REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SOCIAL SECURITY SYSTEM, represented by its President and CEO EMILIO S. DE QUIROS, JR.,
Petitioner,

CTA Case No. 8564

- versus-

Members:

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

ALFREDO V. MISAJON in his capacity as Assistant Commissioner of the Bureau of Internal Revenue,
Respondent.

Promulgated:

JUN 2 4 2015

11:50 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, *J.:*

The Petition for Review filed by the Social Security System prays for the reversal of the Final Decision on Disputed Assessment that found it liable for alleged deficiency withholding tax on compensation amounting to ₱61,103,445.85, deficiency expanded withholding tax amounting to ₱54,386,601.73, and deficiency value-added tax (VAT) and other percentage taxes withheld amounting to ₱135,085,228.57, or in the aggregate amount of ₱250,575,276.15 for taxable year 2004.

FACTS

Petitioner Social Security System is a government-owned and -controlled corporation created by virtue of Republic Act (RA) No. 1161, as amended by RA No. 8282, with principal office address at SSS Building, East Avenue, Diliman, Quezon

City.[1] On the other hand, respondent Alfredo S. Misajon is the Assistant Commissioner of the Bureau of Internal Revenue (BIR) Large Taxpayer Services, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.[2]

The BIR issued Letter of Authority No. 00096205[3] dated April 6, 2006, with the attached First Notice[4], for the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2004.

Thereafter, respondent issued a Second Request for Presentation of Records dated July 26, 2006, which petitioner received on August 4, 2006.[5]

On March 27, 2007, respondent through Revenue Officer Melinda M. Rugayan requested petitioner to submit additional documents.[6] Petitioner complied by submitting its Charter and Audited Financial Statements for calendar year 2004 on March 29, 2007.[7]

Notwithstanding, petitioner was assessed for alleged deficiency withholding tax on compensation in the amount of ₱24,022,789.46 plus twenty percent (20%) interest per annum from January 11, 2005 to December 31, 2008, deficiency expanded withholding tax in the amount of ₱22,216,096.93 plus 20% interest per annum from January 11, 2005 to December 31, 2008, and deficiency withholding tax on Government Money Payment (not subject to withholding percentage/VAT) in the amount of ₱53,108,690.68 plus 20% interest per annum from January 11, 2005 to December 31, 2008.[8]

On October 11, 2007, respondent requested petitioner to attend an informal conference, since the former found the latter liable for deficiency taxes.[9]

[1] Par. 2, Joint Stipulations/Admissions of Facts and Issues (JSAFI), docket, p. 244.
[2] Par. 1, JSAFI, docket, p. 244.
[3] Exhibit "1", BIR Records, p. 573; Par. 4, JSAFI, docket, p. 245.
[4] Exhibit "2", BIR Records, p. 574; Par. 5, JSAFI, docket, p. 245.
[5] Exhibit "3", BIR Records, p. 575; Par. 6, JSAFI, docket, p. 245.
[6] Exhibit "J"; Exhibit "4", BIR Records, p. 580; Par. 7, JSAFI, docket, p. 245.
[7] Exhibit "H"; Par. 16, JSAFI, docket, p. 245.
[8] Par. 3, JSAFI, docket, p. 244.
[9] Exhibit "5", BIR Records, pp. 1313 to 1314.

On November 23, 2007, a Memorandum was issued for Romulo L. Aguila, Jr., the OIC-Head Revenue Executive Assistant of the BIR Large Taxpayers Service-Regular, recommending the approval of the Preliminary Assessment Notice (PAN).[10]

Respondent issued the Preliminary Assessment Notice[11] (PAN) dated December 18, 2007 with Details of Discrepancies, which petitioner received on the same date, assessing the latter for deficiency withholding tax on compensation, deficiency expanded withholding tax, and deficiency withholding tax on government payment in the respective amounts of ₱38,291,668.24, ₱35,411,849.85, and ₱84,653,797.91.

Petitioner protested the said PAN through the letter[12] dated January 2, 2008, which respondent received on even date.

Thereafter, a Memorandum was issued for the OIC-Head Revenue Executive Assistant of Large Taxpayers Service-Regular, recommending the issuance of a Final Assessment Notice (FAN).[13]

On January 10, 2008, petitioner received the Audit Result/Assessment Notices WC-04-000106[14], EWT-04-000196[15], and VT-04-000247[16], all dated January 9, 2008, and the Formal Letter of Demand (FLD)[17] with Details of Discrepancies dated January 10, 2008.

Petitioner filed its Protest Letter[18] dated January 30, 2008 against the FAN and the FLD, with attached Preliminary Assessment Reconciliation Analysis[19] and Explanatory Notes[20]; which respondent received on January 31, 2008.

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[10] Exhibit "6", BIR Records, pp. 1344 to 1350.
[11] Exhibit "B"; Exhibit "7", BIR Records, pp. 1356 to 1359; Par. 10, JSAFI, docket, p. 245.
[12] Exhibit "C"; Par. 15, JSAFI, docket, p. 245.
[13] Exhibit "8", BIR Records, p. 1365.
[14] Exhibit "9-a", BIR Records, p. 1389.
[15] Exhibit "9-b", BIR Records, p. 1387.
[16] Exhibit "9-c", BIR Records, p. 1386.
[17] Exhibit "9", BIR Records, pp. 1413 to 1416.
[18] Exhibit "D"; Pars. 8 and 12, JSAFI, docket, p. 245.
[19] Exhibit "E"; Par. 8, JSAFI, docket, p. 245.
[20] Exhibit "F"; Par. 8, JSAFI, docket, p. 245.

A Tax Verification Notice[21] dated May 27, 2008 was subsequently issued, authorizing Revenue Officer Constante R. Reinante to verify the supporting documents and/or pertinent records relative to petitioner's request for reinvestigation.

On September 27, 2012, petitioner received respondent's Final Decision on Disputed Assessment[22], upholding the Assessment Notices.

On October 29, 2012, petitioner filed the instant Petition for Review.

Respondent filed her Answer[23] on January 21, 2013, interposing the following special and affirmative defenses:

> "Respondent hereby reiterates and repleads the preceding paragraphs as part of his Special and Affirmative Defenses.
>
> The 2004 deficiency expanded withholding tax in the amount of ₱54,386,601.73, withholding tax on compensation in the amount of ₱61,103,445.85, value added tax and other percentage taxes in the amount of ₱135,085,228.57, were issued in accordance with laws, jurisprudence and applicable Revenue Issuances.
>
> Petitioner is liable to pay its deficiency expanded withholding tax in the amount of ₱54,386,601.73, withholding tax on compensation in the amount of ₱61,103,445.85, value added tax and other percentage taxes in the amount of ₱135,085,228.57, all for calendar year 2004 including penalties, surcharges and interest for the following reasons:
>
> ***Petitioner as withholding agent is burdened by law to withhold and remit to the Bureau of Internal Revenue the correct withholding taxes on compensation.***
>
> To ensure efficient collection of taxes on income, petitioner is burdened by law with a public duty to collect

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[21] Exhibit "10", BIR Records, p. 1418.
[22] Exhibit "A"; Exhibit "12", BIR Records, pp. 1424 to 1425; Par. 14, JSAFI, docket, p. 245.
[23] Docket, pp. 65 to 80.

the tax for the government. However upon careful examination of the documents presented, petitioner failed to withhold the correct tax upon its employees [*sic*] compensation.

Petitioner alleged that the discrepancies between respondent's assessment vis-s-vis [*sic*] petitioner's records were readily explained in its various letter-communications, however mere allegation without supporting documents to prove its claim cannot be given merit. Other items included in the assessment subjected to withholding tax are gift cheques. A gift cheque of ₱10,000.00 is given to each employee in keeping with the spirit of Christmas season, however such amount is beyond the de minimis benefits exempted from taxes pursuant to Revenue Regulations No. 8-2000, to wit:

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The term 'DE MINIMIS' benefits which are exempt from the Fringe benefits tax shall, in general, be limited to facilities or privileges furnished or offered by an employer to his employees that are relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees.

Revenue Regulations 8-2000 is very clear. Gifts given during Christmas and major celebration shall not be subject to income tax provided it shall not exceed ₱5,000.00 per annum. Record shows that petitioner gave ₱10,000.00 for the Christmas celebration alone. The journal voucher summary of SSS showed that additional gift certificates given to some employees amounted to ₱20,000.00, loyalty award of ₱10,000.00, Anniversary award of ₱1,000.00, and Birthday Incentive Award or Birthday Gift of ₱5,000.00. Accordingly, if the employer pays more than the ceiling prescribed by the above mentioned regulations the excess shall be taxable to the employee receiving the benefits only if such excess is beyond the ₱30,000.00 ceiling. Thus, respondent subjected to the maximum income tax rate of 32% the amount in excess of the ₱30,000.00 ceiling.

Verification disclosed that per reconciliation of income payments subject to withholding tax on compensation appearing in the Financial Statements against those accounted in the alphalist of employees, it was found that a total of ₱74,128,250.00 was not subjected to withholding tax. Accordingly this was subjected to the 32% maximum income tax rate.

In addition, verification on the computation of the correct tax due revealed underwithholding of the same in the amount of ₱301,749.46 resulting in the deficiency withholding tax on compensation assessment amounting to ₱61,103,445.85.

Petitioner is liable for expanded withholding taxes in the amount of ₱54,386,601.73 in accordance with Section 57 of the National Internal Revenue Code and Revenue Regulations 6-2001 and 17-2003.

Revenue Regulations 6-2001 which was amended by Revenue Regulation 17-2003 provides for tax treatment and rates of withholding tax on certain income payments subject to withholding tax.

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Reconciliation made on income payments subject to expanded withholding tax per financial statements against income payments already subjected to expanded withholding tax disclosed that various purchase of goods, office rentals, and various purchase of services amounting to ₱1,792,692,219.25; ₱3,796,849.89 and ₱163,265,041.85 respectively were not subjected to appropriate expanded withholding tax as amended by the provisions of Revenue Regulations 6-2001, RR 17-2003 and Section 57 of the National Internal Revenue Code (NIRC).

Petitioner is liable to pay deficiency Value Added Tax and other percentage tax in the amount of ₱135,085,28.57.

In compliance with Section 114 (C), Government or any of its political subdivisions instrumentalities, or agencies including Government -owned or -controlled corporations (GOCCs) are required, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of the NIRC, to deduct and withhold the value-added tax due at the rate of 3% of the gross payment.

Contrary to petitioner's allegations, payment made to government owned and controlled corporations like Philippines Postal Corporation, National Printing Office, and Department of Budget and Management (Procurement Division) are subject to withholding of Value Added Tax.

Verification disclosed that various purchase of goods amounting to ₱1,770,2899.33 were not subjected to the 3% withholding VAT on Government Money Payments as prescribed by the provisions of RR 2-98 and Section 114 (C) of the NIRC resulting to deficiency VAT and other percentage tax of ₱135,085,228.57.

To further clarify the findings and computations of withholding taxes and other requirements on Government Money Payments due or payable to suppliers of goods and services, the Bureau of Internal Revenue issued Revenue Memorandum Circular No. 23-2007.

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Verification disclosed that various purchase of goods amounting to ₱1,770,289,689.33 were not subjected to 3% withholding VAT on Government Money Payments as prescribed by the provisions of RR 2-98 and Section 114 (C) of the Tax Code resulting to deficiency VAT and other percentage tax of ₱135,085,228.57

A withholding agent, such as petitioner is no ordinary government agent especially because under Section 53 (c), he is held personally liable for the tax it is duty bound to withhold.

To ensure efficient compliance of government withholding agents to existing withholding tax laws, rules and regulations and other related issuances, the Bureau of Internal Revenue issued Revenue Memorandum Order No. 8-2003 which delineated the duties and responsibilities of Government Officials, to wit:

Revenue Memorandum order No. 8-2003

1. The following government officials are personally charged with the duty to correctly withhold taxes on compensation, expanded and final withholding tax as well as government money payments to persons registered as Non-VAT (percentage, franchise, etc.) and VAT taxpayers and the timely remittance of taxes withheld:

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> ***c. Government Owned and Controlled Corporations (GOCC) - Heads of offices (officials holding the highest position) and Chief Accountants or other persons holding similar positions in departments, bureaus, agencies and instrumentalities officially designated as such by the head of office.***
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> xxx
>
> ***2. The aforesaid officials shall be equally liable to the penalties prescribed in Title X of the National Internal Revenue Code, as amended.***
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> xxx xxx xxx

Heads of Government Owned and Controlled Corporations (GOCC) and Chief Accountants or other persons holding similar positions in departments, bureaus, agencies and instrumentalities officially designated as such by the head of office shall also be liable under Section 251, Title X of the NIRC which provides:

> Section 251. Failure of a Withholding Agent to Collect and Remit Tax. – Any person required to withhold, account for, and remit any tax imposed by this code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax, or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.

Furthermore, Supreme Court in the case of Filipinas Synthetic Fiber Corporation vs. Court of Appeals ruled that:

> The method of **withholding tax at source** is a procedure of collecting income tax sanctioned by the National Internal Revenue Code. Section 53 (c) of which, provides:
>
> 'Return and Payment – Every person required to deduct and withhold any tax under this section shall make return thereof, ... for the payment of the tax, shall pay the amount withheld to the officer of the Government of the Philippines authorized to receive it. Every such person is made personally liable for such tax, and is

> indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provision of this section.'
>
> **In the aforecited provision of law, the withholding agent is explicitly made personally liable for the income tax withheld under Section 54. In Phil. Guaranty Co., Inc. *vs.* Commissioner of Internal Revenue, the Court, has ratiocinated:**
>
> 'The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent both the government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas, the Commissioner of Internal Revenue and his deputies are not made liable to law.'

Petitioner cannot expect respondent to bend backwards in derogation of her bounded duty, to accommodate petitioner's bare allegations not supported by evidence.

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The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong, but also that the taxpayer is right. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment contained in the Preliminary Assessment Notice dated December 18, 2007 as well as in the Final Decision on Disputed Assessment dated September 26, 2012 are imbued with factual and legal bases."

Respondent's Pre-Trial Brief[24] was filed on March 7, 2013; while the Pre-Trial Brief (For Petitioner SSS)[25] was filed on March 14, 2013.

The parties filed their Joint Stipulations/Admissions of Facts and Issues[26] on May 14, 2013. In the Pre-Trial Order[27] dated May 29, 2013, the Court approved the said joint stipulations and terminated the pre-trial.

During trial, petitioner presented its witnesses, namely: Alexis Joyce M. Ocampo; Ester O. Verceles; and Bernadette Alberto A. Colomeda.

On the other hand, respondent presented Melinda Rugayan and Constante Reinante, Jr. as witnesses.

Both parties formally offered their respective documentary and testimonial evidence.

The case was submitted for decision on June 25, 2014,[28] after considering petitioner's Memorandum[29] filed on June 20, 2014 and the Report dated June 23, 2014 of the Records Division, stating that no memorandum has been filed by respondent.

On July 1, 2014, respondent filed a Motion to Admit Attached Memorandum, which the Court granted via Resolution dated July 23, 2014, thus admitting respondent's Memorandum.

ISSUES

The parties submitted the following issues[30] for this Court's resolution:

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[24] Docket, pp. 89 to 93.
[25] Docket, pp. 115 to 119.
[26] Docket, pp. 244 to 247.
[27] Docket, pp. 249 to 252.
[28] Resolution, docket, p. 509.
[29] Docket, pp. 491 to 507.
[30] JSAFI, docket, p. 245.

1. Whether or not petitioner is liable for deficiency withholding tax on compensation in the amount of ₱24,022,789.46;

2. Whether or not petitioner is liable for deficiency expanded withholding tax in the amount of ₱22,216,096.93;

3. Whether or not petitioner is liable for deficiency value-added tax and other percentage taxes in the amount of ₱53,108,690.68; and

4. Whether or not petitioner can be held liable for 20% interest under Section 249 and penalty under Section 251 of the NIRC considering Section 16 of RA No. 8282 exempts SSS from tax, legal process and lien.

DISCUSSION/RULING

The Court shall determine first if it has jurisdiction over the present case.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Based on the afore-quoted provision, petitioner had thirty (30) days from receipt of the FDDA[31] on September 27, 2012 or until October 27, 2012 within which to appeal the said decision.

Since October 27, 2012 fell on Saturday, petitioner filed the Petition for Review on the next working day, which was on October 29, 2012. It is clear from the foregoing that the Court has jurisdiction over the instant Petition for Review.

The Court will now address the issue of whether or not petitioner can be held liable for 20% interest under Section 249 and penalty under Section 251 of the NIRC of 1997, considering that Section 16 of RA No. 8282 exempts SSS from tax, legal process, and lien.

Respondent contends that petitioner as a withholding agent has the duty to withhold taxes correctly as prescribed by law, citing Revenue Memorandum Order (RMO) No. 8-2003. Respondent likewise asserts that heads of government-owned and -controlled corporations (GOCCs) and chief accountants or other persons holding similar positions in departments, bureaus, agencies and instrumentalities officially designated as such by the head of office shall also be liable under Section 251 of the NIRC of 1997, as amended.

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[31] Exhibits "A" and "12".

Petitioner objects to the imposition of 20% interest under Section 249 and penalty under Section 251 of the NIRC of 1997 on the ground that it is exempt from paying tax, legal process and lien, as provided by Sections 2 and 16 of RA No. 8282.

Petitioner asserts that the nature of the funds being administered and managed by petitioner is done in-trust for its members. Therefore, any amount used in payment for penalties/surcharges would be a deduction from the trust fund that is intended for the protection and benefit of its members and their dependents against hazards in life that results in financial loss or burden.

Section 249 of the NIRC of 1997, as amended, provides:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency Interest.* – In case of failure to pay:
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> (1) The amount of the tax due on any return to be filed, or
>
> (2) The amount of the tax due for which no return is required, or
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."

Relative hereto is Section 247 of the NIRC of 1997, as amended, which states that:

> "SEC. 247. *General Provisions.* –
>
> (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The Amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax.
>
> (b) **If the withholding agent is** the Government or any of its agencies, political subdivisions or instrumentalities, or **a government-owned or controlled corporation, the *employee* thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.**
>
> (c) The term *'person'*, as used in this Chapter, includes an officer or employee of a corporation who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs." *(Emphasis supplied)*

Based on the afore-quoted provisions, it is petitioner's employee responsible for the withholding and remittance of the tax that will be personally liable for the accrued interest, deficiency interest and/or delinquency interest on the deficiency tax imposed on petitioner.

As regards the liability of petitioner's head, chief accountants or other person holding similar position officially designated as such by the head of office, Section 251 of the NIRC of 1997, as amended, provides that the person required to withhold, account for, and remit any tax imposed by the Tax Code who willfully fails to do so, or aids or abets in any manner to evade any such tax or the payment thereof, shall be liable **upon conviction** to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.

Clearly, a conviction is necessary in order for the said persons to be liable for the penalty prescribed under Section 251 of the NIRC of 1997, as amended.

Records reveal that there is no evidence presented proving that a conviction was obtained, declaring that petitioner's head, chief accountants or other person holding similar position **willfully** failed to withhold, account for, and remit the withholding tax on compensation, expanded withholding tax, and withholding VAT and other percentage tax. Hence, without a conviction, petitioner's head, chief accountants or other person holding similar position cannot be held liable for the penalty prescribed under Section 251 of the NIRC of 1997, as amended.

The Court shall now proceed to determine whether or not petitioner is liable for deficiency withholding tax on compensation, deficiency expanded withholding tax, and deficiency value-added tax and other percentage tax.

Respondent assessed petitioner for the following alleged deficiency taxes for taxable year 2004 in the total amount of ₱250,575,276.15, inclusive of 20% interest per annum computed from January 11, 2005 to September 28, 2012:

Tax Type	Basic	Interest	Total
Withholding Tax on Compensation	₱ 24,022,789.46	₱ 37,080,656.39	**₱ 61,103,445.85**
Expanded Withholding Tax	21,382,065.52	33,004,536.21	**54,386,601.73**
VAT and Other Percentage Tax Withheld	53,108,690.68	81,976,537.89	**135,085,228.57**
Total	**₱98,513,545.66**	**₱152,061,730.49**	**₱250,575,276.15**

As earlier stated, the 20% interest should not be imposed upon petitioner.

The Court will address each tax assessment.

I. Deficiency Withholding Tax on Compensation – ₱24,022,789.46

Upon verification per reconciliation of income payments subject to withholding tax on compensation appearing in the Financial Statements (FS) against those accounted in the alphalist of employees, respondent found that a total of ₱74,128,250.00 was not subjected to withholding tax that should be subjected to the thirty-two percent (32%) maximum income tax rate. Further examination on the computation of the correct tax due revealed underwithholding of the same in the amount of ₱301,749.46 resulting in deficiency withholding tax on compensation amounting to ₱61,103,445.85.

As such, respondent assessed petitioner for deficiency withholding tax on compensation, pursuant to Sections 78 and 79 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 2-98, broken down as follows:

	Amount
Underwithholding of correct tax due	₱ 301,749.46
Tax due on other Benefits Subject to Tax (₱74,128,250.00 x 32%) [Excess of ₱30,000 bracket]	23,721,040.00
Deficiency withholding tax on compensation	₱ 24,022,789.46
Add: 20% Interest p.a. from 1.11.05 to 09.28.12	37,080,656.39[32]
Total Deficiency Withholding Tax on Compensation	**₱61,103,445.85**

a. Underwithholding of correct tax due

Respondent contends that petitioner failed to withhold the correct tax upon its employee's compensation, which the latter is burdened by law with a public duty to collect the tax for the government.

As shown in the Details of Discrepancies attached to the PAN[33], petitioner underwithheld taxes on compensation of its twenty-three (23) employees for taxable year 2004 amounting to ₱301,749.46.

Petitioner, however, asserts that the assessed underwithholding of ₱301,749.46 was due to the inadvertent delay in remittance of the withholding tax on compensation (WTC) of its 23 employees, majority of whom are assigned to its Baguio Branch, but the same was duly withheld and remitted on March 14, 2005. Furthermore, the said underwithholding was explained in the Judicial Affidavit of Bernadette Alberta A. Colomeda[34], petitioner's Corporate Executive Officer II in the Branch Accounting Department, as follows:

1. Twenty-one (21) of the employees are from SSS Baguio Branch, whose 2003 Short Term Variable Pay (STVP) paid to them in 2004 was belatedly reported

[32] It is to be noted that the 20% interest cannot be imposed upon petitioner.

[33] Exhibit "B", p. 3.

[34] Exhibit "DD", docket, pp. 311 to 315.

by the branch in February 2005, with the corresponding withholding taxes remitted on March 10, 2005 together with the remittance of the withholding taxes for the month of February 2005.

2. One of the employees is from Naga Branch (under Bicol Division), named Aurea V. Antiga, whose salary tax base per 2004 alphalist submitted to the BIR appears to be ₱559,468.82. However, the said amount already includes the taxable benefits in the amount of ₱163,209.50. Thus, the salary tax base should have only been ₱482,610.40.

3. Another employee is from Cagayan de Oro Branch, named Odette Guanzon, who was separated from the service by reason of retirement on March 29, 2003. In 2004, she was given the employer's share of her Provident Fund in the amount of ₱152,497.44. The whole amount was subjected to tax by the BIR. However, the said amount should first be deducted by ₱30,000.00 allowable deductions and ₱25,000.00 personal exemption.

The Court finds respondent's assessment meritorious, except for the underwithholding from Aurea V. Antiga of Naga Branch.

As supported by SSS Bicol Division's Computation of Withholding Tax for the year 2004[35] and BIR Form No. 2316[36] of Aurea V. Antiga, petitioner was able to prove that its taxable net income amounts to ₱559,468.82, of which the corresponding income tax of ₱144,030.02 was properly withheld and remitted to the BIR, contrary to the BIR's computation considering the amount of ₱559,468.82 as the gross salaries with a corresponding tax due of ₱168,631.12 after deducting the allowable deductions and exemptions. Since respondent has erred in its computation, the discrepancy of ₱24,601.10 (₱168,631.12 less ₱144,030.02) shall be excluded from the assessed amount of underwithholding.

[35] Exhibit "Z-1".
[36] Exhibit "Z-2".

Meanwhile, to prove that the deficiency pertaining to its Baguio Branch employees is due to the 2003 STVP given to them in February 2004 but was withheld and remitted only in March 14, 2005, petitioner submitted various supporting documents[37]. Nevertheless, perusal of the same shows that not all of the employees assessed of underwithholding had 2003 STVP and the 2003 STVP of the employees who received the same does not tally with the amount being assessed (*i.e.*, petitioner claims that the STVP of Josephine Abril amounts to ₱11,847.04, however, respondent is assessing petitioner for the amount of ₱18,627.27). Thus, it cannot be surmised that the discrepancies pertain to the alleged 2003 STVP.

As to the employer's share of Provident Fund paid to Odette Guanzon, the same shall be considered as adjustment to her compensation income during her last year of employment[38] with petitioner, as part of her other benefits which is already above and in excess of the ₱30,000.00 threshold, in addition to its basic salaries for year 2003 and from which the personal exemption had already been claimed. Thus, upon payment by petitioner of the same in 2004, no more deductions can be claimed thereon, and the whole amount of ₱152,497.44 shall be subject to withholding tax.

Consequently, petitioner is liable for underwithholding of the correct tax due on compensation of its employees in the amount of ₱277,148.36, computed as follows:

Total Underwithholding per assessment	₱ 301,749.46
Less: Adjustments per review	
Assessed deficiency from Aurea Antiga	24,601.10
Deficiency tax due to underwithholding	**₱277,148.36**

b. Tax due on other benefits subject to tax

Respondent assessed petitioner for deficiency withholding tax on compensation on the other benefits subject to tax in the amount of ₱23,721,040.00, as determined below:

Gift cheques given to employees per Subsidiary Ledger (recorded under Christmas expense)	₱ 42,171,500.00
Loyalty Awards (taxable in excess of ₱30,000.00)	5,808,000.00

[37] Exhibits "V" to "V-5", "W" to "W-2", "W-3", and "W-4".
[38] As indicated in her Service Record (Exhibit "Z-3")

Incentive Awards (taxable in excess of ₱30,000.00)	26,148,750.00
Total	₱ 74,128,250.00
Multiply by Tax Rate	x 32%
Deficiency Tax	**₱23,721,040.00**

Respondent alleges that, among others, petitioner gave each employee a gift cheque of ₱10,000 in keeping with the spirit of Christmas season, which is beyond the *de minimis* benefits exempted from taxes, pursuant to RR No. 2-98.

Respondent likewise claims that the journal voucher summary of petitioner showed that additional gift certificates of ₱20,000.00, loyalty award of ₱10,000.00, anniversary award of ₱1,000.00, and birthday incentive award or birthday gift of ₱5,000.00 were given to some employees. Accordingly, if petitioner pays more than the ceiling prescribed by law and/or revenue regulations, the excess shall be taxable to the employee receiving the benefits only beyond the ₱30,000.00 ceiling; thus, respondent subjected to the maximum income tax rate of 32% the amount in excess of the ₱30,000.00 ceiling.

Petitioner insists that the above-mentioned benefits are exempt from taxes under Section 32(B)(6) of the NIRC of 1997 and Section 2.78.1(A)(3) of RR No. 2-98, as amended, being of relatively small value and given to promote health, goodwill, contentment and efficiency of its employees.

Section 2.78.1(A)(3) of RR No. 2-98, as amended by RR No. 08-00, provides:

> "SECTION 2.78.1. *Withholding of Income Tax on Compensation Income. –*
>
> (A) *Compensation Income Defined. –*
>
> xxx xxx xxx
>
> (3) *Facilities and privileges of a relatively small value. –* xxx

> The following shall be considered as *'de minimis'* benefits not subject to withholding tax on compensation income of both managerial and rank and file employees:
>
> xxx xxx xxx
>
> (g) Employees achievement awards, *e.g.*, for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding ₱10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;
>
> (h) Gifts given during Christmas and major anniversary celebrations not exceeding ₱5,000 per employee per annum;
>
> xxx xxx xxx
>
> The amount of *'de minimis'* benefits conforming to the ceiling herein prescribed shall not be considered in determining the ₱30,000 ceiling of 'other benefits' provided under Section 32(B)(7)(e) of the Code. However, if the employer pays more than the ceiling prescribed by these Regulations, the excess shall be taxable to the employee receiving the benefits only if such excess is beyond the ₱30,000 ceiling: xxx."

However, the afore-mentioned benefits cannot be considered as *de minimis* benefits not subject to taxable compensation income considering that petitioner did not provide detailed schedules showing the breakdown of the supposed *de minimis* benefits given to its employees so as to determine further which portion of said benefits are exempt for each employee. It must be noted that Section 2 of RR No. 08-00, as amended, provides for a limit in the amount of each *de minimis* benefit such that if the employer gives more than the limit prescribed, the excess of the limit shall be taxable to the employee receiving the benefits – if such excess is beyond the ₱30,000.00 ceiling of "Other Benefits" provided under Section 2.78.1(B)(11) of RR No. 2-98, as amended, in relation to Section 32(B)(7)(e) of the NIRC of 1997, as amended.

As for the retirement benefits included under incentive awards, Section 32(B)(6)(f) of the NIRC of 1997, as amended, provides:

"SEC. 32. *Gross Income.* –

xxx xxx xxx

(B) *Exclusions from Gross Income.* –

xxx xxx xxx

(6) *Retirement Benefits, Pensions, Gratuities, etc.* –

(f) Benefits received from the GSIS under Republic Act No. 8291, including **retirement gratuity received by government officials and employees**." (*Emphasis supplied*)

Pursuant to the above-quoted provision, benefits received from the GSIS and retirement gratuity received by government officials and employees shall not be included in gross income and shall be exempt from income tax and consequently from withholding tax prescribed in Section 79(A) of the NIRC of 1997, as amended.

Per petitioner's Memorandum[39], the conditions for entitlement of petitioner's retirement plan, as provided in the SSS Manual on Personnel Policies, Rules and Regulations (p.116) is based on actual service and performance, thus:

i. Have rendered at least 20 years of creditable service in the SSS, which include his services as SSS contractual;
ii. Must be rated at least Satisfactory during his last 5 years in the SSS service; and
iii. Not separated from the SSS service through his own fault.

Unfortunately, petitioner did not provide detailed schedules showing the breakdown of the Incentive Awards so as to determine which portion of said benefits pertains to the alleged payment of Retirement Incentive Award to its retired employees. Moreover, petitioner did not present in evidence the said SSS Manual on Personnel Policies, Rules and Regulations. Also, petitioner did not present any evidence to show that the concerned employees retired from the service in accordance with the rules laid down in the said manual to be entitled to the payment of the Retirement Incentive Award.

[39] Docket, p. 497.

Consequently, the alleged Retirement Incentive Award that petitioner grants to its retiring employees shall not be excluded from the latter's taxable income and consequently would be subject to withholding tax on compensation.

Hence, the assessed deficiency tax on other benefits in the amount of ₱23,721,040.00 shall be upheld, in addition to the tax due to underwithholding of ₱277,148.36, making petitioner liable for basic deficiency withholding tax on compensation in the total amount of ₱23,998,188.36, as computed below:

Underwithholding of correct tax due	₱ 277,148.36
Tax due on other benefits	23,721,040.00
Basic Deficiency Withholding Tax Due on Compensation	**₱23,998,188.36**

II. Deficiency Expanded Withholding Tax (EWT) - ₱54,386,601.73

Respondent's reconciliation made on income payments subject to EWT per FS against income payments already subject to EWT disclosed that various purchases of goods – ₱1,792,692,219.25, office rentals – ₱3,796,849.89, and various purchase of services – ₱163,265,041.85 were not subjected to the appropriate EWT as mandated by RR No. 6-2001, RR No. 17-2003 and Section 57 of the NIRC, as amended, computed as follows:

	Per FS	Per Alpha list	Discrepancy	Rate	Tax due
Purchase of Goods					
Supplies & Materials Inventory	₱ 110,926,351.20				
Furniture & Equipment Computer Expenses	5,319,394.96				
Miscellaneous Expenses	680,194.20				
Addition to Property & Equipment	1,844,722,862.52				
Training & Personnel Expenses (Foods)	748,151.00				
SSS Commission expense (meals)	490,865.00				
Books and Subscriptions	412,806.25				
	₱ 1,963,300,625.13	₱ 170,608,405.88	₱1,792,692,219.25	1%	**₱17,926,922.19**
Office Space Rentals	₱ 90,566,212.50	₱ 86,769,362.61	₱ 3,796,849.89	5%	**189,842.49**
Purchase of Services					
Freight Charges	₱ 9,883,186.50				
Service Bureau Expense	107,689,433.95				
Equipment Rentals (Photocopy)	5,401,277.21				

Special Project	33,501,208.90				
Training and Personnel Improvement (resource speaker)	526,254.11				
Training and Personnel Improvement (payment for service)	505,135.00				
Light & Water	107,974,557.10				
Publication Expenses	49,996,967.40				
Printing & Reproducing	1,337,139.08				
M/R - Transportation Equipment	15,843,930.31				
M/R - Furniture & Equipment	249,493,797.25				
M/R - Building Leased Offices	158,206,748.07				
Construction in Progress-Land Improvements	605,900.00				
Construction in Progress-Building Improvement	1,355,699.59				
Construction in Progress-Building	956,554.00				
Construction in Progress-Leasehold Improvement	4,171,932.43				
	₱ 747,449,720.90	₱ 584,184,679.05	₱ 163,265,041.85	2%	**3,265,300.84**
Deficiency Expanded Withholding Tax					21,382,065.52
Add: 20% interest from Jan. 11, 2005 to September 28, 2012					33,004,536.21[40]
Total Deficiency Expanded Withholding tax					**₱54,386,601.73**

Petitioner argues that respondent failed to consider the reconciling factors between petitioner's FS and alphalist, wherein the figures in the FS are inclusive of the 10% VAT, while those in the alphalist are net of the 10% VAT. Since it does not record separately input/output VAT, the VAT amount is incorporated in the amount appearing per FS; thus, the amounts in the FS should have been divided first by 1.10 before computing for the amount of withholding taxes.

However, petitioner failed to prove that the gross amount of its purchases allegedly inclusive of VAT, are the amounts actually recorded in its books and consequently reflected in its FS. Also, granting that its purchases are recorded inclusive of VAT, the sweeping computation of dividing the total amount of expenses by 1.10 is not proper since it cannot be ascertained whether all of its purchases/expenses were actually subject to VAT.

Petitioner points out that another reconciling factor is its use of accrual method of accounting. As such, the FS includes accruals for the year 2004, which are recorded, *sans* withholding tax, once a billing or assessment is received from the supplier even if the said billed amount is not yet paid. Allegedly, the payments of these accruals were made in the

[40] It is to be noted that the 20% interest cannot be imposed upon petitioner.

succeeding year and the correct withholding taxes thereof were properly withheld and remitted to respondent in the same year it is paid.

Section 2.57.4 of RR No. 2-98, as amended by RR No. 12-01, provides for the obligation of the payor to deduct and withhold the tax, *to wit*:

> "SECTION 2.57.4. *Time of withholding.* – The obligation of the payor to deduct and withhold the tax under Section 2.57 of these Regulations arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first. The term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable.
>
> **Provided, however, that where income is not yet paid or payable but the same has been recorded as an expense or asset, whichever is applicable, in the payor's books, the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes.**" *(Emphasis supplied)*

Pursuant to the above-quoted provision, petitioner is required to withhold the payments to subcontractors when the same is paid or becomes payable, or the income payment is accrued or recorded as expense or asset, whichever is applicable in petitioner's books, whichever comes first. Moreover, if petitioner recorded its payments to subcontractors as expense, although they were not yet paid or payable, the obligation to withhold the same shall be within the last month of the return period in which payments to subcontractors were claimed as expense for tax purposes. Accordingly, it is not always the payment that necessitates the withholding of taxes on purchase. Even if payment is yet to occur, withholding shall be made once the obligation becomes demandable, or was accrued or claimed as expense for income tax purposes, whichever comes first.

In this case, once the billing or assessment is received by petitioner, its obligation to withhold arises. Nonetheless, petitioner failed to prove that it indeed withheld and remitted the corresponding taxes when it paid the said accruals in the succeeding year. Hence, the amount of accrual, as referred by petitioner to certain income payments (Supplies and Materials Inventory, Furniture and Equipment Expense, Freight Charges, M/R-Transportation Equipment, M/R-Furniture & Equipment and M/R-Building) is proper inclusion to the amount subject to withholding tax.

A. Purchase of goods and services

Per petitioner's Memorandum[41] and Explanatory Notes[42], the discrepancies in the computation of the one percent (1%) EWT on goods and two percent (2%) EWT on services consist of the following items:

		Per BIR	Per SSS	Difference
Purchase of Goods				
1.	Supplies and Materials Inventory	₱ 110,926,351.20	₱ 68,789,152.74	₱ 42,137,198.46
2.	Furniture and Equipment Expense	5,319,394.96	4,148,622.93	1,170,772.03
3.	Addition to property and Equipment	1,844,722,862.52[43]	78,192,781.63	1,726,087,001.37
Purchase of Services				
4.	Freight Charges	₱ 9,883,186.50	₱ 6,977,754.23	₱ 2,905,432.27
5.	Light and Water	107,974,557.10	83,338,500.25	24,636,056.85
6.	M/R-Transportation Equipment	15,843,930.31	12,675,443.54	3,168,486.77
7.	M/R-Furniture & Equipment	249,493,797.25	174,333,779.14	75,160,018.11
8.	M/R-Building	158,206,748.07	128,910,530.44	29,296,217.63

The above-enumerated income payments shall be discussed *in seriatim.*

1. Supplies and Materials Inventory

Petitioner avers in its explanatory report that the discrepancy of ₱42,137,198.46 pertains to payments made to government agencies in the amount of ₱30,349,235.24, which were exempt from withholding tax per Section 2.57.5(A) of RR No. 2-98, and accruals in the amount of ₱11,787,963.22.

To support its claim, petitioner provided a Summary of Payments to Government Agencies[44] in the aggregate amount

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[41] Docket, p. 501.
[42] Exhibit "F".
[43] Petitioner accounted for the amount of P1,804,279,783.10 instead of the amount of P1,844,722,862.52 per BIR assessment. Please see discussion under No. 3.
[44] Exhibit "M".

of ₱30,330,933.99. From the summary provided, only the payments to government of ₱4,978,230.25 are supported by corresponding Disbursement Vouchers that were duly admitted by the Court. Consequently, only the said amount shall not be subjected to withholding tax in accordance with Section 2.57.5(A) of RR No. 2-98:

Payee	Amount	Exhibit
Procurement Service(DBM)	₱ 847.10	M-6
Procurement Service(DBM)	6,230.00	M-7
Procurement Service(DBM)	8,775.00	M-12
Procurement Service(DBM)	7,373.75	M-14
National Printing Office	2,474,325.00	M-17
National Printing Office	2,474,325.00	M-18
Procurement Service(DBM)	6,354.40	M-24
Total	**₱4,978,230.25**	

The accruals, as discussed earlier, shall be subject to withholding tax pursuant to Section 2.57.4 of RR No. 2-98. Thus, of the ₱110,926,351.20 Supplies and Materials Inventory expense, the amount of ₱105,948,120.95 shall be subject to 1% EWT, detailed as follows:

Supplies and Materials Inventory per assessment	₱ 110,926,351.20
Less: Payment to government agencies	4,978,230.25
Supplies and Materials Inventory subject to EWT	**₱105,948,120.95**

2. Furniture and Equipment Expense

Per petitioner's note, it excludes the amounts of ₱865,860.06 and ₱304,911.97 from the amount subject to withholding as these refer to accruals and reimbursements through a revolving fund, respectively. The accruals, as discussed earlier, shall be subject to withholding tax pursuant to Section 2.57.4 of RR No. 2-98. Likewise, the reimbursements shall be subject to withholding since petitioner did not provide evidence to support the same. Thus, the total Furniture and Equipment expense of ₱5,319,394.96 shall be subject to 1% EWT.

3. Addition to Property and Equipment

Below is petitioner's breakdown of "addition to property and equipment" pertaining to Computer Equipment:[45]

Purchases	₱ 78,192,781.63
Reclassification of account[46]	(10,387,850.00)
Restoration of accruals	3,477,966.02
Adjustment re: acquisitions from March 1996 F&E to Computer Equipment[47]	844,546,550.02
Reclassification from Intangible Assets	935,583,031.96
Reclassification to Intangible Assets[48]	(37,697,834.26)
Year-end accruals	15,238,769.00
Adjustment to prior years accruals[49]	(26,204,207.21)
Other adjustments	1,530,575.94
	₱1,804,279,783.10

Notice that the amount of ₱1,804,279,783.10, which was accounted by petitioner, is lower than the amount of ₱1,844,722,862.52 per respondent's assessment, thereby resulting in a discrepancy of ₱40,443,079.42. Since petitioner failed to reconcile the difference of ₱40,443,079.42, the same shall be considered subject to withholding tax.

As admitted by petitioner, only purchases or acquisitions during the year in the amount of ₱78,192,781.63 are subject to withholding tax.[50]

Further, records show that out of the ₱3,477,966.02 restoration of accruals, the amount of ₱1,777,186.47[51] is subject to withholding tax; while the remaining amount of ₱1,700,779.55[52], representing the VAT component of an equipment purchased in the prior years, shall be excluded from the income payments subject to withholding tax.

Petitioner claims that ₱935,583,031.96 was a reclassification from intangible assets, but its record reveals otherwise as its Journal Voucher 216[53] shows that it was actually a transfer from computer equipment to intangible assets and not an addition to Computer Equipment. Such being the case, petitioner failed to account for the additions

[45] Exhibits "F" and "P".
[46] Exhibit "P", p. 1 of 2, no. 2; Exhibits "P-1" to "P-2"; Exhibit "Q-58".
[47] Exhibit "P", p. 1 of 2, no. 4; Exhibits "P-16" to "P-17".
[48] Exhibit "P", p. 2 of 2, no. 6A-6B; Exhibits "P-25" to "P-28".
[49] Exhibit "P", p. 2 of 2, no. 8; Exhibits "P-41" to "P-42".
[50] Exhibit "F".
[51] Exhibit "P", p. 1 of 2, no. 3A; Exhibits "P-3" to "P-6".
[52] Exhibit "P", p. 1 of 2, no. 3B; Exhibits "P-7" to "P-15".
[53] Exhibits "P-18" to "P-21".

amounting to ₱935,583,031.96; thus, shall be subject to withholding tax.

The year-end accruals shall be subject to withholding tax but only in the amount of ₱15,145,769.00, since ₱93,000.00[54] of the ₱15,238,769.00 is not an accrual but a reclassification from furniture and equipment to computer equipment.

Other adjustments in the amount of ₱1,530,575.94 were not provided with supporting documents. As such, the same shall be considered subject to withholding tax.

In sum, the amount of addition to property and equipment subject to 1% EWT is ₱1,072,672,424.42, computed as follows:

Unaccounted difference	₱ 40,443,079.42
Purchases	78,192,781.63
Restoration of accruals	1,777,186.47
Reclassification from Intangible Assets	935,583,031.96
Year-end accruals	15,145,769.00
Other adjustments	1,530,575.94
Total	**₱1,072,672,424.42**

4. Freight Charges

According to petitioner, freight charges include accruals in the amount of ₱1,474,609.08 and reimbursements through a revolving fund of SSS foreign offices in the amount of ₱1,430,823.19, which should be excluded from the amount subject to withholding. However, as discussed earlier, the accruals shall be subject to withholding. Further, petitioner did not submit supporting documents for the alleged reimbursements and in turn failed to establish the basis of its exclusion from withholding. Therefore, freight charges in the total amount of ₱9,883,186.50 shall be subject to 2% EWT.

5. Light and Water

In its Explanatory Note, petitioner indicated that ₱24,636,056.85 of the light and water expense represented payments to tax-exempt cooperatives.

[54] Exhibit "P-32".

Pursuant to Sections A(3) and B(1)(b) of Revenue Memorandum Circular (RMC) No. 72-2003[55], electric cooperatives registered with the National Electrification Administration (NEA) and/or Cooperative Development Authority (CDA) are exempt from income tax.

Cooperatives registered with NEA are governed by the provisions of Presidential Decree No. 269, which expressly grants exemption to cooperatives from income tax under Section 39(a)(1) thereof as affirmed in the Decision of the CTA *En Banc* in *Commissioner of Internal Revenue vs. Samar-I Electric Cooperative, Inc.*[56], to quote:

> "xxx since petitioner remained registered with NEA; thus, governed by the provisions of PD 269. This being the case, Section 39 of PD 269 clearly grants tax exemption to electric cooperatives, such as petitioner, from income tax. xxx"

On the other hand, cooperatives registered with CDA are governed by the Cooperative Code of the Philippines (Republic Act No. 6938). The availment of exemptions granted under the said Code shall be supported by Certificate of Tax Exemption issued by the BIR pursuant to Revenue Regulations No. 20-2001[57] dated November 12, 2001.

The cooperatives entitled to income tax exemption from the above-mentioned provisions are consequently not subject to 2% EWT.

Petitioner submitted a List of 2004 Payments to Government Entities (Light and Water)[58] in the aggregate amount of ₱1,049,578.65, in support of its light and water expense. However, said document is merely a list of payments which may be considered as self-serving and does not establish anything to support its alleged tax-exempt amount.

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[55] Tax Implications of Electric Cooperatives Registered with the National Electrification Administration and Cooperative Development Authority.

[56] CTA EB Nos. 460 and 462, March 11, 2010.

[57] Regulations Implementing Articles 61 and 62 of Republic Act No. 6938, Otherwise Known as the "Cooperative Code of the Philippines", in Relation to R.A. Nos. 7716, 8241 and 8424, Thereby Amending Revenue Memorandum Circular (RMC) No. 48-91.

[58] Exhibits "N" to "N-1".

Petitioner also submitted two other documents to support its payments to cooperatives but with different sum totals, namely: (1) List of 2004 Payments to Cooperatives (Light and Water)[59] with a total amount of ₱18,681,519.34; and (2) Summary of 2004 Payments to Electric Cooperatives and Local Water Districts[60] with a total amount of ₱15,750,419.67. Of the two, only the second document shall be given consideration being supported with Disbursement Vouchers, Certificates, Billings, and Receipts. The first document is simply a list without other supporting documents to prove its certainty.

The payments aggregating to ₱15,750,419.67 is broken down per division as follows:

Division Offices	**Electric Cooperatives**	**Local Water Districts**	**Total**
Luzon North	₱ 1,842,413.66	₱ 109,981.19	₱ 1,952,394.85
Luzon Central	758,507.52	124,071.69	882,579.21
Luzon South	982,081.98	65,976.45	1,048,058.43
Bicol	2,564,948.40	128,430.92	2,693,379.32
Visayas Central	460,668.92	-	460,668.92
Visayas West	4,094,517.25	312,583.99	4,407,101.24
Mindanao North	897,126.01	129,667.90	1,026,793.91
Mindanao South	1,499,334.59	399,882.34	1,899,216.93
Mindanao West	1,368,989.86	11,237.00	1,380,226.86
Total	**₱14,468,588.19**	**₱1,281,831.48**	**₱15,750,419.67**

Upon verification, out of ₱15,750,419.67, only ₱304,221.52, as determined below, pertained to payments to tax-exempt electric cooperatives in the Visayas West Division supported by Disbursement Vouchers, Billings, Receipts and Certificates; thus, should not be subject to withholding tax:

Name of Cooperative	**Amount**	**Exhibit**
Antique Electric Cooperative, Inc. -supported by Certificate of Registration w/NEA dated December 10, 1972 (Exhibit "AA-124")	₱ 74,027.50	AA-47, BB-867 to BB-891
Negros Oriental Electric Cooperative, Inc. -supported by Certificate of Registration w/NEA dated June 14, 1972 (Exhibit "AA-125")	75,887.53	AA-49, BB-956 to BB-985
Negros Oriental 2 Electric Cooperative, Inc. -supported by BIR Ruling RR-12-03-99 dated January 14, 1999 (Exhibit "AA-129")	154,306.49	AA-44, BB-720 to BB-748
Total	**₱304,221.52**	

[59] Exhibit "N-2".
[60] Exhibit "AA".

Accordingly, the ₱107,670,335.58 light and water expense shall be subject to 2% EWT, as computed below:

Light and Water per assessment	₱ 107,974,557.10
Less: Payment to tax-exempt cooperatives	304,221.52
Light and Water subject to EWT	**₱ 107,670,335.58**

6. M/R-Transportation Equipment
M/R-Furniture and Equipment
M/R-Building

Anent the difference in M/R expense accounts, petitioner attributed the same to accruals which were paid in 2005, and the correct withholding taxes thereof were properly withheld and remitted to the BIR that same year. However, as discussed earlier, said accruals should have been subjected to withholding in 2004 pursuant to Section 2.57.4 of RR No. 2-98. Likewise, petitioner failed to show that proper withholding and remittance of the same were indeed made in 2005. Hence, M/R-Transportation Equipment, M/R-Furniture & Equipment and M/R-Building in the amounts of ₱15,843,930.31, ₱249,493,797.25, and ₱158,206,748.07, respectively, shall all be subject to 2% EWT.

B. Office Space Rental

As regards Office Space Rentals, petitioner asserts that instead of subjecting the entire amount of ₱90,566,212.50 (per BIR) to withholding tax, the same should only be ₱86,769,362.61, the difference of which pertained to payment to government agencies and lease of foreign branch offices (payees are foreign government/companies) in the amount of ₱3,796,849.89.

To prove its claim, petitioner provided a List of 2004 payments to entities/payees allegedly exempt from withholding tax but only in the aggregate amount of ₱2,835,470.20.[61] Furthermore, of the said amount, only ₱1,743,948.46 was duly supported by Disbursement Vouchers, showing that the same pertained to payments to government agency and foreign payees, which are not subject to withholding tax, *to wit*:

[61] Exhibit "O".

Payee	Amount	Exhibit
Philippine Consulate-Hongkong	₱ 632,124.90	O-1
Dato Paduka Haji Awang Abdul Hapidz	100,680.00	O-3
Philippine Consulate General-Milan	102,298.00	O-5
Philippine Consulate General-Milan	99,582.00	O-7
Philippine Consulate General-Milan	98,112.00	O-9
Employees' Compensation Commission	173,451.60	O-11
Employees' Compensation Commission	173,451.60	O-13
Employees' Compensation Commission	182,124.18	O-14
Employees' Compensation Commission	182,124.18	O-15
Total	**₱1,743,948.46**	

Thus, the amount of Office Space Rental subject to 5% EWT is ₱88,822,264.04, broken down as follows:

Office Space Rental per assessment	₱ 90,566,212.50
Less: Payment to government agencies/foreign payees	1,743,948.46
Office Space Rental subject to EWT	**₱88,822,264.04**

To recapitulate, petitioner is liable to pay basic deficiency EWT in the total amount of ₱13,518,496.99, computed as follows:

	Net of Adjustments Per Review	Per Alpha list	Discrepancy	Rate	EWT still due
Purchase of Goods					
Supplies & Materials Inventory	**₱ 105,948,120.95**				
Furniture & Equipment Computer Expenses	**5,319,394.96**				
Miscellaneous Expenses	680,194.20				
Addition to Property & Equipment	**1,072,672,424.42**				
Training & Personnel Expenses (Foods)	748,151.00				
SSS Commission expense (meals)	490,865.00				
Books and Subscriptions	412,806.25				
	₱ 1,186,271,956.78	₱ 170,608,405.88	₱ 1,015,663,550.90	1%	**₱ 10,156,635.51**
Office Space Rentals	**₱ 88,822,264.04**	86,769,362.61	2,052,901.43	5%	**102,645.07**
Purchase of Services					
Freight Charges	**₱ 9,883,186.50**				
Service Bureau Expense	107,689,433.95				
Equipment Rentals (Photocopy)	5,401,277.21				
Special Project	33,501,208.90				
Training and Personnel Improvement (resource speaker)	526,254.11				
Training and Personnel Improvement (payment for service)	505,135.00				
Light & Water	**107,670,335.58**				

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Publication Expenses	49,996,967.40				
Printing & Reproducing	1,337,139.08				
M/R - Transportation Equipment	**15,843,930.31**				
M/R - Furniture & Equipment	**249,493,797.25**				
M/R - Building Leased Offices	**158,206,748.07**				
Construction in Progress-Land Improvements	605,900.00				
Construction in Progress-Building Improvement	1,355,699.59				
Construction in Progress-Building	956,554.00				
Construction in Progress-Leasehold Improvement	4,171,932.43				
	₱ 747,145,499.38	₱ 584,184,679.05	₱ 162,960,820.33	2%	**3,259,216.41**
Total					**₱ 13,518,496.99**

III. Deficiency VAT and other percentage taxes withheld - ₱135,085,228.57

Respondent's verification disclosed that various purchases on goods amounting to ₱1,770,289,689.33 were not subjected to the three percent (3%) withholding VAT on government money payments as prescribed by the provisions of RR No. 2-98 and Section 114(C) of the NIRC of 1997, as amended, resulting in basic deficiency VAT and other percentage tax of ₱53,108,690.68, as shown below:

Various income payments not subjected to withholding percentage/VAT	
Purchase of goods	₱1,770,289,689.33
Tax Rate	3%
Deficiency Withholding Tax on Gov't Money Payment	53,108,690.68
Add: 20% interest from Jan. 11, 2005 to September 28, 2012	81,976,537.89[62]
Total Deficiency VAT & Other Percentage Taxes	**₱135,085,228.57**

The tax base used by respondent as basis for the assessed withholding VAT and other percentage tax is the discrepancy between the amounts subjected per alphalist and the amounts per FS, the latter being the same income payments for goods reflected in the EWT assessment, detailed as follows:

[62] It is to be noted that the 20% interest cannot be imposed upon petitioner.

	Per FS	Per Alpha list	Discrepancy	Rate	Tax due
Purchase of Goods					
Furniture & Equipment Computer Expenses	₱ 5,319,394.96				
Miscellaneous Expenses	680,194.20				
Addition to Property & Equipment	1,844,722,862.52				
Supplies & Materials Inventory	110,926,351.20				
Training & Personnel Expenses (Foods)	748,151.00				
Books and Subscriptions	412,806.25				
SSS Commission expense (meals)	490,865.00				
	₱1,963,300,625.13	₱193,010,935.80	₱1,770,289,689.33	3%	**₱53,108,690.68**

Petitioner explains that the difference in the 3% VAT/percentage tax on goods pertained to Addition to Property & Equipment and Supplies & Materials Inventory, which has been explained under the EWT assessment.

Since petitioner's justification on these two income payments are the same with the discussion in the deficiency EWT, the amounts arrived at therein shall be the same amount to be subject to withholding VAT/other percentage tax.

As discussed in the deficiency EWT, ₱1,072,672,424.42 of the Addition to Property & Equipment are subject to withholding as these referred to unaccounted amounts, purchases, accruals and unsupported items. Moreover, the Supplies & Materials Inventory subject to withholding amounts to ₱105,948,120.95. No additional supporting documents are provided to prove that the same is not subject to withholding VAT; thus, the assessment shall be sustained.

In sum, petitioner is liable to pay basic deficiency withholding VAT and other percentage tax in the amount of ₱29,797,830.63, computed as follows:

	Net of Adjustments Per review	Per Alpha list	Discrepancy	Rate	WVAT/% Tax due
Purchase of Goods					
Furniture & Equipment Computer Expenses	₱ 5,319,394.96				
Miscellaneous Expenses	680,194.20				
Addition to Property & Equipment	**1,072,672,424.42**				
Supplies & Materials Inventory	**105,948,120.95**				
Training & Personnel Expenses (Foods)	748,151.00				

Books and Subscriptions	412,806.25				
SSS Commission expense (meals)	490,865.00				
	₱ 1,186,271,956.78	₱193,010,935.80	₱ 993,261,020.98	3%	**₱29,797,830.63**

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessed basic deficiency withholding tax on compensation, deficiency expanded withholding tax, and deficiency withholding VAT and other percentage tax for taxable year 2004 are upheld but in the modified amount of ₱67,314,515.98, computed as follows:

Tax Type	Basic Deficiency Taxes
Withholding Tax on Compensation	₱ 23,998,188.36
Expanded Withholding Tax	13,518,496.99
VAT and Other Percentage Tax Withheld	29,797,830.63
Total	**₱67,314,515.98**

Furthermore, petitioner shall not be held liable for the interest and penalty, in addition to the basic tax due, pursuant to Sections 247(b) and 251 of the NIRC of 1997, as amended.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice