REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AB CAPITAL AND INVESTMENT CORPORATION *Petitioner,*	**CTA CASE NO. 8411**
	Members: **CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** and **COTANGCO-MANALASTAS,***JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** APR 30 2015

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4:30 p.m.

DECISION

COTANGCO-MANALASTAS, *J.:*

The case involves a Petition for Review filed by AB Capital and Investment Corporation to seek the reversal and setting aside of the Final Decision on Disputed Assessment (FDDA) dated December 8, 2011, rendered by Alfredo V. Misajon, Officer in Charge-Assistant Commissioner for Large Taxpayers Service of the Bureau of Internal Revenue (BIR), finding it liable for deficiency income tax, withholding tax on compensation (WTC), expanded withholding tax (EWT), fringe benefit tax (FBT), final tax, percentage tax, and documentary stamp tax (DST), plus penalties and interest, in the total amount of P25,165,683.37 for the taxable year ending December 31, 2008.

STATEMENT OF FACTS

Petitioner AB Capital and Investment Corporation is a corporation duly organized and existing under the laws of the Philippines. It is primarily engaged in conducting business as a full-service investment house with quasi-banking functions.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue, duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue

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[1] Par. 6, Petition for Review, docket, p. 8; Exhibit "A".

taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code.

On May 27, 2009, respondent, through Zenaida G. Garcia, then OIC-BIR Assistant Commissioner for Large Taxpayers Service, issued Letter of Authority No. 00049408 against petitioner to examine its books of accounts and other accounting records for all internal revenue taxes for the period covering January 1 to December 31, 2008.[2]

On June 1, 2009 and June 10, 2009, respondent, through Conrad C. Lee, OIC-Chief of the BIR Large Taxpayers Audit and Investigation Division (LTAID), sent to petitioner Notices for Presentation of Books of Accounts and Other Accounting Records.[3]

On September 28, 2011, respondent sent to petitioner a Preliminary Assessment Notice (PAN)[4], finding petitioner liable to pay deficiency taxes in the total amount of P16,556,170.87.

On October 28, 2011, respondent, through Alfredo V. Misajon, Officer in Charge-Assistant Commissioner for Large Taxpayers Service, issued a Formal Letter of Demand/Assessment Notice (FLD/FAN) against petitioner for alleged deficiency taxes, penalties, and interests in relation to taxable year 2008, computed as follows:[5]

TAX	ASSESSED AMOUNT
Income tax	P16,835,114.25
Withholding Tax on Compensation	1,844,567.66
Expanded Withholding Tax	928,670.60
Fringe Benefit Tax	171,797.16
Final Tax	342,402.28
Percentage Tax	953,435.15
Documentary Stamp Tax	P 4,089,696.27

As a consequence, on November 16, 2011, petitioner filed its protest letter[6] to the said FAN. On December 8, 2011, respondent, through Assistant Commissioner Misajon, issued

[2] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 502; Stipulated Facts, Pre-Trial Order, docket, p. 520; Exhibit "R-1", BIR Records, p. 1.
[3] Exhibits "R-2" and "R-3", BIR Records, pp. 3-5.
[4] Exhibit "R-9", BIR Records, pp. 610-619.
[5] Par. 3, Stipulation of Facts, JSFI, docket, p. 502; Par. 3, Stipulated Facts, Pre-Trial Order, docket, p. 520.
[6] BIR Records, pp. 814-821.

a Final Decision on Disputed Assessment[7], finding petitioner liable to pay deficiency income tax, WTC, EWT, FBT, final tax, percentage tax, and DST, plus penalties and interest, in the total amount of P26,165,683.37.

Considering the unfavorable decision of respondent, petitioner filed the instant Petition for Review before this Court on January 12, 2012.

Respondent filed her Answer[8] on March 9, 2012, raising the following Special and Affirmative Defenses:

> "5. **Revenue Regulations No. 12-85, the Procedure Governing Administrative Protests of Assessment of the Bureau of Internal Revenue**, issued on 27 November 1985, defines the two types of protest, the request for reconsideration and the request for reinvestigation, and distinguishes one from the other in this manner:
>
> > Section 6. Protest – The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars:
> >
> > x...x...x
> >
> > For the purpose of protest herein –
> >
> > (a) Request for reconsideration – refers to a plea for a re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
> >
> > (b) Request for reinvestigation – refers to a plea for re-evaluation of an assessment on the basis of newly-discovered evidence or additional evidence that a taxpayer intends to present in the investigation. It may also involve a question of fact or law or both.
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> 6. The difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered or additional evidence.

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7 Par. 4, Stipulation of Facts, JSFI, docket, p. 502; Exhibit "E", docket, pp. 386-389; Exhibit "R-11", BIR Records, pp. 830-833.

8 Docket, pp. 425-436.

7. In the case at bar, the protest letter dated 14 November 2011 is pro forma. Petitioner requests for the cancellation of assessment for taxable year 2008 without specifically stating if it is for reconsideration or reinvestigation. Although it categorically states that petitioner reserves the right to file a supplemental protest and/or documents in support of the protest letter, up to the present petitioner failed to submit all pertinent papers, records and documents which could evidently prove the incorrectness of the assessment made by respondent.

8. In fact only partial documents were submitted together with the protest letter dated 14 November 2011, specifically the annual and quarterly income tax returns (BIR form 1702/1702Q) from taxable years 2009 and 2011, as well as its own computation of fringe benefit tax, percentage tax and final withholding tax which are all self-serving. It bears stressing that the said documents were the same documents submitted during the informal conference, protest to the Preliminary Assessment Notice and Final Decision on Disputed Assessment. There were no additional documents submitted to substantiate the protest against the final assessment.

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10. Respondent never violated petitioner's right to due process. **The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to seek a reconsideration of the action or ruling complained of**. What the law proscribes is the lack of opportunity to be heard. In the instant case, petitioner was given all the opportunity to present its side and to refute the findings of the respondent. **Mere filing of protest is not a guarantee that the audit findings against petitioner for deficiency tax assessments will be cancelled**. Respondent has the authority to deny the said protest.

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12. Since the petitioner was given the opportunity to defend itself, it does not have any reason to complain, for it is the opportunity to be heard that makes up the essence of due process.

13. Petitioner is liable to pay deficiency income tax, withholding tax on compensation, expanded withholding tax, fringe benefit tax, final tax, percentage tax and documentary stamp tax for calendar year 2008 in the aggregate amount of Twenty-Five Million One Hundred Sixty Five Thousand Six Hundred Eighty-Three and 77/100 (Php25,165,683.77) including penalties and interest as of 15 November 2011.

14. For taxable year 2008, audit and investigation disclosed that petitioner failed to pay the correct taxes. In the Formal Letter of Demand on the investigation, the examiner pointed out the following discrepancies:

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15. Finally, petitioner's claim that the right of respondent to assess and collect the aforecited taxes had already prescribed is legally misplaced. The tax base of the aforesaid assessments is computed on annual-year end basis, hence, not barred by prescription as provided under Section 203 of the 1997 NIRC, as amended.

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16. Furthermore, in the assessment for deficiency withholding tax on compensation, expanded withholding tax, fringe benefit tax and final tax, what is being sought to be collected from petitioner are penalties for failure to withhold the tax. **The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer**.

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20. The assessment for taxable year 2008 in the amount of Twenty-Five Million One Hundred Sixty-Five Thousand Six Hundred Eighty-Three and 77/100 (Php25,165,683.77) including penalties and interest as of 11 November 2011 was issued in accordance with law and regulations."

On April 3, 2012, petitioner filed a Reply attached to its Motion to Admit Attached Reply[9], where it in part argued that:

"1. Respondent's contention that Petitioner's Protest Letter dated November 14, 2011 is pro forma for the sole reason that petitioner allegedly failed to allege in its subject heading whether it was a request for a reconsideration or a reinvestigation is baseless and preposterous.

[9] Docket, pp. 453-463.

2. Revenue Regulation No. ('RR') 12-99 is the governing rule on the matter. Section 3.15 of the said regulations provides –

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3. Taking into consideration the afore-cited provision of the regulations, Petitioner submits that it has complied with all the requirements of filing a protest, namely, 1) it must be filed within thirty (30) days, 2) it shall state the facts, the applicable law, rules and jurisprudence on which the protest is based, and 3) the taxpayer shall submit his supporting documents within sixty (60) days from the filing of his protest.

4. In the case at bar, Respondent issued the Formal Letter of Demand/Assessment Notice on October 28, 2011 ('Assessment Notice'). Petitioner filed its Protest Letter on November 14, 2011 or seventeen (17) days after the Assessment Notice was issued. Further, Petitioner's Protest Letter thoroughly states the facts and the law, rules and jurisprudence on which its Protest Letter is based. However, as thoroughly discussed by Petitioner in its Petition, Petitioner's Protest Letter was resolved on December 14, 2011, or merely thirty (30) days after Petitioner filed its Protest Letter, way before the sixty-day period given to it by law and RR 12-99 within which to submit its supporting documents expired. Despite the foregoing, on January 13, 2012, or within the said sixty-day period, Petitioner sent a letter to Respondent regarding its supporting documents to make true its reservation in its Protest Letter to submit its supporting documents within sixty (60) days from filing thereof. xxx

5. Given the foregoing, Respondent's contention that although Petitioner 'categorically states that petitioner reserves the right to file a supplemental protest and/or supporting documents in support of the protest letter, up to the present petitioner failed to submit all pertinent papers, records and documents which could eventually prove the incorrectness of the assessments made by the respondent' is false and contradicted by the facts at hand. As earlier stated, Petitioner's Protest Letter was denied prematurely. It was resolved by Respondent without waiting for the supporting documents within the sixty-day period given to Petitioner by law. Moreover, as mentioned in the preceding paragraph, despite its Petition being already denied, Petitioner still submitted its letter dated January 13, 2012 to comply with its reservation in its Protest Letter to submit its supporting documents within the sixty-day period.

6. Respondent further contends that the 'requirement of due process is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the

controversy' and, as such, 'petitioner cannot claim that its right due process has been violated.' How could Petitioner have been given a fair and reasonable opportunity to explain its side when the sixty-day period given to it by law and as confirmed by regulations was disregarded by Respondent? What aggravates the situation even more is that a plain reading of Respondent's Final Decision on Disputed Assessment dated December 8, 2011 ('Assailed Decision') will show that the main reason why Petitioner's protest was denied is purportedly due to Petitioner's failure to submit its supporting documents, but this is precisely what Petitioner intended to do when it reserved its right to file its supporting documents within the 60-day period given to it by law.

7. Clearly, Petitioner was denied its right to due process when Respondent resolved Petitioner's Protest Letter without giving it the opportunity to submit its supporting documents.

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12. In *Avon Products Mfg., Inc. vs. Commissioner of Internal Revenue*, the Court held –

> This Court has consistently ruled that the three (3)-year prescriptive period for expanded withholding tax shall commence to run from the last day for filing of the Monthly Remittance Return of Income Taxes Withheld or from the date of filing thereof if filed after such last day (CORPORATE INFORMATION SOLUTIONS, INC. vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE NO. 5919, December 1, 2003; MIRANT (NAVOTAS II) CORPORATION [formerly Southern Energy Navotas II Power, Inc.] vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE NO. 5950, January 13, 2003; HPCO AGRIDEV CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE NO. 6355, July 18, 2002). xxx
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> From the above-cited provisions, the filing and payment of creditable expanded withholding taxes is due on or before the 10th day of the following month. <u>Hence, the three-year prescriptive period shall be reckoned from the respective monthly due dates.</u> (Underscoring supplied)

13. Clearly, it is well settled in jurisprudence that prescription of WTC, as well as EWT, FBT, final tax, percentage tax and DST, is reckoned monthly."

