REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

FORT BONIFACIO DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 7696 & 7728

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

DEC 21 2015
3:16 p.m.

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AMENDED DECISION

RINGPIS-LIBAN, *J*.:

For resolution are the following:

1. Respondent's "Motion for Partial Reconsideration (Re: Decision promulgated 15 July 2015)" filed on July 31, 2015, without petitioner's comment as per Records Verification dated September 22, 2015; and

2. Petitioner's "Motion for Partial Reconsideration" filed on July 31, 2015, with respondent's "Comment/Opposition (Re: Motion for Partial Reconsideration of the Decision dated 15 July 2015)" filed on September 8, 2015.

In the assailed Decision, the Court cancelled the assessment issued by respondent against petitioner for taxable year 2003 covering deficiency Withholding Tax on Compensation (WTC) in the amount of Twenty-Nine Million Five Hundred Forty-Six Thousand Four Hundred Forty-Two and 74/100 Pesos (₱29,546,442.74). However, the Court affirmed with modifications the assessments covering deficiency Value-added Tax (VAT), Expanded Withholding Tax (EWT), Documentary Stamp Tax (DST), Fringe Benefit Tax (FBT), and Income Tax. Accordingly, petitioner was ordered to pay respondent Eighty-Five Million Eight Hundred Fifty-Six Thousand Two Hundred Thirty-Seven and 89/100 Pesos (₱85,856,237.89), representing basic deficiency VAT, EWT, DST, FBT, and Income Tax, and the surcharged imposed. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the assessment issued by respondent against petitioner for taxable year 2003 covering deficiency Withholding Tax on Compensation in the amount of ₱29,546,442.74 is hereby **CANCELLED**. However, the assessments issued by respondent against petitioner for taxable year 2003 covering deficiency VAT, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefit Tax and Income Tax are hereby **AFFIRMED** but with modifications. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **EIGHTY FIVE MILLION EIGHT FIFTY SIX THOUSAND TWO HUNDRED THIRTY SEVEN PESOS AND EIGHTY NINE CENTAVOS (₱85,856,237.89)** representing basic deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefit Tax and Income Tax and the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

Type of Tax	Basic Tax due	25% Surcharge	Total
Value-Added Tax	₱ 28,889,366.59	₱ 7,222,341.65	₱ 36,111,708.24
Expanded Withholding Tax	6,815,989.95	1,703,997.49	8,519,987.44
Documentary Stamp Tax	1,086,685.00	271,671.25	1,358,356.25
Fringe Benefits Tax	2,173,126.12	543,281.53	2,716,407.65
Income Tax	29,719,822.65	7,429,955.66	37,149,778.32
Total	**₱68,684,990.31**	**₱17,171,247.58**	**₱85,856,237.89**

> In addition, petitioner is hereby **ORDERED** to **PAY**:
>
> a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefits Tax and Income Tax 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
Value-Added Tax	₱28,889,366.59	January 25, 2004
Expanded Withholding Tax	6,815,989.95	January 13, 2004
Documentary Stamp Tax	1,086,685.00	January 05, 2004
Fringe Benefits Tax	2,173,126.12	January 15, 2004
Income Tax	29,719,822.65	April 15, 2004

b) Delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest which have accrued on the deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax and Fringe Benefits Tax as aforestated in (a) computed from January 2, 2007 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;

c) Delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest which have accrued on the deficiency Income Tax as aforestated in (a) computed from April 13, 2007 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;

d) Delinquency interest at the rate of twenty percent (20%) per annum on the following amounts computed from the dates indicated below until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;

Tax Type	Total Amount Due	Delinquency Interest Computed from
Value-Added Tax	₱36,111,708.24	January 2, 2007
Expanded Withholding Tax	8,519,987.44	
Documentary Stamp Tax	1,358,356.25	
Fringe Benefits Tax	2,716,407.65	
Income Tax	29,719,822.65	April 13, 2007

SO ORDERED."

Respondent seeks reconsideration of the subject Decision and prays that another one be rendered ordering petitioner to pay the following: (1) Seventy Million Forty-Six Thousand Six Hundred Sixty-Six and 93/100 Pesos

(₱70,046,666.93) as deficiency VAT; (2) Twenty-Nine Million Five Hundred Forty-Six Thousand Four Hundred Forty-Two and 74/100 Pesos (₱29,546,442.74) as deficiency WTC; (3) Thirty-Eight Million Eight Hundred Sixty-Nine Thousand Four Hundred Three and 74/100 Pesos (₱38,869,403.74) as deficiency Withholding Tax; (4) Twelve Million Five Hundred Fifty-Four Thousand Nine Hundred Seventy-Nine and 55/100 Pesos (₱12,554,979.55) as deficiency DST; (5) Six Million Three Hundred Ninety-Nine Thousand Seven Hundred Twenty-Three and 81/100 Pesos (₱6,399,723.81) as deficiency Final Withholding Tax-FBT; and (6) Seventy-Seven Million Two Hundred Fifty-Seven Thousand Eight Hundred Ninety and 37/100 Pesos (₱77,257,890.37) as deficiency Income Tax for taxable year 2003, plus twenty-five percent (25%) surcharge and 20% deficiency and delinquency interests for late payment pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.

On the other hand, petitioner raised in its Motion the following grounds for this Court's reconsideration:

I. THE ASSESSMENT FOR DEFICIENCY VAT, EXPANDED WITHHOLDING TAX, AND FRINGE BENEFIT TAX ISSUED BY RESPONDENT AGAINST PETITIONER SHOULD BE VOIDED DUE TO PRESCRIPTION SINCE THE RULE ON PRESUMPTION OF CORRECTNESS OF TAX ASSESSMENTS WAS NEGATED BY THE CLEAR ADMISSION OF THE RESPONDENT'S EXAMINER THAT THE RESULTING AMOUNTS IN THE FORMAL DEFICIENCY TAX ASEESSMENTS COVERED THE ENTIRE TAXABLE YEAR 2003;

II. ON THE DISALLOWED INPUT TAX TO ALLEGED INVALID TAXPAYERS, THE PETITIONER WAS ABLE TO REFUTE THE BASIS USED BY RESPONDENT IN DISALLOWING CERTAIN INPUT TAX WHICH SHOULD BE EXCLUDED IN THE VAT ASSESSMENT;

III. ON THE DEFICIENCY EXPANDED WITHHOLDING TAX, WITH ALL DUE RESPECT, THE HONORABLE COURT FAILED TO CONSIDER CERTAIN DETAILED GL SCHEDULES AND THE EXPANDED WITHHOLDING TAX PAYMENTS PER RETURN FOR DECEMBER 2003 IN THE

COMPUTATION OF DEFICIENCY EXPANDED WITHHOLDING TAX FOR DECEMBER 2003;

