REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MILWAUKEE INDUSTRIES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6202

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
APR 14 2009
11:00 a.m.

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AMENDED DECISION

UY, *J.*:

This resolves:

1. petitioner's *MOTION FOR PARTIAL RECONSIDERATION* filed on February 8, 2008 and *SUPPLEMENTAL MOTION FOR PARTIAL RECONSIDERATION* filed on March 28, 2008, with respondent's *COMMENT/OPPOSITION* filed on April 14, 2008; and

2. respondent's *MOTION FOR PARTIAL RECONSIDERATION* filed on February 12, 2008, with petitioner's *COMMENT/OPPOSITION (to the Motion for Partial reconsideration dated 8 February 2008)* filed on March 24, 2008.

Inasmuch as both parties rely on different grounds for their *Motions for Partial Reconsideration*, each *Motion* will be discussed separately.

Petitioner's Motion and Supplemental Motion

In its *Motion*, petitioner prays for partial reconsideration of this Court's *Decision* dated January 16, 2008 by:

1. allowing the following deductions from petitioner's gross income for taxable year 1997:

   1.1 interest and bank charges amounting to P18,128,498.26;
   1.2 scrap purchases from various junk shops in the amount of P9,040,701.37;
   1.3 foreign exchange losses in the amount of P4,429,982.42; and

2. canceling or withdrawing the VAT imposed on petitioner's sales to Ciriaco Corporation in the amount of P155,163.56.

In its *Supplemental Motion for Partial Reconsideration*, petitioner further prays that the remaining input VAT, in the total amount of P31,739,321.03, be applied against petitioner's output tax in 1997.

The above-enumerated items will be discussed in *seriatim*.

Interest Expense – P18,128,498.26

Petitioner submits that the Court, in disallowing interest and bank charges as deductions from gross income for taxable year 1997 amounting to P18,128,498.26 on the ground that it failed to prove that the proceeds of its loans were used in connection with its business, allegedly overlooked the following:

a. The third requisite for deductibility of interest expense only requires that the indebtedness be connected with the business, trade or profession of the taxpayer. Actual utilization of the proceeds thereof is immaterial;

b. The petitioner is effectively denied due process of law as it did not know that the third requisite for the deductibility of interest expense or the connection between the debt and the business of petitioner is in issue. Thus, it was deprived of the opportunity to prove the existence of the third requisite or defend against its alleged non-existence;

c. It is presumed that the transactions of private corporations are regular. Since a corporation like petitioner can only act within the powers given to it by law and its Articles of Incorporation, the debt is presumed to have been contracted in furtherance of or in connection with petitioner's business.

This Court finds no merit in petitioner's contentions.

Contrary to petitioner's claim, the third requisite for deductibility of interest expense requires that the indebtedness be connected with the business, trade or profession of the taxpayer. This means that there must be sufficient and relevant relationship between the taxpayer's incurrence of the loans and the taxpayer's business which can only be established through the presentation of proof/s showing actual utilization of the proceeds of the loans upon which the claimed deduction for interest expense was paid or incurred. Actual utilization of the loan proceeds is material as this was the very basis upon which respondent disallowed the corresponding interests and bank charges of P18,128,498.26 in the assailed Final Decision on Disputed Assessment, to wit:

"B. <u>Disallowed 'Interest and Bank Charges'</u>

The loan operations, as described in detail in our report of investigation to the Commissioner of Internal Revenue, is in fact speculation in the rise and fall of the US dollar. Significantly, the year 1997 marked the start of the depreciation of the pesos vis-à-vis the US dollar as a result of the Asian financial crisis which peaked in 1998. Obviously, speculation is prime currency (US Dollar) was big business during this period.

In fact, the Bangko Sentral ng Pilipinas (BSP) even prohibited the peso-dollar swap during this period in order to arrest the further depreciation of the peso.

We disallowed the interests on the Philippine Banking Corporation (PBC) Prime Currency (US Dollar) loan for the following reasons:

1. Only the interest expenses on the Prime Currency (US Dollar) loan from PBC and the interests and bank charges on the repurchase of the assigned Prime Currency (US Dollar) with PBC Capital and Investment Corporation (PBCCAP) were recorded in its 1997 books of accounts and not the liability. Said interests and bank charges were subsequently claimed as deduction in Milwaukee Industries Corporation's (Milwaukee) 1997 Income Tax Return.

2. **Milwaukee did not receive the proceeds of, neither did it benefit from**, the Prime Currency (US Dollar) loan and its reassignment with PBCCAP because the bank accounts used (Milwaukee's Account No. 1041-01768-6 and Prime Currency Savings Account No. 2-534-00391-1, both with PBC) are not recorded in Milwaukee's books of accounts. Apparently, said accounts with PBC are under the control and disposition of the top officials of Milwaukee."[1] (*Emphasis supplied*)

Likewise, petitioner alleges that its financial statements[2] show that it had Current Assets (cash and near cash assets) at the beginning of taxable year 1997 in the amount of P816,306,714.68, while its Current Liabilities beginning taxable year 1997 stood at P1,271,245,802.56. These figures purportedly show that petitioner's Current Assets of P816,306,714.68 were not enough to answer for all its maturing liabilities of P1,271,245,802.56. Thus, petitioner avers that it was in a state of illiquidity as it was unable to pay its obligations as they fall due and that at the very least, it had to borrow

[1] Exhibit "SSSS-3".
[2] Exhibits "JJJ" to "JJJ-3", inclusive.

or source funding for the difference between its Current Assets and its Current Liabilities in the amount of P454,939,087.88, in order to cover all its maturing obligations. Therefore, the purpose of petitioner's borrowings was allegedly to infuse the much needed funds in order to pay its current obligations and to sustain its faltering operations.

The Court cannot give credence to petitioner's foregoing arguments as the same are inconsistent with its stance in its Protest Letter dated February 21, 2000[3] and Memorandum[4] that the liability from which the interest charges arose was not recorded in 1997 because the loan was obtained in 1996. Furthermore, deductions for income tax purposes partake the nature of tax exemptions, hence, strictly construed against the taxpayer and cannot be allowed unless granted in the most explicit and categorical language too plain to be mistaken.[5]

Petitioner's Scrap Purchases from Various Junk Shops – P9,040,701.37

Petitioner argues that the Court, in not allowing petitioner's scrap purchases from various junk shops in the amount of P9,040,701.37 on the ground that the amount involved can hardly be considered as purchases from small-time vendors, overlooks the fact that said purchases were an accumulation of hundreds of purchases spanning a period of one (1) year; that petitioner indeed paid for the said purchases as evidenced by the checks and vouchers duly acknowledged and signed by the representatives of the

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[3] Docket, pp. 19-25, at p. 22
[4] Filed on October 17, 2006, Docket, p. 1643-1682, at p. 1659
[5] *Pansacola vs. Commissioner of Internal Revenue*, G.R. No. 159991, November 16, 2006.

junk shop dealers pursuant to Revenue Regulations No. 12-78 dated July 21, 1978.

This issue had already been thoroughly discussed in the assailed Decision. To reiterate, petitioner's scrap purchases in the amount of P9,040,701.37 is substantial and can hardly be considered as purchases from small-time vendors so as to exempt such purchases from the required issuance of official receipts or sales invoices under Section 238 of the National Internal Revenue Code (NIRC) of 1977, as amended, which states:

> **"SECTION. 238.** ***Issuance of receipts or sales or commercial invoices.*** — **All persons, subject to an internal revenue tax shall for each sale or transfer of merchandise or for services rendered valued at P25.00 or more, issue receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service;** *Provided*, That in the case of sales, receipts or transfers in the amount of P100.00 or more, or, regardless of amount, where the sale or transfer is made by persons subject to value-added tax to other persons also subject to value-added tax; or, where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client. **The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business for a like period**. xxx." (*Emphasis and underscoring supplied*)

From the foregoing provision of law, a person who is subject to an internal revenue tax, shall issue receipts, sales or commercial invoices, prepared at least in duplicate for each sale or transfer of merchandise or for services rendered valued at **P25.00 or more**. The provision likewise imposes a responsibility upon the purchaser to keep and preserve the original copy of the invoice or receipt for a period of three years from the close of the taxable year in which such invoice or receipt was issued. The rationale behind the latter requirement is the duty of the taxpayer to keep adequate records of each and every transaction entered into in the conduct of its business. So that when their books of accounts are subjected to a tax audit/examination, all entries therein, could be shown as adequately supported and proven as legitimate business transactions.[6]

Foreign Exchange Losses – P4,429,982.42

Petitioner maintains that the Court, in not allowing foreign exchange losses in the amount of P4,429,982.42 on the ground that it did not submit the loan documents establishing its trust receipts payable balance, allegedly overlooked the fact that all the requisites for the deductibility of losses were complied with by petitioner.

The Court disagrees. It is to be emphasized that the subject foreign exchange losses represent the difference between the foreign exchange (forex) rates used at the time when petitioner obtained its foreign currency loans and the forex rates used at the time when the said loans were paid by petitioner. While petitioner submitted documents proving the actual forex

[6] *Pilmico-Mauri Foods Corporation vs. Commissioner of Internal Revenue* (C.T.A. Case No. 6151, December 15, 2004), affirmed in *Pilmico-Mauri Foods Corp. vs. Commissioner of Internal Revenue* (C.T.A. EB NO. 97, August 29, 2006).

rates used when it settled its foreign currency loans, it failed to establish the actual forex rates used at the time it obtained the said loans.

Sales to Ciriaco Corporation – P155,163.56

Petitioner argues that the Court in ruling that petitioner's sales to Ciriaco Corporation in the amount of P155,163.56 is taxable, and that petitioner is liable to pay the corresponding VAT on the ground that the word "zero-rated" is not imprinted on petitioner's VAT invoice, overlooked the following:

a. Revenue Regulations No. 7-95 does not prescribe a penalty for noncompliance with the invoicing requirements; and

b. the Court effectively and unequivocally recognized the transaction between petitioner and Ciriaco Corporation as zero-rated.

Again, the Court disagrees. It is explicit from the provisions of Section 108(a) of the NIRC of 1977, as amended, in relation to Section 238 of the same Code and that a VAT-registered person like herein petitioner must issue a duly registered VAT invoice or receipt ***for every sale transaction***. Such VAT invoice or receipt must show the taxpayer's identification number (TIN) followed by the word VAT, BIR authority to print or BIR permit number and the word "zero rated" imprinted on the invoice or receipt covering a zero-rated sale, pursuant to Section 4.108-1 of Revenue Regulations No. 7-95. Considering so, the export sales referred to under Section 100(a)(2)(A)(i) of the Tax Code of 1977, as subject to zero percent (0%) VAT are those covered by duly registered VAT invoices.

Accordingly, without the duly registered VAT invoices, petitioner's export sales cannot qualify for zero-rating.

Disallowed Input VAT Credits – P31,739,321.03

Petitioner prays that its claimed input VAT in the amount of P31,739,321.03 be reconsidered and allowed to be applied against its output VAT liability for 1997.

As can be recalled, the Court-commissioned Independent Certified Public Accountant (ICPA), Edgardo S. Licuanan, Jr., arrived at the following findings upon verification of petitioner's source documents:

Input VAT with available supporting papers	P 28,662,239.99
Input VAT with supporting papers not available	P 1,550,495.91
Input VAT carry over from the previous year	P 21,560,097.46

However, in Our Decision, We ruled as follows:

> "Based on the above findings, the input VAT with no supporting papers available in the amount of P1,550,495.91 shall be denied outright. The same holds true with the input VAT carry-over from the previous year in the amount of P21,560,097.46 for petitioner's failure to prove the existence via VAT invoices, receipts and quarterly VAT returns of the previous year. As to the input VAT of P28,662,239.99, a part thereof in the amount of P5,061,208.22 was found to be without supporting documents; thus, shall be disallowed. Out of the P23,601,031.77 remaining input VAT with supporting documents, the amount of P5,118,015.35 shall be disallowed for it was not properly substantiated with VAT invoices/receipts and only the amount of P18,483,016.42 represents petitioner's valid input VAT pursuant to the invoicing requirements under Section 108(a) in relation to Section 104(a)(2) of the 1977 Tax Code and Section 4.104-5 of Revenue Regulations No. 7-95. Consequently, instead of the P7,308,759.01 input VAT allowed by respondent, the input VAT amount of P18,483,016.42 shall be applied against petitioner's output tax in computing the amount of VAT still due and payable."

While petitioner concedes to the disallowance of the amount of P1,550,495.91, representing input taxes without supporting documents as found by the ICPA, petitioner questions this Court's disallowance of the following input taxes:

Input VAT carry-over from the previous year	P 21,560,097.46
Input VAT without supporting documents	5,061,208.22
Input VAT with invalid supporting documents	5,118,015.35
	P 31,739,321.03

Petitioner argues that the input tax carry-over from the previous year in the amount of P21,560,097.46 was verified by the ICPA to have been duly supported and that the disallowance of the said amount is an undue deprivation of its right under Section 104(b) of the NIRC of 1977, as amended; and that the carry-over of the prior year's excess input VAT was affirmed in *AAPI Realty Corporation vs. Commissioner of Internal Revenue*[7], wherein this Court ruled as follows:

> "xxx [W]e shall rule on whether or not it was proper for the respondent to disallow the input VAT of P9,213,677.71 on the sole ground that the same corresponds to purchases made in 1996 and not in 1997.
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> Section 104(b) of the NIRC of 1977, as amended, provides thus:
>
> > Sec. 104. *Tax Credits.* — xxx
> >
> > (b) *Excess output tax or input tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. *If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarters. ...* (Emphasis supplied)

[7] CTA Case No. 6344, June 23, 2005.

> Pursuant to the aforequoted provision, the excess of the input tax over the output tax in a given taxable quarter may be carried-over and applied against the output VAT of the succeeding quarters. Thus, even if the input VAT of P9,213,677.71 disallowed by the respondent actually pertains to purchases made in 1996 and should have been reported by petitioner in its 1996 VAT returns, the law allows the carrying-over of the said input VAT to the succeeding quarters. In which case, the input VAT of P9,213,677.71 would have formed part of the excess input tax carried-over from 1996 reflected in petitioner's 1997 first quarterly VAT return in the amount of P3,281,713.45 (*Exhibit AA*) which was allowed by the respondent as tax credit in 1997. Evidently, therefore, respondent's disallowance of the input VAT of P9,213,677.71 is erroneous and without legal basis and the 1997 deficiency VAT assessment of P18,380,309.19 should be cancelled and withdrawn."

The Court finds the *AAPI Realty Corporation case* inapplicable to the present case for having a different set of facts. In the cited case, respondent disallowed petitioner's claimed input taxes on the sole ground that the same pertains to prior year and not the current year under assessment. In other words, respondent found petitioner's claimed input taxes to be duly supported by VAT invoices or receipts and that the only issue left for determination was whether or not the same maybe credited in the succeeding quarter's/year's returns. In the present case, the substantiation of the prior year's input VAT of P21,560,097.46 is put into issue.

Although Section 104(b) of the NIRC of 1977, as amended, allows the carry-over of excess input VAT from the previous quarter(s) to the succeeding quarter(s), the same must be duly supported by VAT invoices (for purchases of goods) or VAT official receipts (for purchases of services) in order to be creditable against its output VAT as required under Section 104(a) thereof, which states:

> "SEC. 104. *Tax Credits.* - (a) *Creditable input tax.* – Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 108 hereof on the following transactions shall be creditable against the output tax:
>
> (1) Purchase or importation of goods:
>
> (A) For sale; or
> (B) For conversion into or intended to form part of a finished product for sale including packaging materials; or
> (C) For use as supplies in the course of business; or
> (D) For use as materials supplied in the sale of service; or
> (E) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.
>
> (2) Purchase of services on which a value-added tax has been actually paid.
>
> The input tax on domestic purchase of goods or properties shall be creditable:
>
> (AA) To the purchaser upon consummation of sale and on importation of goods or properties;
>
> (BB) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> However, in the case of purchase of services, lease or use of properties the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.
>
> xxx xxx xxx."

Inasmuch as petitioner did not submit VAT invoices or receipts proving the existence of its claimed prior year's input VAT in the amount of P21,560,097.46, the same cannot be allowed to be credited or applied against its output VAT liability for 1997. The same holds true with the claimed input tax in the amount of P5,061,208.22 for which no supporting documents were submitted by petitioner.

As regards the amount of P5,118,015.35 representing input VAT found by this Court to have been supported by invalid documents, petitioner maintains that the disallowance of the said amount is erroneous for the following reasons:

	Findings	Aggregate Amount	Remarks
a.	Not within the period of claim	9,321.85	The official receipts, though not dated in 1997, pertain to the billing period covering 1997.
b.	Different documents with same exhibit number	56,213.68	Mere error in the designation of exhibit number must not negate petitioner's valid claim of input VAT
c.	Non-VAT Sales Invoice	299.64	
d.	Supporting documents not dated	108,834.37	A perusal of the documents showed that the same are dated
e.	Supporting documents not in the name of the company	8,221.72	The receipts were issued in the name of "Cash"
f.	Document presented twice	41,079.26	The documents have different dates and amounts and represent different transactions
g.	Supported by document other than Sales Invoice	1,110,702.81	The supporting documents constitute of official receipts
h.	Supported by document other than Official Receipts	2,123,433.34	The supporting documents constitute of invoices
i.	Supported by OR without pre-printed TIN VAT number	1,120,670.00	The receipts were issued by the Bureau of Customs, a government entity
j.	Supported by TAN Invoice	263,631.97	The invoices were from the unexpended/unissued invoices of supplier
k.	Not legible OR/Sales Invoice	206,333.76	This is negated by the fact that Annex "A" was able to list down the specific dates and amounts of the official receipts/sales invoices
l.	Without preprinted TIN VAT Number	69,272.95	The official receipts bear the TIN
		5,118,015.35	

Anent petitioner's assertion that the official receipts covering the input taxes of P9,321.85, though not dated in 1997, pertain to the billing period covering 1997,[8] the Court finds the same without merit.

Part of the input VAT of P9,321.85 relates to petitioner's purchases of goods and the other part pertains to petitioner's purchase of services. In *Telecommunications Technologies Phil., Inc. vs. Commissioner of Internal Revenue*[9], this Court in a Resolution dated July 28, 2004, declared that the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser only **upon consummation of sale**, which means upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only **upon payment of the compensation or fee**, *i.e.*, upon issuance by the seller of the VAT official receipt for the payment for services performed or yet to be performed. Section 104(a) of the NIRC of 1977, as amended, is clear that the input tax shall be allowed as tax credit to the purchaser only upon consummation of sale or upon payment of the compensation, as the case may be. Accordingly, it is imperative for petitioner to **declare the input value-added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt**.

[8] Item "a" of the Findings.
[9] C.T.A. Case No. 6168.

It must be noted that the claimed input VAT of P9,321.85 covers the year 1997. Thus, the input taxes on purchases of goods which are supported by VAT invoices and the input taxes on purchases of services which are supported by VAT official receipts bearing dates outside of the year 1997 cannot be considered as valid support for petitioner's claimed 1997 tax credits of P9,321.85.

Contrary to petitioner's allegation, the documents supporting the input VAT of P108,834.37 were not dated in violation of Section 108(a), in relation to Section 238 of the NIRC of 1977, as amended, and Section 4.108-1 of Revenue Regulations No. 7-95, which require that the date of the transaction be indicated in the VAT invoice or official receipt.[10] Hence, the input VAT claim of P108,834.37 should be denied.

Likewise, the Court reiterates the disallowance of the input VAT of P8,221.72, the supporting documents of which were issued in the name of "Cash".[11] Pursuant to Section 108(a) in relation to Section 238 of the NIRC of 1977, as amended, and Section 4.108-1 of Revenue Regulations No. 7-95, the VAT invoice or official receipt must be **issued in the name of the purchaser**.

Also, the Court is firm on the denial of the input taxes of P299.64 covered by non-VAT sales invoice,[12] input taxes of P263,631.97 which are supported by TAN invoice,[13] and input taxes of P69,272.95 the supporting

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[10] Item "d" of the Findings.
[11] Item "e" of the Findings.
[12] Item "c" of the Findings.
[13] Item "j" of the Findings.

invoices/receipts of which do not have preprinted TIN VAT Number.[14] Section 4.108-1 of Revenue Regulations No. 7-95 provides that "Only VAT-registered persons are required to print their **TIN followed by the word 'VAT'** in their invoices or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax."

As regards the input taxes of P206,333.76,[15] the Court maintains the disallowance of the said input taxes because the purchase date or purchase amount cannot be determined from the supporting official receipts or sales invoices.

With reference to the input taxes of P41,079.26,[16] which were disallowed because the corresponding documents were presented twice, the Court reiterates the disallowance of the same but reconsiders the following documentary exhibits with the equivalent amounts for being presented only once:

Supplier	Date	Exhibit No.	Input VAT
Uni-Pacons Commercial Corp.	1/31/1997	AAAA-635	P5,296.25
Citadel Motors	7/19/1997	AAAA-1592	125.73
Asline Chemical Product Supplies		AAAA-744	636.36
			P6,058.34

On the disallowed input taxes of P56,213.68,[17] the Court after considering that the subject documentary exhibits are part of the records of

[14] Item "l" of the Findings.
[15] Item "k" of the Findings.
[16] Item "f" of the Findings.
[17] Item "b" of the Findings.

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this case, finds the input taxes enumerated below, in the total amount of P36,359.19, valid:

Supplier	Date	Exhibit No.	Input VAT
Alpha Commercial Enterprises	4/11/1997	AAAA-670	545.45
Alpha Commercial Enterprises	4/11/1997	AAAA-671	225.45
Alpha Commercial Enterprises	4/8/1997	AAAA-673	937.27
Alpha Commercial Enterprises	4/8/1997	AAAA-674	410.45
Alpha Commercial Enterprises	5/12/1997	AAAA-675	776.59
Alpha Commercial Enterprises	5/12/1997	AAAA-676	272.73
Alpha Commercial Enterprises	5/8/1997	AAAA-677	590.91
Alpha Commercial Enterprises	5/5/1997	AAAA-678	656.36
Alpha Commercial Enterprises	5/2/1997	AAAA-679	152.50
Alpha Commercial Enterprises	4/21/1997	AAAA-680	286.36
Alpha Commercial Enterprises	4/30/1997	AAAA-681	251.14
Amstar Process Technology	6/11/1997	AAAA-682	197.27
Andes Resources Corp.	5/17/1997	AAAA-684	2,881.82
Kimika Industrial Corp.	6/24/1997	AAAA-918	1,521.82
Automatic Center	8/29/1997	AAAA-2321	3,500.55
Wickfield Trading & Industrial Supp	3/3/1997	AAAA-2321	3,818.18
Ferromet Resources	10/3/1997	AAAA-2744	4,267.50
Ferromet Resources	10/11/1997	AAAA-2744	1,590.00
Ferromet Resources	10/16/1997	AAAA-2744	4,267.50
Pier 8 Arrastre & Stevedoring Services, Inc.	11/11/1997	AAAA-2905	190.31
Pocketbell Philippines	10/6/1997	AAAA-2905	155.00
Taiho Motor Parts	11/23/1997	AAAA-3087	10.91
Toyota Balintawak, Inc.	11/29/1997	AAAA-3087	170.85
Tadchem Marketing	10/23/1997	AAAA-3103	922.82
Technorand Sales Corporation	10/2/1997	AAAA-3103	801.55
Top-Rigid Enterprises	12/3/1997	AAAA-3103	517.09
Technorand Sales Corporation	10/2/1997	AAAA-3104	4,695.36
Tradepoints, Inc.	11/24/1997	AAAA-3104	1,745.45
			P 36,359.19

However, the remaining amount of P19,854.49 is still disallowed on the ground that the supporting invoices bear TIN-V instead of TIN-VAT and/or the purchase date cannot be determined from the supporting invoices.

As regards the input taxes of P1,110,702.81 supported by documents other than sales invoices,[18] input taxes of P2,123,433.34 supported by

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[18] Item "g" of the Findings.

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documents other than official receipts[19] and input taxes of P1,120,670.00 supported by ORs without pre-printed TIN VAT number,[20] the Court reconsiders and finds the following input taxes in the amount of P2,069.839.98 valid:

Supplier	Exhibit No.	Input VAT
1. Input VAT on Importation supported by bank OR and/or Debit Advice		
Schmitz Transport & Brokerage Corp.	AAAA-3291	P 46,789.00
Schmitz Transport & Brokerage Corp.	AAAA-3292	22,150.00
Schmitz Transport & Brokerage Corp.	AAAA-3293	13,736.00
Schmitz Transport & Brokerage Corp.	AAAA-3295	342,821.00
Schmitz Transport & Brokerage Corp.	AAAA-3306	59,041.00
Schmitz Transport & Brokerage Corp.	AAAA-3307	386,774.00
Schmitz Transport & Brokerage Corp.	AAAA-3319	67,300.00
Schmitz Transport & Brokerage Corp.	AAAA-3322	6,738.00
	Sub-total	**P 945,349.00**
2. Input VAT on Importation supported by OR issued by the Bureau of Customs		
Bureau of Customs	AAAA-3305	P 42,864.00
Bureau of Customs	AAAA-3308	54,341.00
Bureau of Customs	AAAA-3309	265,704.00
Bureau of Customs	AAAA-3311	106,927.00
Bureau of Customs	AAAA-3312	2,209.00
Bureau of Customs	AAAA-3313	43,468.00
Bureau of Customs	AAAA-3314	137,056.00
Bureau of Customs	AAAA-3315	363,397.00
Bureau of Customs	AAAA-3321	104,704.00
	Sub-total	**P1,120,670.00**
3. Input VAT on purchases of services which are duly supported by VAT ORs		
Datelcom Corp.	AAAA-1241	P 1,582.84
Datelcom Corp.	AAAA-1242	1,202.58
Datelcom Corp.	AAAA-1243	207.61
Datelcom Corp.	AAAA-1244	159.64
Datelcom Corp.	AAAA-3224	348.22
Datelcom Corp.	AAAA-3223	320.09
	Sub-total	**P 3,820.98**
	Total	**P2,069.839.98**

Taking into account the foregoing findings, petitioner is entitled to additional allowable input VAT in the amount of P2,112,257.51[21] for taxable year 1997; thus, leaving a deficiency VAT payable of P46,280,162.38, plus the

[19] Item "h" of the Findings.
[20] Item "I" of the Findings.
[21] The sum of P6,058.34, P36,359.19, and P2,069.839.98.

payment of twenty percent (20%) delinquency interest per annum computed from January 21, 2000 until full payment thereof, pursuant to Section 249(c) of the NIRC of 1997, as amended, computed as follows:

Sales declared per VAT returns			P519,323,448.20
Add:	Adjustments to vatable sales per investigation Sales to Ciriaco Company		155,163.56
Total Sales subject to 10% VAT			P519,478,611.76
VAT due thereon			P 51,947,861.18
Less:	VAT paid per return	P 905,112.00	
	Allowable input tax *(See details per Annex A of the assailed Decision dated 01-16-08)*	18,483,016.42	
	Additional allowable input tax	2,112,257.51	
	Total		21,500,385.93
Deficiency VAT due			P 30,447,475.25
Add:	Interest		15,832,687.13
Total Deficiency VAT Payable			**P 46,280,162.38**

Respondent's Motion

Respondent prays that the Court's *Decision* dated October 23, 2006 (should be January 16, 2008) be partially considered. He submits that the Court erred in holding that the sales between petitioner and its affiliate Littlegiant Steel Pipe Corporation of 21,448 metric tons of hot rolled steel coils valued at P193,032,000.00 was cancelled.

In its *Comment/Opposition*, petitioner prays for the denial of respondent's *Motion* considering, among others, that it was sent to petitioner by registered mail and does not contain an explanation for failure to effect personal service; in contravention of Section 11, Rule 13 of the Revised Rules of Court, as amended.

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Respondent's *Motion* is without merit. The Court finds no new matters raised therein that will warrant a reversal or modification of the assailed *Decision* based on the ground relied upon by respondent. Hence, this Court's finding that petitioner submitted sufficient documentary evidence to support its explanation that all the hot rolled steel coils were returned and that indeed the sales by Littlegiant were cancelled shall not be disturbed. Furthermore, We reiterate Our findings that respondent's allegation that petitioner had gross profit on sales traceable to unrecorded purchases from Littlegiant amounting to P90,713,406.43 is without basis.

WHEREFORE, premises considered, respondent's *MOTION FOR PARTIAL RECONSIDERATION* is hereby **DENIED** for lack of merit; while petitioner's *MOTION FOR PARTIAL RECONSIDERATION* and *SUPPLEMENTAL MOTION FOR PARTIAL RECONSIDERATION* are hereby **PARTIALLY GRANTED**. This Court's Decision dated January 16, 2008 is hereby **MODIFIED**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent, its deficiency income tax and value-added tax in the reduced amounts of P16,706,973.96 and P46,280,162.38, respectively, or in the total amount of P62,987,136.34 .

In addition, petitioner is hereby **ORDERED** to **PAY** twenty percent (20%) delinquency interest per annum on the total amount of P62,987,136.34, computed from January 21, 2000 until full payment thereof, pursuant to Section 249(c) of the NIRC of 1997, as amended.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTANEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division