On April 2, 2012[10] and April 4, 2012,[11] respectively, respondent and petitioner filed their Pre-Trial Briefs. Subsequently, on April 30, 2012, the parties submitted their Joint Stipulation of Facts and Issues[12], and on May 16, 2012, the Court issued a Pre-Trial Order[13].

On July 23, 2012, petitioner filed an Urgent Motion to Suspend Payment[14], which the Court granted in the Resolution[15] dated September 26, 2012, subject to petitioner's compliance with the requirements, *i.e.*, posting of surety bond, among others. On November 22, 2012, petitioner filed its Compliance[16] and on December 13, 2012, the Court issued a Resolution[17] approving the surety bond.

During trial, petitioner presented Mr. Jose S. Banta[18] – petitioner's First Vice President and Mr. Jerome Antonio B. Constantino[19] – Court-commissioned Independent Certified Public Accountant (ICPA) as it witnesses.

Petitioner also made its Formal Offer of Evidence[20] on March 25, 2013 and in the Court's Resolution[21] dated May 10, 2013, the Court admitted as evidence Exhibits "A" to "H", "Z" to "ZZZ-1", "XXXXX-1" to "XXXXX-12", "DDDDDD-1" to "DDDDDD-6", "EEEEEE" to "EEEEEE-6", and "FFFFFFF" to "HHHHHHH". However, Exhibits "I" and "J" were denied admission for failure to identify the same during trial. Meanwhile, on June 13, 2013, petitioner filed a Motion to Admit Attached Supplemental Formal Offer of Evidence[22], which the Court granted and accordingly admitted Exhibit "DDDD" in the Resolution[23] dated July 22, 2013.

On the other hand, respondent presented as witness Ms. Felina B. Guimbao[24] – BIR Revenue Officer. Likewise,

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[10] Respondent's Pre-Trial Brief, docket, pp. 444-450.
[11] Petitioner's Pre-Trial Brief, docket, pp. 482-494.
[12] Docket, pp. 501-510.
[13] Docket, pp. 519-526.
[14] Docket, pp. 559-564.
[15] Docket, pp. 780-782.
[16] Docket, pp. 955-956.
[17] Docket, p. 959.
[18] Minutes of the Hearing, docket, pp. 735, 954, and 1798.
[19] Minutes of the Hearing, docket, pp. 769 and 796.
[20] Docket, pp. 969-982.
[21] Docket, pp. 1291-1292.
[22] Docket, pp. 1299-1301.
[23] Docket, p. 1320.
[24] Minutes of the Hearing, docket, p. 1340.

respondent filed her Formal Offer of Evidence[25] on October 4, 2013 and in the Court's Resolution dated November 25, 2013, the Court admitted as evidence Exhibits "R-1", "R-2", "R-3", "R-4", "R-4-a", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", and "R-13-a".

On February 5, 2014, the Court ordered the parties to submit their respective memoranda, which petitioner and respondent filed on April 11, 2014[26] and April 21, 2014,[27] respectively. Thereafter, on April 30, 2014, the Court issued a Resolution[28] submitting the instant case for decision.

STATEMENT OF ISSUE

The parties presented the following issue for the Court's resolution:

> Whether or not petitioner is liable to pay deficiency income tax, withholding tax on compensation, expanded withholding tax, fringe benefit tax, final tax, percentage tax and documentary stamp tax assessments for taxable year 2008, in the amount of Twenty-Five Million One Hundred Sixty-Five Thousand Six Hundred Eighty-Three Pesos and 77/100 (Php25,165,683.77) as well as the corresponding penalty and deficiency and delinquency interest from 11 November 2011, pursuant to Sections 248 and 249 of the 1997 Tax Code.[29]

RULING OF THE COURT

In disputing the subject assessments, petitioner asserts the following: (1) the FDDA was prematurely issued by respondent when she issued the same prior to the lapse of the 60-day period for submission of supporting documents under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Regulations (RR) No. 12-99, as such, its right to due process was violated; (2)

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[25] Docket, pp. 1346-1356.
[26] Memorandum (For the Petitioner), docket, pp. 1823-1856.
[27] Memorandum, docket, pp. 1880-1893.
[28] Docket, p. 1895.
[29] Pre-Trial Order, docket, p. 520.

respondent's deficiency assessments covering the period January to September 2008, pertaining to WTC, EWT, FBT, final tax, percentage tax, and DST are already barred by prescription; and (3) the deficiency tax assessments lack factual and legal basis.

I. Whether petitioner's right to due process was violated when respondent issued the FDDA before the lapse of the 60-day period for submission of supporting documents under Sec. 228 of the 1997 NIRC

Petitioner argues that its right to due process was violated when respondent issued the FDDA prior to the lapse of the 60-day period for submission of supporting documents under Section 228 of the NIRC of 1997, as amended, in relation to RR No. 12-99.

On the other hand, respondent contends that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to seek a reconsideration of the action or ruling being complained.

The applicable parts of Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99 are quoted hereunder for ready reference:

> SEC. 228. *Protesting of Assessment.* – xxx
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> xxx xxx xxx
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules

and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.** *(Emphasis supplied)*

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

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3.1.5 *Disputed Assessment.* –

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

Corollary thereto is Revenue Regulations No. 12-85, which defines the two types of protest, the request for reconsideration and the request for reinvestigation, and distinguishes one from the other in this manner:

"Section 6. Protest. - The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars:

x x x x

For the purpose of protest herein—

(a) *Request for reconsideration*-- refers to a plea for a re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(b) *Request for reinvestigation*—refers to a plea for re-evaluation of an assessment on the basis of newly-discovered evidence or **additional evidence that a taxpayer intends to present in the investigation**. It may also involve a question of fact or law or both." *(Emphasis supplied)*

The main difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered or additional evidence.[30] Looking at both Section 228 of the NIRC of 1997, as amended, and Revenue Regulations No. 12-85, it is clear that if the protest is a request for reconsideration, the submission of additional or supporting documentary evidence is not required. On the other hand, if the protest is a request for reinvestigation, newly discovered evidence or additional supporting documents.[31]

Verily, considering the provisions of Section 228 of the NIRC of 1997, as amended, RR No. 12-99, and RR No. 12-85, if the assessment protest involves a request for reinvestigation, the taxpayer must be fully accorded with the 60-day period from the date of filing his protest within which to submit his supporting documents, as the same is part and parcel of the "due process requirement in the issuance of a deficiency tax assessment" as categorically stated in Section 3.1.5 of RR No. 12-99.

In this case, petitioner's protest letter filed with the BIR on November 16, 2011, expressly states that "We respectfully reserve the right to file a supplemental protest letter and/or documents" in support of the protest letter.[32] Counting from November 16, 2011, petitioner had until January 15, 2012 within which to submit its supporting documents. Visibly, petitioner's letter is a request for reinvestigation as the plea for re-evaluation is on the basis of **additional evidence that the taxpayer intends to present in the investigation**. In other words, the 60-day period granted to the taxpayer cannot be disregarded by respondent without violating the former's right to due process.

Thus, when the respondent issued the FDDA and concluded on December 8, 2011 that petitioner failed to introduce evidence to reverse the validity of her findings when petitioner still had until January 15, 2012 (end of the 60-day period) to submit the same, the respondent failed to observe petitioner's right to due process expressly guaranteed under Section 228 of the NIRC of 1997, as amended, RR No. 12-99, and RR No. 12-85.

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[30] *Commissioner of Internal Revenue vs. Philippine Global Communication, Inc.,* G.R. No. 167146, October 31, 2006.
[31] *Royal Bank of Scotland (Philippines), Inc., vs. Commissioner of Internal Revenue,* CTA EB No. 446, October 23, 2009.
[32] BIR Records, p. 814.

Respondent issued the FDDA as early as December 8, 2011[33], where it was specifically stated that:

> "The records of this case disclosed that you have not introduced any evidence to reverse the validity of the aforementioned findings that resulted to your 2008 deficiency internal revenue tax liabilities."[34]

'[D]ue process requires more than giving a person the right to be heard.[35] In a landmark Decision,[36] the Supreme Court enumerated the following principles governing administrative due process:

> 1. The right to a hearing, which included the right to present one's case and **submit evidence in support thereof**;
>
> 2. The tribunal must consider the evidence presented;
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> xxx xxx xxx'

By reason of the foregoing, the FDDA issued by respondent is considered void for failure of the respondent to fully accord petitioner the 60-day period to submit documents which is part and parcel of the "due process requirement in the issuance of a deficiency tax assessment" stated in Section 3.1.5 of RR No. 12-99 and expressly guaranteed under Section 228 of the NIRC of 1997, as amended, RR No. 12-99, and RR No. 12-85.

However, despite the finding that the FDDA is void on the ground of failure to observe the due process requirements, the same does not result to the automatic declaration that the disputed tax assessments subject of the FDDA are likewise void. The law, rules, and jurisprudence spell out the grounds when an assessment may be considered void, these include, among others, prescription, failure to send a PAN, lack of factual and legal basis; but, prematurity in the issuance of FDDA on the ground of failure to observe the due process requirements is not one of them.

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[33] Par. 4, Stipulation of Facts, JSFI, docket, p. 502; Exhibit "E", docket, pp. 386-389; Exhibit "R-11", BIR Records, pp. 830-833.
[34] Exhibit "R-11", BIR Records, p. 830.
[35] *Leonisa E. Suarez vs. COA,* G.R. No. 131077, August 7, 1998.
[36] Ang Tibay v. Court of Industrial Relations, 69 Phil. 635, 642-644 [1940]; see also Fabella v. Court of Appeals, GR No. 110379, November 28, 1997, p. 11.

The effect in this case would be as if no FDDA was issued by the BIR in the present case; thus, just like a case where the BIR has not issued a decision on a disputed assessment (*i.e., when there is inaction on the part of the BIR*), the present case will be resolved on the merits taking into consideration the FLD/FAN, petitioner's protest, and the corresponding supporting documents offered by petitioner.

In resolving the case on the merits, the Court shall determine the following issues: whether respondent's deficiency assessments covering the period January to September 2008, pertaining to WTC, EWT, FBT, final tax, percentage tax, and DST are barred by prescription; and whether petitioner is liable to pay the subject deficiency tax assessments for taxable year 2008.

II. Whether respondent's deficiency assessments covering the period January to September 2008, pertaining to WTC, EWT, FBT, final tax, percentage tax, and DST are already barred by prescription

Section 203 of the NIRC of 1997, as amended, provides:

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

Additionally, Section 7 of RR No. 9-2001, as amended by RR No. 26-02, states:

> Section 7. TIME OF FILING RETURN. - For purposes of filing returns under the EFPS, the taxpayers classified under the following business industries shall be required to file Monthly Withholding Tax Returns, except withholding of Value-Added Tax; Monthly VAT Declarations; and Monthly

Percentage Tax Returns, on or before the dates prescribed and presented herein below:

Business Industry	*Monthly Withholding Tax Returns Except Withholding of Value Added Tax*	*Monthly VAT Declarations and Monthly Percentage Tax Returns*
Group A		
Non-Bank Financial Intermediation Activities Auxiliary to Financial Intermediation	• Fifteen (15) days following end of the month	• Twenty five (25) days following end of the month

As a full-service investment house performing quasi-banking functions, petitioner is categorized under Group A as above set-forth. Thus, petitioner has 15 days following the end of the month to file its Monthly Withholding Tax Returns except Withholding of VAT, and 25 days following the end of the month to file its Monthly VAT Declarations and Monthly Percentage Tax Returns.

Applying Section 203 of the NIRC of 1997, as amended, in relation to Section 7 of RR No. 9-2001, as amended by RR No. 26-02, the Court shall proceed to determine the timeliness of respondent's assessments.

A. WTC Monthly Returns

The pertinent dates regarding the filing of petitioner's WTC Monthly Returns[37] are summarized as follows:

Period Covered (2008)	**Date of Filing**	**Last Day to File Return**	**Last Day of the 3-Year Period**	**Date of Issuance of FLD**
January	February 14, 2008	February 15, 2008	February 15, 2011	October 28, 2011
February	March 14, 2008	March 15, 2008	March 15, 2011	October 28, 2011
March	April 14, 2008	April 15, 2008	April 15, 2011	October 28, 2011
April	May 15, 2008	May 15, 2008	May 15, 2011	October 28, 2011
May	June 13, 2008	June 15, 2008	June 15, 2011	October 28, 2011
June	July 11, 2008	July 15, 2008	July 15, 2011	October 28, 2011
July	August 8, 2008	August 15, 2008	August 15, 2011	October 28, 2011
August	September 10, 2008	September 15, 2008	September 15, 2011	October 28, 2011
September	October 10, 2008	October 15, 2008	October 15, 2011	October 28, 2011
October	November 10, 2008	November 15, 2008	November 15, 2011	October 28, 2011
November	December 9, 2008	December 15, 2008	December 15, 2011	October 28, 2011
December	January 9, 2009	January 15, 2009	January 15, 2012	October 28, 2011

[37] Exhibits "LL" to "WW".

Based on the foregoing, it appears that respondent's deficiency assessments on petitioner's WTC from January 2008 to September 2008 had already prescribed.

B. EWT Monthly Returns

Summarized below are the dates pertaining to petitioner's filing of Monthly Returns[38] for its EWT:

Period Covered (2008)	Date of Filing	Last Day to File Return	Last Day of the 3-Year Period	Date of Issuance of FLD
January	February 14, 2008	February 15, 2008	February 15, 2011	October 28, 2011
February	March 14, 2008	March 15, 2008	March 15, 2011	October 28, 2011
March	April 14, 2008	April 15, 2008	April 15, 2011	October 28, 2011
April	May 15, 2008	May 15, 2008	May 15, 2011	October 28, 2011
May	June 13, 2008	June 15, 2008	June 15, 2011	October 28, 2011
June	July 11, 2008	July 15, 2008	July 15, 2011	October 28, 2011
July	August 8, 2008	August 15, 2008	August 15, 2011	October 28, 2011
August	September 10, 2008	September 15, 2008	September 15, 2011	October 28, 2011
September	October 10, 2008	October 15, 2008	October 15, 2011	October 28, 2011
October	November 10, 2008	November 15, 2008	November 15, 2011	October 28, 2011
November	December 9, 2008	December 15, 2008	December 15, 2011	October 28, 2011
December	January 9, 2009	January 15, 2009	January 15, 2012	October 28, 2011

From the foregoing, respondent's deficiency assessments on petitioner's EWT from January 2008 to September 2008 had already prescribed.

C. FBT Quarterly Returns

Petitioner filed its FBT Quarterly Returns[39] on the following dates:

Period Covered (2008)	Date of Filing	Last Day to File Return	Last Day of the 3-Year Period	Date of Issuance of FLD
January-March	April 14, 2008	April 15, 2008	April 15, 2011	October 28, 2011
April-June	July 14, 2008	July 15, 2008	July 15, 2011	October 28, 2011
July-September	October 10, 2008	October 15, 2008	October 15, 2011	October 28, 2011
October-December	January 9, 2009	January 15, 2009	January 15, 2012	October 28, 2011

Based on the above table, respondent's deficiency assessments on petitioner's FBT for the first three (3) quarters or from January 2008 to September 2008 had already lapsed.

[38] Exhibits "Z" to "KK".
[39] Exhibits "XX" to "AAA".

D. Monthly Returns for Final Tax

Petitioner filed its monthly returns for final tax[40] on the following dates:

PERIOD COVERED (2008)	DATE OF FILING	LAST DAY TO FILE RETURN	LAST DAY OF THE 3-YEAR PERIOD	DATE OF ISSUANCE OF FLD
January	February 13, 2008	February 15, 2008	February 15, 2011	October 28, 2011
February	March 14, 2008	March 15, 2008	March 15, 2011	October 28, 2011
March	April 14, 2008	April 15, 2008	April 15, 2011	October 28, 2011
April	May 15, 2008	May 15, 2008	May 15, 2011	October 28, 2011
May	June 13, 2008	June 15, 2008	June 15, 2011	October 28, 2011
June	July 14, 2008	July 15, 2008	July 15, 2011	October 28, 2011
July	August 8, 2008	August 15, 2008	August 15, 2011	October 28, 2011
August	September 10, 2008	September 15, 2008	September 15, 2011	October 28, 2011
September	October 9, 2008	October 15, 2008	October 15, 2011	October 28, 2011
October	November 8, 2008	November 15, 2008	November 15, 2011	October 28, 2011
November	December 9, 2008	December 15, 2008	December 15, 2011	October 28, 2011
December	January 9, 2009	January 15, 2009	January 15, 2012	October 28, 2011

Clearly, based on the foregoing, the deficiency assessments on petitioner's final tax from January 2008 to September 2008 had already prescribed.

E. Monthly Returns for Percentage Tax

Petitioner's monthly returns[41] for percentage tax were filed on the following dates:

Period Covered (2008)	Date of Filing	Last Day to File Return	Last Day of the 3-Year Period	Date of Issuance of FLD
January	February 23, 2008	February 25, 2008	February 25, 2011	October 28, 2011
February	March 24, 2008	March 25, 2008	March 25, 2011	October 28, 2011
March	April 25, 2008	April 25, 2008	April 25, 2011	October 28, 2011
April	May 22, 2008	May 25, 2008	May 25, 2011	October 28, 2011
May	June 19, 2008	June 25, 2008	June 25, 2011	October 28, 2011
June	July 18, 2008	July 25, 2008	July 25, 2011	October 28, 2011
July	August 20, 2008	August 25, 2008	August 25, 2011	October 28, 2011
August	September 22, 2008	September 25, 2008	September 25, 2011	October 28, 2011
September	October 21, 2008	October 25, 2008	October 25, 2011	October 28, 2011
October	November 24, 2008	November 25, 2008	November 25, 2011	October 28, 2011
November	December 22, 2008	December 25, 2008	December 25, 2011	October 28, 2011
December	January 22, 2009	January 25, 2009	January 25, 2012	October 28, 2011

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40 Exhibits "BBB" to "MMM".
41 Exhibits "NNN" to "YYY".

Clearly, the deficiency assessments on petitioner's percentage tax from January 2008 to September 2008 likewise had already prescribed.

F. Monthly Returns for DST

With respect to the time of filing of returns for DST, Section 5 of RR No. 06-01 provides:

> SECTION 5. *Time for Filing of Documentary Stamp Tax Returns and the Payment of Taxes Due Thereon.* – xxx
>
> xxx xxx xxx
>
> (2) For large taxpayers, Section 4(3.6) of Revenue Regulations No. 1-98 is hereby amended to read as follows:
>
> SECTION 4. *Filing of Returns and Payment of Taxes.* –
>
> 3. *When to File and Pay*
>
> 3.6 Documentary Stamp Tax
>
> Large taxpayers shall pay their documentary stamp taxes within five (5) days after the close of the month when the taxable document was made, signed, issued, accepted or transferred by the filing of the documentary stamp tax returns, through purchase or actual affixture or by imprinting the documentary stamps through a documentary stamp tax metering machine.

An examination of the pieces of evidence[42] presented by petitioner shows that it filed its returns for the advance payment of the DST. Applying Section 5 of RR No. 06-01, the Court shall determine the timeliness of respondent's assessment of petitioner's deficiency DST, thus:[43]

Month of Transaction (2008)	Last Day to File Return	Last Day of the 3-Year Period	Date of Issuance of FLD
January	February 5, 2008	February 5, 2011	October 28, 2011
February	March 5, 2008	March 5, 2011	October 28, 2011
March	April 5, 2008	April 5, 2011	October 28, 2011
April	May 5, 2008	May 5, 2011	October 28, 2011
May	June 5, 2008	June 5, 2011	October 28, 2011
June	July 5, 2008	July 5, 2011	October 28, 2011

[42] Exhibits "EEEEEE-1" to "EEEEEE-6".
[43] Exhibits "XXXXX-1" to "XXXXX-12".

July	August 5, 2008	August 5, 2011	October 28, 2011
August	September 5, 2008	September 5, 2011	October 28, 2011
September	October 5, 2008	October 5, 2011	October 28, 2011
October	November 5, 2008	November 5, 2011	October 28, 2011
November	December 5, 2008	December 5, 2011	October 28, 2011
December	January 5, 2009	January 5, 2012	October 28, 2011

Similarly, it appears that respondent's deficiency DST assessments covering January 2008 to September 2008 had already prescribed.

It is noteworthy that respondent argues that the tax base of the aforesaid assessments is computed on annual/year-end basis, hence, not barred by prescription under Section 203 of the NIRC of 1997, as amended.

However, it bears stressing that Section 203 of the NIRC of 1997, as amended, expressly states that internal revenue taxes shall be assessed within three (3) years **after the last day prescribed by law for the filing of the return**. Thus, the reckoning date of the 3-year prescriptive period is counted not on an annual/year-end basis, but after the last day prescribed by law for the filing of the return as provided for under Section 7 of RR No. 9-2001, as amended by RR No. 26-02 and Section 5 of RR No. 06-01.

Considering the foregoing, respondent's deficiency assessments covering the period January to September 2008, pertaining to WTC, EWT, FBT, final tax, percentage tax, and DST are already barred by prescription.

III. Whether petitioner is liable to pay the [1] assessment for deficiency income tax for 2008; and [2] the assessments for WTC, EWT, FBT, final tax, percentage tax, and DST which are not barred by prescription (i.e., covering the period October to December 2008).

Having established that respondent's deficiency assessments covering the period January to September 2008, pertaining to WTC, EWT, FBT, final tax, percentage tax, and

DST are already barred by prescription, the Court shall now look into the arguments and offered evidence/documents in order to ascertain whether petitioner is liable to pay the assessment for deficiency income tax, and the assessments for WTC, EWT, FBT, final tax, percentage tax, and DST which are not barred by prescription (i.e., covering the period October to December 2008).

A. Deficiency Withholding Tax on Compensation - ₱1,844,567.66

Respondent's reconciliation of the salaries and wages per petitioner's income tax return (ITR) against the Monthly Remittance Returns of Income Taxes Withheld on Compensation (BIR Forms No. 1601-C) showed that the amount of ₱1,161,900.27 was not subjected to withholding taxes. Pursuant to Section 79 of the NIRC of 1997, as amended, in relation to Sections 58 and 81 of the same Code, respondent assessed petitioner of the corresponding deficiency WTC in the amount of ₱1,844,567.66, inclusive of interest and compromise penalty, computed as follows.[44]

Salaries and wages per ITR	
Direct charges – salaries, wages and benefits	₱ 33,212,631.00
Salaries and allowances	747,009.00
Total	₱ 33,959,640.00
Less: Salaries and wages per monthly returns	32,797,739.73
Salaries and wages not subjected to tax	**₱ 1,161,900.27**
Add: 20% interest p.a. fr. 1.16.2009 – 11.15.2011 (1033D)	657,667.39
Compromise penalty – non-submission of alphabetical list	25,000.00
Total amount due and collectible	**₱ 1,844,567.66**

Petitioner argued that the salaries and wages in the amount of ₱1,161,900.27 was correctly excluded from the taxable amount as it represents items which are legally not subject to WTC, as shown below:[45]

Director's fees (already subjected to EWT)	₱ 158,500.00
SSS, Pag-ibig, PhilHealth	754,867.00
Fringe benefit tax expenses	224,509.00

For lack of factual basis, the respondent denied the protest, holding the following: /

[44] Exhibit R-10, BIR records, pp. 711 and 723.
[45] Exhibit "D", p. 4.

> "The protest against the assessment for withholding tax on compensation was based on your allegation that these are Director's fees, SSS, pag-ibig and fringe benefit tax expenses. Th(ese) w(ere) not duly supported by document that indeed these accounts were transactions from 1st to 3rd quarter and since no alphabetical list of employees subjected to withholding taxes has been submitted to date, the basis of the computation was on annual year end basis."

Petitioner asserted that the handling revenue examiners erroneously used the amount of ₱33,959,640.00 as tax base in computing the WTC. The salaries and wages per ITR included not only directors' fees subject to WTC but also directors' fees subject to 15% EWT. In using the tax base of ₱33,959,640.00 as subject to WTC, respondent failed to exclude the portion pertaining to directors' fees subject to EWT in the amount of ₱1,204,683.51.[46]

The Court partially upholds the assessment.

As already discussed, the respondent's assessment for deficiency WTC from January 2008 to September 2008 had already prescribed. Consequently, the subject of the assessment shall cover only the months of October 2008 to December 2008 in the aggregate amount of ₱1,976,973.55, as shown below:

	October	November	December	Total
Salaries and wages per schedule (Exhibit NNNN)				
Salaries and wages	₱2,372,271.91	₱2,379,212.45	₱2,436,349.92	₱7,187,834.28
Bonuses	-	557,205.35	347,249.83	904,455.18
Staff benefits	204,709.78	109,086.04	9,584.00	323,379.82
Directors' fees	190,000.00	100,000.00	40,000.00	330,000.00
Fringe benefit tax	18,840.79	18,834.08	18,827.31	56,502.18
Medical/dental/hospitalization	93,388.19	37,543.58	39,176.30	170,108.07
SSS/PhilHealth/ EC-Co's share	63,548.30	64,490.00	64,490.00	192,528.30
Total	2,942,758.97	3,266,371.50	2,955,677.36	9,164,807.83
Less: Salaries and wages per monthly returns (Exhibits UU, VV, WW)	2,372,271.91	2,379,212.45	2,436,349.92	7,187,834.28
Salaries and wages not subjected to tax	**₱ 570,487.06**	**₱ 887,159.05**	**₱ 519,327.44**	**₱ 1,976,973.55**

Undoubtedly, the assessed amount of ₱1,976,973.55 originated from bonuses, staff benefits, directors' fees, fringe benefit tax, medical/dental/hospitalization, and SSS/PhilHealth/EC-Co's share.

[46] Exhibit "IIIIII", docket, vol. 3, pp. 1778-1779.

The bonuses in the amount of ₱904,455.18, as verified by the Court-commissioned Independent Certified Public Accountant (ICPA), were erroneously not included in the 1601-C returns[47], but the corresponding withholding taxes were properly remitted.[48] However, no corroborating evidence was offered to establish this proposition. The Court has stressed time and again that allegations must be proven by sufficient evidence because mere allegation is definitely not evidence.[49]

With respect to the staff benefits in the amount of ₱323,379.82, the ICPA correctly pointed out that de minimis benefits are non-taxable compensation.[50] Although this finds legal support in Section 2.78.1 of Revenue Regulations (RR) No. 02-98, as amended, by RR No. 10-08[51], this claim cannot be given credence for lack of factual basis.

As regards the directors' fees in the amount of ₱330,000.00, the ICPA noted that these fees were subjected to either EWT at 15% or WTC at graduated rates. As the petitioner represented, directors' fees subjected to EWT pertain to fees granted to directors, while that subjected to WTC pertain to fees granted to directors who were employees as well. The details are as follows:[52]

Reference	Directors' Fees	Tax Base	Tax
Exhibit ZZZZ	Subjected to WTC	₱ 718,799.64	₱ 230,015.88
Exhibit YYYY	Subjected to 15% EWT	1,204,683.51	180,702.53
	Total	**₱ 1,923,483.15**	**₱ 410,718.41**

As reconciled in the annexes[53] attached in the ICPA report, the directors' fees for the year 2008 in the total amount

[47] Exhibits "UU", "VV" and "WW".
[48] Exhibit "EEEEEEE", docket, vol. 2, p. 998.
[49] Spouses Nilo Ramos and Eliadora Ramos vs. Raul Obispo and Far East Bank and Trust Company, G.R. No. 193804, February 27, 2013, *citing,* Real v. Sangu Philippines, Inc., G.R. No. 168757, January 19, 2011, General Milling Corporation v. Casio, G.R. No. 149552, March 10, 2010.
[50] Exhibit EEEEEEE, docket, vol. 2, p. 998.
[51] "Sec. 2.78.1. *Withholding of Income Tax on Compensation Income.* —
(A) *Compensation Income Defined.* — xxx
xxx xxx xxx
(3) Facilities and privileges of relatively small value. — Ordinarily, facilities, and privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), otherwise known as "de minimis benefits," furnished or offered by an employer to his employees, are not considered as compensation subject to income tax and consequently to withholding tax, if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as means of promoting the health, goodwill, contentment, or efficiency of his employees.
[52] Exhibit EEEEEEE, docket, vol. 2, p. 1006.
[53] Exhibit EEEEEEE, Annexes 5 and 6, docket, vol. 2, pp. 1065-1069.

of ₱522,500.00 (including the amount of ₱330,000.00 pertaining the months of October to December) consisted of that subjected to WTC in the amount of ₱270,000.00, and that subjected to EWT in the amount of ₱252,500.00. The reconciling items in the total amount of ₱1,400,983.15 (₱1,923,483.15 less ₱522,500.00) were accounted for as follows:

Annex	Difference Accounted for as	₱ 1,400,983.15
12	2007 Directors' Fees Subjected to 15% EWT and/or WTC	(343,905.08)
13	2008 Advisory Fees Subjected to 15% EWT and/or WTC	(70,000.00)
14	2008 Directors' Fees Subjected both to 15% EWT and WTC*	(190,000.00)
15	2007 Directors' Fees Subjected both to 15% EWT and WTC*	(169,578.07)
ZZZZZZ	Book adjustment pertaining to reversal of accrual for various long outstanding operating expenses	(600,000.00)
	Unaccounted Difference	**27,500.00**

For petitioner's failure to account for the directors fees of ₱27,500.00, the same shall be subjected to deficiency WTC.

Moreover, scrutiny of the Summary of Directors Fees Subjected to Withholding Tax on Compensation[54] and petitioner's Alphalist on Compensation[55] shows that for the period October to December 2008, there were directors fees in the amount of ₱40,000.00 which were paid to employees but the corresponding withholding tax thereon cannot be traced to the Alphalist on Compensation because petitioner failed to provide the details of the gross compensation reflected therein. Hence, the said directors fees in the amount of ₱40,000.00[56], broken down below, shall be subjected to deficiency WTC.

Check Voucher			
Number	**Date**	**Amount**	**Payee**
28763	10/15/2008	10,000.00	Francisco Varela
28912	11/25/2008	10,000.00	Francisco Varela
28761	10/15/2008	10,000.00	Ramon Del Rosario Jr.
28909	11/25/2008	10,000.00	Ramon Del Rosario Jr.
	Total	**40,000.00**	

Evident in the returns[57], the amount of ₱56,502.18 pertains to fringe benefit taxes which were duly remitted to the BIR. Hence, the deficiency WTC assessment on the amount of ₱56,502.18 shall be cancelled.

[54] Exhibit EEEEEEE, Annex 5, docket, vol. 2, pp. 1064-1065.
[55] Exhibit PPPP.
[56] Exhibit EEEEEEE, Annex 5, docket, vol. 2, p. 1064.
[57] Docket, vol. 1, pp. 236-239; Exhibit PPPP, p. 4.

It is represented that medical/dental/hospitalization benefits in the amount of ₱170,108.07 include medical membership and dental fees, company's medicine and medical/dental reimbursements of employees.[58] RR No. 10-08 lists, among other de minimis benefits, actual yearly medical benefits not exceeding ₱10,000.00 per annum as exempt from income tax, hence, exempt from withholding tax on compensation income. However, notwithstanding that petitioner submitted supporting documents[59] (e.g., official receipts, tape receipts, invoices and statements of accounts), the Court cannot identify which among these documents pertain to a particular check voucher. Possibly, each voucher represents reimbursement of expenses supported by two (2) or more official receipts. Petitioner should have detailed in its schedule the transactions covered by each check voucher and the corresponding supporting document reference number. In that case, the Court will be able to ascertain whether the said expenses were actually incurred. Such actual expenses shall then be subject to the ₱10,000.00 limit to finally determine which portion falls within the exemption provided for by the law. For failure to sufficiently substantiate that the amount of ₱170,108.07 pertains to medical/dental/hospitalization benefits given to employees, petitioner shall be liable for the corresponding deficiency WTC.

Petitioner's ₱192,528.30 share in the SSS[60], PhilHealth[61] and Pag-Ibig[62] contributions for the benefit of its employees are exempt from withholding tax on compensation under Section 32(B)(7)(f)[63] of the NIRC of 1997, as amended. Thus, the deficiency WTC assessment on this item shall be cancelled.

In fine, petitioner shall be liable to pay basic deficiency WTC in the amount of ₱468,941.78, as computed below:

Salaries and wages not subjected to tax per assessment	₱1,976,973.55
Less: Items not subject to WTC	

[58] Exhibit EEEEEEE, docket, vol. 2, p. 998.
[59] Exhibits WWWWWW-1 to WWWWWW-153.
[60] Exhibits QQQQ-10 to QQQQ-12.
[61] Exhibits RRRR-5 to RRRR-6.
[62] Exhibits SSSS-10 to SSSS-12.
[63] "SEC. 32. Gross Income. –
"(B) *Exclusions from Gross Income.* - The following items shall not be included in gross income and shall be exempt from taxation under this Title:
"(7) Miscellaneous Items. –
"(f) *GSIS, SSS, Medicare and Other Contributions.* - GSIS, SSS, Medicare and Pag-ibig contributions, and union dues of individuals."

Directors' fees	₱330,000.00	
Less: Unaccounted Directors' fees	27,500.00	
Directors' fees not traced to Alphalist on Compensation	40,000.00	262,500.00
Fringe benefit tax		56,502.18
SSS/PhilHealth/EC-Cos share		192,528.30
Salaries and wages not subjected to tax per Court's verification		₱ 1,465,443.07
Tax Rate		27.26705019%
Basic Deficiency Withholding Tax on Compensation		**₱ 399,583.10**

B. Deficiency Expanded Withholding Tax - ₱928,670.60

Respondent assessed petitioner for deficiency EWT, including interest and penalty, in the total amount of ₱928,670.60[64] on the payments made to various suppliers/payees, broken down as follows:

Particulars	**Tax Rate**	**Total Income Payments Not Subjected to EWT**	**Tax Due**
Income Payments per FS/Trial Balance			
Goods	1%	₱ 5,264,924.28	₱ 52,649.24
Services	2%	2,429,722.50	48,594.45
Rental	5%	172,342.68	8,617.13
Professional Fees	15%	1,595,529.12	239,329.37
Directors' Fees	15%	522,500.00	78,375.00
Sub-total		₱ 9,985,018.58	₱427,565.19
Portion of income payments under Occupancy and related cost account per FS			
Rental	5%	₱ 2,286,742.48	₱114,337.12
Insurance	5%	422,790.51	21,139.53
Power, light & water	2%	549,006.07	10,980.12
Sub-total		₱ 3,258,539.06	₱146,456.77
Basic Deficiency EWT		₱13,243,557.64	₱574,021.97
Add: 20% interest p.a. fr. 1.16.2009 - 11.15.2011 (1033D)			324,912.16
20% interest p.a. fr. 1.16.2008 - 1.15.2009 (365D) for late payment (3,464,117.85 x 2%)	20%	68,682.36	13,736.47
Compromise penalty			16,000.00
Total amount due and collectible			**₱928,670.60**

[64] Exhibit R-10, BIR Records, p. 723.

In its Memorandum[65], petitioner pointed out that it cannot understand how respondent arrived at her several assessments based solely on the Assessment Notices. Several requests were allegedly extended to the handling revenue examiners to provide specific details on how they arrived at particular assessments but the same remained unheeded. As such, petitioner maintained that the assessments with regard to items which were incomprehensible should be voided for lack of factual and legal bases pursuant to Section 3.1.4 of RR No. 12-99, which provides:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. x x x

The Court agrees with petitioner.

Section 228 of NIRC of 1997, as amended, provides that the taxpayer must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void. This is in consonance with the due process requirement of the 1997 Philippine Constitution, which provides that "No person shall be deprived of his property without due process of law." The taxpayer needs to know the nature of the examiner's findings in order to be able to properly contest the same and submit supporting documents.

In **Commissioner of Internal Revenue vs. Enron Subic Power Corporation**[66], the Supreme Court ruled:

> The CIR insists that an examination of the facts shows that Enron was properly apprised of its tax deficiency. During the pre-assessment stage, the CIR advised Enron's representative of the tax deficiency, informed it of the proposed tax deficiency assessment through a preliminary five-day letter and furnished Enron a copy of the audit

[65] Docket, vol. 3, pp. 1829-1830.
[66] GR. No. 166387, Resolution dated January 19, 2009.

working paper allegedly showing in detail the legal and factual bases of the assessment. The CIR argues that these steps sufficed to inform Enron of the laws and facts on which the deficiency tax assessment was based.

We disagree. The advice of tax deficiency, given by the CIR to an employee of Enron, as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment. These steps were mere perfunctory discharges of the CIR's duties in correctly assessing a taxpayer. The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax assessment is markedly different from the requirement of what such notice must contain. Just because the CIR issued an advice, a preliminary letter during the pre-assessment stage and a final notice, in the order required by law, does not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made.

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.

We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void."

In the FDDA[67], Formal Letter of Demand (FLD) and Final Assessment Notices (FAN)[68] and Preliminary Assessment Notice (PAN)[69] sent by respondent to petitioner and particularly in the attached schedules and "Details of Discrepancies", there was no indication as to how the

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[67] Exhibit "R-11", BIR records, pp. 830-833.
[68] Exhibit "R-10", BIR records, pp. 708-724.
[69] Exhibit "R-9", BIR records, pp. 610-619.

respondent's examiners arrived at the following amounts except for the description of "Income Payments per FS/Trial Balance":

Income Payments FS/Trial Balance	Amount
Goods	₱ 5,264,924.28
Services	2,429,722.50
Rental	172,342.68
Professional Fees	1,595,529.12

Respondent failed to give the composition or breakdown of the various accounts comprising her computation of the income payments for goods and services in the respective amounts of ₱5,264,924.28 and ₱2,429,722.50. The same holds true with the rental of ₱172,342.68 and professional fees of ₱1,595,529.12. Since these amounts used by respondent were different from those reflected in petitioner's FS/Trial Balance, respondent should have provided the detailed computation thereof.

Petitioner cannot be expected to be able to determine and thereafter refute the examiner's findings without the disclosure of the details of the basis of the assessment. Accordingly, the Court finds the deficiency EWT assessment on the aforesaid items invalid and illegal for respondent's failure to inform petitioner in writing of the facts on which the said assessment was based.

However, the FDDA[70], FLD and FAN[71] and PAN sufficiently complied with the due process requirement under RR No. 12-99 and Section 228 of the NIRC of 1997, as amended, with regard to the following income payments because these were the very same figures reflected in petitioner's FS/Trial Balance:

Income Payments	Amount
Directors' Fees	₱ 522,500.00
Portion of income payments under Occupancy and related cost account per FS	
Rental	2,286,742.48
Insurance	422,790.51
Power, light & water	549,006.07

[70] Exhibit "R-11", BIR records, pp. 830-833.
[71] Exhibit "R-10", BIR records, pp. 708-724.

Thus, the Court shall now proceed to discuss the merits of the assessment on these income payments by looking into the propriety of each of the respondent's findings.

1. Directors' fees - ₱522,500.00

As earlier stated under the deficiency WTC assessment, the directors' fees of ₱522,500.00 consisted of that subjected to WTC in the amount of ₱270,000.00, and that subjected to EWT in the amount of ₱252,500.00. Based on the Summary of Directors Fees Subjected to Expanded Withholding Tax[72] and and Alphalist of Payees Subjected to Expanded Withholding Tax[73], it was established that the EWT on the directors' fees of ₱252,500.00 was duly withheld and remitted to the BIR. Thus, the deficiency EWT assessment on this item shall be cancelled.

2. Rental

Records show that for the CY 2008 petitioner rented office space, parking lots and warehouse space from the following lessors[74]:

Name of Lessor	Amount
First Philippine Holdings Corporation (FPH)	₱ 2,216,725.42
Manuela Corporation (MC)	70,017.06
Total	**₱ 2,286,742.48**

Respondent compared this rental amount to the alleged amount of ₱2,114,399.80 declared by petitioner in the alphalist. The difference in the amount of ₱172,342.68 was assessed for deficiency EWT.

Perusal of the alphalist reveals, however, that petitioner made income payments in the aggregate amount of ₱2,488,439.45[75], as detailed below, and not ₱2,114,399.80.

Taxable Month	FPHC	MC	Total
January	₱ 159,049.00	₱ 67,584.00	₱ 226,633.00
February	159,049.00	33,792.00	192,841.00
March	33,792.00	-	33,792.00

[72] Exhibit EEEEEEE, Annex 6, docket, vol. 2, pp. 1066-1069.
[73] Exhibit DDDDDDD.
[74] Exhibits GGGGG to JJJJJ.
[75] Docket, vol. 1, pp. 80-131.

April	318,098.00	33,792.00	351,890.00
May	159,049.00	33,792.00	192,841.00
June	168,757.60	-	168,757.60
July	168,757.20	67,584.00	236,341.20
August	168,757.20	33,792.00	202,549.20
September	168,757.20	33,792.00	202,549.20
October	168,757.20	33,792.00	202,549.20
November	230,983.76	33,792.00	264,775.76
December	179,128.29	33,792.00	212,920.29
Total	**₱ 2,082,935.45**	**₱ 405,504.00**	**₱ 2,488,439.45**

Based on the computation presented in the table below, also taking into account the prescribed period of January to September 2008, the assessment on rental related only to FPH for the period October to December 2008 in the amount of ₱44,058.15 is proper.

	October	November	December	Total
FPH				
Per schedule	₱ 169,278.92	₱ 258,701.82	₱ 194,946.66	₱ 622,927.40
Per alphalist	168,757.20	230,983.76	179,128.29	578,869.25
Rental not subjected to EWT	**₱ 521.72**	**₱ 27,718.06**	**₱ 15,818.37**	**₱ 44,058.15**
MC				
Per schedule	₱ 3,784.71	₱ 9,461.76	₱ 3,784.71	₱ 17,031.18
Per alphalist	33,792.00	33,792.00	33,792.00	101,376.00
Difference	₱ (30,007.29)	₱ (24,330.24)	₱ (30,007.29)	₱ (84,344.82)

3. Insurance - ₱422,790.51; Power, light and water - ₱549,006.07

For petitioner's failure to submit supporting documents, the deficiency EWT assessment on the insurance of ₱422,790.51 and power, light and water of ₱549,006.07 shall be upheld.

It bears stressing that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[76]

In sum, petitioner is liable for basic deficiency EWT in the total amount of ₱34,322.56, computed as follows:

[76] Marcos II vs. Court of Appeals, et at., G.R. No. 120880, June 5, 1997.

	Income Payment	Tax Rate	Basic Deficiency EWT
Rental	₱ 44,058.15	5%	₱ 2,202.91
Insurance	422,790.51	5%	21,139.53
Power, light & water	549,006.07	2%	10,980.12
Total	**₱ 1,015,854.73**		**₱ 34,322.56**

C. Deficiency Income Tax - ₱16,835,114.25

Respondent's detailed computation of the deficiency income tax assessment for CY 2008 in the amount of ₱16,835,114.25 is reproduced herein below[77]:

Net Income (Loss) per ITR		₱(31,195,401.00)
Add: Additional Income/Disallowed Deductions		
Compensation not subjected to WC		1,161,900.27
Disallowed Interest Expense		17,260,746.00
Understatement of Revenue per SLS vs SAWT		3,180,712.40
Understatement of Revenue per TRS data		30,980.20
Income payments not subjected to WE		9,985,018.58
Taxable Income		₱ 423,956.45
Add: NOLCO carried over to succeeding quarter		31,195,401.00
Taxable income per investigation		₱ 31,619,357.45
Tax rate		35%
Deficiency Income Tax		₱ 11,066,775.11
Less: Tax Paid/ Creditable Tax Withheld		
Prior years excess credits	₱8,214,570.58	
Creditable tax withheld	555,262.01	
Total	₱8,769,832.59	
Less: Excess credits carried over to next year	(8,769,832.59)	-
Deficiency Income Tax, Basic		₱ 11,066,775.11
Add: 20% int. pa. (4.16.09-11.15.2011) 943D		5,718,339.14
Compromise penalty		50,000.00
Total amount due and collectible		**₱16,835,114.25**

As can be seen from the above computation, the assessment arose from the following items:

A.	Compensation not subjected to WC	₱ 1,161,900.27
B.	Disallowed Interest Expense	17,260,746.00
C.	Understatement of Revenue per SLS vs SAWT	3,180,712.40

[77] Exhibit "E", docket, vol. 1, p. 386; Exhibit "R-10", Schedule 1, BIR records, p. 709.

D.	Understatement of Revenue per TRS data	30,980.20
E.	Income payments not subjected to WE	9,985,018.58
F.	NOLCO carried over to succeeding quarter	31,195,401.00
G.	Excess credits carried over to next year	8,769,832.59

The Court shall discuss each item hereafter.

1. Compensation not subjected to WTC - ₱1,161,900.27

Respondent found that part of the salaries and wages for the year 2008 in the amount of ₱1,161,900.27 was not subjected by petitioner to withholding tax pursuant to Sections 58 and 81 the NIRC of 1997, as amended. As a consequence of the alleged non-withholding, respondent disallowed said amount from petitioner's claimed deductible expenses pursuant to Section 34(K) of the same Code.

As earlier stated under the deficiency WTC assessment, petitioner failed to prove that it withheld and remitted the withholding tax due on the salaries and wages of ₱1,465,443.07. Hence, the same cannot be deducted by petitioner from its taxable gross income pursuant to Section 34(K) of the NIRC of 1997, as amended, which states that:

> "(K) *Additional Requirements for Deductibility of Certain Payments.* — Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, sections 58 and 81 of this Code."

2. Disallowed Interest Expense - ₱17,260,746.00

Petitioner's ITR for the taxable year 2008 showed interest income subjected to final tax in the amount of ₱43,367,541.00.[78] Pursuant to Section 34(B) of the NIRC of 1997, as amended, respondent applied the limitation of deductibility of interest expense and disallowed the entire interest expense claimed by petitioner in the amount of ₱17,260,746.00.

[78] Exhibit "F", Section E, line 123.

The disallowance is in order.

Section 34 of the NIRC of 1997, as amended, provides that the amount of interest that a taxpayer can deduct from his taxable gross income should be reduced by an amount equal to forty-two percent (42%) of his interest income subjected to final tax, thus:

> "SEC. 34.*Deductions from Gross Income.* –xxx
>
> "(B) *Interest.*-
>
> "(1) *In General.* — The amount of interest paid or incurred within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business shall be allowed as deduction from gross income: *Provided, however,* That the taxpayer's otherwise allowable deduction for interest expense shall be reduced by forty-two percent (42%) of the interest income subjected to final tax: xxx

Applying the foregoing provisions, petitioner's non-deductible interest expense for the year 2008 amounted to ₱18,214,367.22, computed as follows:

Interest Expense (Grossed up value)	₱ 43,367,541.00
Limitation rate	42%
Non-deductible Interest Expense	**₱ 18,214,367.22**

Clearly, petitioner's claimed deduction for interest expense in the amount ₱17,260,746.00 should be disallowed.

3. Understatement of Revenue per SLS vs SAWT - ₱3,180,712.40

The alleged understatement of revenue in the amount of ₱3,180,712.40 was based on the examiners finding that[79]:

> Based on audit reported Revenue per monthly Summary List of as compared with the summary alphalist of withholding taxes (SAWT) has an unaccounted diffrence of P3,180,712.40. This was accounted as unaccounted sales hence, was added back as income taxable under Section 32(A) of the Tax Code.

[79] Exhibit R-10, Annex A-1, BIR records, p. 712.

Petitioner counter argued that all its revenues for tax purposes were properly declared and it cannot be determined how the respondent arrived at the amount of alleged understatement of revenues per SLS and SAWT amounting to ₱3,180,712.40. Petitioner alleged that despite its request, respondent failed to provide any information as to how the handling revenue examiners arrived at this particular assessment. As such, petitioner maintained that the assessment in relation to this particular item should be voided for lack of factual and legal bases[80].

The Court agrees with petitioner.

The examiners' working papers[81] show that the alleged understatement of revenue in the amount of ₱3,180,712.40 was derived upon comparison of the income declared per CWT certificates and the income declared per FS, as shown below:

Particulars	Tax Withheld	Tax Rate per SAWT	Income Payment
1st Quarter			
Pepsi Cola Products Phils., Inc.	12,709.23	2%	635,461.50
Trans Asia Oil & Energy Development Corp.	31,500.00	15%	210,000.00
Victoria's Milling Co., Inc.	5,941.30	2%	297,065.00
Rockwell Land Corporation	43,032.13	2%	2,151,606.50
	93,182.66		**3,294,133.00**
2nd Quarter			
Rockwell Land Corporation	38,413.87	2%	1,920,693.50
Trans Asia Oil & Energy Development Corp.	21,000.00	15%	140,000.00
Phinma Inc.	7,532.29	5%	150,645.80
Phinma Inc.	1,201.08	2%	60,054.00
Victoria's Milling Co., Inc.	5,733.56	2%	286,678.00
	73,880.80		**2,558,071.30**
3rd Quarter			
Vulcan Industrial & Mining Corporation	10,000.00	2%	500,000.00
Victoria's Milling Co., Inc.	5,733.56	2%	286,678.00
Rockwell Land Corporation	46,859.50	2%	2,342,975.00
Trans Asia Oil & Energy Development Corp.	42,000.00	15%	280,000.00
Trans Asia Oil & Energy Development Corp.	1,972.92	5%	39,458.40
Phinma Inc.	608.44	2%	30,422.00

[80] Exhibit "IIIIII", BIR records, p. 851; petitioner's Memorandum, docket, vol. 3, pp. 1829-1830.
[81] BIR records, p. 475.

Vivant Corporation	120,967.74	15%	806,451.60
	228,142.16		**4,285,985.00**
4th Quarter			
Trans Asia Oil & Energy Development Corp.	31,500.00	15%	210,000.00
Rockwell Land Corporation	68,667.35	2%	3,433,367.50
Vivant Corporation	120,967.74	15%	806,451.60
	221,135.09		**4,449,819.10**
Total Investment Banking and Prof. Fees Subject to CWT	**616,340.71**		**14,588,008.40**
Total Investment Banking and Prof. Fees per FS			**11,407,296.00**[82]
Difference			**3,180,712.40**

Unfortunately, however, respondent failed to convey in writing such information to petitioner. In the FDDA[83], Formal Letter of Demand (FLD) and Final Assessment Notices (FAN)[84] and Preliminary Assessment Notice (PAN)[85], particularly in the attached schedules and "Details of Discrepancies" sent by respondent to petitioner, there was no indication whatsoever as to how the respondent's examiner arrived at the undeclared income amount of ₱3,180,712.40. While it is true that the legal basis was indicated by respondent in the FDDA and Details of Discrepancies attached to the FLD, respondent nonetheless failed to show the detailed computation of the amount of ₱3,180,712.40. Hence, respondent clearly violated Section 228 of the NIRC of 1997, as amended, as it failed to comply with the requirement set forth in law. Thus, this Court finds the deficiency income tax assessment on this item void.

4. Understatement of Revenue per TRS data - ₱30,980.20

Per BIR records, respondent arrived at the alleged undeclared income per TRS data as follows[86]:

Payor	TOTAL per SAWT	Per TRS data	Difference
Pepsi Cola Products Phils., Inc.	₱ 635,461.50	₱ 635,461.50	
Philippine Investment Management, Inc.	190,104.20		

[82] Exhibit "HHHH", 2008 Audited Financial Statements, p.5.
[83] Exhibit "R-11", BIR records, pp. 830-833.
[84] Exhibit "R-10", BIR records, pp. 708-724.
[85] Exhibit "R-9", BIR records, pp. 610-619.
[86] BIR Records, p. 474.

Philippine Investment Management, Inc.	90,476.00		
	280,580.20	311,520.40	₱ 30,940.20
Rockwell Land Corp.	1,447,335.66		
Rockwell Land Corp.	3,021,412.50		
Rockwell Land Corp.	2,816,332.50		
Rockwell Land Corp.	2,462,755.00		
Rockwell Land Corp.	100,806.45		
	9,848,642.11		
Trans Asia Oil & Energy Development	840,000.00	840,000.00	-
Victoria's Milling Co., Inc.	870,421.66		
Vivant Corp.	1,612,903.22		
Vulcan Indl & Mining Corp.	500,000.00		
Ang Ping and Associates	-	40.00	40.00
Undeclared income per TRS		**₱1,787,021.90**	**₱ 30,980.20**

We understand that the TRS or the Tax Reconciliation System is a tool typically used by respondent in cross-referring the taxes withheld from and by registered entities to the said entities' own records and filed returns. However, respondent did not provide petitioner of the actual TRS data to which petitioner's SAWT was compared, hence, petitioner was unable to verify the correctness of the comparison made. Again, respondent failed to comply with the due process requirement under Section 228 of the NIRC of 1997, as amended. For lack of factual basis, the deficiency income tax assessment corresponding to the alleged undeclared income per TRS of ₱30,980.20 should be cancelled.

5. Income payments not subjected to WE - ₱9,985,018.58

Based on the finding that petitioner failed to withhold and remit the EWT on certain income payments in the amount of ₱9,985,018.58 as discussed under the deficiency EWT assessment, respondent disallowed the said amount as deduction from petitioner's taxable gross income.

As earlier discussed, petitioner failed to prove that it properly withheld and remitted the EWT due on its income payments of ₱1,015,854.73. Consequently, the said amount shall be disallowed from petitioner's claimed deductible expenses pursuant to Section 34 (K) of the NIRC of 1997, as amended.

6. Excess credits carried over to next year - ₱8,769,832.59

Respondent disallowed petitioner's excess tax credits as of December 31, 2008 in the amount of ₱8,769,832.59 but gave no explanation in her FDDA[87] nor in the FLD and Assessment Notices[88]. This Court could only surmise that the excess tax credits carried over to the succeeding year was disallowed in order to recapture the tax benefit realized by petitioner in carrying the said amount to the succeeding year.

However, it was improper for respondent to disallow the said excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2009. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

7. Net Operating Loss Carry-over (NOLCO) carried over to succeeding quarter - ₱31,195,401.00

In arriving at petitioner's taxable income, respondent added back the amount of ₱31,195,401.00, which represents petitioner's net loss for taxable year 2008, as Net Operating Loss Carry-Over (NOLCO) carried over in 2009. However, petitioner averred that this is baseless and incorrect. The said loss, according to petitioner, was never utilized in its ITRs for taxable years 2009, 2010, and 2011. Moreover, petitioner's unexpired NOLCO as of 2008, pertaining to years 2005 to 2007, aggregated to ₱99,157,351.00.

To prove its contentions, petitioner presented its ITRs for the taxable years 2008[89], 2009[90], 2010[91] and the first two (2) quarters[92] of CY 2011.

It appears from the foregoing returns that petitioner incurred continuous net losses from operations for the inclusive years, hence, petitioner had no chance to utilize its NOLCO from CY 2008.

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87 Exhibit "R-11", BIR records, pp. 805-808.
88 Exhibit "R-10", BIR records, pp. 708-724.
89 Exhibit "F", docket, vol. 2, pp. 47-51.
90 Exhibit "G", docket, vol. 2, pp. 52-56.
91 Exhibit "H", docket, vol. 2, pp. 58-64.
92 Exhibits "I-4" and "J", docket, vol. 2, pp. 65-72.

Petitioner cited in its Petition for Review[93], the case of *Moneyline Telerate vs Commissioner of Internal Revenue*[94], where this Honorable Court held that:

> "Besides, respondent failed to present evidence to prove that petitioner used its 2002 net loss as NOLCO in the succeeding year. Granting, for the sake of argument, that petitioner actually deducted its 2002 net loss as NOLCO in the succeeding year 2003 and the said deduction was not proper as petitioner did not incur net loss, **the same can only be the subject of assessment when it was claimed as deduction in the year 2003 and not in the year 2002, for such is beyond the scope of the present assessment. Therefore, adding back the net loss of ₱ 68,433.00 to petitioner's taxable income for the year 2002 is erroneous.**" *(Emphasis supplied)*

Applying the above-mentioned ruling to the instant case, the NOLCO that was to be carried-over to the succeeding years (i.e., CY 2009, CY 2010, CY 2011) is part of the jurisdiction of the said succeeding years, and not during taxable year 2008. Moreover, the net operating loss of ₱31,195,401.00 was not an actual deduction from taxable income of petitioner, but was a mere result of the operations of CY 2008. Thus, it was erroneous on the part of respondent in disregarding petitioner's net operating loss of ₱31,195,401.00 in the determination of petitioner's deficiency income tax liability for the CY 2008.