IV. ON THE DEFICIENCY DOCUMENTARY STAMP TAX, THE HONORABLE COURT FAILED TO CONSIDER THE DST PAYMENTS OF PETITIONER IN 2003 RECOGNIZED BY THE RESPONDENT IN ITS FORMAL ASSESSMENT NOTICE AMOUNTING TO ₱1,552,671.06 NET OF THE DST PAYMENT FOR THE TRANSFER OF LOT TO CRESCENT WEST DEVELOPMENT CORPORATION ("CWDC");

V. ON THE DEFICIENCY INCOME TAX ASSESSMENT, THE SEPARATION AND GRATUITY PAY AMOUNTING TO ₱48,604,751.59 SHOULD HAVE BEEN EXCLUDED IN THE COMPUTATION OF DISALLOWED EXPENSES SINCE THESE PAYMENTS ARE NOT SUBJECT TO WITHHOLDING TAX ON COMPENSATION PURSUANT TO SECTION 32(B)(6)(b) OF THE 1997 TAX CODE;

VI. ON THE DEFICIENCY INCOME TAX ASSESSMENT, THE DISALLOWED EXPENSES SUPPOSEDLY NOT SUBJECTED TO EXPANDED WITHHOLDING TAX AMOUNTING TO ₱16,375,523.31 IS AN APPARENT ERROR ADMITTED BY THE RESPONDENT'S EXAMINER AND THEREFORE SHOULD BE CANCELLED;

VII. ON THE DEFICIENCY INCOME TAX ASSESSMENT, THE ALLEGED UNJUSTIFIED REDUCTION OF INCOME ACCOUNT WHILE REDUCING THE ADVANCES-METRO PACIFIC (ASSET) ACCOUNT IN THE AMOUNT OF ₱62,485,550.46 EXPANDED WITHHOLDING TAX IN THE AMOUNT OF ₱16,375,523.31 SHOULD BE ALLOWED AS THIS REPRESENTS REVERSAL OF INCOME PREVIOUSLY SUBJECTED TO TAX.

VIII. PETITIONER IS NOT LIABLE TO PAY 25% SURCHARGE, AND 20% DELINQUENCY INTEREST.

In the assailed Decision, the Court found that the three-year period within which to assess petitioner for deficiency taxes pursuant to Section 203 of the NIRC of 1997, as amended, in relation to Section 114 (VAT) of the same Code, Section 5 of Revenue Regulations (RR) No. 06-01 (DST), Sections 7 and 8.1 of RR No. 09-01, as last amended by RR No. 26-02 (EWT), and Section 5 of RR No. 04-02 (FBT), has already prescribed, as follows:

Type of Tax	Period for which the respondent's right to assess had already prescribed
VAT	1st, 2nd, and 3rd Quarters
DST	Prescribed with Respect to Sale of Properties
WTC	January to November 2003
EWT	January to November 2003
FBT	1st, 2nd, and 3rd Quarters

Petitioner's Motion for Partial Reconsideration

Prescription

In its Motion, petitioner contends that the deficiency VAT, EWT, and FBT assessments issued by respondent against petitioner for taxable year 2003 should be considered void in its entirety, following the Court's ruling that prescription has set in albeit only for the 1st, 2nd, and 3rd taxable quarters of 2003 for VAT and FBT, and from January to November 2003 for EWT and WTC. According to petitioner, considering the clear admission of respondent's examiner and lone witness during the cross-examination that the assessed deficiency amounts for VAT, EWT and FBT in the Formal Letter of Demand (FLD)[1] encompassed the entire taxable year, and were based on annual figures, the legal benefit of presumption that the assessment may have pertained to the open tax periods (*i.e.*, the 4th quarter of 2003 for VAT and FBT, and the month of December 2003 for EWT), following the rule on presumption of correctness of tax assessments and regularity in the performance of respondent's examiners of their duty, cannot apply as said admission diametrically contradicts the said presumption.

Petitioner cites a portion of the testimony of respondent's witness, Mr. Joseph Christian B. Santos, during cross-examination[2], to wit:

> "ATTY. MARIN
>
> Q. So with that coverage the resulting Formal Assessment Notices issued by the BIR, I assumed covered with *(sic)* 2003 taxable year with *(sic)* the petitioner?

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[1] Exhibit "13", BIR Records, pp. 536-541.

[2] Transcript of Stenographic Notes (TSN), October 10, 2013, pp. 10-17.

MR. SANTOS
A. Yes.

Q. Okay. Did you personally conduct the investigation of the petitioner for 2003 assessment?

A. Yes, sir.

Q. When you said that the investigation and the resulting formal assessment notices covered taxable year 2003, did it include only certain period or periods for the entire taxable year 2003?

A. The entire taxable year.
Q. Okay. So after the investigation you came up with the deficiency tax findings for VAT Expanded Withholding Tax, Withholding Tax [on] Compensation, documentary stamped *(sic)* tax, expanded withholding tax and Fringe Benefit and income tax, is this correct?

A. Yes, sir.

xxx xxx xxx

Q. And that would be for the entire taxable year 2003?

A. Yes, sir.

Q. Okay. Of the alleged deficiency VAT in the amount of 43,599,988.88, could you tell us how much deficiency tax liability would correspond to the 4th taxable quarter for 2003?

A. For VAT?

Q. For VAT.

A. For the deficiency taxes the same was 43,599,988.88.

Q. But that would be for the entire taxable year?

A. For the entire year.

Q. So would it be correct that you're saying that the said amount pertains to the entire year and not segregated based on taxable quarter?

A. It's not segregated on taxable quarter, but for the entire year.

xxx xxx xxx

Q. Okay, thank you. Now, on the alleged basic deficiency expanded withholding tax amount [of] 3,938,395.64, could you please confirm the amount if that is [for] the entire taxable year of 2003?

A. The amount of 3,938,395.64, represent *(sic)* basic deficiency tax for final withholding tax on fringe benefit.

Q. Ah, I'm sorry, so that is final withholding tax on fringe benefit?

A. Yes, sir.

Q. Would you be able to tell the amount of deficiency tax liability on a per quarter basis?

A. The assessment was prepared on annual figures, so that's *(sic)* represent[s] the annual deficiency.

Q. Okay. What about for deficiency expanded *(sic)* withholding tax[,] would the amount be 24,152,761.91, would covered *(sic)* the entire 2003 taxable year of petitioner?

A. The amount of 24,152,761.91 represent[s] the basic deficiency for tax for expanded withholding for taxable year 2003.

Q. Would you be able to segregate the amount per monthly basis?

A. The assessment again was prepared on annual computation.

Q. So, for all these deficiency taxes on VAT, Expanded Withholding Tax, withholding tax [on] compensation and fringe benefit tax[,] there is no segregation in the formal assessment notice that BIR issued insofar as for VAT and fringe benefit on a quarterly basis[,] whereas for expanded withholding tax as in withholding tax [on] compensation on a monthly basis?

A. Ah, yes, sir that is correct."

Petitioner asserts that considering the foregoing admission, it has been established that the assessed deficiency amounts as stated in the 2003 tax assessments were based on annual figures. Thus, according to petitioner, it cannot presume that these amounts were limited to the open tax periods. Without the benefit of legal presumption of correctness insofar as it affects prescription of the right of government to assess taxes, the 2003 VAT, EWT and FBT assessments issued against petitioner become doubtful, arbitrary, unreasonable and legally infirmed and should be resolved strictly against the government by cancelling the same.

Meanwhile, in her Comment, respondent contends that petitioner had gross under-declarations, which constituted falsity in the returns and gave her the benefit of the period under Section 222 of the NIRC of 1997, as amended, to assess the correct amount of tax at any time within ten (10) years after the discovery of the falsity, fraud or omission.

The Court disagrees with petitioner.

From the records of the case, it can be seen that respondent based her assessment on petitioner's annual and adjusted/amended reports and returns for taxable year 2003, such as the Audited Financial Statements, Income Tax Return, Annual Information Returns, and Alphalists (BIR Form Nos. 1604-CF and 1604-E). However, while petitioner contends that the Court cannot apply the legal benefit of presumption that the assessment may have pertained to the open tax periods (*i.e.*, the 4th quarter of 2003 for VAT and FBT, and the month of December 2003 for EWT), the Court also cannot ascertain, more so, presume that the annual figures assessed by respondent did not pertain only to the open tax periods.

Petitioner, being the one seeking reconsideration, has the burden of proof to show with certainty that the annual figures do not necessarily pertain to the open tax periods of 2003.

As held by the Supreme Court in a series of cases, tax assessments are presumed correct in the absence of evidence to the contrary. The burden of proof is upon the complaining party to show clearly that an assessment is erroneous.[3]

On the Disallowed Input VAT

In the assailed Decision, the Court partially granted the petition by cancelling a total amount of ₱2,435,796.51, representing input tax duly supported by VAT Official Receipts (₱1,025,336.57) and input tax not claimed by petitioner (₱1,410,459.76), out of the total Disallowed Input Tax of ₱3,552,470.45 related to Invalid Taxpayers.

Petitioner claims that the entire amount of ₱1,930,542.14 (less the amount of ₱1,025,336.57 already considered by the Court in the Decision), should have been excluded from the VAT assessment. According to petitioner, through the VAT-registered Official Receipts (ORs) that it presented before the Court, it was able to refute and controvert the basis relied upon by respondent's examiners, specifically for the following suppliers:

Supplier	Disallowed Input VAT	Reason for Disallowance
Rudy S. Labos & Associates Inc.	₱ 1,396,861.71	2004 registered
Superfix Autoconcept	79,062.75	Does not exist
Will Decena and Associates	454,617.68	Percentage tax registered
Total	**₱1,930,542.14**	

Petitioner argues that since the basis for disallowance was refuted, the entire amount of ₱1,930,542.14 (less the amount of ₱1,025,336.57 already considered by the Court in the Decision) from said suppliers has to be excluded as well from the VAT assessment.

[3] *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez, Secretary of Justice, L. M. Camus Engineering Corporation (Represented by Luis M. Camus and Lino D. Mendoza)*, G.R. No. 177279, October 13, 2010.

Petitioner would like the Court to allow the entire amount of input tax on purchases from the above suppliers, instead of only the input tax that was duly supported by VAT-registered ORs, as previously summarized in the assailed Decision and reproduced herein:

Exhibit	Supplier	O.R. No.	Date	Amount
"CCCCC-1"	Rudy S. Labos & Associates, Inc.	2325	4/4/2003	₱ 7,640,000.00
"CCCCC-2"	Rudy S. Labos & Associates, Inc.	2653	12/12/2003	397,766.75
"CCCCC-3"	Rudy S. Labos & Associates, Inc.	2551	11/14/2003	95,717.19
	Subtotal			**₱ 8,133,483.94**
	Less: Amt received as w/tax refund			(397,766.75)
	Subtotal, as adjusted			**₱ 7,735,717.19**
"CCCCC-4"	Superfix Auto Concept	5626	3/13/2003	1,816.36
"CCCCC-5"	Superfix Auto Concept	5627	3/13/2003	12,696.87
"CCCCC-6"	Superfix Auto Concept	5628	3/13/2003	8,036.46
	Subtotal			**₱ 22,549.69**
"CCCCC-7"	Will Decena & Associates	1892	12/19/2003	1,325,724.50
"CCCCC-8"	Will Decena & Associates	1858	11/5/2003	1,012,610.48
"CCCCC-9"	Will Decena & Associates	1822	10/24/2003	1,182,100.46
	Subtotal			**₱ 3,520,435.44**
	Total Purchases of Services			**₱11,278,702.32**
	Allowable Input VAT (1/11)			**₱ 1,025,336.57**

The Court is not convinced.

It should be noted that in order for the input VAT to be proven as an allowable credit against output tax due, VAT-registered invoices and VAT-registered official receipts representing purchases of goods and services, respectively, must be presented, pursuant to Section 113(A) and (B) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-05, and in relation to Section 238 of the same Code, as amended.

The Court reiterates that petitioner has the burden of proof to show that the input tax on all of the purchases involved in the assessment qualifies as credit against output tax, in that it is supported by VAT-registered official receipts and invoices.

Since petitioner was able to substantiate only ₱1,025,336.57 out of the ₱1,930,542.14 being claimed by petitioner as input VAT, there is no reason to disturb the findings of the Court regarding this matter.

On the Deficiency EWT

In the Decision, the Court reduced the basic EWT of petitioner to the amount of ₱6,815,989.95, after considering income payments to general professional partnership not subject to EWT, expenses doubly subjected to deficiency EWT, and exempt association dues and development control fees included in the "Director's Fees" account. The Court also took into consideration that prescription has already set in, and therefore the assessed amount was limited to expense transactions for December 2003 based on petitioner's General Ledger (GL).

However, in its Motion, petitioner argues that in the computation of the deficiency EWT for December 2003, the Court failed to consider certain detailed GL schedules, and the EWT payments per return for December 2003. Petitioner points out that the Court considered the December 2003 transactions supported with detailed breakdown per general ledger, while certain accounts with no GL entries provided were based on the amounts as indicated in the assessment. The same was presented as Annex "A" in the assailed Decision.

Petitioner insists that the Court should also consider the December 2003 GLs for the accounts Electricity, Water and Communication (Exhibit "KKKKK"), Entertainment, Amusement, and Recreation (Exhibit "HHHHH"), and Membership Dues (Exhibit "JJJJJ").[4] It should be noted that the two latter exhibits were presented in relation to the assessment of deficiency Fringe Benefits Tax.

Based on Annex "A" of the assailed Decision, Communications, Entertainment, Amusement, and Recreation, and Membership fees were subjected to EWT as follows:

Account	**For the year 2003 Expenses**	**EWT rate**	**EWT**
Communication	₱112,437,313.00	2%	₱ 2,248,746.26
Entertainment, Amusement and Recreation (EAR)	5,734,000.00	2%	114,680.00
Membership Fees	2,653,534.00	2%	53,070.68
			₱2,416,496.94

However, petitioner asserts that the following amounts based on the detailed GLs pertaining to December 2003 transactions should have formed part of the recomputation instead:

[4] Docket, Vol. 4, pp. 2173-2175.

Account	December 2003 expenses	EWT rate	EWT	Ref.
Communication	₱ 8,882,558.00	2%	₱ 177,651.16	Annex A of the Motion[5]
Entertainment, Amusement and Recreation (EAR)	3,534,542.00	2%	70,690.84	Annex B of the Motion[6]
Membership Fees[7]	nil	2%	nil	
TOTAL	**₱12,417,100.00**		**₱248,342.00**	

After a second look and careful examination of the evidence on record, the Court finds for petitioner. The basic deficiency EWT assessment should be reduced to ₱4,647,835.01, computed as follows:

EWT pertaining to Communication, EAR and Membership Dues per assailed Decision	₱ 2,416,496.94
EWT liability per December 2003 general ledgers (Exhibits "KKKKK", "HHHHH" and "JJJJJ")	248,342.00
Difference = Reduction in basic deficiency EWT	₱ 2,168,154.94
Basic deficiency EWT per Assailed Decision	6,815,989.95
Basic deficiency EWT per reevaluation	**₱4,647,835.01**

On the Deficiency DST

In the assailed Decision, the Court ruled that since respondent recognized petitioner's payment of DST in the amount of ₱3,273,000.00, the deficiency DST assessment on the transfer of lot to CWDC shall be cancelled.

Petitioner avers that the Court failed to consider the DST payments of petitioner in 2003 recognized by respondent in the Formal Assessment Notice (FAN), amounting to ₱1,552,671.06, net of the DST payment for the transfer of lot to CWDC.

Petitioner submits that inasmuch as respondent recognized the DST payment amounting to ₱4,825,671.06 (inclusive of the DST paid for the transfer of lot to CWDC), in the computation of the deficiency DST assessment in respondent's Formal Letter of Demand[8], said amount should be considered in the computation of the Court in the determination of petitioner's liability for DST for the year 2003, pursuant to the deficiency DST assessment issued by respondent, net of the amount already considered for the transfer of the lot to CWDC.

[5] Docket, Vol. 4, pp. 2185-2186.
[6] Docket, Vol. 4, pp. 2187-2188.
[7] Exhibit "JJJJJ", no transactions in December 2003 for this account.
[8] Exhibit "13", BIR Records, pp. 536-541.

For reference, respondent's original assessment is reproduced hereunder:

	Base	Rate	DST Due
On Leases (Sales per Return)	₱186,226,299.00	₱3/₱2000; ₱1/₱1000	₱ 186,225.30
On Sale of Properties			
New	143,238,190.00	₱15/₱1000	2,148,572.85
Cash Sales	471,758,685.45	₱15/₱1000	7,076,380.28
Other Contracted Agreements			
Transfer of Lot to CWDC	152,60,000.00	₱15/₱1000	2,289,000.00
Management Agreement w/ Related Parties	1,106,000.00	₱3/₱2000; ₱1/₱1000	1,113.00
Management Agreement other than Related Parties	29,733,000.00	₱3/₱2000; ₱1/₱1000	29,734.00
Advances to Affiliates per cash Flows	₱579,744,000.00	₱0.30/₱200	869,616.00
Total			12,600,641.43
Payments			**4,825,671.06**
DST Still Due			7,774,970.37
Surcharge			
Interest 1-05-04 to 1-31-07			4,780,009.18
Compromise			
DST Still Due			**₱12,554,979.55**

As can be gleaned from the above table, respondent deducted the amount of ₱4,825,671.06 from the total DST due in order to arrive at the basic deficiency DST liability of petitioner. The said amount was later on discovered as pertaining to DST due on the tax-free transfer of lot to CWDC.

In the Court's recomputation reproduced below, the said deduction pertaining to DST payment was not considered, which as petitioner pointed out should be ₱1,552,671.06 (₱4,825,671.06 - ₱3,273,000.00).

	Base	Rate	DST Due
On Leases (Sales per Return)	₱186,226,299.00	₱3/₱2000; ₱1 /₱1000	₱ 186,227.30
Other Contracted Agreements			
Management Agreement w/ Related Parties	1,106,000.00	₱3/₱2000; ₱1/₱1000	1,107.00
Management Agreement other than Related Parties	29,733,000.00	₱3/₱2000; ₱1/₱1000	29,734.00
Advances to Affiliates per cash Flows	₱579,744,000.00	₱0.30/₱200	869,616.00
Basic Deficiency DST			**₱1,086,684.30**

We disagree with petitioner.

Upon verification of records and admissions made by petitioner, the Court finds that the foregoing payments do not represent the remaining transactions still subject to deficiency DST per assailed Decision. It should be noted that DST is filed on a per-transaction basis, unlike other taxes that follow a monthly, quarterly and annual bases of reporting; hence, said payments cannot be used to reduce the deficiency DST due if they do not pertain to the transactions involved in the assessment.

Consequently, the Court will not disturb the original ruling of this Court relating to deficiency DST.

On the Deficiency Income Tax

a. Disallowed Separation and Gratuity Payments

With regard to separation and gratuity payments that are allegedly exempt, the Court found that the Summary prepared by the Independent Certified Public Accountant (ICPA) and the Quit Claims and/or Termination Letters presented by petitioner do not tally and are insufficient to prove the truthfulness of the amounts of non-taxable redundancy pay, retirement pay and exempt vacation leave (VL) credits. Moreover, the Court discussed that petitioner could have provided the Court with the actual final pay computations where the proper breakdown of the amounts could be found, and the check payments to prove the actual amounts paid out to the terminated employees that tie up with the Quit Claims.

In its Motion for Reconsideration[9], petitioner claims that the separation and gratuity pay amounting to ₱48,604,751.59 should not have been disallowed expenses since these payments are not subject to withholding tax on compensation pursuant to Section 32(B)(6)(b) of the NIRC of 1997, as amended. Petitioner points out that respondent's examiner admitted on cross-examination during the hearing on October 10, 2013[10] that part of the figures comprising his findings were matched to the amount declared per BIR Form No. 1604-CF of petitioner for 2003 came from separation pay and gratuity accounts in petitioner's General Ledger.

