, surcharge and deficiency interest as of September 10, 2016, computed therefrom until December 31, 2017; and,

b) 12% per annum computed from January 1, 2018, the effectivity of the TRAIN Law, until full payment thereof.

Thus, for TY 2011, petitioner is liable to pay the aggregate amount of ₱87,794,356.20, consisting of basic deficiency taxes, surcharges, and deficiency interest computed as of December 31, 2017, detailed as follows:

	Income tax	VAT	WTC	EWT
Basic deficiency tax	₱ 26,330,229.75	₱ 57,533.49	₱ 2,415,044.35	₱ 888,709.53
Add: 25% Surcharge	6,582,557.44	14,383.37	603,761.09	222,177.38
20% Deficiency Interest on:				
Income tax – from April 16, 2012 to September 10, 2016 [₱26,330,229.75 x 20% x (1,609/365 days)]	23,213,884.75			
VAT – from January 26, 2012 to September 10, 2016 [₱57,533.49 x 20% x (1,690/365 days)]		53,277.59		
WTC – from January 16, 2012 to September 10, 2016 [₱2,415,044.35 x 20% x (1,700/365 days)]			2,249,630.35	
EWT – from January 16, 2012 to September 10, 2016 [₱888,709.53 x 20% x (1,700/365 days)]				827,839.01
Total Amount Due – September 10, 2016	**₱ 56,126,671.94**	**₱ 125,194.45**	**₱ 5,268,435.79**	**₱1,938,725.92**
Add: 20% Deficiency Interest:				
Income tax – from September 11, 2016 to December 31, 2017	₱ 6,881,928.54			

[188] Exhibit "P-9-8", and Exhibit "R-11", BIR Records – Folder 2 (Exhibit "R-14-a"), pp. 204 to 207 and 216 to 218.

[₱26,330,229.75 x 20% x (477/365 days)]				
VAT – from September 11, 2016 to December 31, 2017 [₱57,533.49 x 20% x (477/365 days)]		₱ 15,037.52		
WTC – from September 11, 2016 to December 31, 2017 [₱2,415,044.35 x 20% x (477/365 days)]			₱ 631,219.81	
EWT – from September 11, 2016 to December 31, 2017 [₱888,709.53 x 20% x (477/365 days)]				₱ 232,281.89
Add: 20% Delinquency Interest:				
Income tax – from September 11, 2016 to December 31, 2017 [₱56,126,671.94 x 20% x (477/365 days)]	14,669,820.56			
VAT – from September 11, 2016 to December 31, 2017 [₱125,194.45 x 20% x (477/365 days)]		32,722.06		
WTC – from September 11, 2016 to December 31, 2017 [₱5,268,435.79 x 20% x (477/365 days)]			1,377,010.34	
EWT – from September 11, 2016 to December 31, 2017 [₱1,938,725.91 x 20% x (477/365 days)]				506,724.53
Total additional deficiency & delinquency interests	₱ 21,551,749.10	₱ 47,759.58	₱ 2,008,230.15	₱ 739,006.42
Total Amount Due – December 31, 2017	**₱77,678,421.04**	**₱172,954.03**	**₱7,276,665.94**	**₱2,677,732.34**

Summary of petitioner's deficiency tax liabilities, including increments, as of December 31, 2017 amount to **₱87,805,773.35**:

	Total Amount Due – September 10, 2016	20% Deficiency Interest	20% Delinquency Interest	Total Amount Due – December 31, 2017
Income tax	₱ 56,126,671.94	₱ 6,881,928.54	₱ 14,669,820.56	₱ 77,678,421.04
VAT	125,194.45	15,037.52	32,722.06	172,954.03
WTC	5,268,435.79	631,219.81	1,377,010.34	7,276,665.94
EWT	1,938,725.92	232,281.89	506,724.53	2,677,732.34
Total	**₱63,459,028.10**	**₱7,760,467.76**	**₱16,586,277.49**	**₱87,805,773.35**

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

Respondent's assessment of deficiency DST, IAET and administrative penalties, for taxable year 2011 are **CANCELLED** for lack of merit, while the assessments for deficiency income tax, VAT, WTC, and EWT, for taxable year 2011, are **UPHELD WITH MODIFICATIONS**.

Petitioner is **ORDERED TO PAY** respondent the amount **₱87,805,773.35**, inclusive of the 25% surcharge, 20% deficiency interest, and 20% delinquency interest, imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, broken down as follows:

	Total Amount Due – September 10, 2016	20% Deficiency Interest	20% Delinquency Interest	Total Amount Due – December 31, 2017
Income tax	₱ 56,126,671.94	₱ 6,881,928.54	₱ 14,669,820.56	₱ 77,678,421.04
VAT	125,194.45	15,037.52	32,722.06	172,954.03
WTC	5,268,435.79	631,219.81	1,377,010.34	7,276,665.94
EWT	1,938,725.92	232,281.89	506,724.53	2,677,732.34
Total	**₱63,459,028.10**	**₱7,760,467.76**	**₱16,586,277.49**	**₱87,805,773.35**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total amount due of ₱63,459,028.10 as of September 10, 2016, as determined above, or equivalent to the amount of ₱20,863.24[189] per day, from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by the TRAIN Law and as implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

---

[189] ₱63,459,028.10 multiplied by 12% divided by 365 days.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
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