After taking into account petitioner's disallowed deductions for salaries and wages, interest expense and income payments not subjected to EWT, petitioner would still be in a net loss position in the amount of ₱11,453,357.20, as computed below. Thus, the deficiency income tax assessment for taxable year 2008 shall be cancelled.

Net Income (Loss) per ITR	₱ (31,195,401.00)
Add: Disallowed Deductions	
Compensation not subjected to WTC	1,465,443.07
Disallowed Interest expense	17,260,746.00
Income payments not subjected to EWT	1,015,854.73
Taxable Loss	₱ (11,453,357.20)
Income Tax Due	₱ -
Less: Tax Credits	

[93] Docket, vol. 1, p. 16.
[94] CTA Case No. 7658, February 4, 2011.

Prior years excess credits	₱	8,214,570.58
Creditable tax withheld		555,262.01
Total		8,769,832.59
Excess Tax Credits	**₱**	**(8,769,832.59)**

D. Deficiency Fringe Benefit Tax (FBT) - ₱171,797.15

Respondent's verification disclosed that a portion of the fringe benefits granted by petitioner to its employees, except rank and file, in the amount of ₱1,022,591.91 was not subjected to FBT pursuant to Section 33(A) of the NIRC of 1997, as amended. Hence, petitioner was assessed for deficiency FBT in the amount of ₱171,797.15, computed as follows[95]:

Depreciation of transportation equipment	₱ 1,390,725.00
Multiply by	50%
Monetary value of fringe benefit	₱ 695,362.50
Percentage divisor	68%
Total grossed up monetary value	₱ 1,022,591.91
Multiply by Tax rate	32%
Tax required to be withheld	₱ 327,229.41
Less: Tax paid	224,509.11
Deficiency FBT, basic	₱ 102,720.30
Add: 20% interest p.a. fr. 4.16.2009 – 11.15.2011 (943D)	53,076.85
Compromise penalty	16,000.00
Total amount due and collectible	**₱ 171,797.15**

Petitioner argued that the tax base amount of ₱1,390,725.00 is incorrect as this included ₱484,561.47 depreciation expense of staff vehicles which were not specifically assigned to an officer. The ICPA presented the details of transportation equipment not subjected to fringe benefit tax as follows[96]:

Acquisition Date	**Termination Date**	**Type of Car**	**Acquisition Cost**	**Depreciation Expense***
2-Jun-2006	2-Jun-2011	Volvo	₱ 765,000.00	₱ 153,000.00
12-Sep-2007	12-Sep-2012	Vios	644,000.00	128,799.96
18-Jan-2008	18-Jan-2013	Toyota	1,000,000.00	200,000.04
Total			2,409,000.00	481,800.00
Unaccounted difference				2,761.47
Total			**₱2,409,000.00**	**₱ 484,561.47**

**As per petitioner's policy, transportation equipment are normally depreciated for five (5) years.*

[95] Exhibit R-10, BIR records, pp. 711 and 722.
[96] Exhibit EEEEEEE, p. 36.

Examination of the pertinent documents[97] shows that the Volvo, Vios and Toyota (Fortuner) cars were registered under the name of the petitioner. As aptly observed by the ICPA, based on the Comprehensive Private Car Policy[98], the Volvo car was assigned to Mr. Francisco Javier P. Bonoan, Vice President for Investment and Banking Division. No copy of the insurance plan for Toyota (Fortuner) was submitted, but the ICPA was informed by petitioner that the car was assigned to Mr. Ramon Torres, First Vice President for Marketing[99].

Since petitioner failed to establish that the Volvo and Toyota Fortuner were necessary to its trade or business or that the use thereof is for its convenience or advantage, the depreciation expense related to these vehicles shall be subject to FBT pursuant to Section 33 of the NIRC of 1997, as amended, which states:

> "SECTION 33. *Special Treatment of Fringe Benefit.* —
>
> "(A) Imposition of Tax. — A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer). The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57(A) of this Code. The grossed-up monetary value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by sixty-six percent (66%) effective January 1, 1998; sixty-seven percent (67%) effective January 1, 1999; and sixty-eight percent (68%) effective January 1, 2000 and thereafter: xxx

Relative thereto, Section 2.33(B)(3) of RR No. 03-98, provides:

> For this purpose, the guidelines for valuation of specific types of fringe benefits and the determination of the

[97] Exhibits AAAAAAA, BBBBBBB and QQQQQ.
[98] Exhibit RRRRR.
[99] Exhibit EEEEEEE, docket, vol. 2, p. 1020.

monetary value of the fringe benefits are given below. The taxable value shall be the grossed-up monetary value of the fringe benefit.

xxx xxx xxx

(3) *Motor vehicle of any kind* —

xxx xxx xxx

(e) If the employer owns and maintains a fleet of motor vehicles for the use of the business and the employees, the value of the benefit shall be the acquisition cost of all the motor vehicles not normally used for sales, freight, delivery service and other non-personal use divided by five (5) years. The monetary value of the fringe benefit shall be fifty per cent (50%) of the value of the benefit.

The monetary value of the motor vehicle fringe benefit is equivalent to the following:

MV = [(A)/5] X 50%

where:

MV = Monetary value
A = acquisition cost

The Vios car, on the other hand, was not assigned to a particular employee as there was no name of assignee written in the car policy[100]. This car served as staff car and was used only for business related purposes[101]. Thus, it is proper not to subject to FBT the depreciation expense of ₱128,799.96 related to the Vios car. Consequently, out of petitioner's claimed depreciation expense - transportation equipment for the year 2008 in the amount of ₱1,390,725.00, only the amount of ₱1,261,925.04, as computed below, is subject to FBT:

2008	**Depreciation – Transportation Equipment**				**Depr.-Vios**	**Depr. Subject to FBT**
	Subjected to FBT by petitioner[102]	**Not subjected to FBT[103]**	**Un-accounted Difference [104]**	**Total**		
January	53,763.51	40,150.00		93,913.51	10,733.33	83,180.18
February	87,596.85	40,150.00		127,746.85	10,733.33	117,013.52

[100] Exhibit SSSSS.
[101] Exhibit EEEEEEE, docket, vol. 2, p. 1021.
[102] BIR records, p. 783.
[103] Exhibit EEEEEEE, docket, vol. 2, p. 1020.
[104] Exhibit EEEEEEE, docket, vol. 2, p. 1020.

March	75,680.18	40,150.00		115,830.18	10,733.33	105,096.85
April	75,680.18	40,150.00		115,830.18	10,733.33	105,096.85
May	75,680.18	40,150.00		115,830.18	10,733.33	105,096.85
June	80,614.81	40,150.00		120,764.81	10,733.33	110,031.48
July	76,282.45	40,150.00		116,432.45	10,733.33	105,699.12
August	76,379.60	40,150.00		116,529.60	10,733.33	105.796.27
September	76,351.59	40,150.00		116,501.59	10,733.33	105,768.26
October	76,073.33	40,150.00		116,223.33	10,733.33	105,490.00
November	76,044.81	40,150.00		116,194.81	10,733.33	105,461.48
December	76,016.04	40,150.00	2,761.47	118,927.51	10,733.33	108,194.18
	906,163.53	**481,800.00**	**2,761.47**	**1,390,725.00**	**128,799.96**	**1,261,925.04**

Inasmuch as the assessment for the period January 2008 to September 2008 had already prescribed, petitioner shall be liable to pay deficiency FBT only for the months of October to December 2008 in the amount of ₱18,590.92, computed as follows:

Depreciation - transportation equipment		
October	₱ 105,490.00	
November	105,461.48	
December	108,194.18	₱ 319,145.66
Multiply by		50%
Monetary value of fringe benefit		₱ 159,572.83
Percentage divisor		68%
Total grossed up monetary value		₱ 234,665.93
Tax rate		32%
Tax required to be withheld		₱ 75,093.10
Less: Tax paid[105]		56,502.18
Deficiency FBT		**₱ 18,590.92**

E. Deficiency Final Withholding Tax - ₱342,402.28

Respondent arrived at the basic deficiency FWT in the amount of ₱208,426.93 as follows[106]:

Interest - Deposit Substitute		₱ 16,882,942.75
Interest - Bonds Payable		377,803.28
Total Interest		₱ 17,260,746.03
FWT rate		20%
Tax Due		₱ 3,452,149.21
Tax Paid	₱ 3,477,825.56	
Less: Tax withheld by Trust Dept.	(234,103.28)	3,243,722.28

[105] Exhibit EEEEEEE, docket, vol. 2, p. 1021.
[106] Exhibit R-10, BIR records, p. 708.

Basic Deficiency FWT		₱ 208,426.93
20% int. p.a. 1.26.2009-11.15.2011 (1023D)		117,975.35
Compromise penalty		16,000.00
Total amount due and collectible		**₱ 342,402.28**

Petitioner argued that respondent's computation is erroneous. The amount of ₱17,260,746.03 used by respondent as petitioner's alleged "Total Interest – Deposit Substitute/Bonds Payable" included the amount of ₱377,803.28 representing interest expense on Bonds Payable with a term of five (5) years or more, which is not subject to the 20% final tax. Petitioner cited as legal basis, BIR Ruling No. 020-01 dated May 31, 2001, wherein the BIR ruled[107]:

> "Furthermore, gains from sale, exchange, or retirement of the PEACe bonds shall not be subject to the twenty percent (20%) final withholding tax imposed under Section (27)(D)(1) of the Tax Code, since the gains that may be derived from PEACe Bonds with maturity of more than five (5) years, shall be exempt from income tax as provided for under Section 32(B)(7)(g) of the 1977 Tax Code pertinent portion of which reads as follows, viz:
>
> > "(g) Gains from the sale of bonds, debentures or other certificates of indebtedness. – Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of five (5) years" shall not be included in gross income and shall be exempt from taxation.
>
> The exemption from income tax and from the withholding tax on the income derived from the sale of bonds with maturity of more than five (5) years is given by law as an incentive to encourage cash savings in such investment securities and to develop both the capital market as well as the secondary market for these investments. Thus, the appellation, kind or form underwhich the bonds come from is immaterial for the purpose of recognition of the income tax exemption for so long as the gains are derived from bonds with maturity of more than five (5) years."

Moreover, petitioner alleged that respondent failed to take into account that ₱1,254,222.89 of the aforesaid ₱17,260,746.03 represents interest expense arising from tax-exempt clients such as retirement funds pursuant to Section 32(B)(6)(a) of the NIRC of 1997, as amended.

[107] Docket, vol. 1, pp. 26-27.

The Court finds the assessment in order.

In his verification of the subject deficiency FWT, the ICPA compared the balance of interest expense as reflected in petitioner's schedule and in its 2008 AFS/ITR and noted the difference amounting to ₱377,802.95, to wit[108]:

	Per schedule	Per AFS/ITR	Difference
Interest expense	₱16,882,943.05	₱17,260,746.00	₱ (377,802.95)

The discrepancy of ₱377,802.95 allegedly pertains to the interest expense from bonds payable with maturity of five (5) years or more which was not included in the schedule by petitioner as the data pertaining thereto were no longer available at the time of the ICPA's examination. Also, the ICPA was not able to obtain supporting promissory notes on the said bonds payable[109].

Even granting, for the sake of argument, that the amount of ₱377,802.95 actually pertains to interest expense on bonds payable with maturity of five (5) years or more, the same is subject to 20% final tax pursuant to Section 27(D)(1) of the NIRC of 1997 which imposes 20% final tax on interest from deposits and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties received by a domestic corporation.

There is a clear distinction between *interest* from bonds and *gain from the sale* of bonds. It is only the "Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years" that is excluded from gross income and thus exempt from income tax under Section 32(B)(7)(g) of the NIRC of 1997, as amended. Such gains from sale or exchange or retirement of bonds, debentures or other certificate of indebtedness fall within the general category of "Gains derived from dealings in property", as distinguished from interest from bonds, debentures or other certificate of indebtedness, which fall within the general category of "Interests" under Section 32(A) of the NIRC of 1997, as amended[110].

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108 Exhibit EEEEEEE, docket, vol. 2, p. 1023.
109 Exhibit EEEEEEE, docket, vol. 2, p. 1023.
110 NIPPON LIFE INSURANCE COMPANY OF THE PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 6142, February 4, 2002

As regards the interest expense of ₱1,254,222.89, petitioner was unable to sufficiently prove that the said amount is related to tax-exempt clients. Petitioner merely provided a Schedule[111] of Interest Expense showing the amount of ₱1,254,222.89 as tax-exempt and BIR Certificates of Tax Exemptions[112] of its clients, specifically Holcim Philippines, Inc. and PHINMA JUMBO. There was no breakdown of interest expense in the schedule as to what amount of interest expense is actually related to which client, neither was there evidence presented to prove that petitioner actually incurred/paid the interest of ₱1,254,222.89 to these tax-exempt clients.

Considering the foregoing, this Court upholds respondent's computation of basic deficiency FWT in the amount of ₱208,426.93.

While respondent's right to assess petitioner of deficiency FWT for the months of January to September 2008 had already prescribed, petitioner was unable to establish that the subject deficiency FWT pertained to the months of January to September 2008. Thus, this Court shall consider the amount of ₱208,426.93 as pertaining to the months of October to December 2008.

F. Documentary Stamp Tax - ₱4,089,696.27

Respondent computed the deficiency DST assessment in the amount of ₱4,089,696.27 as follows[113]:

Total debt instrument subject to DST per audit	2,716,064,332.94		
Total subjected to DST per Taxpayer	2,199,206,361.24		
Total debt instrument not subjected to DST	516,857,971.70	1.00/200.00	2,584,289.86
Rent Expense	2,286,742.48	1.00/2000.00	1,143.37
Rental of Real Property	19,341.00	1.00/2000.00	12.00
Basic Deficiency DST	519,164,055.18		2,585,445.23
Add: Discrepancy between DST usage & DST affixed			1,048.20
Total Basic Deficiency DST			2,586,493.43

[111] Exhibit TTTTT.
[112] Exhibit CCCCCCC.
[113] Exhibit "R-10", BIR Records, p.721

Add: 20% int p.a. fr.1 06.09-11.15.2011 (1043D)			1,478,200.21
Compromise penalty			25,000.00
Total amount due and collectible			**4,089,696.27**

In its letter dated January 6, 2012[114] requesting for reconsideration of the respondent's FDDA, petitioner requested for an explanation on how the handling revenue examiners arrived at the amount of ₱2,716,064,332.94 "Total debt instrument subject to DST". Petitioner alleged that per official records, the total amount of promissory notes it issued only sums up to ₱2,557,734,368.62, on the basis of which, it paid a total DST of ₱2,881,990.93.

It should be noted that no correspondence to answer petitioner's request for explanations was issued by respondent. Respondent should have indicated in the FLD and assessment notices as to what comprises the "Total debt instrument subject to DST per audit" that would have enabled petitioner to intelligently refute the same and provide support to specifically address each account which became the basis of respondent's assessment. As earlier discussed, Section 228 of the NIRC of 1997, as amended, requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice, otherwise the assessment is void. Consequently, the portion of the deficiency DST assessment related to the amount of ₱516,857,971.70 (i.e., ₱2,716,064,332.94 less ₱2,199,206,361.24) be withdrawn and cancelled, for failure of respondent to comply with the requirement set forth by Section 228 of the NIRC of 1997, as amended.

However, as to the remaining portion of the deficiency DST assessment which pertains to petitioner's rental expense in the amount ₱2,286,742.48 and rental of real property in the amount of ₱19,341.00, the same shall be upheld. This is pursuant to Section 194 of the NIRC of 1997, as amended, which reads:

> "***SEC. 194. Stamp Tax on Leases and Other Hiring Agreements.*** – On each lease, agreement, memorandum, or contract for hire, use or rent of any lands or tenements, or portions thereof, there shall be collected a documentary stamp tax of Three pesos (₱ 3.00) for the first Two thousand

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[114] Exhibit "IIIIII", BIR Records, p. 859

pesos (₱2,000), or fractional part thereof, and an additional One peso (₱1.00) for every One thousand pesos (₱ 1,000) or fractional part thereof, in excess of the first Two thousand pesos (₱ 2,000) for each year of the term of said contract or agreement."

Petitioner failed to refute that said rental expense and rental income do not qualify under Section 194 of the NIRC of 1997, as amended. Hence, it is deemed that petitioner accepts its failure to impose DST on these lease agreements and, therefore, the basic deficiency DST assessment in the amount of ₱2,309.00 on rental expense and rental income is upheld, as computed below:

	Base Amount	**DST Rate**	**DST due**
Rental Expense	₱ 2,286,742.48	₱1.00/1,000.00	₱ 2,288.00
Rental Income	19,341.00	1.00/1,000.00	21.00
Deficiency DST			**₱ 2,309.00**

G. Percentage Tax - ₱953,435.15

Based on the FLD, respondent arrived at the total amount collectible from petitioner in relation to deficiency percentage tax as follows:

	GROSS RECEIPTS	**TAX RATE**	**TAX DUE**
Realized Trading Gain	₱ 37,234,878.53	7%	₱ 2,606,441.50
Total Other Fee Income	47,385,658.10	7%	3,316,996.07
Interest Income	50,679,046.39	5%	2,533,952.32
Interest Income	504,235.68	1%	5,042.36
Understatement of Revenue	4,332,554.60	7%	303,278.82
	₱ 140,136,373.30		₱ 8,765,711.06
Per Petitioner's returns:			
PT-101 - %tax on interest, commissions and discounts from lending act, maturity is more than 5 years	₱ 504,242.05	1%	₱ 5,042.42
PT-103-On royalties, rentals of properties real or personal profits from exchange and all other gross income	29,027,567.16	7%	2,031,929.70
PT-104-% on net trading gains within the taxable year for foreign currency, debt securities	55,592,972.18	7%	3,891,508.05
PT-105 - %tax on interest, commissions and discounts from lending act, maturity is more than 5 years	44,781,702.30	5%	2,239,085.12
	₱ 129,906,483.69		₱ 8,167,565.29

Basic Deficiency GRT			**598,145.77**
Add: 20% int. p.a. 1.26.2009-11.15.2011 (1023D)			335,289.38
Compromise penalty			20,000.00
Total amount due and collectible			**₱ 953,435.15**

Based on the above computation, the deficiency percentage tax assessment resulted from the following undeclared receipts:

	Per Respondent's Audit	**Per Petitioner's Returns**	**Undeclared Receipts**	**Tax Rate**	**Deficiency Percentage Tax**
Interest Income	₱ 50,679,046.39	₱44,781,702.30	₱ 5,897,344.09	5%	₱ 294,867.20
Understatement of Revenue	4,332,554.60	-	4,332,554.60	7%	303,278.82
	₱55,011,600.99		**₱10,229,898.69**		**₱ 598,146.03**

In its letter[115] dated January 6, 2012 requesting reconsideration of the respondent's FDDA, petitioner reiterated its request for an explanation on how the handling revenue examiners arrived at the alleged amount of petitioner's "Interest Income" of ₱50,679,046.39 subject to 5% percentage tax. According to petitioner, per its audited FS, its interest income subject to 5% percentage tax only amounts to ₱44,578,366.00, on the basis of which, petitioner paid the proper percentage taxes. Likewise, petitioner stated that no factual and legal bases were given by respondent for the alleged amount of ₱4,332,554.60 "Understatement of Revenue".

The Court finds the assessment void. The records show that petitioner was not furnished in writing with the details on how the alleged undeclared receipts of ₱10,229,898.69 were arrived at in violation of Section 228 of the NIRC of 1997, as amended. Hence, the deficiency percentage tax assessment must be cancelled and withdrawn.

H. COMPROMISE PENALTIES - ₱168,000.00

The Court notes that respondent imposed compromise penalties on the subject deficiency taxes in the total amount of ₱168,000.00, broken down as follows:

[115] BIR records, pp 843-844.

Deficiency Tax	Compromise Penalty
Income Tax	₱ 50,000.00
Withholding Tax on Compensation	25,000.00
Expanded Withholding Tax	16,000.00
Fringe Benefit Tax	16,000.00
Final Tax	16,000.00
Percentage Tax	20,000.00
Documentary Stamp Tax	25,000.00
Total	**₱ 168,000.00**

Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-07, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. Thus, compromise penalties imply mutual agreement between the taxpayer, on one hand, and the CIR, on the other. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[116] Since petitioner did not pay the compromise penalties imposed by the respondent, it did not agree to settle the same. Thus, the compromise penalties of ₱168,000.00 shall be cancelled.

WHEREFORE, premises considered, the assessments issued by respondent against petitioner for taxable year 2008 covering deficiency income tax in the amount of ₱16,835,114.25, percentage tax in the amount of ₱953,435.15 and compromise penalties in the amount of ₱168,000.00 are hereby **CANCELLED AND/OR WITHDRAWN**. However, the assessments for deficiency withholding tax on compensation, expanded withholding tax, fringe benefits tax, final withholding tax, and documentary stamp tax are hereby **UPHELD IN PART.** Accordingly, petitioner is hereby ordered to pay **EIGHT HUNDRED TWENTY NINE THOUSAND FORTY PESOS AND SIXTY FOUR CENTAVOS (₱829,040.64)** for the taxable year 2008, inclusive of the 25% surcharge imposed under Section 248(3) of the 1997 NIRC, as amended, computed as follows:

Tax Type	Basic Tax due	25% Surcharge	Total
Withholding Tax on Compensation (WTC)	₱ 399,583.10	₱ 99,895.78	₱ 499,478.88

[116] Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. and the Court of Tax Appeals, G.R. No. L-35266, 21 January 1991.

Expanded Withholding Tax (EWT)	34,322.56	8,580.64	42,903.20
Fringe Benefit Tax (FBT)	18,590.92	4,647.73	23,238.65
Final Withholding Tax (FWT)	208,426.93	52,106.73	260,533.66
Documentary Stamp Tax (DST)	2,309.00	577.25	2,886.25
Total	**₱ 663,232.51**	**₱ 165,808.13**	**₱ 829,040.64**

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

a) Deficiency interest at the rate of 20% per annum on the basic deficiency WTC, EWT, FBT, FWT and DST 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
Withholding Tax on Compensation (WTC)	₱ 399,583.10	January 15 , 2009
Expanded Withholding Tax (EWT)	34,322.56	January 15, 2009
Fringe Benefit Tax (FBT)	18,590.92	January 15, 2009
Final Withholding Tax (FWT)	208,426.93	January 15, 2009
Documentary Stamp Tax (DST)	2,309.00	January 5, 2009

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱829,040.64 and 20% deficiency interest which have accrued in the aforestated in (a) computed from December 14, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice