REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GLOBAL QUICKSERVICE RESTAURANT, INC.,
Petitioner,

CTA Case No. 8704

- versus-

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE; OFFICE OF THE REGIONAL DIRECTOR, BUREAU OF INTERNAL REVENUE, REVENUE REGION NO. 7 – QUEZON CITY; BUREAU OF INTERNAL REVENUE, REVENUE DISTRICT OFFICE NO. 43A, EAST PASIG,
Respondents.

Promulgated:

AUG 11 2015

1:20 p.m.

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D E C I S I O N

COTANGCO-MANALASTAS, *J.:*

This resolves the Petition for Review filed on September 2, 2013 by Global Quickservice Restaurant, Inc. to seek the cancellation and nullification of the Formal Letter of Demand with Assessment Notices dated January 25, 2013 that demanded the payment of alleged deficiency income tax in the amount of ₱2,029,842.77, deficiency value-added tax (VAT) in the amount of ₱234,840.18, and compromise penalty in the amount of ₱15,000.00 for taxable year 2009.

FACTS

Petitioner Global Quickservice Restaurant, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines and was duly registered with the Securities and Exchange Commission under Company Reg. No. CS200501537.[1] It operates under the name and style of California Pizza Kitchen located in the Promenade Mall, Greenhills Shopping Center, San Juan, Metro Manila.[2] Petitioner is an affiliate of Global Restaurant Concepts, Inc., the latter being the parent company.[3]

On the other hand, respondent Commissioner of Internal Revenue is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with principal office at the 5th Floor of BIR National Office Building, Agham Road, Diliman Quezon City. She is vested with the power to decide tax cases, including disputed assessments pursuant to Section 4 of the National Internal Revenue Code (NIRC) of 1997.

Petitioner was sent a Letter of Authority (LOA) No. 43A-2010-00000496[4] dated October 13, 2010, which authorized Revenue Officer Dolores Gillego and Group Supervisor Ramon Navarro to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable period January 1 to December 31, 2009.[5]

Subsequently, a Notice of Informal Conference[6] dated August 31, 2012 was received by petitioner, stating that an audit report was received from Revenue Officer Dolores F. Gillego under Group Supervisor Ramon D. Navarro pursuant to Letter of Authority No. LOA-43A-2010-00000496 dated October 13, 2010. The said Notice requested petitioner or its representatives to appear before BIR Revenue District Office No. 43A on or before September 11, 2012, to enable them to go over the findings, offer explanation or present objections to said findings.[7]

Thereafter, through the Preliminary Assessment Notice[8] (PAN) dated January 3, 2013, petitioner was initially assessed for several tax deficiencies, namely: ₱1,993,077.94 for income

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[1] Par. 1, Joint Stipulation of Facts, Issues and Other Related Matters (JSFIORM), docket, p. 550; Exhibit "P-5", docket, pp. 1167-1175.
[2] Par. 2, JSFIORM, docket, p. 550.
[3] Par. 3, JSFIORM, docket, p. 550.
[4] Exhibit "R-2", BIR Records, p. 73.
[5] Par. 7, JSFIORM, docket, p. 550.
[6] Exhibit "R-3", BIR Records, p. 387.
[7] Par. 8, JSFIORM, docket, pp. 550-551.
[8] Exhibit "R-8", BIR Records, pp. 437-438.

tax deficiency; ₱230,702.02 as VAT deficiency; and ₱15,000.00 as compromise penalty.[9]

Petitioner was sent a Formal Letter of Demand with Assessment Notices No. 043A-B219-09[10] dated January 25, 2013, assessing it for the following deficiency taxes:

a. income tax deficiency amounting to ₱2,029,842.77;
b. VAT deficiency of ₱234,840.18; and
c. Compromise penalty of ₱15,000.00.[11]

On February 8, 2013, within the period allowed by law, petitioner filed its Protest to the Formal Letter of Demand with Assessment Notices denominated as "January 28, 2013 Legal Petition Notice".[12]

On the same day as the filing of its Protest, petitioner paid the following withholding taxes as assessed in the above-mentioned Formal Letter of Demand:

a. ₱53,795.96 as withholding taxes for income payments subject to expanded withholding taxes;[13]
b. ₱28,204.44 as withholding taxes on compensation;[14] and
c. ₱2,000.00 as compromise penalty.[15]

On February 11, 2013, petitioner filed a Supplemental Protest to raise additional arguments in support of its earlier protest.[16]

On April 1, 2013, petitioner filed its March 26, 2013 Legal Petition Notice[17], attaching thereto its additional supporting documents.[18]

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[9] Par. 9, JSFIORM, docket, p. 551.
[10] Exhibits "R-10", "R-11", "R-12", "R-13" and "R-14", BIR Records, pp. 448-453.
[11] Par. 11, JSFIORM, docket, p. 551.
[12] Par. 12, JSFIORM, docket, p. 551; Exhibit "P-19", docket, pp. 1238-1241.
[13] Exhibit "P-19B", docket, pp. 1244-1245.
[14] Exhibit "P-19C", docket, pp. 1246-1247.
[15] Exhibit "P-19A", docket, pp. 1242-1243.
[16] Par. 14, JSFIORM, docket, p. 551.
[17] Exhibit "P-24", docket, pp. 1288-1357.
[18] Par. 15, JSFIORM, docket, p. 551.

On August 1, 2013, respondents sent the Letter[19] dated July 26, 2013 denying the protest for the reason that petitioner failed to submit documents in support of its protest and stating that it is the Final Decision of the Commissioner of Internal Revenue.[20]

Hence, petitioner filed the instant Petition for Review[21] before this Court on September 2, 2013.

Respondents filed their Answer[22] on September 23, 2013, interposing the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

8. The assessment for calendar year 2009 deficiency Income Tax, Value Added Tax and Compromise Penalty in the amount of PESOS: **TWO MILLION TWO HUNDRED SEVENTY-NINE THOUSAND SIX HUNDRED EIGHTY-TWO AND 95/100** (Php2,279,682.95) was issued in accordance with applicable laws and regulations. The factual and legal bases of the assessments are contained in the Formal Letter of Demand (FLD) and Final Assessments Notice (FAN).

9. As alleged by Petitioner in its Petition, it received the Final Decision on August 1, 2013. However, the Petitioner failed to submit the required documents in support of its protest within sixty (60) days from the date of filing of its letter of protest, hence, the assessment have already become final, executory and demandable. Consequently, this Honorable Court cannot anymore exercise jurisdiction over Petitioner's Petitioner for Review.

   Section 3.1.5 of Revenue Regulation No. 12-99 provides as follows:

   xxx xxx xxx

10. A perusal of Annex 'Tax Appeal – I' of the Petition for Review purporting to be a protest letter does not stand the test as required under RR 12-99.

[19] Exhibit "P-3", docket, p. 1165.
[20] Par. 16, JSFIORM, docket, p. 551.
[21] Docket, pp. 14-43.
[22] Docket, pp. 187-193.

11. Assuming por arguendo that the instant Petition was filed within the period provided by law, the details of discrepancies disclosed the following:

Deficiency Income Tax

a. Verification disclosed that sales/revenue/receipts per audit were not fully reported in the financial statements (FS) and Income Tax Return (ITR), as per analysis, which resulted to an under declaration of Petitioners taxable sales/revenue/receipts. Therefore, the unrecorded portion has been added to Petitioners taxable income pursuant to Section 31 in relation to Section 32 of the Tax Code of 1997, as amended.
b. Verification disclosed that writing off of Advances to Suppliers and Rental Deposit were not substantial [*sic*] with necessary documentary evidence, hence, disallowed as deduction in computing Petitioner's taxable income pursuant to Section 34(A) of the Tax Code of 1997, as amended.

Deficiency Value-Added Tax

a. Verification disclosed that underdeclared sales/ revenue/receipts as mentioned in Item 1.a of the Details of Discrepancies, is subject to 12% VAT pursuant to Section 106 and 108 of the Tax Code of 1997, as amended.
b. Verification disclosed that the total taxable revenues, as per analysis, was not fully subjected to VAT, therefore, assessed pursuant to Sections 106 and 108 of the Tax Code of 1997, as amended.

12. It is to be noted that the Petitioner was given an opportunity to dispute the Assessments issued to them when the Respondent granted their request for reinvestigation, however, the same was futile because it failed to submit the documents that would support their allegations.

13. In ***COMMISSIONER OF INTERNAL REVENUE VS. PHILIPPINE GLOBAL COMMUNICATION, INCORPORATED G.R. No. 167146 dated October 31, 2006***, the Honorable Supreme Court has this to say on Request for Reinvestigation, to wit: xxx

> ***'Request for reinvestigation – refers to a plea for re-evaluation of an assessment on the basis of newly-discovered evidence or additional evidence that a taxpayer intends to present in the investigation. It may also involve a question of fact or law or both.'***

14. In the Memorandum prepared by Revenue Officer Verjun Solomon C. Catapia regarding the result of the reinvestigation that he conducted provides:

    'During the conduct of the reinvestigation, subject taxpayer submitted documents to protest the assessment. However, these documents failed to refute the assessments made.'

15. Hence, the failure of the Petitioner to submit substantial documents during the period of reinvestigation to refute the assessments made results in the finality of the assessments made.

16. Finally, well settled in the rule that tax assessments by examiners are presumed correct and made in good faith. It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, as assessment will not be disturbed.

17. In **COMMISSIONER OF INTERNAL REVENUE VS. BANK OF THE PHILIPPINE ISLANDS, GR No. 134062** dated April 17, 2007, the Honorable Supreme Court said, to wit:

    'Tax assessment by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessment.'"

In the Notice of Pre-Trial Conference, the Pre-Trial Conference was set on October 24, 2013.[23] Upon motion of petitioner, with no objection from respondents, the pre-trial was reset to December 5, 2013[24]. Respondent's Pre-Trial Brief[25] was filed on October 10, 2013; while petitioner's Pre-Trial Brief[26] was filed on December 2, 2013. On December 5, 2013, petitioner filed an Amended Pre-Trial Brief[27].

[23] Docket, p. 194.
[24] Docket, p. 269.
[25] Docket, pp. 198-202.
[26] Docket, pp. 278-283.
[27] Docket, pp. 287-292.

Thereafter, the parties filed their Joint Stipulation of Facts, Issues and Other Related Matters[28] on January 24, 2014, which was approved and adopted by the Court in the Pre-Trial Order[29] on February 12, 2014.

During the trial, petitioner presented its witnesses: Mr. Fernando B. Bulante, Audit Manager of Global Restaurant Concepts, Inc. (GRCI) and head of petitioner's internal audit team; and Mrs. Marissa R. Tagle, Comptroller of GRCI.

Petitioner sent two (2) copies of its Formal Offer of Evidence[30] through a courier (LBC) on May 2, 2014, which was received by the Court on May 5, 2014. On May 5, 2014, petitioner filed additional copies of its Formal Offer of Evidence through its Manifestation and Compliance[31]. This was noted by the Court in the Resolution[32] dated May 8, 2014.

In the Resolution[33] dated May 29, 2014, the Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-5A", "P-5B", "P-5C", "P-7", "P-8", "P-8A", "P9", "P-10" to "P-10K", "P-11" to "P-11G", "P-12", "P-12A", "P-12B", "P-14", "P-14A", "P-15", "P-15A", "P-16", "P-17", "P-17A", "P-18", "P-18A", "P-19", "P-19A", "P19B", "P-19C", "P-20", "P-21", "P-22", "P-23", "P-24", "P25", "P-26", "P-26A", "P-26B", "P26C", "P-26D", "P-26E", "P-26F", "P-26G", "P-26H", "P-261", "P-26J", "P-26K", "P-26L", "P-26M", "P-26N", "P-26O", "P-26P", "P-26Q", "P-26R", "P-26S", "P-26T", "P-26U", "P26V", "P-26W", "P-27", and "P-28". The Court, however, denied the admission of Exhibits "P-6" and "P-6A" for not being identified during trial and Exhibits "P-13" and "P-13A" for failure of petitioner to submit the original documents for comparison. During the hearing on June 2, 2014, the Court reconsidered and admitted Exhibits "P-6", "P-6A", "P-13" and "P-13A".[34]

Respondents, on the other hand, presented as their witnesses, Revenue Officers Dolores F. Gillego, Owen R. Villanueva, and Verjun Solomon C. Catapia.

[28] Docket, pp. 549-557.
[29] Docket, pp. 566-571.
[30] Docket, pp. 755-772.
[31] Docket, pp. 1140-1142.
[32] Docket, p. 1523.
[33] Docket, pp. 1527-1528.
[34] Resolution dated June 2, 2014, docket, pp. 1532-1533.

Respondents filed their Formal Offer of Evidence[35] on June 9, 2014. The Court admitted respondents' Exhibits "R-1" to "R-23-a" in the Resolution[36] dated July 15, 2014.

The case was submitted for decision via Resolution[37] dated August 27, 2014, after respondents' Memorandum[38] was filed on August 18, 2014 and petitioner's Memorandum[39] was filed through courier and received by the Court on August 20, 2014.

ISSUES

The submitted issues can be summarized as follows:

1. Whether or not petitioner is liable to pay the alleged deficiency income tax, deficiency VAT, and compromise penalty for taxable year 2009 as assessed by respondents; and

2. Whether or not respondents' tax assessment for taxable year 2009 became final, executory and demandable.

DISCUSSION/RULING

The tax assessment for taxable year 2009 is not yet final, executory and demandable.

Respondents argue that the tax assessment issued against petitioner for taxable year 2009 has become final, executory and demandable for petitioner's alleged failure to submit relevant supporting documents in support of its tax protest.

[35] Docket, pp. 1534-1539.
[36] Docket, pp. 1548-1549.
[37] Docket, p. 1563.
[38] Docket, pp. 1550-1557.
[39] Docket, pp. 1564-1605.

The procedure in protesting a tax assessment issued by the BIR is provided for under Section 228 of the NIRC of 1997, as amended, which reads:

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

Section 3.1.5 of Revenue Regulations (RR) No. 12-99[40] explains the procedure in disputing assessments, *to wit:*

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[40] 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 Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty, September 6, 1999.

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

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

xxx xxx xxx

3.1.5 *Disputed Assessment.* - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.* If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty

> (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: *Provided, however*, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable." *(Emphasis supplied)*

Based on the foregoing provisions, an assessment may be protested by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment by the taxpayer. Within 60 days from filing of the protest, all relevant supporting documents must be submitted; otherwise, the assessment shall become final.

Perusal of the records shows that petitioner was able to submit relevant supporting documents in support of its protest.

When petitioner filed its Protest to the Formal Letter of Demand with Assessment Notices on February 8, 2013, it attached to its protest BIR Form No. 0605 (Payment Forms) for deficiency expanded withholding tax, withholding tax on compensation, and for compromise penalty.[41]

[41] Exhibits "P-19", "P-19A", "P-19B" and "P-19C", docket, pp. 1238-1247.

Moreover, on April 1, 2013, petitioner submitted additional relevant supporting documents, like its Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded), Alphalist of Payees, BIR Tax Payment Deposit Slips and Annual Information Return.[42]

Furthermore, in the Memorandum[43] prepared by Revenue Officer Verjun Solomon C. Catapia, it was stated that during the reinvestigation petitioner submitted documents to protest the assessment, *to wit*:

> "During the conduct of reinvestigation, subject taxpayer submitted documents to protest the assessment. However, these documents failed to refute the assessments made."

In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*[44], the Supreme Court held that it is the taxpayer who determines what documents are relevant and necessary to support its protest, *to wit*:

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

Clearly, respondents were mistaken in arguing that petitioner failed to submit relevant supporting documents. Hence, the tax assessment for taxable year 2009 is not yet final, executory and demandable.

Petitioner is liable to pay the basic deficiency income tax in the amount of ₱1,290,304.09.

[42] Exhibit "P-24", docket, pp. 1288-1357.
[43] Exhibit "R-17", BIR Records, p. 572.
[44] G.R. Nos. 172045-46, June 16, 2009.

As shown in the Formal Letter of Demand (FLD) dated January 25, 2013, petitioner was assessed by respondents for, among others, deficiency income tax for taxable year 2009 amounting to ₱2,029,842.77. As provided in the Details of Discrepancies attached thereto, respondents alleged that petitioner is liable to pay income tax deficiencies pertaining to the following items: (A) undeclared sales/revenues/receipts; (B) unsupported accounts written off; and (C) income payments not subjected to withholding tax. The total deficiency income tax of ₱2,029,842.77 is computed as follows:

Taxable Income per ITR		₱ 1,448,606.00
Add: Adjustments per investigation		
Undeclared sales/revenue/receipts	₱ 725,934.93	
Unsupported accounts written off	145,583.70	
Income payments not subjected to withholding tax	3,429,494.55	4,301,013.18
Taxable Income per Investigation		**₱5,749,619.18**
Income tax due thereon		₱ 1,724,885.75
Less: Allowable tax credits/payments		
Creditable tax withheld	₱ 58,077.00	
Payments	376,504.66	434,581.66
Deficiency Income Tax		₱ 1,290,304.09
Add: 20% interest p.a. (04.16.10 to 2.25.13)		739,538.68
Total Amount Due		**₱2,029,842.77**

A. Undeclared sales/revenues/receipts

Respondents assessed petitioner for alleged undeclared sales/revenues/receipts in the amount of ₱725,934.93, broken down as follows:

1. Deemed sale transactions			
Transfer of stocks (inventory) to Global Restaurant Concepts, Inc.			
Food	₱ 248,150.96		
Beverages	5,455.13		
Alcoholic beverages	15,719.70	₱269,325.79	
Transfer of unused supplies to Global Restaurant Concepts, Inc.			
Supplies – Dining	9,851.66		
Supplies – Office	1,882.35		
Supplies – Kitchen	1,561.02	13,295.03	₱282,620.82
2.1. Taxable Service Charge/Company Share			
Total Service Charge	1,667,923.53		
Less: Payments made to employees	1,229,903.44	438,020.09	
2.2. Taxable Charged Tips/Company Share			
Total Charged Tips	38,550.39		
Less: Payments made to employees	33,256.37	5,294.02	443,314.11
Undeclared sales/revenues/receipts			**₱725,934.93**

1. On deemed sale transactions

Respondents assessed petitioner for the amount of ₱282,620.82 allegedly constituting deemed sale transactions for the transfer of inventory and unused supplies to its parent company, Global Restaurant Concepts, Inc. (GRCI). Petitioner, however, denies this allegation.

According to petitioner, GRCI is the one actually supplying the food and beverage items and restaurant supplies used by petitioner in its business. GRCI was the one accredited as importer as evidenced by a Certificate of Accreditation as Importer[45] issued by the Assessment and Operations Coordinating Group-Customs Accreditation Secretariat of the Bureau of Customs. Since GRCI has the authority to import, it is the one who purchases the raw materials, semi-processed foodstuff and other restaurant supplies for its restaurant chain, including that of petitioner. These goods, upon their arrival, are stored in a warehouse owned by GRCI and distributed to its restaurants, including that of petitioner. Petitioner itself has no Import Permit, hence, cannot ever import, sell or supply food and beverage items and restaurant supplies to GRCI.

Such being the fact, petitioner concludes that respondents' allegation is unfounded given the circumstance that GRCI is the one supplying and selling goods and items needed by the former for its business.

Petitioner further adds that GRCI is least likely to require such transfer from its smaller subsidiary companies as the latter have ample supplies and inventory except in certain circumstances. However, in the transactions in question, petitioner, whose restaurant is located in Greenhills, was compelled to transfer some supplies to GRCI's California Pizza Kitchen Greenhills branch on several instances as the latter ran out of the said supplies. This was done in the regular course of business, subject to reimbursement in a later date.

Citing Section 106(B) of the NIRC of 1997, as amended, petitioner submits that the said transfers do not qualify as deemed sale transactions.

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[45] Exhibit "P-4", docket, p. 1166.

The Court finds the assessment in order.

Section 32(A) of the NIRC of 1997, as amended, generally defines gross income as:

> "SEC. 32. *Gross Income.* –
>
> (A) *General Definition.* - Except when otherwise provided in this Title, gross income means all **income** derived from whatever source, xxx" *(Emphasis supplied)*

For the proper resolution of this case, "income" may be defined as follows:

> "Income means all the wealth which flows into the taxpayer other than a mere return on capital. Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time. Income is gain derived and severed from capital. For income to be taxable, the following requisites must exist:
>
> (1) there must be gain;
> (2) the gain must be realized or received and
> (3) the gain must not be excluded by law or treaty from taxation."[46]

To reiterate, petitioner argues that the transfers were done subject to reimbursement/replenishment at a later date. This is clearly evident in the Judicial Affidavit[47] of Mr. Fernando Bulante, GRCI's Audit Manager, particularly:

> "Q46: What does the Memo provide for?
> A46: It allows the Company to place its orders for importation under the name and account of GRCI, subject to the Company's payment of the amount of the items ordered for importation. In return, should GRCI's chain of restaurants have a temporary supplies shortage pending importation, the Company is bound to help GRCI by allowing it to borrow and transfer some needed supplies to it. After that, GRCI will reimburse the supplies it requested from the Company.
>
> Q47: What, if any, did GRCI charge the Company for this service?

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[46] *Chamber of Real Estate and Builders' Associations, Inc. vs. The Hon. Executive Secretary Aberto Romulo, et al.*, G.R. No. 160756, March 9, 2010.

[47] Docket, pp. 301-303.

A47: GRCI did not charge the Company any additional amounts, nor did GRCI make any money from this service.

Q48: Why not?
A48: Because they are sister companies as I said.

xxx xxx xxx

Q53: Based on your analysis of this system between GQSR (petitioner) and GRCI, what is your conclusion on the BIR's assessment as regards the issue of deemed sales transactions?
A53: This should not be considered deemed sales transactions because they are not sales and were merely made in the ordinary course of business. **It was more of an accommodation, subject to replenishment in the future.**" *(Emphasis supplied)*

In support of this claim, petitioner submitted the Memorandum dated June 14, 2005 with subject "Guide in Importation of Goods and Sharing of Supplies with Affiliates"[48]. The "Statement of Responsibilities" and "Transfer Procedures" of GRCI and petitioner are outlined therein, *to wit*:

"**II. STATEMENT OF RESPONSIBILITIES**

A. Global Restaurant Concepts Inc. (GRCI)

GRCI shall be responsible to:

xxx xxx xxx

- Set pricing procedures on imported goods.

B. Various CPK Stores

xxx GQSR shall be responsible to:

- Keep proper documentation of stock transfers from warehouse to store or from store to another CPK store.
- Lend supplies to other stores of GRCI if in cases of emergency when such other stores run out of supplies and/or goods.

[48] Exhibit "P-6", docket, pp. 1184-1185.

III. TRANSFER PROCEDURES

A. Documentation Requirements

All stock transfers shall:

- Be supported with Stock Transfer Form (STF). Store or warehouse shall indicate the Recipient of the Stock, the Quantity transferred and the cost of goods plus any freight cost incurred. STF shall be made in three (3) copies. Copy shall be given to Accounting, Warehouse and Store.
- Attach Summary List of Stock Transfer and/or any receiving report to validate transfer.
- Be filed properly prior to archiving.

B. Pricing & Replenishment

xxx xxx xxx

For transfers between and its affiliate, GQSR:

- Transfer from GRCI-owned store to GQSR store shall be treated as an ordinary stock transfer subject for replenishment.
- While transfers from warehouse to GQSR store shall be treated as an accommodation by GRCI to GQSR. GRCI shall not charge additional amounts on the value of the imported supplies and goods. GQSR shall be responsible for payment for the said supplies and goods, including import taxes. Should GRCI advance such expenses, GQSR shall reimburse GRCI for the cost thereof.
- **Any transfer back to GRCI shall be subject to a stock replenishment by GQSR.**" *(Emphasis supplied)*

While said Memorandum proves the policy on the distribution of goods and sharing of supplies between GRCI and among its affiliated companies like petitioner, such does not validate the fact that the subject transfers by petitioner to GRCI were subject to replenishment. It must be stressed that the purported stock transfers require proper documentation. Thus, petitioner should have corroborated its Memorandum with other evidence such as, but not limited to, the Stock Transfer Forms and Receiving Report, as well as the subsequent Stock Replenishment Report, made by and between GRCI and petitioner. With that finding, petitioner failed to prove that no income, gain or profit was derived from such transfer.

2. On taxable service charges and charge tips

With respect to the subject collected tips of ₱5,294.02, petitioner concedes and admits the obligation to pay the tax due on the same.

However, petitioner denies any liability as to the alleged taxes accruing to petitioner's share in the service charges amounting to ₱438,020.09.

According to petitioner, it collects service charges from its customers for the following periods in a month: (a) first (1st) day until the fifteenth (15th) day of the month, and (b) sixteenth (16th) until the last day of the month. The collected service charges in every given period are distributed to the employees in their next payday during the following 15-day period. The rationale behind it is that the exact amounts to be divided and received by the employees cannot as yet be ascertained at the last day of the given period. Such amounts will only be determinable in the following period of the month or of the next month.

Petitioner insists, in its Petition for Review, that the subject service charges were collected during the period of December 15-31, 2009, and that the same were only distributed to the employees on January 15 of the following year (2010). Petitioner concludes that respondents' assessment on amounts not yet distributed to the employees is erroneous to say the least considering that petitioner has yet to distribute them.

Petitioner's argument is bereft of merit.

In support of its claim, petitioner offered its Service Charge Payroll Summary and Payroll Registers[49]. The payroll

[49] Exhibits "P-27" and "P-26" to "P-26-W", docket, p. 1517 and pp. 1360-1516.

summary merely shows the computation of the service charges allocated to petitioner's employees, Restaurant Support Center employees and commissary employees as a whole. On the other hand, the payroll register, as manifested by GRCI's Comptroller, Ms. Marissa R. Tagle, merely indicates the earnings each employee receives per cut-off which includes, among others, service charges. Otherwise put, these documents merely show that petitioner had allocated each employee its share in the service charges. The same do not support petitioner's claim that it had distributed the subject service charge to its employees only on the following year 2010. Thus, respondent's assessment with regard to service charges shall be upheld.

B. Unsupported accounts written-off

Respondents assessed petitioner for the unsupported write-off of the following accounts: (1) Advances to Suppliers, amounting to ₱45,583.70; and (2) Rental Deposit, amounting to ₱100,000.00.

Petitioner admits and commits to pay the income tax due on Advances to Suppliers of ₱45,583.70.

On the other hand, petitioner submits that the write-off of Rental Deposit was justified by the circumstances. According to petitioner, this Rental Deposit pertains to a failed negotiated concession between petitioner and Rockwell Land, Inc. sometime in 2009 for the purpose of building a small stall or kiosk within Power Plant Mall to cater to hurrying and passing mall customers with ready-to-eat and quick-to-prepare food items from its restaurant franchise, California Pizza Kitchen™. In his Judicial Affidavit, Mr. Bulante testified on the said matter in this wise:

> "Q64: What is the basis for Company disputing the Rental Deposits?
> A64: This Php100,000.00 represents the Security Deposit with Rockwell Land, Inc. when the Company negotiated for a stall or concession in Power Plant Mall. But the negotiations did not push through because the contract was too burdensome for the Company. So the Company opted for the return of the Php100,000.00.

> Q65: What happened to your Company's entries in its books of account after the said Security Deposit was returned by Rockwell Land, Inc.?
> A65: It was written off from the Company's books of accounts."[50]

During the negotiations, petitioner paid the amount of ₱100,000.00 as security deposit for the supposed agreement. As it turned out, further negotiations turned sour and the contract was too burdensome for petitioner to continue, so the same was eventually cancelled.

In this regard, since the said security deposit was cancelled and consequently, written off from its books, petitioner holds that respondents erred in treating the returned rental deposit as an unsupported account written off. Thus, there is no factual and/or legal basis for this assessment.

To prove that the said rental agreement did not push through, petitioner submitted the Affidavit[51] of its President Mr. Armando Rodriguez where he attested that the deposit of ₱100,000.00 was returned. However, petitioner failed to present evidence that would establish the fact that the subject Rental Deposit was indeed returned to petitioner. Said affidavit, standing alone, amounts to nothing but a mere uncorroborated and self-serving allegation. Hence, the assessment on Rental Deposit shall be sustained.

C. Income payments not subjected to withholding tax

Respondents allegedly discovered that certain income payments of petitioner in taxable year 2009 were not subjected to compensation and expanded withholding tax. Petitioner disputes respondents' assessment of income payments not subjected to withholding tax in the amount of ₱3,429,494.55 considering that such amount should have already been deducted from its gross income for taxable year 2009 pursuant to Section 34(K) of the NIRC of 1997, as amended, in view of the subsequent payments of its withholding taxes.

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[50] Docket, p. 305.
[51] Exhibit "P-8", docket, p. 1187.

1. On the alleged income payments not subjected to withholding tax on compensation

The items as assessed by respondents that were allegedly not subjected to withholding tax on compensation are tabulated as follows:

	Per FS/ITR/Audit	**Per Alphalist**	**Difference**
Cost of service - Personnel costs			
Salaries and wages	₱3,072,447.24		
Overtime &night differential	205,330.41		
13thMonth pay	274,811.45		
Cellphone	11,700.00		
Training allowance	72,803.26		
Employee benefits	18,129.66		
Employees meals	413,172.18		
Health and accidental insurance	2,310.00		
Medical and dental	114,654.23		
Trainings and seminars	7,788.46		
Uniforms	27,379.41		
Scholarships	16,743.75		
Taxable service charge	1,229,903.44		
Taxable charge tips	33,256.37		
Schedule 7.1 (Employees terminated before December 31)			
13th Month pay and other benefits		₱ 49,815.64	
SSS, GSIS, PHIC & PAG-IBIG contrib. and union dues		37,955.12	
Salaries & other forms of compensation		924,520.34	
Schedule 7.3 (Employees with no previous employer)			
13th Month pay and other benefits		230,728.33	
SSS, GSIS, PHIC & PAG-IBIG contrib. and union dues		131,568.46	
Salaries & other forms of compensation		3,670,931.66	
Income payment not subjected to withholding tax	₱5,500,429.86	₱5,045,519.55	**₱ 454,910.31**

Petitioner submits that it properly withheld and remitted the correct taxes on the following income payments, amounting to ₱4,948,532.80: (1) salaries and wages; (2) overtime & night differential; (3) 13th month pay; (4) employee benefits; (5) medical and dental; (6) taxable service charge, and (7) taxable charge tips.

Examination of the relevant documents[52] would show that petitioner had indeed paid taxes amounting to ₱315,242.46; but those taxes pertain only to income payments of ₱4,582,776.62, as shown below. Clearly, petitioner failed to fully subject its personnel costs to withholding tax. Thus, respondents are correct in disallowing personnel costs in the amount of ₱365,756.18 as deduction from petitioner's gross income, as determined below:

Personnel costs			
Salaries and wages		₱ 3,072,447.24	
Overtime &night differential		205,330.41	
13thMonth pay		274,811.45	
Employee benefits		18,129.66	
Medical and dental		114,654.23	
Taxable service charges		1,229,903.44	
Taxable charge tips		33,256.37	₱ 4,948,532.80
Less: Taxable items per alphalist			
Basic salary			
Schedule 7.1 *(Exhibit "P-12-B")*	₱ 590,465.69		
Schedule 7.3 *(Exhibit "P-12-A")*	2,481,981.55	3,072,447.24	
Salaries & other forms of compensation			
Schedule 7.1	334,054.65		
Schedule 7.3	1,176,274.73	1,510,329.38	4,582,776.62
Income payment not subjected to withholding tax			**₱ 365,756.18**

As to the remaining items with an aggregate amount of ₱551,897.06, petitioner maintains that these are not subject to withholding tax.

In support of this claim, petitioner submitted various Memoranda. *First*, the Memorandum dated January 12, 2007 with subject "Assignment of Cellphones"[53] merely supports the fact of petitioner's policy of providing cellphones and prepaid credits to its restaurant employees to facilitate communication

[52] Exhibits "P-10" to "P-10-K", "P-11" to "P-11-G", and "P-12" to "P-12-B", docket, pp. 1189-1200, 1201-1207, and 1208-1210.

[53] Exhibit "P-14", docket, pp. 1225-1226.

with the suppliers, customers and co-employees. *Second,* the Memorandum dated March 20, 2007 with subject "Trainings and Seminars"[54] and Standard Employment Contract[55] merely confirms that petitioner offers trainings and seminars to its restaurant service crew to develop their talent and skills for the benefit of petitioner. *Third,* the Memorandum dated October 25, 2008 with subject "Employee Meals"[56] merely validates petitioner's policy of providing free lunch meals to its employees on a daily basis to boost their efficiency and morale at work, and to minimize the need of its employees to leave the restaurant premises during work hours and break time. *Fourth,* the Memorandum dated April 25, 2008 with the subject "GQSR Scholarship Program for Employees and Employees' Dependents"[57] merely documents the fact that petitioner offers scholarship programs as assistance to its deserving employees and their dependents to enable them to continue with formal schooling despite financial difficulties. Simply put, the foregoing documents only prove the policies itself. Consequently, without submitting additional documentary evidence to support its claim, the Court cannot ascertain the nature of the purported employee benefits not subject to withholding tax. Therefore, respondents' assessment shall be upheld.

Personnel costs			
Cellphone		₱ 11,700.00	
Training allowance		72,803.26	
Employees meals		413,172.18	
Health and accidental insurance		2,310.00	
Trainings and seminars		7,788.46	
Uniforms		27,379.41	
Scholarships		16,743.75	₱ 551,897.06
Less: Non-taxable items per alphalist			
13th Month pay and other benefits			
Schedule 7.1	49,815.64		
Schedule 7.3	230,728.33	280,543.97	
SSS, GSIS, PHIC & Pag-IBIG contrib. and union dues			
Schedule 7.1	37,955.12		
Schedule 7.3	131,568.46	169,523.58	
Salaries & other forms of compensation (Schedule 7.3)		12,675.38	462,742.93
Income payment not subjected to withholding tax			**₱ 89,154.13**

[54] Exhibit "P-15", docket, pp. 1227-1228.
[55] Exhibit "P-16", docket, pp. 1229-1230.
[56] Exhibit "P-17", docket, pp. 1231-1232.
[57] Exhibit "P-18", docket, pp. 1233-1237.

Notwithstanding its protest, petitioner paid the amount of ₱28,204.44[58], representing the corresponding withholding tax due on the subject income payments, amounting to ₱454,910.31, at the rate of 6.20%. Petitioner submits that respondents erred in further assessing deficiency taxes despite petitioner's payment of withholding taxes after final assessment had been made.

The Court disagrees with petitioner.

Section 2.58.5 of RR No. 2-98, as amended by RR No. 14-2002, reads:

> "Sec. 2.58.5. *Requirements for Deductibility* – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.
>
> A deduction will also be allowed in the following cases where no withholding of tax was made:
>
> xxx xxx xxx
>
> (C) The withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, at the time of the audit/investigation or reinvestigation/reconsideration."

A perusal of the Payment Form (BIR Form No. 0605)[59] shows that petitioner merely paid the basic deficiency withholding tax on compensation in the amount of ₱28,204.44 in violation of Section 2.58.5(C) above-quoted, which mandates not only the payment of the basic deficiency tax due, but also the interest incident to the underwithholding and surcharge, if applicable. Thus, petitioner's incomplete payment did not have the effect of cancelling this item of assessment.

[58] Exhibit "P-19-C", docket, pp. 1246-1247.
[59] *Ibid.*

2. On the alleged income payments not subjected to expanded withholding tax

Respondents allege that the following income payments were not fully subjected to EWT as required by the provision of RR No. 2-98, as amended. As a result, the difference was disallowed as deduction in computing petitioner's taxable income, detailed hereunder:

	Per FS/ITR/ Audit	**Per Returns/ Alphalist**	**Difference**	**EWT Rate**	**EWT Deficiency[60]**
Income Payment made to Top 20,000 Corporations – Purchase from local supplier of goods	₱4,125,624.25	₱2,739,060.00	₱1,386,564.25	1%	₱ 13,866.54
Income Payment made to Top 20,000 Corporations – Purchase from local supplier of services	3,358,209.19	1,875,823.00	1,482,386.19	2%	29,647.72
Income Payments subject to 5% EWT – Rental	2,523,564.60	2,517,930.80	5,633.80	5%	281.69
Income Payment subject to 10% EWT – Professional fees	100,000.00	-	100,000.00	10%	10,000.00
Total	10,107,398.04	7,132,813.80	2,974,584.24		**₱ 53,795.96**

Petitioner paid the amount of ₱53,795.96 on February 7, 2013.[61] Reiterating Section 34(K) of NIRC of 1997, and Section 2.58.5 of RR No. 2-98, petitioner maintains that its payment of the EWT due on some income payments should have been considered by respondents.

Applying Section 2.58.5 of RR No. 2-98, as amended by RR No. 14-2002, the related expenses shall still be disallowed for income tax purposes in view of the fact that only the basic deficiency EWT was paid.

In fine, petitioner shall be liable to pay the basic deficiency income tax in the amount of ₱1,290,304.09, computed as follows:

Taxable income per Income Tax Return (ITR)			₱ 1,448,606.00
Add: Adjustments			
Undeclared sales/ revenues/ receipts			
Deemed sale transactions	₱ 282,620.82		

[60] Exhibit "P-19", docket, p. 1239.
[61] Exhibit "P-19-B", docket, pp. 1244-1245.

Service charges	438,020.09		
Charged tips	5,294.02	₱ 725,934.93	
Unsupported accounts written-off			
Advances to suppliers	45,583.70		
Rental deposit	100,000.00	145,583.70	
Income payments not subjected to withholding tax			
Withholding tax on compensation	454,910.31		
Expanded withholding tax	2,974,584.24	3,429,494.55	4,301,013.18
Adjusted taxable income			₱ 5,749,619.18
Income tax due thereon			₱ 1,724,885.75
Less: Allowable tax credits/ payments			
Creditable tax withheld		₱ 58,077.00	
Payments		376,504.66	434,581.66
Basic Deficiency Income Tax			**₱1,290,304.09**

Petitioner is liable for basic deficiency VAT in the amount of ₱145,233.25.

Respondents maintain that petitioner should be assessed for deficiency VAT amounting to ₱234,840.18 from the following items: (A) undeclared sales/revenues/receipts; and (B) taxable sales/revenues/receipts not subjected to VAT. The deficiency VAT of ₱234,840.18 is computed as follows:

Taxable Sales/revenues/receipts per VAT		₱ 21,280,127.63
Add: Adjustment per investigation:		
Undeclared sales/revenue/receipts	₱ 725,934.93	
Taxable sales/revenues/receipts not subjected to VAT	484,342.09	1,210,277.02
Total taxable Sales/revenues/receipts not subjected to VAT		**₱ 22,490,404.65**
Output tax due thereon		₱ 2,698,848.56
Less: Allowable tax credits/payments		
Current input tax	₱ 815,917.21	
Payments	1,627,848.96	
Creditable VAT withheld	109,849.14	2,553,615.31
Deficiency VAT		₱ 145,233.25
Add: 20% interest p.a. (01.26.10 to 2.25.13)		89,606.93
Total Amount due		**₱ 234,840.18**

A. Undeclared sales/revenues/receipts

The Court sustains respondents' assessment on undeclared sales/revenues/receipts in the total amount of

₱725,934.93 for petitioner's failure to prove its claim. This follows that the said amount shall be subject to VAT.

B. Taxable sales/revenues/ receipts not subjected to VAT

Respondents' verification disclosed that the total taxable revenues per analysis, as shown below, were not fully subjected to VAT, therefore, assessed pursuant to Sections 106 and 108 of the NIRC of 1997, as amended.

Taxable revenues/receipts per analysis*		₱ 21,764,469.72
Taxable revenues/receipts per VAT returns		21,280,127.63
Taxable sales/revenues/receipts not subjected to VAT		**₱ 484,342.09**
**Taxable revenues per ITR/FS*		*₱ 21,280,128.00*
Add: Other Income		*45,506.00*
Receivables-net-Trade, beg.	*₱ 692,414.00*	
Divided by	*112%*	*618,226.79*
Less: Receivables-net-Trade, end	*200,918.00*	
Divided by	*112%*	*179,391.07*
Taxable revenues/receipts per analysis		*₱ 21,764,469.72*

According to petitioner, the Other Income of ₱45,506.00 represents scrap sales, that is, the value received for sale of goods not needed in the ordinary course of business such as empty cartons, bottles, etc. Petitioner undertakes to pay deficiency VAT due on the same.

Petitioner, on the other hand, disputes the balance of ₱438,836.09. In her Judicial Affidavit, Ms. Marissa R. Tagle clarified the nature of petitioner's trade receivables, to wit:

> "Q37: Let's go to the alleged VAT deficiencies in year 2009. According to the Final Assessment Notice, petitioner GQSR was also assessed the amount of Php438,835.72 for taxable sales/revenues/receipts not subjected to VAT. Why did the BIR assess Petitioner GQSR for that?
> A37: Based on GQSR's Comparative Audited Financial Statements for year 2009, BIR took the difference between its trade receivables for 2008 and 2009. That is how they arrived with the said amount. To them, GQSR did not pay any VAT on these receivables.
>
> xxx xxx xxx

Q39: What can you say about this VAT assessment?
A39: We are not liable to pay VAT.

Q40: Why?
A40: **Actually, these trade receivables are customer payments made through credit cards.** Before we receive payment from the credit card companies, we treat the sales through credit cards as trade receivables. In fact, at the time of each sale, we already reported each transaction. At the same time, all sales are subjected to VAT even if we are yet to receive any payment from the credit card sales.

Q41: What is your basis to support that?
A41: Under ***Sec. 106(A) of the National Internal Revenue Code and Section 4.106-1 of Revenue Regulations No. 16-2005***, as amended by ***Revenue Regulations No. 4-2007***, sales of goods are to be reported at the time of the transaction.

Q42: What type of reporting or accounting method do you employ when it comes to GSQR's sales transactions?
A42: It uses revenue recognition accounting method when reporting sales.

Q43: xxx, what does that mean?
A43: It means, xxx, that GQSR's sales, assets and liabilities are recorded at their values when they are first acquired. So, at the moment the transaction is closed, the sales are already posted and recorded in our books. Sales are recorded even when cash is not yet received.

Q44: xxx, you said that these trade receivables are sales made through the customer using his/her credit card for purchase. What happens when you receive the payment from the credit card company?
A44: The value of that sale is removed from Trade Receivables, and the payment received from the credit card company is now to be recorded under cash receipts."[62]

The Court notes that petitioner misquoted Section 106(A) of the NIRC of 1997, as amended, and Section 4.106-1 of RR No. 16-2005, as amended by RR No. 4-2007. Considering it is an operator of a restaurant[63], petitioner is engaged in the sale

[62] Docket, p. 585-586.
[63] Exhibit "P-5", docket, p. 1169.
"Second. – That the purposes for which such corporation is formed are as follows:
PRIMARY PURPOSE
To establish, operate and maintain restaurants, coffee shops, refreshment parlors, cocktail lounges and cater foods, and for this purpose to formulate, prepare, manufacture or import dough and dough preparations, sauces, mixes, condiments, meat and meat preparations, and any and all other ingredients necessary for the preparation, sales, distribution and marketing of pizzas, pasta dishes and all other

of services, and not that of goods, pursuant to Section 108 of the NIRC of 1997, as amended and Section 4.108-2 of RR No. 16-2005, as amended by RR No. 4-2007, *to wit*:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> The phrase **'sale or exchange of services'** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by xxx **proprietors or operators of restaurants, refreshment parlors, cafes and other eating places**, xxx." *(Emphasis supplied)*
>
> "SEC. 4.108-2. *Meaning of 'Sale or Exchange of Services'.* – The term *'sale or exchange of services'* means the performance of all kind of services in the Philippines for others for a fee, remuneration or consideration, whether in kind or in cash, including those performed or rendered by the following:
>
> xxx xxx xxx
>
> (8) proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers;"

Thus, petitioner shall be subject to VAT equivalent to 12% of its gross receipts. The same Code and Regulation defines 'gross receipts' in this wise:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> The term **'gross receipts'** means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments **actually or constructively received** during the taxable quarter for the services

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types of food and beverage preparations, sold, distributed and marketed in the restaurants, coffee shops, refreshment parlors, cocktail lounges and catering functions operated, maintained and performed by the corporation." (Articles of Incorporation).

performed or to be performed for another person, excluding value-added tax."

"SECTION. 4.108-4. *Definition of Gross Receipts.* – ***'Gross receipts'*** refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments **actually or constructively received** during the taxable period for the services performed or to be performed for another person, excluding VAT, xxx.

'Constructive receipt' occurs when the money consideration or its equivalent is placed at the control of the person who rendered the service without restrictions by the payor. The following are examples of constructive receipts:

(1) deposit in banks which are made available to the seller of services without restrictions;

(2) issuance by the debtor of a notice to offset any debt or obligation and acceptance thereof by the seller as payment for services rendered; and

(3) transfer of the amounts retained by the payor to the account of the contractor." *(Emphasis supplied)*

Thus, for VAT purposes, petitioner's obligation to pay the VAT accrues from the time it received payments from its services, and not before the receipt of payment from the credit card companies, as claimed by petitioner. Moreover, petitioner's claim that it already pays the VAT thereon even if the amount has yet to be collected is bereft of merit considering that no supporting documents were presented before the Court. The Judicial Affidavit of Ms. Tagle, being self-serving, must be corroborated by additional documentary evidence to enhance its reliability. Accordingly, the foregoing assessment shall be sustained.

In sum, petitioner shall be liable for basic deficiency VAT in the amount of ₱145,233.25, as determined below:

Taxable sales/revenues/receipts per VAT return		₱ 21,280,127.63
Add: Adjustments		
Undeclared sales/revenues/receipts	₱ 725,934.93	
Taxable sales/revenues/receipts not subjected to VAT	484,342.09	1,210,277.02
Total sales/revenues/receipts not subjected to VAT		₱ 22,490,404.65
Output tax due thereon		₱ 2,698,848.56
Less: Allowable tax credits/payments		

Current input tax	₱ 815,917.21	
Payments	1,627,848.96	
Creditable VAT withheld	109,849.14	2,553,615.31
Deficiency VAT		**₱ 145,233.25**

Petitioner is not liable to pay Compromise Penalty.

Petitioner disputes the following compromise penalties as assessed by respondents pursuant to Sections 250, 251, and 255 of the NIRC of 1997, as amended, with reference to Revenue Memorandum Order (RMO) No. 1-90, as amended by RMO No. 19-07:

Failure to use registered books of accounts	₱ 1,000.00
Non-filing of Monthly Alphalist of Payees	12,000.00
Non-submission of Annual Information Returns: BIR Form 1604-E and Alphalist of Payees	2,000.00
Total Amount Due	**₱15,000.00**

Notwithstanding, petitioner made a subsequent payment of ₱2,000.00 on February 7, 2013[64], representing the compromise penalty for failure to use registered books of accounts. Petitioner submits that such amount be refunded and/or applied if a violation will be truly found by the Court as alleged and imputed by respondents.

The Court cannot sustain the assessment.

As already held in a long line of cases, compromise penalties, under Revenue Memorandum Order No. 1-90, are only suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses 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.[65] The imposition of the same without the conformity of the

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[64] Exhibit "P-19-A", docket, pp. 1242-1243.

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

taxpayer is illegal and unauthorized.[66] Absent any showing that petitioner consented to the compromise penalty, the same should not be imposed. Accordingly, respondent's imposition of the compromise penalty, without the consent of petitioner, cannot be sustained.

Even though it made a payment, petitioner still disputes the compromise penalties. Thus, it is, but fair that the amount of ₱2,000.00 be applied to the total tax due as found by the Court.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The compromise penalty imposed by respondents for taxable year 2009 in the amount of P15,000.00 is hereby **CANCELLED AND WITHDRAWN**. However, the assessments issued by respondents against petitioner for taxable year 2009 covering deficiency income and value-added taxes are **AFFIRMED** with some modifications. Accordingly, petitioner is **ORDERED TO PAY ONE MILLION SEVEN HUNDRED NINETY-FOUR THOUSAND FOUR HUNDRED TWENTY-ONE PESOS AND 67/100 (₱1,794,421.67)**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	25% Surcharge	Total
Income Tax	₱ 1,290,304.09	₱ 322,576.02	₱ 1,612,880.11
Value-added Tax	145,233.25	36,308.31	181,541.56
Total	**₱ 1,435,537.34**	**₱ 358,884.33**	**₱ 1,794,421.67**

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income and value added taxes computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Deficiency Interest Computed From
Income Tax	₱1,290,304.09	April 15, 2010
Value-added Tax	₱ 145,233.25	January 25, 2010

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

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱1,794,421.67 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from February 25, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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