Respondent's witness likewise admitted during said cross-examination that transactions were recorded in each descriptive accounts were properly recorded and accurate with respect to the respective account that these transactions were included in or recorded. By way of example, if the account refers to "salaries", then all transactions included therein are indeed salaries.

[9] Docket, Vol. 4, pp. 2176-2178.
[10] TSN, October 10, 2013, pp. 29-31.

And, as confirmed by respondent's witness during the same cross-examination, these are correct to all other items or GL accounts that he has considered.

Respondent's examiner admitted that transaction recorded in the account "Gratuity and Separation Pay"[11] under GL Account No. 75209 of petitioner necessarily consisted of the separation and gratuity pay paid to employees and officers of the petitioner that were retrenched due to redundancy and re-organization, which are causes beyond the control of the concerned employees and officers of petitioner.

Reproduced herein is the part of the cross-examination referred to in the above discussion:

"ATTY. MARIN
Q. You mentioned in your memorandum if I may refer you to Exhibit '14', and I quote: '*the discrepancy and withholding tax compensation will arrive at through analysis of their general ledger by closely identifying items that have an impact in the computation of their withholding taxes, then matching the figures totals with the amounts declared per alphabetical listing form 1604C.*' That would be on page 465, is that accurate?

MR. SANTOS
A. Yes, sir.

ATTY. MARIN
Q. So, your saying that you derived the certain items from GL of the petitioner, is that correct?

MR. SANTOS
A. Yes, sir.

ATTY. MARIN
Q. Can you recall what are those items which you choose *(sic)* from the GL which you concluded as part of the compensation income subject to the tax of the employees?

MR. SANTOS
A. It's part of the working papers. Can I go over the record?

ATTY. MARIN

[11] Exhibits "FFFFF" to "FFFFF-1".

Q. Yes, please.

MR. SANTOS

A. *(at this juncture witness going over the BIR record)* The figures has came *(sic)* from the accounts derived from the General Ledger consisting of salaries, expenses, SSS premiums accounts, PAG-IBIG contributions, bonuses, allowances, overtime pay, meal subsidies, leave pays, medical and dental pay, graduate pays, hospital and medical insurance and separation pays. This is part of the working papers submitted and part of the docket.

ATTY. MARIN

Q. Okay, thank you. So, based on this accounts which taken *(sic)* from the ledger of from the GL of the petitioner, were you able to verify this *(sic)* accounts separate to verify that the transactions reflected therein are indeed reflective from the account titles which derives your findings?

MR. SANTOS

A. It's part of our audit procedure aside from looking up from the general ledger books[,] we compare this against the declarations per income tax returns filed by the taxpayers as well as the financial statement and we do also sampling basis, to verify the collaborative nature of this case.

ATTY. MARIN

Q. Okay, This is my understanding based on your recent answer. So, your *(sic)* saying that based on this *(sic)* accounts, transactions recorded therein would be accurate as to the accounts wherein they are included, meaning if the accounts is salaries everything that would included would be the salaries?

MR. SANTOS

A. That's correct.

ATTY. MARIN

Q. And that would be applicable to all these items you identified?

MR. SANTOS

A. That's correct, sir."

Petitioner further argues that the ICPA already extracted the non-taxable or tax-exempt payments to some of the retrenched employees of petitioner, which is why the amount indicated in the waiver may not tally with that identified by the ICPA. As the amounts in the waiver included taxable items and even considers adjustments charged to the employees concerned. Petitioner then admits that the ICPA was not able to consider all separation payments made to the retrenched employees of petitioner during reorganization as the files relating to some employees and executives cannot be located or may have been part of the files that were damaged during the typhoon that flooded petitioner's basement.

Petitioner submitted the copies of the final pay computation that was considered by the ICPA when it conducted the verification of this account, to show how the computation was arrived at by the ICPA. The document was considered confidential and hence was not included in the exhibits marked by ICPA. Petitioner pleads for the Court to consider the attached final pay computations so it may verify the findings and recommendations of the ICPA in this regard. Attached to the Motion are Annexes "C" to "C-43" corresponding to the name of the employees per the summary submitted as Annex "B-1" of the ICPA report.

The Court disagrees with petitioner.

Even if the account of "Gratuity & Separation Pay" truly included separation pay as indirectly admitted by respondent's witness, there was no direct admission that the account in question is actually and necessarily made up of gratuity and separation paid out to retrenched employees, which qualify for tax-exemption. Hence, petitioner's argument is unmeritorious.

Moreover, it should be noted that petitioner only attached the actual separation pay computations to the Motion for Partial Reconsideration instead of formally offering them before this Court.

In the case of *Far East Bank & Trust Company vs. Commissioner of Internal Revenue*[12], the Supreme Court made the following pronouncements:

> "First, it is well-settled that the **courts cannot consider evidence which has not been formally offered.** Parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. Without a formal offer of evidence, courts are constrained to take no notice

[12] G.R. No. 149589, September 15, 2006.

> of the evidence even if it has been marked and identified. Needless to say, the failure of petitioner to make a formal offer of evidence was detrimental to its cause.
>
> This case does not fall within the exception in *Oñate v. Court of Appeals*[13] where the Court relaxed the foregoing rule and allowed evidence, not formally offered, to be considered on condition that: (1) evidence must have been identified by testimony duly recorded and (2) it must have been incorporated in the records of the case. In this case, '. . . [petitioner's] duly marked and identified exhibits [were] not incorporated in the records. . . They are nowhere to be found.'" *(Emphasis supplied)*

Considering the foregoing, the Court finds that the additional evidence introduced by petitioner bears no probative value to the motion.

b. Disallowed Expenses not Subjected to EWT

Moreover, in the assailed Decision, the Court based its disallowance of expenses not subjected to expanded withholding tax on Section 34(K) of the NIRC of 1997, as amended. Based on the FLD, the disallowed amount is ₱16,375,523.31, which represents the EWT liability of petitioner after getting the difference between the total claimed expenses per ITR and the expenses reported in the Alphalist.

According to petitioner, the disallowed expense not subjected to EWT in the amount of ₱16,375,523.31 is clearly an error since it actually refers to the deficiency amount as computed by respondent in the FLD and as admitted by respondent's examiner and witness on cross-examination during the hearing on November 21, 2013[14]. Petitioner insists that there is no basis for the disallowance since it is not a claimed expense but a computation of alleged deficiency EWT by respondent. The fact that the amount should have been greater is a non-issue since it remained and was admitted to be an error and petitioner cannot possibly refute the said amount of ₱16,375,523.31 as allowable expenses subjected to EWT as said amount did not represent any claimed expense subject to EWT in the first place, which therefore violates the due process right of petitioner under the Constitution. Said amount should therefore be cancelled and excluded from the deficiency income tax assessment issued against petitioner.

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[13] 320 Phil. 344 (1995).
[14] TSN, Hearing: November 21, 2013, pp. 27-31.

In the Comment/Opposition (Re: Motion for Partial Reconsideration of the Decision dated 15 July 2015)[15] filed by respondent on September 8, 2015, respondent contended that petitioner erroneously computed the tax due column to harmonize the EWT remittances it made during the year. The deficiency EWT per assessment was arrived at by comparing the withholding tax due from petitioner's claimed expenses with the tax due per petitioner's Alphalist, which was already erroneous to begin with. The inaccurate computation immediately subjects the taxpayer to additional taxes based on its own declaration as can be gleaned from this issue.

We disagree with petitioner.

It could be gleaned from the deficiency EWT assessment of respondent that the amount of ₱16,375,523.31 was arrived at by deducting the EWT reported by petitioner in the Alphalist from the EWT due based on the expenses claimed per ITR.

It merits reiteration that under Section 34(K) of the NIRC of 1997, as amended, no expense can be claimed as a deduction from gross income if the same was not subjected to the applicable withholding tax. In short, the disallowed amount ₱16,375,523.31 is the EWT equivalent of the actual difference between the deduction claimed per ITR and the expense reported per Alphalist. Hence, the admission of error on the part of respondent actually pertains to the fact that what was disallowed is the EWT equivalent, instead of the actual reporting difference.

The reason why the Court was confined to the disallowed amount of ₱16,375,523.31 per FLD, is that if the Court would consider the actual expense that was not subjected to withholding and remained unsupported by petitioner, the disallowance will be much greater than the EWT due that was originally disallowed by respondent. Therefore, we find no reason to disturb the original findings of the Court.

c. Disallowed Reduction from Income Account in the amount of ₱62,485,550.46

Furthermore, the Court ruled in its Decision that respondent's assessment pertaining to the unexplained debit to Miscellaneous Income account in the amount of ₱62,485,550.46 should be sustained for insufficiency of evidence on the part of petitioner.

[15] Docket, Vol. 4, pp. 2236-2243.

The Court held that the journal entries presented by petitioner reflect debits to "AR – Others", which is not the account in question. Moreover, while there is evidence of approval through the minutes of the meeting of the Board of Directors, there was no proof of actual refund that will justify the cancellation of income.

On the other hand, petitioner pointed out that its Finance Manager, Ms. Anna Lisa P. Mesina, testified by way of Judicial Affidavit dated November 21, 2012 that the refund of the amount in question actually took the form of a set-off or compensation by reducing the advances-metro pacific (asset) as verified by the examiner, which circumstance is noted in the Formal Letter of Demand[16], by stating that "[r]eduction of Income account while reducing the advances-metro pacific (asset) account." The effect of the reduction of MPC's payable to petitioner to the extent of the refunded amount arising from the cancellation of sales approved[17] by the Board of Directors of the petitioner. So instead of petitioner actually paying MPC the refunded amount on one hand and then MPC on the other hand paying petitioner the advances made by it to MPC, compensation or set-off was made.

Petitioner argues that the alleged unjustified reduction of income account in the amount of ₱62,485,550.46 should be allowed as this represents reversal of income previously subjected to tax.

According to petitioner, respondent's examiner and witness testified on cross-examination[18] during the hearing on November 21, 2013 that he has verified the subject transaction and that it pertained to a refund of a sale of property. Petitioner insists that that the refund should have been made as an adjustment to that prior period as it involved prior period transaction and not in 2003 when the amount was effectively refunded with the reduction in the advance-metro pacific (asset) account.

Petitioner argues that it was not able to respond to that issue of having to make the adjustment in prior period since this was not discussed nor disclosed in the assessment notices and FLD issued by respondent. It is in this context that the assessment is a nullity for failure to clearly state the basis of the assessment.

Petitioner maintains that the assessment pertaining to this item is without basis since Section 27 of the NIRC of 1997 clearly states that:

"SEC. 27. *Rates of Income Tax on Domestic Corporations.* -

[16] Exhibit "23".
[17] Exhibit "WWWW-3".
[18] TSN, November 21, 2013, pp. 31-37.

> (A) *In General.* — Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: *Provided*, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).
>
> xxx xxx xxx
>
> For purposes of this Section, the term **'gross income'** derived from business shall be equivalent to gross sales less sales returns, discounts, allowances and cost of goods sold. xxx"

Also, petitioner posits that the contention of the examiner that the adjustment should have been made in that prior period of the transaction is not possible since the Contract to Sell was executed in 1996 and under Section 6 of the NIRC of 1997, as amended, tax returns may only be amended within three years from time of filing which would have been in year 2000. Thus, petitioner insisted that it is justified to reflect the adjustment in 2003 when the compensation or set-off was effected.

The Court disagrees with petitioner.

We reiterate that the basis of the Court's denial in the assailed Decision is insufficiency of evidence. The Approval of the Board of Directors is not sufficient as the same could have been easily contrived. Petitioner should have presented before the Court additional pieces of evidence in order to show that the debited amount of ₱62,485,550.46 indeed formed part of petitioner's reported sales revenue in the prior taxable year. Petitioner should have also provided a documented form of communication or agreement between the two parties (*i.e.*, petitioner and MPC) that an offsetting of receivables and payables from/to each other will take place.

It bears stressing that the burden of proof falls on the taxpayer. In the High Court's decision in the case of *Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories Inc., et al.*[19], the Supreme Court had the occasion to rule that:

[19] G.R. No. 76281, September 30, 1991.

> "Tax assessments 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, as 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 assessments."

Therefore, the Court upholds its original ruling regarding deficiency income tax.

Liability for Payment of 25% Surcharge, and 20% Delinquency Interest

In the assailed Decision, the Court imposed upon petitioner 25% surcharge on the basic deficiency taxes, 20% deficiency interest per annum on the basic deficiency taxes from various dates until full payment thereof, and 20% delinquency interest per annum on the total deficiency taxes (inclusive of the 25% surcharge) and on the accrued 20% deficiency interest until fully paid.

However, petitioner points out that in the final assessments and FLD issued by respondent, only 20% deficiency interests were imposed.

Thus, the surcharge and delinquency interest may not be imposed against petitioner unless the required assessment is first issued against it. Due process mandates that an assessment therefor should have first been issued against petitioner as such surcharge and interest form part of the tax.

Section 247(a) of the NIRC of 1997 provides that the "amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax"; while Section 249(C) on delinquency interest provides that "there shall be assessed and collected on the unpaid amount, interest..., which interest shall form part of the tax."

The above provisions make applicable the requirement in Section 228 of the NIRC regarding the issuance of an assessment, which may be protested administratively by the taxpayer.

The issuance of an assessment is mandated by due process. As explained by the High Court in *Commissioner of Internal Revenue vs. Pascor Realty and*

Development Corporation, et al.[20], due process requires that an assessment must be served on and received by the taxpayer to enable the taxpayer to determine his remedies thereon. Therefore, petitioner averred that inasmuch as respondent did not impose the aforesaid surcharge and delinquency interest in its final assessments issued against petitioner, and considering that the said deficiency tax assessment are being contested in good faith by petitioner, the 25% surcharge and 20% delinquency interest should not be imposed as otherwise it becomes an arbitrary imposition – considering its excessive and adverse effects on the taxpayers without due process of law.

We are not persuaded.

The payment of surcharge is mandatory and the same cannot be condoned for flimsy reasons. Not even the BIR is vested with any authority to waive the collection thereof.[21]

Moreover, the pronouncement of the Supreme Court in the case of *Philippine Refining Company vs. Court of Appeals, et al.*[22] is enlightening, *viz*:

> "xxx Tax laws imposing penalties for delinquencies, so we have long held, are intended to hasten tax payments by punishing evasions or neglect of duty in respect thereof. If penalties could be condoned for flimsy reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the Government and its multifarious activities will be adversely affected.
>
> We have likewise explained that it is mandatory to collect penalty and interest at the stated rate in case of delinquency. **The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government.** xxx" *(Emphasis supplied)*

The provisions of both Sections 247(a) and 249(A) and (B) of the NIRC of 1997, as amended, are clear and unambiguous, which are quoted hereunder for ready reference:

[20] G.R. No. 128315. June 29, 1999.

[21] *Philex Mining Corporation vs. Commissioner of Internal Revenue, et al.*, G.R. No. 125704, August 28, 1998.

[22] G.R. No. 118794, May 8, 1996.

> "SEC. 247. *General Provisions.* —
>
> (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The Amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax."
>
> "SEC. 249. *Interest.* —
>
> (A) *In General.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof."

In *Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue*[23], the Court, in relation to a similar issue on the mandatory nature of deficiency and delinquency interests, stated:

> "The law could not be any clearer. It states that the interests, both deficiency and delinquency interests, shall be assessed **until full payment thereof.** 'It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation.' As has been the Supreme Court's consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.
>
> xxx xxx xxx
>
> xxx Moreover, it must be emphasized that Section 249(B) should not be read in isolation but must be read in light of the

[23] CTA EB No. 745, September 4, 2012.

provisions of Sections 247(a) and 249(a) of the same Code. Thus, in *Obosa v. Court of Appeals*,[24] the Supreme Court held that:

> 'Truly, law must be understood not by "the letter that killeth but by the spirit that giveth life." Law should not be read and interpreted in isolated academic abstraction nor even for the sake of logical symmetry but always in [the] context of pulsating social realities and specific environmental facts."'

Therefore, the Court finds no reason to disturb the findings of the Court regarding the imposition of penalties and surcharges.

Respondent's Motion for Partial Reconsideration

Prescription

Respondent contests the Court's Decision, arguing that her right to assess petitioner for WTC for the period January to November 2003; VAT for the 1st, 2nd, and 3rd quarters of 2003; EWT for the period January to November 2003; DST on sale and lease of real properties entered into during the year 2003; and FBT for the 1st, 2nd, and 3rd quarters of 2003, has not yet prescribed.

According to respondent, petitioner's failure to withhold the tax on compensation was evident from the findings of the revenue examiners. Since the returns filed by petitioner were false returns, respondent's right to assess petitioner for withholding tax on compensation for the period January to November 2003 has not yet prescribed following the ruling of the Supreme Court in the case of *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*[25].

Likewise, herein respondent insists that in the instant case, petitioner has falsely under-declared its returns for VAT, EWT, FBT and income tax for taxable year 2003. Hence, respondent's right to assess the same has not yet lapsed.

The Court finds respondent's discussion untenable. As previously held by the Court in its Decision:

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[24] G.R. No. 114350, January 16, 1997.
[25] G.R. No. 193100, December 10, 2014.

"On the other hand, in case of false returns, the CIR has 10 years from the date of discovery of the falsity of the return within which to assess a taxpayer under Section 222(a) of the NIRC of 1997, as amended.

In the leading case of *Jose B. Aznar v. Court of Tax Appeals and Collector of Internal Revenue,* the Supreme Court characterized a false return as mere deviation from truth. Hence, to determine whether there is a deviation from what should have appeared in petitioner's returns *vis a vis* the application of the 3-year or 10-year prescriptive period of respondent's right to assess, the Court shall examine the pieces of evidence submitted by petitioner.

Meanwhile, considering that the determination of whether petitioner filed false returns is intertwined with the correctness of the assessments, the Court shall likewise proceed to determine the correctness thereof.

xxx xxx xxx

Based from the foregoing discussion, it appears that petitioner failed to substantiate all of its claims against the assessment. **However, does the failure of petitioner to substantiate all of its allegations constitute deviation from truth so as to categorize its returns as false? The Court does not believe so.**

In other words, petitioner was able to prove that some of its claims were valid. However, the fact that it was not able to present all the necessary pieces of evidence to prove its claims against the assessment does not make its returns, *per se*, false. These are evidentiary matters which militate upon the correctness of the assessment and not upon the truth or falsity of petitioner's returns.

xxx xxx xxx

In sum, the Court finds that there was no falsity with respect to petitioner's VAT and DST Returns based on the evidence presented by petitioner. **Its failure to provide proof to some of its claims is not synonymous to deviating so far from the truth so as to constitute false returns.** Rather, that circumstance merely affects the correctness of respondent's

> assessment. On the other hand, the Court finds that the respondent's right to assess FBDC for the following types of taxes already prescribed: xxx" *(Emphasis supplied)*

In addition, with regard to the deficiency DST assessment, respondent argues that since petitioner did not raise the issue of prescription in its protest letter, it is already barred from raising the same in accordance with Section 3.1.5 of RR No. 12-99.

We disagree with respondent.

In the recent case of *Universal Weavers Corporation vs. Commissioner of Internal Revenue*[26], this Court made the following ruling:

> "In the instant case, it is undisputed that petitioner received the FLD dated January 3, 2012 with attached Assessment Notices for alleged deficiency income tax, expanded withholding tax, and documentary stamp tax, with compromise penalty covering the calendar year 2006 only on January 13, 2012 or way beyond the 3-year prescriptive period provided by law. Clearly then, the foregoing assessments issued by respondent have already prescribed and should be set aside for being void.
>
> While the issue of prescription was not raised as a defense by petitioner, the Court is mandated to dismiss the claim pursuant to Section 1, Rule 9 of the Revised Rules of Court which reads:
>
>> Section 1. *Defenses and objections not pleaded.* - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by prior judgment or **by the statute of limitations, the court shall dismiss the claim.** [Emphasis supplied]
>
> Thus, in ***Bank of the Philippine Islands v. Commissioner of Internal Revenue***, the Supreme Court denied

[26] CTA Case No. 8566, May 11, 2015.

the right of the BIR to collect the assessed deficiency tax on the ground of prescription, *viz*:

> **'If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense.** In *Heirs of Valientes v. Ramas [G.R. No. 157852, 15 December 2010, 638 SCRA 444]*, we ruled that the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. The court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. More so, **when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time.'** [Emphasis supplied.]"

<u>*On the Deficiency Income Tax*</u>

In the assailed Decision, the Court ruled in favor of petitioner with regard to the deduction of the 2002 excess unexpired Minimum Corporate Income Tax (MCIT) as of 2003 in the amount of ₱17,199,081.00 from the assessment, to wit:

> "Based on the 2003 Annual Income Tax Return[27], petitioner has excess MCIT amounting to ₱66,567,526. Since for the taxable year 2003, it incurred Regular Corporate Income Tax Liability (RCIT) of ₱49,368,445.00, petitioner applied the MCIT to the extent of its RCIT due, leaving the amount of ₱17,199,081.00 at the end of 2003. On this score, petitioner asserts that this should be deducted from deficiency income tax due.
>
> xxx xxx xxx
>
> Considering that the unexpired MCIT arose from taxable year 2002 and that respondent offered no justification as to why there was no deduction made to account for the said excess

[27] Computation of Minimum Corporate Income Tax of Previous Year, Exhibit "RRRR-3", p. 2.

> MCIT, this Court deems it fair to deduct the same from the basic deficiency income tax due of petitioner."

In her Motion, respondent argues that the 2002 excess MCIT was claimed as tax credit from calendar year (CY) 2004 income tax due, and thus, should not be deducted from the present assessment.

However, it should be noted that in the case of *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*[28], this Court ruled that disallowance of MCIT to be carried over to the following taxable year is improper, to wit:

> "Respondent did not allow the Minimum Corporate Income Tax (MCIT) in the amount of ₱453,178.88 as tax credit against the computed deficiency income tax on the ground that the said amount would be carried over and credited against the normal income tax for the next three (3) years in accordance with Section 27 of the NIRC of 1997, as amended. Meanwhile, petitioner maintains that it is entitled to utilize the MCIT as a credit for 2003 considering that respondent's assessments have no basis.
>
> As correctly pointed out by respondent, the amount of ₱453,178.88 represents petitioner's MCIT for the year 2003. Thus, any tax benefit derived therefrom redounds to the succeeding year 2004. Since the tax benefit will be experienced in the succeeding years, at most, petitioner may only be assessed in the succeeding years."

Hence, the Court finds no merit in respondent's argument with regard to the fact that petitioner carried over the remaining unexpired MCIT of ₱17,199,081.00 to CY 2004.

On the Discrepancy in Taxpayer's Alphalist

In the Decision, the Court ruled as follows:

> "Again, the Court observes that the assessment on erroneous computation has no effect because the procedure wherein all expenses in the FS and ITR of petitioner were subjected to EWT has already covered any mistake in reporting in

[28] CTA Case No. 7830, December 11, 2012.

> the Alphalist. Hence, the Court finds that this assessment should be cancelled."

Respondent insists in her Motion that petitioner erroneously computed the tax due column to harmonize the EWT remittances it made during the year. The deficiency EWT per assessment was arrived at by comparing the withholding tax due from petitioner's claimed expenses with the tax due per petitioner's Alphalist which was already erroneous to begin with. The inaccurate computation immediately subjects the taxpayer to additional taxes due based on its own declarations as can be gleaned from this issue.

The Court is not convinced.

In assessing petitioner for deficiency EWT for taxable year 2003, respondent compared what should have been the EWT due from petitioner, against the EWT remittances made by petitioner for the same year. Such computation in effect covered any underpayment or computational error made by petitioner in its Alphalist. Thus, the Court reiterates the cancellation of this assessment item.

In view of the foregoing, the Court **DENIES** respondent's Motion for Partial Reconsideration for lack of merit. However, the Court **PARTIALLY GRANTS** petitioner's Motion for Partial Reconsideration. Accordingly, the dispositive portion of the Decision promulgated on July 15, 2015 should be amended to read as follows:

> "**WHEREFORE**, premises considered, the assessment issued by respondent against petitioner for taxable year 2003 covering deficiency Withholding Tax on Compensation in the amount of ₱29,546,442.74 is hereby **CANCELLED**. However, the assessments issued by respondent against petitioner for taxable year 2003 covering deficiency VAT, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefit Tax and Income Tax are hereby **AFFIRMED** but with modifications. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **EIGHTY THREE MILLION ONE HUNDRED FORTY SIX THOUSAND FORTY FOUR and TWENTY ONE CENTAVOS (₱83,146,044.21)** representing basic deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefits Tax and Income Tax and the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

	Basic Tax due	25% Surcharge	Total
Deficiency VAT	₱ 28,889,366.59	₱ 7,222,341.65	₱ 36,111,708.24
Deficiency EWT	4,647,835.01	1,161,958.75	5,809,793.76
Deficiency DST	1,086,685.00	271,671.25	1,358,356.25
Deficiency FBT	2,173,126.12	543,281.53	2,716,407.65
Deficiency Income Tax	29,719,822.65	7,429,955.66	37,149,778.31
Total	**₱66,516,835.37**	**₱16,629,208.84**	**₱83,146,044.21**

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

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefits Tax and Income Tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Type of Tax	Basic Tax	Deficiency interest computed from
Value-added Tax	₱28,889,366.59	January 25, 2004
Expanded Withholding Tax	4,647,835.01	January 13, 2004
Documentary Stamp Tax	1,086,865.00	January 5, 2004
Fringe Benefits Tax	2,173,126.12	January 15, 2004
Income Tax	29,719,822.65	April 15, 2004

b) Delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest which have accrued on the deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax and Fringe Benefits Tax as afore-stated in (a) computed from January 2, 2007 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;

c) Delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest which have accrued on the deficiency Income Tax as afore-stated in (a) computed from April 13, 2007 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;

d) Delinquency interest at the rate of twenty percent (20%) per annum on the following amounts computed from the dates indicated below until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

Type of Tax	Total Amount Due	Delinquency Interest computed from
Value-added Tax	₱ 36,111,708.24	January 2, 2007
Expanded Withholding Tax	5,809,793.76	
Fringe Benefits Tax	2,716,407.65	
Documentary Stamp Tax	1,358,356.25	
Income Tax	37,149,778.31	April 13, 2007

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution and the Division's 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice