REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

LIBERTY FLOUR MILLS, INC.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10532

Present:

RINGPIS-LIBAN, *P.J., Chairperson,*
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

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DECISION

FERRER-FLORES, J.:

At bar is a **Petition for Review** filed by petitioner **Liberty Flour Mills, Inc.** praying for the Court to cancel the alleged deficiency tax assessment, covering the period January 1, 2012 to December 31, 2012 (CY 2012), consisting of income tax, value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation (WTC) amounting to **₱25,633,645.26**, **₱65,452,411.68**, **₱3,767,200.36**, and, **₱3,491,291.54**, respectively, all inclusive of interests and compromise penalties.[1]

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with registered office address at No. 835 Liberty Building, Arnaiz Avenue, Makati City.[2]

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[1] Refer to Statement of the Case, Pre-Trial Order dated August 4, 2022, Docket – Vol. II, p. 1010; and Prayer, *Petition for Review*, Docket – Vol. I, p. 35 vis-à-vis Submitted Issues for Trial, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, pp. 993 to 994.

[2] Par. 1, Admitted Facts, JSFI, Docket – Vol. II, p. 992.

Respondent, on the other hand, is the **Commissioner of Internal Revenue (CIR)** with office address at the 5/F, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On May 9, 2014, the Letter of Authority (LOA) No. 116-2014-00000046 was issued by the BIR to authorize the examination of petitioner's books of accounts and other accounting records for CY 2012.[4]

During the course of the audit, seven Waivers of the Defense of Prescription were executed by petitioner, which were accepted by respondent, to wit:

	Date of Execution	**Stated period of Extension**
1st Waiver[5]	November 12, 2015	December 31, 2016
2nd Waiver[6]	November 9, 2016	June 30, 2017
3rd Waiver[7]	May 2, 2017	December 31, 2017
4th Waiver[8]	October 19, 2017	June 30, 2018
5th Waiver[9]	May 16, 2018	December 31, 2018
6th Waiver[10]	November 6, 2018	June 30, 2019
7th Waiver[11]	May 20, 2019	December 31, 2019

Thereafter, petitioner received on July 19, 2019 the Notice of Informal Conference.[12]

On November 19, 2019, petitioner received the Preliminary Assessment Notice (PAN), demanding payment of alleged deficiency income tax, improperly accumulated earnings tax (IAET), VAT, EWT, WTC, fringe benefits tax (FBT) and documentary stamp tax (DST), for CY 2012, in the total amount of ₱117,320,552.04, inclusive of interests and compromise penalties.[13] Petitioner replied to the PAN on December 23, 2019.[14] ᴍ

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[3] Par. 2, Admitted Facts, JSFI, Docket – Vol. II, p. 992.
[4] Par. 3, Admitted Facts, JSFI, Docket – Vol. II, p. 992; Exhibit "R-2", BIR Records (Exhibit "R-14"), p. 1.
[5] Exhibit "R-3", BIR Records (Exhibit "R-14"), p. 695.
[6] Exhibit "R-4", BIR Records (Exhibit "R-14"), p. 696.
[7] Exhibit "R-5", BIR Records (Exhibit "R-14"), p. 697.
[8] Exhibit "R-6", BIR Records (Exhibit "R-14"), p. 698.
[9] Exhibit "R-7", BIR Records (Exhibit "R-14"), p. 699.
[10] Exhibit "R-8", BIR Records (Exhibit "R-14"), p. 700.
[11] Exhibit "R-9", BIR Records (Exhibit "R-14"), p. 359.
[12] Par. 4, Admitted Facts, JSFI, Docket – Vol. II, p. 993; Exhibit "R-10", BIR Records (Exhibit "R-14"), pp. 391 to 396.
[13] Par. 5, Admitted Facts, JSFI, Docket – Vol. II, p. 993; Exhibit "R-11", BIR Records (Exhibit "R-14"), pp. 435 to 442.
[14] BIR Records (Exhibit "R-14"), pp. 525 to 539.

Subsequently, on December 23, 2019, the Formal Letter of Demand (FLD) and Assessment Notices, premised on insufficiency of evidence to refute the validity of its findings, were received by petitioner.[15]

Aggrieved, petitioner filed its protest to the FLD on January 21, 2020.[16]

Petitioner received a copy of LOA No. 116-2020-00000177 dated July 8, 2020 on July 13, 2020, superseding the previous LOA because the assigned Revenue Officer (RO) has been reassigned to another district office, and informing it that certain ROs from the Large Taxpayers Regular Audit Division I of the BIR have been authorized to examine its books of accounts and other accounting records for TY 2012.[17]

On April 22, 2021, petitioner received the assailed Final Decision on Disputed Assessment (FDDA) in the reduced amount of ₱101,649,612.57, stating therein that, notwithstanding its protest to FLD, there were still some deficiency taxes that were still due and demandable.[18]

PROCEEDINGS BEFORE THIS COURT

Undeterred, petitioner filed the present *Petition for Review* on May 24, 2021.[19]

Respondent thereafter filed his *Answer* on October 27, 2021,[20] and the *BIR Records* was transmitted on November 8, 2021, consisting of 775 pages in one folder.[21]

The Pre-Trial Conference was initially set on March 2, 2022.[22] In the scheduled Pre-Trial Conference, the Court directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on April 20, 2022 at 9:00 a.m.[23] The PMC-CTA, however, issued the *No*

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[15] Par. 6, Admitted Facts, JSFI, Docket – Vol. II, p. 993; Exhibit "R-12", BIR Records (Exhibit "R-14"), pp. 540 to 554.

[16] BIR Records (Exhibit "R-14"), pp. 560 to 693.

[17] Par. 7, Admitted Facts, JSFI, Docket – Vol. II, p. 993; Exhibit "R-1", BIR Records (Exhibit "R-14"), p. 694.

[18] Par. 8, Admitted Facts, JSFI, Docket – Vol. II, p. 993; Exhibit "R-13", BIR Records (Exhibit "R-14"), pp. 747 to 764.

[19] Docket – Vol. I, pp. 10 to 37.

[20] Docket – Vol. II, pp. 917 to 924.

[21] Respondent's *Compliance* dated November 4, 2021, Docket – Vol. II, pp. 936 to 938.

[22] *Notice of Pre-Trial Conference* dated December 7, 2021, Docket – Vol. II, pp. 958 to 959.

[23] Minutes of the hearing held on, and Order dated, March 2, 2022, Docket – Vol. II, pp. 960 to 961; Resolution dated March 2, 2022, Docket – Vol. II, p. 964.

Agreement To Mediate dated April 20, 2022,[24] stating that the parties decided not to have their case mediated.

The Pre-Trial Conference was then set anew and held on June 8, 2022.[25] Prior thereto, respondent's *Pre-Trial Brief* was filed on February 16, 2022,[26] while the *Pre-Trial Brief (For Petitioner Liberty Flour Mills, Inc.)* was submitted on February 23, 2022.[27]

On June 22, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[28] which was admitted and approved by the Court in its Resolution dated July 20, 2022,[29] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated August 4, 2022 was then issued.[30]

Trial ensued.

Petitioner offered the testimonies of the following: (1) Ms. Maria Luisa L. Quizon,[31] petitioner's Chief Accountant; and, (2) Ms. Rean G. Abalos,[32] the Court-commissioned Independent Certified Public Accountant (ICPA).[33]

Ms. Abalos then submitted the ICPA *Report* on September 29, 2022.[34]

On November 25, 2022, petitioner filed its *Formal Offer of Evidence*,[35] without comment from respondent.[36] In the Resolution dated March 30, 2023,[37] the Court admitted petitioner's offered exhibits, *except* for the following:

1. Exhibits "P-1" "P-3" "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-

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24 Docket – Vol. II, p. 971.
25 Resolution dated April 27, 2022, Docket – Vol. II, p. 973; Minutes of the hearing held on, and Order dated, June 8, 2022, Docket – Vol. II, pp. 990 to 991.
26 Docket – Vol. II, pp. 940 to 945.
27 Docket – Vol. II, pp. 948 to 956.
28 Docket – Vol. II, pp. 992 to 1002.
29 Docket – Vol. II, p. 1006.
30 Docket – Vol. II, pp. 1010 to 1017.
31 Exhibit "P-174", Docket – Vol. I, pp. 329 to 357; Minutes of the hearing held on August 30, 2022, Docket – Vol. II, p. 1031.
32 Exhibit "P-175" (unmarked), Docket – Vol. 3, pp. 1075 to 1115; Minutes of the hearing held on, and Order dated, October 26, 2022, Docket – Vol. 3, pp. 1117 and 1119 to 1120, respectively.
33 *Oath of Commission* dated August 30, 2022, Docket – Vol. II, p. 1032; Minutes of the hearing held August 30, 2022, Docket – Vol. II, p. 1031.
34 Exhibit "P-176" (unmarked), Docket – Vol. 3, pp. 1033 to 1070.
35 Docket – Vol. 3, pp. 1121 to 1136.
36 Records Verification Report dated January 3, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 1139.
37 Docket – Vol. 3, pp. 1143 to 1145.

24", "P-25", "P-26", "P-27" "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48 to P-141", "P-142", "P-143", "P-144", "P-145", "P-146", "P-147", "P-148", "P-149", "P-150", "P-151", "P-152", "P-153", "P-154", "P-155", "P-156", "P-157", "P-158", "P-159", "P-160", "P-161" and "P-162 to 173", for failure to have these exhibits marked before the Court; and,

2. Exhibit "P-176-B", for failure to identify.

On April 27, 2023, petitioner filed a *Motion for Leave to Recall Witness*,[38] seeking to recall the ICPA only for the purpose of identifying the USB containing the ICPA *Report*, Annexes "A" to "B", and Exhibits "ICPA-P-176" to "ICPA-P-201". Respondent filed his *Comment (Re: Motion for Leave to Recall Witness dated 27 April 2023)* on May 31, 2023.[39] In the Resolution dated July 3, 2023,[40] the Court granted petitioner's *Motion for Leave to Recall Witness,* and set the recall of the ICPA on October 10, 2023.

At the hearing for the recall of the ICPA, the parties entered into stipulations that the ICPA will be able to identify the USB, marked as Exhibit "P-176-B"; the Court gave petitioner a period of 15 days or until October 25, 2023 within which to file its formal offer of evidence; and, respondent was likewise given the same period to file his comment thereon.[41]

On October 25, 2023, petitioner filed its *Supplemental Formal Offer of* Evidence,[42] again without any comment from respondent.[43] In the Resolution dated February 15, 2024,[44] the Court admitted petitioner's exhibits, which included Exhibit "P-176-B", *except* Exhibits "ICPA-P-176", "ICPA-P-183", "ICPA-P-194", "ICPA-P-200", and "ICPA-P-201", for failure to correspond with the documents actually marked.

For his part, respondent presented the testimony of RO Francis Elvin Ordoñez.[45]

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[38] Docket – Vol. 3, pp. 1146 to 1149.
[39] Docket – Vol. 3, pp. 1153 to 1155.
[40] Docket – Vol. 3, pp. 1159 to 1161.
[41] Minutes of the hearing held on, and Order dated, October 10, 2023, Docket – Vol. 3, pp. 1162 to 1164.
[42] Docket – Vol. 3, pp. 1165 to 1174.
[43] Records Verification dated November 30, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 1177.
[44] Docket – Vol. 3, pp. 1181 to 1183.
[45] Exhibit "R-15", Docket – Vol. II, pp. 930 to 935; Minutes of the hearing held on, and Order dated, April 4, 2024, Docket – Vol. 3, pp. 1184 to 1185.

On April 11, 2024, respondent filed his *Formal Offer of Evidence*,[46] to which petitioner filed its *Comment (Re: Formal Offer of Evidence dated 08 April 2024)* on April 24, 2024.[47] In the Resolution dated August 15, 2024,[48] the Court admitted all of respondent's offered exhibits.

Subsequently, respondent filed a *Manifestation* on September 30, 2024,[49] stating that he will adopt the arguments stated in the *Answer* filed before this Court, in place of the *Memorandum*, considering that it already contains all the arguments and defenses subject of this case, while petitioner submitted its *Memorandum* on October 18, 2024.[50]

The present case was considered submitted for decision on November 26, 2024.[51]

THE STIPULATED ISSUES

The parties submit the following issues for this Court's resolution:

A. **WHETHER OR NOT PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY IT IN THE TOTAL AMOUNT OF PHP25,633,645.26, INCLUSIVE OF INTERESTS AND COMPROMISE PENALTY;**

B. **WHETHER OR NOT PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY VAT IN THE TOTAL AMOUNT OF PHP65,452,411.68, INCLUSIVE OF INTERESTS AND COMPROMISE PENALTY;**

C. **WHETHER OR NOT PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY EWT IN THE TOTAL AMOUNT OF PHP3,767,200.36 INCLUSIVE OF INTERESTS AND COMPROMISE PENALTY;**

B. **WHETHER OR NOT PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY WT ON COMPENSATION IN THE TOTAL AMOUNT OF PHP3,491,291.54, INCLUSIVE OF INTERESTS AND COMPROMISE PENALTY; AND**

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46 Docket – Vol. 3, pp. 1186 to 1193
47 Docket – Vol. 3, pp. 1195 to 1196.
48 Docket – Vol. 3, pp. 1199 to 1200.
49 Docket – Vol. 3, pp. 1202 to 1204.
50 Docket – Vol. 3, pp. 1208 to 1239.
51 Docket – Vol. 3, p. 1241.

C. WHETHER OR NOT PETITIONER IS LIABLE FOR COMPROMISE PENALTIES.[52]

THE COURT'S RULING

The *Petition for Review* is partly meritorious.

Based on the FLD,[53] with attached *Details of Discrepancies*, petitioner was assessed deficiency income tax, VAT, EWT, WTC, FBT and DST for the CY 2012, in the aggregate amount of ₱117,793,915.24, inclusive of interests and penalties, summarized as follows:

Income Tax	₱ 49,690,817.10
VAT	57,999,432.05
EWT	3,610,656.83
WTC	3,327,698.43
FBT	1,773,568.35
DST	1,391,742.48
Total Amount Due	**₱ 117,793,915.24**

On April 22, 2021, petitioner received the FDDA,[54] finding petitioner still liable to pay deficiency income tax, VAT, EWT, WTC, FBT and DST, inclusive of surcharge, interests and compromise penalties, for CY 2012, in the aggregate amount of ₱101,649,612.57, as shown below:

Tax Type	Basic Tax	Interest	Surcharge	Total
Income Tax	₱ 11,165,619.04	₱ 14,418,026.21	-	₱ 25,583,645.26
VAT	28,008,119.33	37,394,292.36	-	65,402,411.68
EWT	1,598,819.10	2,143,381.26	-	3,742,200.36
WTC	1,480,939.71	1,985,351.83	-	3,466,291.54
FBT	717,275.23	926,208.66	₱ 179,318.81	1,822,802.69
DST	547,849.00	737,449.78	136,962.25	1,422,261.03
Compromise penalty	210,000.00	-	-	210,000.00
Total Amount Due	**₱ 43,728,621.40**	**₱ 57,604,710.10**	**₱ 316,281.06**	**₱ 101,649,612.57**

In its *Petition for Review*,[55] petitioner submits that it has no explanation on the other assessment items, particularly for the deficiency FBT and deficiency DST, and that it is willing to settle the same. Hence, being undisputed, the assessed basic deficiency FBT and DST shall remain, including the surcharge and interest, which shall be adjusted accordingly.

[52] Submitted Issues for Trial, JSFI, Docket – Vol. II, pp. 993 to 994.
[53] Exhibit "R-12", BIR Records (Exhibit "R-14"), pp. 540 to 554.
[54] Exhibit "R-13", BIR Records (Exhibit "R-14"), pp. 761 to 764.
[55] Par. 5.62, *Petition for Review*, Docket – Vol. I, p. 31.

The Court's disquisitions will, therefore, focus on the merits of the assessments pertaining only to deficiency income tax, VAT, EWT, WTC, and compromise penalty for CY 2012.

I. DEFICIENCY INCOME TAX - ₱25,583,645.26

Respondent assessed petitioner deficiency income tax for CY 2012 in the amount of ₱25,583,645.26,[56] computed as follows:[57]

Sales for the Year		₱1,990,584,987.00
Add: Other Income per Returns		5,616,107.00
Total Sales per Returns		₱1,996,201,094.00
Add: Undeclared Sales based on SAWT vs. AFS (Schedule 1)	₱ 5,846,389.06	
Undeclared Sales based on SLS vs. TPI (Schedule 2)	2,540,425.35	
Scrap Sales	2,189,507.00	10,576,321.41
Total Sales per Audit		₱2,006,777,415.41
Less: Cost of Sales per Returns	₱1,457,835,556.00	
Less: Overstated Materials per Audit (Schedule 3)	7,486,677.99	1,450,348,878.01
Gross Income per Audit		₱ 556,428,537.40
Add: Other Income per Audit		
Undeclared Income from Unaccounted Importations (Schedule 3)	₱ 33,865,292.34	
Recoveries from Insurance, Note 18 FS	3,370,717.00	
MERALCO Refund	27,462.44	
Undeclared Other Income (Schedule 4)	5,227,781.00	42,491,252.78
Total Gross Income per Audit		₱ 598,919,790.19
Less: Optional Standard Deduction (40%)		239,567,916.07
Taxable Income per Audit		₱ 359,351,874.11
Income Tax Due Thereon		₱ 107,805,562.23
Less: Allowable Tax Credits/Payments		
Tax Payments per Returns	₱ 75,866,887.00	
Creditable tax withheld claimed	21,038,910.00	
Subtotal	₱ 96,905,797.00	
Less: Unsupported Tax Credits	265,853.81	96,639,943.19
Basic Tax Due		₱ 11,165,619.04
Add: 20% Interest (04.16.13 to 12.31.17)	₱ 10,523,213.56	
12% Interest (01.01.18 to 11.27.20)	3,894,812.65	14,418,026.21
TOTAL AMOUNT DUE		**₱ 25,583,645.25**

The deficiency income tax assessment arose from the following items:

[56] Per FDDA, the total amount indicated was ₱25,583,645.26 but per actual footing the amount should be ₱25,583,645.25.

[57] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 752.

1. Undeclared Sales based on Summary Alphalist of Withholding Taxes (SAWT) vs. Audited Financial Statements (AFS)	₱ 5,846,389.06
2. Undeclared Sales based on Summary List of Sales (SLS) vs. Third Party Information (TPI)	2,540,425.35
3. Scrap Sales	2,189,507.00
4. Overstated Materials per Audit	7,486,677.99
5. Undeclared Income from Unaccounted Importations	33,865,292.34
6. Recoveries from Insurance	3,370,717.00
7. MERALCO Refund	27,462.44
8. Undeclared Other Income	5,227,781.00
9. Unsupported Tax Credits	265,853.81

1. Undeclared Sales based on SAWT vs. AFS

Respondent's comparison of the amounts of sales declared per SAWT as against the sales declared per Income Tax Return (ITR)/AFS resulted in a discrepancy amounting to ₱5,846,389.06, as computed below, which was assessed as undeclared sales pursuant to Section 32 of the National Internal Revenue Code (NIRC) of 1997, as amended:[58]

Customer	Per SAWT	Per FS-ITR	Higher Amount
Parity Values, Inc. (PVI)	₱1,430,948,764.00	₱1,429,213,178.00	₱1,430,948,764.00
Liberty Commodities Corp. (LCC)	314,034,480.00	306,620,094.00	314,034,480.00
Trade Demands	228,691,627.00	233,202,484.00	233,202,484.00
Total	₱1,973,674,871.00	₱1,969,035,756.00	₱1,978,185,728.00
Sales of Goods per ITR			1,969,035,756.00
Undeclared Sales per FLD			₱ 9,149,972.00
Less: Reconciling Items per Reinvestigation			
Amount of Rental Income from PVI per AFS		₱ 1,193,671.00	
Amount of Rental Income from LCC per AFS		2,109,911.94	3,303,582.94
Undeclared Sales per Reinvestigation			**₱ 5,846,389.06**

Petitioner contends that respondent failed to consider its explanation that the amount reported per SAWT is inclusive of ₱6,718.61 rental income recognized in 2011 and rebates to PVI amounting to ₱1,145,196.42, which should not be considered in computing the correct amount of sales; that certain direct sales to Mr. Henry Cabales totaling ₱719,375.00 were not included in its SAWT but was included as part of the sale to PVI and LCC; and, that the interchanged amount of ₱5,413,861.31 is due merely to the error in encoding this amount in Note 21 of petitioner's AFS corresponding to sales to LCC and Trade Demand Corp. (TDC). As such, petitioner insists that, as per its reconciliation shown below, there is actually no discrepancy between the amounts reported per SAWT and AFS, to wit:[59]

[58] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 764; and Schedule 1, Exhibit "R-13", BIR Records (Exhibit "R-14"), p. 750.
[59] Pars. 43 to 50, petitioner's *Memorandum*, Docket – Vol. 3, pp. 1215 to 1217.

PVI	
Rebate	₱ 1,145,196.42
Rental Income dated 2011	6,718.61
Direct Sales c/o Henry Cabales under SI No. 91001	(610,000.00)
LCC	
Sales of Goods	(12.75)
Direct Sales c/o Henry Cabales under SI No. 91001	(109,375.00)
TDC	
Interchanged amount	5,413,861.31
Undeclared Sales per Reinvestigation	**₱5,846,388.59**

We find against petitioner.

An analysis of respondent's computation of the assessment reveals that the undeclared sales per reinvestigation in the amount of ₱5,846,389.06 actually pertained to sales to PVI and LCC, as shown below:

	PVI	**LCC**	**Total**
Sales per SAWT	₱1,430,948,764.00	₱314,034,480.00	₱1,744,983,244.00
Less: Sales per FS-ITR	1,429,213,178.00	306,620,094.00	1,735,833,272.00
Undeclared Sales per FLD	1,735,586.00	7,414,386.00	9,149,972.00
Less: Reconciling items per Reinvestigation	1,193,671.00	2,109,911.94	3,303,582.94
Undeclared Sales per Reinvestigation	**₱ 541,915.00**	**₱ 5,304,474.06**	**₱ 5,846,389.06**

At the outset, it bears noting that petitioner did not provide the breakdown of its sales to PVI and LCC per SAWT[60] and per Note 21 of its Notes to AFS,[61] from which the assessed amounts were picked up. Though the Summary of Sales Invoices of PVI[62] and LCC[63] for CY 2012 may be used as other reference for the sales per SAWT, the alleged exclusion of the rebate and rental income and inclusion of the direct sale c/o Mr. Henry Cabales in its sales per AFS cannot be verified without the details of the amounts of the sales per AFS. Hence, it cannot be ascertained whether the assessed discrepancy indeed pertained to the alleged reconciling items.

Besides, the credit memos showing "Rebate on sale of El Superior outstanding CPO's as of Jan. 24, 2012", in the amount of ₱888,098.21,[64] and "Adjustment on Feb. 2012 invoice # 90836, 90840", in the amount of ₱257,098.21,[65] in support of the alleged rebates on sales to PVI of ₱1,145,196.42, and the debit memo dated December 31, 2011, showing additional office rental charges for 2011, in the amount of ₱6,718.61,[66] are

[60] BIR Records (Exhibit "R-14"), p. 206.
[61] BIR Records (Exhibit "R-14"), p. 156.
[62] BIR Records (Exhibit "R-14"), p. 678.
[63] Exhibit "ICPA-P-182-1", USB (Exhibit "P-176-B").
[64] Exhibit "ICPA-P-179-1", USB (Exhibit "P-176-B").
[65] Exhibit "ICPA-P-179-2", USB (Exhibit "P-176-B").
[66] Exhibit "ICPA-P-180", USB (Exhibit "P-176-B").

quite self-serving as the basis of the application of the said rebates and adjustments was not shown to determine the veracity of the same.

Moreover, since the direct sales to Mr. Cabales allegedly included as part of sales to PVI and LCC per AFS apparently pertained to one transaction only, as evidenced by Charge Sales Invoice No. 91001, reflecting total sales in the amount of ₱719,375.00,[67] the inclusion of a portion of the said amount into the sales of two different customers (neither was named buyer in the invoice) is unreasonable.

Further, as to the alleged interchanged amount of ₱5,413,861.31 due to error in encoding of the sales to LCC and TDC in Note 21 of its Notes to AFS, petitioner asserts that based on the summary of sales invoices accounted by the ICPA, the total sales to LCC should be ₱311,924,580.47, instead of ₱306,620,094.00, and the total sales to TDC should be ₱227,867,078.05, instead of ₱233,202,484.00. The ICPA further computed the said interchanged amount of ₱5,413,861.31 as follows:[68]

LCC		
Sales per summary of invoices	₱311,924,580.47	
Add: Direct sale to Henry Cabales	109,375.00	₱ 312,033,955.47
Less: Sales per AFS		306,620,094.00
		₱ 5,413,861.47

TDC		
Sales per summary of invoices	₱227,867,078.05	
Add: Sales not recorded per SAWT	51,633.93	
Total	227,918,711.98	
Less: Rebate	(130,089.29)	₱ 227,788,622.69
Sales per AFS		233,202,484.00
		₱ (5,413,861.31)

Based on the above computation of the ICPA, however, there was no actual sales to LCC or TDC in the amount of ₱5,413,861.31 that was interchanged. The amounts computed therein were arrived at by considering adjustments for direct sale to Mr. Cabales amounting to ₱109,375.00, sales not recorded per SAWT amounting to ₱51,633.93 and rebate amounting to ₱130,089.29,[69] which were not proven as already included or adjusted in the amount of "Sales per AFS" to justify the inclusion or exclusion of the same in the computation. Moreover, a comparison of petitioner's sales per summary of invoices for LCC and TDC as against its sales per AFS for the same clients would result in different amounts, which do not equate to ₱5,413,861.31, as shown below:

[67] Exhibit "ICPA-P-181", USB (Exhibit "P-176-B").
[68] Exhibit "P-176" (unmarked), Docket – Vol. 3, pp. 1040 and 1041.
[69] Exhibit "ICPA-P-184", USB (Exhibit "P-176-B").

	LCC	TDC
Sales per summary of invoices [70]	₱ 311,924,580.47	₱ 227,867,078.05
Sales per AFS	306,620,094.00	233,202,484.00
Difference	**₱ 5,304,486.47**	**₱ (5,335,405.95)**

Thus, for petitioner's failure to successfully refute the assessed undeclared sales of ₱5,846,389.06, the same shall be upheld.

2. Undeclared Sales based on SLS vs. TPI

Respondent's comparison of the amounts of sales declared per petitioner's SLS as against the amount of purchases declared by its customers based on TPI resulted in a discrepancy amounting to ₱2,540,425.35, as shown below, which was assessed as undeclared sales pursuant to Section 32 of the NIRC of 1997, as amended:[71]

Customer	**Sales per SLS**	**Sales per TPI**	**Undeclared Sales**
Globe Telecom Inc	₱ 664,460.40	₱ 2,112,063.25	₱ 1,447,602.85
Lancero Jayvee Emperado	-	700,788.78	700,788.78
Parity Values Inc	1,430,268,045.41	1,430,511,129.12	243,083.71
Personal Computer Specialists, Inc.	1,575,852.07	1,724,802.08	148,950.01
TOTAL	**₱ 1,432,508,357.88**	**₱1,435,048,783.23**[72]	**₱ 2,540,425.35**

Petitioner asserts that the alleged discrepancies, being more apparent than real, should not in any manner be construed as undeclared sales.[73] Moreover, the ICPA noted that the examination is limited due to lack of information on the TPI data.[74]

The assessment must be cancelled.

The pertinent provisions of Revenue Memorandum Order (RMO) Nos. 30-2003 and 46-2004 confirm the need for the BIR to verify the amounts it obtained from its computerized/third-party matching in ascertaining the taxpayer's under declaration of revenues or overstatement of costs and expenses, if any, by securing confirmation or certification from the TPI sources, to wit:

70 Exhibits "ICPA-P-182-1" and "ICPA-P-185-1", USB (Exhibit "P-176-B").
71 Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 764; and Schedule 2, Exhibit "R-13", BIR Records (Exhibit "R-14"), p. 750.
72 The amount indicated in the schedule was ₱4,444,267.00, but the correct total is ₱1,435,048,783.23.
73 Par. 52, petitioner's *Memorandum*, Docket – Vol. 3, p. 1217.
74 Exhibit "P-176" (unmarked), Docket – Vol. 3, p. 1042.

REVENUE MEMORANDUM ORDER NO. 30-2003

SUBJECT: Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization, and Monitoring of RELIEF data for Audit and Enforcement Purposes

xxx xxx xxx

IV. PROCEDURES

xxx xxx xxx

E. At The RDO/LTDO/LTAID
At The TFD for 'Preprocessed' RELIEF Data

xxx xxx xxx

3. Determine appropriate action on the LNs issued to taxpayers with RELIEF data discrepancy

xxx xxx xxx

B.3 If the taxpayer is refuting the accuracy of the figures in the LN, together with the DTCS –

xxx xxx xxx

a.2 If the discrepancy is on the data submitted by a third party, forward the LN to the SCG for confirmation of the figures from the TPI source by sending a 'Confirmation Request' (CR) Annex 'C'). The confirmation by the TPI source should be embodied in a 'Confirmation Certificate' (CC) (Annexes 'G' & 'G-1')."

REVENUE MEMORANDUM ORDER NO. 46-2004

SUBJECT : Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

xxx xxx xxx

III. PROCEDURES

xxx xxx xxx

Action on Protested LNs due to TPI discrepancy

The Revenue Officer assigned to handle the Letter Notice shall:

xxx xxx xxx

3. Obtain Sworn Statements from TPI sources (Annexes 'B' and 'C') attesting to the veracity of the data provided.

Verily, the assessed undeclared sales were based merely on the figures extracted from respondent's own database (AITEID data) through the matching of petitioner's SLS with the Summary List of Purchases (SLP) of third parties but were not verified with the pertinent externally sourced documents to check its accuracy.

Moreover, the records are bereft of any showing that confirmation requests were sent to and received by third-party sources to confirm the veracity of the data gathered therefrom. Without the corroborating certifications or confirmations from related third-party sources, the data gathered from the computerized/third-party matching are left unverified, and assessments arising therefrom are mere presumptions lacking reliability and credibility.

Apropos, it must be emphasized that in order for an assessment to be valid, the same must be based on facts supported by credible evidence.[75] The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption no matter how reasonable or logical said presumptions may be.[76]

3. Scrap Sales &
6. Recoveries from Insurance

Respondent's verification disclosed that petitioner failed to declare its sales of scrap amounting to ₱2,189,507.00 and recoveries from insurance amounting to ₱3,370,717.00 for income tax purposes. Hence, these amounts were assessed and subjected to income tax pursuant to Section 32 of the NIRC of 1997, as amended.[77]

Petitioner contends that the assessments must be cancelled and set aside since the sales of scrap and insurance proceeds were included in computing its taxable income subjected to income tax, and in fact, reported in its annual ITR under "miscellaneous income" and "Other Taxable Income" not subjected to Final Tax.[78]

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[75] Refer to *Commissioner of Internal Revenue vs Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.
[76] *The Collector of Internal Revenue vs. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962.
[77] Exhibit "R-13", BIR Records (Exhibit "R-14"), at pp. 763 to 764.
[78] Pars. 60 to 61 and 76 to 77, petitioner's *Memorandum*, Docket – Vol. 3, pp. 1219 to 1223, respectively.

Petitioner's contention has merit.

In its Annual ITR for CY 2012, petitioner reported "Other Taxable Income not Subjected to Final Tax" in the amount of ₱5,616,107.00,[79] and subjected the same to income tax. Notably, as early as its reply to the PAN,[80] petitioner had already provided the breakdown of the ₱5,616,107.00 (rounded off) "Other Taxable Income not Subjected to Final Tax" reflected in its annual ITR, as shown below, that included the scrap sales of ₱2,189,507.24 and recoveries from insurance worth ₱3,370,717.22, which respondent failed to consider:

Particulars	Amount	Per ITR	Per VAT	Non VAT/VAT Exempt
Under Miscellaneous Income-Mandaluyong	₱ 2,189,507.24	₱ 2,189,507.24	₱ 2,189,507.24	
GAIN from insurance claims-CCC Insurance Corp	3,370,717.22	3,370,717.22		₱ 3,370,717.22
Under Miscellaneous Income-Makati				
MERALCO-Company Refund of Meter & Services	₱ 51,114.70			51,114.70
MERALCO-CWT on refund	2,746.24			2,746.24
	₱ 53,860.94	53,860.94		
Under Miscellaneous Income-Others				
National Home Mortgage Finance Corp	₱ 1,816.86			1,816.86
Foreign exchange gain	205.20			205.20
	₱ 2,022.06	2,022.06		
Sub-Total under Miscellaneous Income	**₱ 5,616,107.46**	**₱ 5,616,107.46**	**₱ 2,189,507.24**	**₱ 3,426,600.22**

Respondent erred in considering the declared amount of ₱5,616,107.00 as pertaining to a portion of the assessed ₱10,843,888.00 undeclared other income (see discussion in item no. 8 under income tax), when petitioner expressly claims that the latter amount is not income, but reimbursements at cost and was not subjected to income tax.

Considering that the scrap sales and recoveries from insurance in the respective amounts of ₱2,189,507.00 and ₱3,370,717.00 were already declared and subjected to income tax, the assessments thereon must be set aside.

4. Overstated Materials per Audit

Respondent's comparison of the amounts of materials used per AFS as against the amounts of materials computed based on the amount of importations per reinvestigation and local purchases per SLP, resulted in a discrepancy amounting to ₱7,486,677.99, as computed below, which was

[79] Line 19C, BIR Records (Exhibit "R-14"), pp. 134 and 144.
[80] BIR Records (Exhibit "R-14"), p. 533.

then treated as overstated materials used and disallowed pursuant to Section 34(A)(1) of the NIRC of 1997, as amended:[81]

Beginning Inventory		₱ 418,689,242.00
Importation per Reinvestigation	₱1,290,042,583.07	
Local Purchases per SLP	83,648,611.94	1,373,691,195.01
Materials Available for Use		₱1,792,380,437.01
Less: Ending Inventory		480,265,620.00
Materials Used per Audit		₱1,312,114,817.01
Less: Materials used per FS, Note 15		1,319,601,495.00
Overstated Materials Used		**₱ 7,486,677.99**

Petitioner posits that respondent's computation used local purchases per SLP which include not only purchases of raw materials but also other items used in operation; that the computation should only include the raw materials (wheat), and exclude the finished goods and supplies that formed part of the beginning and ending inventories; and, that based on the ICPA's examination of the journal entries, only wheat grains and supplies such as additives, flour and feed bags and miscellaneous manufacturing supplies are considered for inventories in arriving at the actual purchases. Petitioner, thus, insists that respondent failed to consider that the said amount includes purchases not directly related to its operation.[82]

Petitioner's assertion, however, is untenable.

Presented below is petitioner's alleged recomputation and the ICPA's analysis of "Materials Used," to wit:

Recomputation per petitioner:[83]

Beginning Inventory-wheat grains	₱ 388,159,142.93
Raw materials purchased	1,334,055,404.19
Total	₱1,722,214,547.12
Ending Inventory-wheat grains	402,459,971.98
Raw Material Used	₱1,319,754,575.14
Materials used per FS	1,319,601,495.00
Difference	₱ **(153,080.14)**

Recomputation per ICPA:[84]

Beginning Inventory	₱ 418,689,242.00
Add: Actual purchases	1,380,382,235.05
Materials Available for Use	₱1,799,071,477.05
Less: Ending Inventory	480,265,620.00
Materials used per Audit	₱1,318,805,857.05

[81] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 763; and lower portion of Schedule 3, Exhibit "R-13", BIR Records (Exhibit "R-14"), pp. 749 to 750.
[82] Pars. 62 to 65, petitioner's *Memorandum*, Docket – Vol. 3, pp. 1219 to 1220.
[83] Par. 63, petitioner's *Memorandum*, Docket – Vol. 3, p.1220.
[84] Exhibit "P-176" (unmarked), Docket – Vol. 3, p. 1044.

Less: Materials used per AFS	1,319,601,495.00
Overstated Materials Used	**₱ 795,637.95**

A review of petitioner's computation shows that the beginning and ending inventory, in the respective amounts of ₱388,159,142.93 and ₱402,459,971.98, were apparently composed of "Wheat grains" and "Inventories in-transit" based on Note 7 of the Notes to AFS.[85] While petitioner claims that only the raw materials (wheat) must be included, it is inconsistent with its computation, which actually included "supplies", since the "Inventories in-transit" include "wheat grains" and "supplies" owned but not yet received by the Company as of balance sheet date, as disclosed in Note 7[86] of the Notes to AFS.

Further, as can be gleaned from Note 15[87] of the Notes to AFS, petitioner's Cost of Sales (COS) was computed by adding the "Materials Used", "Direct labor" and "Overhead" accounts, without separately reflecting the finished goods beginning and ending inventory amounts. Also, Note 2 (under Inventories) of the Notes to AFS states that cost of finished goods such as flour and mill feeds and work in process represents the cost of direct materials, direct labor and a proportion of production overhead.[88] As such, it can be deduced that the finished goods beginning and ending inventory were already incorporated in computing the "Materials Used" for purposes of computing its COS. Hence, respondent's use of the total beginning and ending inventory amounts (including the finished goods inventory amounts) per Note 7 of the Notes to AFS in computing the "Materials Used" is reasonable.

As to the ₱83,648,611.94 local purchases per SLP used by respondent, petitioner did not point out which among the said purchases only pertained to raw materials and the ₱1,334,055,404.19 alleged raw materials purchased used by petitioner in its computation cannot be verified as the said amount has no supporting basis or details.

In her computation, the ICPA used the alleged amount of ₱1,380,382,235.05, as petitioner's actual purchases, which purportedly consisted of purchases of wheat grains, flour and feed bags, additives and miscellaneous manufacturing supplies, as shown in its Schedule of actual

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[85] Rounded off amounts under Note 7, Inventories–at cost [BIR Records (Exhibit "R-14"), p. 165]:

	2012	2011
Wheat grains	₱210,169,926	₱202,820,285
Inventories in-transit	192,290,046	185,338,858
Ending/ Beginning Inventory-wheat grains per petitioner's computation	**₱402,459,972**	**₱388,159,143**

[86] BIR Records (Exhibit "R-14"), p. 165.
[87] BIR Records (Exhibit "R-14"), p. 160.
[88] BIR Records (Exhibit "R-14"), p. 174.

purchases of inventory.[89] Although the ICPA echoed petitioner's claim that the local purchases per SLP used by respondent included purchases not directly related to operation, the total actual purchases used by the ICPA amounting to ₱1,380,382,235.05 is even higher than the total importation and local purchases used by respondent amounting to ₱1,373,691,195.01. Therefrom, it appears that the ICPA's analysis considered purchases which were not included in petitioner's local purchases per SLP. However, the schedule provided by the ICPA is a mere list of debit/credit transactions with supplier/description allegedly sourced from journal entries but without the actual documentary support to verify the details thereof. Hence, absent proof to the contrary, the importation and local purchases used by respondent amounting ₱1,373,691,195.01 shall not be disturbed.

Considering that petitioner failed to disprove the Overstated Materials Used in the amount of ₱7,486,677.99, the disallowance of the said amount shall remain.

5. Undeclared Income from Unaccounted Importations

Respondent's comparison of the amount of importations, computed on the basis of advanced VAT payments, as against the amount of importations per Summary List of Importations resulted in a discrepancy amounting to ₱94,988,464.58. This was then grossed-up using the ratio of COS to Total Sales and treated as unaccounted source of cash pursuant to Section 32 of the NIRC of 1997, as amended, as held in the case of *Perez vs. CTA and CIR,*[90] that unreflected sources of funds not accounted for in the taxpayer's tax returns led to the inference that part of his income had not been reported.[91] Respondent computed the assessed undeclared income from unaccounted importations of ₱33,865,292.34 as follows:[92]

Adjusted computation per Reinvestigation:	
Advanced VAT per Protest	₱ 121,909,024.10
Divided By: 12% VAT Rate	12%
Tax Base for AVP purposes	₱1,015,908,534.17
Divided By:	75%
Total Landed Cost after 5% markup	₱1,354,544,712.22
Divided By:	1.05
Total Landed Cost before 5% markup	₱1,290,042,583.07
Less: Landed Cost per SLI	1,195,054,118.49
Adjusted Unaccounted Importations	₱ 94,988,464.58
Divided By: COS Ratio*	73.72%

***COS Ratio**	
Cost of Sales per FS/ITR	₱1,451,534,574.00
Divided By: Sales per FS/ITR	1,969,035,756.00
COS Ratio	73.72%
GP Ratio	
Gross Profit per FS/ITR	₱ 517,501,182.00
Sales per FS/ITR	1,969,035,756.00

[89] Annex A of ICPA Report, USB (Exhibit "P-176-B").
[90] G.R. No. L-10507, May 30,1958.
[91] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 763.
[92] Schedule 3, Exhibit "R-13", BIR Records (Exhibit "R-14"), p. 750.

Undeclared Sales from Unaccounted Importations	₱ 128,853,756.92	GP Ratio	26.28%
Multiplied By: GP Ratio	26.28%		
Undeclared Income per Reinvestigation	**₱ 33,865,292.34**		

The assessment, however, must be cancelled for lack of merit.

Here, the gross profit was imputed by respondent from the alleged unaccounted or undeclared amount of importations based on a mere presumption that, since there were undeclared importations, there were corresponding gross profits which petitioner failed to declare.

A finding of under-declaration of purchases/importations, however, should not by itself be treated as income subject to tax.

Income in tax law is an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment. It means cash or its equivalent. It is gain derived and severed from capital, from labor or from both combined. Income is profit or gain or the flow of wealth. The determining factor for the imposition of income tax is whether any gain or profit was derived from a transaction. [93]

Clearly, in a purchase/importation transaction, the taxpayer expends money and does not derive any gain or profit from the said transaction. As such, the under-declaration of purchase/importation does not correspondingly constitute undeclared income.

Moreover, for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[94] Thus, even when a taxpayer has not claimed purchases/importations or declared a lesser amount thereof in the ITR, such action is allowed, and shall not necessarily result in the imposition of income tax on the undeclared or under-declared purchases/importations.

7. MERALCO Refund

Respondent's verification disclosed that petitioner failed to declare its refunds from MERALCO amounting to ₱27,462.44 for income tax purposes.

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[93] *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.

[94] *The Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd., et seq.*, G.R. Nos. L-19727 and L-19903, May 20,1965.

Hence, this amount was assessed and subjected to income tax pursuant to Section 32 of the NIRC of 1997, as amended.[95]

Petitioner contends that the MERALCO refund was reported in its annual ITR under "Other Taxable Income" item.[96]

Similar to the Court's discussion on scrap sales and recoveries from insurance, petitioner's breakdown of the reported "Other Taxable Income not Subjected to Final Tax" in the amount of ₱5,616,107.00 allegedly included MERALCO refund amounting to ₱53,860.94. The said amount of ₱53,860.94, however, lacks any supporting document for verification. As such, it cannot be determined whether the said amount actually pertains to refunds received from MERALCO, and if the same included the assessed amount of ₱27,462.44.

Thus, the assessed MERALCO refund in the amount of ₱27,462.44 stands.

8. Undeclared Other Income

Respondent's comparison of the other income declared per AFS as against the amount of other income per ITR resulted in a discrepancy amounting to ₱5,227,781.00, as shown below, which was assessed as undeclared income and subjected to income tax pursuant to Section 32 of the NIRC of 1997, as amended:[97]

Other Income per AFS	₱ 10,843,888.00
Other Income per ITR	5,616,107.00
Undeclared Other Income	**₱ 5,227,781.00**

Petitioner asserts that the discrepancy is not income or revenue because it merely pertains to reimbursements at cost for common utilities. According to petitioner, it pays for the utility expenses of its tenants and thereafter claims reimbursements for the same amount from its tenants. Thus, no taxable income arises from such reimbursements. Consequently, the same should not be properly subject to income tax.[98]

Petitioner's assertion is unfounded.

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95 Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 763.
96 Par. 78, petitioner's *Memorandum*, Docket – Vol. 3, p. 1223.
97 Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 763; and Schedule 4, Exhibit "R-13", BIR Records (Exhibit "R-14"), p. 749.
98 Par. 81, petitioner's *Memorandum*, Docket – Vol. 3, p. 1224.

As can be gleaned from Note 26[99] of its Notes to AFS, petitioner described the amount of ₱10,843,888.00 as "Common utilities service area income" and included the same in the computation of Net Sales/Receipt declared per VAT Returns for 2012 under Taxable Sales, with corresponding output VAT of ₱1,301,267.00.

Moreover, petitioner failed to adduce evidence to prove that the said amount indeed pertains to reimbursements at cost and that no income therefrom redounds to the benefit of the latter. The Schedule of Billing Statement-Utilities/Others 2012[100] found in the *BIR Records* showing the list of billings for utilities to different customers in the total amount of ₱10,834,119.74 is a mere list of billings, which does not even tally with the alleged reimbursement claim. Thus, the same cannot serve as proof that the amounts therein are reimbursements at cost to petitioner.

While petitioner failed to prove the entire amount claimed as reimbursement, inasmuch as only the amount of ₱5,227,781.00 was assessed as undeclared other income, the said amount of ₱5,227,781.00 shall be sustained.

9. Unsupported Tax Credits

Respondent's verification disclosed that petitioner failed to submit supporting documents to prove the validity of its withholding tax credits amounting to ₱265,853.81. Hence, the said amount was disallowed pursuant to Section 2.58.3(B) of Revenue Regulations (RR) No. 02-98.[101]

Per its reply to PAN[102] and protest to FLD,[103] petitioner stated that it is still trying to locate supporting documents for the alleged unsupported tax credits and that in case it is still unlocated in due time, the latter may have to settle it. Furthermore, in its *Petition for Review*[104] and *Memorandum*,[105] petitioner did not anymore include any discussion on or make mention of the unsupported tax credits.

Accordingly, there being no documentary evidence presented to substantiate the unsupported tax credits of ₱265,853.81, the disallowance of the same shall be upheld.

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[99] BIR Records (Exhibit "R-14"), pp. 148 to 149.
[100] BIR Records (Exhibit "R-14"), pp. 294 to 301.
[101] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 763.
[102] BIR Records (Exhibit "R-14"), item I.1.8, p. 532.
[103] BIR Records (Exhibit "R-14"), item I.8, p. 686.
[104] Docket – Vol. I, pp. 14 to 21.
[105] Docket – Vol. 3, pp. 1214 to 1224.

In sum, petitioner's basic deficiency income tax due for CY 2012 amounted to ₱3,611,749.54, computed as follows:

Sales for the Year		₱1,990,584,987.00
Add: Other Income per Returns		5,616,107.00
Total Sales per Returns		₱1,996,201,094.00
Add: Undeclared Sales based on SAWT vs. AFS		5,846,389.06
Total Sales per Audit		₱2,002,047,483.06
Less: Cost of Sales per Returns	₱1,457,835,556.00	
Less: Overstated Materials per Audit	7,486,677.99	1,450,348,878.01
Gross Income per Audit		₱ 551,698,605.05
Add: Other Income per Audit		
MERALCO Refund	27,462.44	
Undeclared Other Income	5,227,781.00	5,255,243.44
Total Gross Income per Audit		₱ 556,953,848.49
Less: Optional Standard Deduction (40%)		222,781,539.40
Taxable Income per Audit		₱ 334,172,309.09
Income Tax Due Thereon		₱ 100,251,692.73
Less: Allowable Tax Credits/Payments		
Tax Payments per Returns	₱ 75,866,887.00	
Creditable tax withheld claimed	21,038,910.00	
Subtotal	₱ 96,905,797.00	
Less: Unsupported Tax Credits	265,853.81	96,639,943.19
Basic Deficiency Income Tax		**₱ 3,611,749.54**

II. Deficiency VAT - ₱65,402,411.68

Respondent assessed petitioner for deficiency VAT for CY 2012, in the amount of ₱65,402,411.68,[106] computed as follows:[107]

Vatable Sales per VAT returns		₱1,805,755,229.44
Add: Discrepancies		
Undeclared Sales based on SAWT vs. AFS (Schedule 1)	₱ 5,846,389.06	
Undeclared Sales based on SLS vs. TPI (Schedule 2)	2,540,425.35	
Undeclared Sales from Unaccounted Importations (Schedule 3)	128,853,756.92	
Revenues not Subjected to VAT (Schedule 5)	9,476,942.31	
Sales not subjected to VAT (Schedule 6)	17,965,336.32	164,682,849.96
Total VATable Sales per Audit		₱1,970,438,079.40
Output Tax Due		₱ 236,452,569.53
Less: Input Tax claimed per Returns	₱ 24,312,349.04	
Less: Input Tax Allocated to Exempt Sales	2,214,590.08	
Disallowed Input Taxes On Overstated Purchases (Schedule 7)	898,401.36	21,199,357.60

106 Per FDDA, the total amount indicated was ₱65,402,411.68 but per actual footing the amount should be ₱65,402,411.69.

107 Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 752.

VAT Payable		₱ 215,253,211.93
Less: VAT Payments per return	₱ 72,223,449.22	
Creditable VAT	142,824.51	
Advance VAT Payments	120,011,937.87	192,378,211.60
Basic Deficiency VAT		₱ 22,875,000.33
Add: Output VAT Payable per FS (Note 13)		5,133,119.00
Total Deficiency VAT		₱ 28,008,119.33
Add: 20% Interest (01.26.13 to 12.31.17)	₱ 27,624,446.46	
12% Interest (01.01.18 to 11.27.20)	9,769,845.90	37,394,292.36
TOTAL AMOUNT DUE		**₱65,402,411.69**

The deficiency VAT assessment is comprised of the following items:

1. Undeclared Sales based on SAWT vs. AFS	₱ 5,846,389.06
2. Undeclared Sales based on SLS vs. TPI	2,540,425.35
3. Undeclared Sales from Unaccounted Importations	128,853,756.92
4. Revenues not Subjected to VAT	9,476,942.31
5. Sales not subjected to VAT	17,965,336.32
6. Disallowed Input Taxes On Overstated Purchases	898,401.36
7. Output VAT Payable per FS	5,133,119.00

1. Undeclared Sales based on SAWT vs. AFS

This assessment was based on the same finding under the deficiency income tax that there was a discrepancy between the sales declared per SAWT as against the sales declared per ITR/AFS amounting to ₱5,846,389.06, which was also assessed of VAT pursuant to Sections 105 and 106 of the NIRC of 1997, as amended.[108]

Following the earlier discussion on this matter, petitioner failed to justify its reconciliation and to successfully refute the assessed undeclared sales of ₱5,846,389.06 based on its arguments. Thus, this item of assessment shall likewise be upheld.

2. Undeclared Sales based on SLS vs. TPI

On the basis of the same finding under deficiency income tax, the undeclared sales of ₱2,540,245.35 arising from the comparison of sales per SLS as against the sales per TPI is also assessed of VAT pursuant to Sections 105 and 106 of the NIRC of 1997, as amended.[109]

[108] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 763.
[109] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 763.

As already pointed out earlier, this item of assessment must be cancelled on the ground that the TPI data were unverified. Thus, the assessments arising therefrom are mere presumptions, lacking reliability and credibility absent proper verification with third-party sources to check its veracity.

3. Undeclared Sales from Unaccounted Importations

This item of assessment was based on the same finding under the deficiency income tax that since there were unaccounted importations, there were corresponding income which petitioner failed to declare. The resulting unaccounted importations of ₱94,988,464.58 were grossed-up using the ratio of cost of sales to total sales to determine the undeclared sales of ₱128,853,756.92, as shown below, which was assessed of VAT pursuant to Sections 105 and 106 of the NIRC of 1997, as amended:

Adjusted Unaccounted Importations		₱ 94,988,464.58
Divided By: COS Ratio*		
Cost of Sales per AFS/ITR	₱1,451,534,574.00	
Divided By: Sales per AFS/ITR	1,969,035,756.00	73.72%
Undeclared Sales from Unaccounted Importations		**₱ 128,853,756.92**

Again, the assessment is devoid of merit. It must be pointed out that under Section 106(A) of the NIRC of 1997, as amended, VAT is assessed on the "gross selling price or gross value in money of the goods or properties sold, bartered or exchanged" and is "to be paid by the seller or transferor." Relative thereto, the same section defines "gross selling price" as follows:

> "... the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price."

Thus, what is critical to be shown in the imposition or assessment of VAT on the sale of goods or properties, is that the taxpayer is paid or ought to be paid in an amount of money or its equivalent, in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. In other words, the VAT is imposed when one sells, not when one purchases.

Since petitioner had no sales arising from importation transactions, the imputed deficiency VAT on the unaccounted importation must be cancelled.

4. Revenues not Subjected to VAT

Respondent's comparison of the amount of sales per ITR as against the amount of sales per VAT returns resulted in a discrepancy of ₱9,476,942.31, as shown below, which was assessed of VAT pursuant to Sections 105 and 106 of the NIRC of 1997, as amended:[110]

Sales per ITR	₱1,996,201,094.00
Sales per VAT Return	1,986,724,151.69
Sales not Subjected to VAT	**₱ 9,476,942.31**

Petitioner submits that it has correctly subjected to VAT all its sales and presented the breakdown of the alleged discrepancy as follows:[111]

Type of Sale		Per VAT Returns	Per ITR	Variance
Taxable Sales				
	Sale of goods	₱ 1,771,192,668.10	₱ 1,771,192,668.00	₱ 0.10
	Leasing income	21,517,855.82	21,549,231.00	(31,375.18)
	Other income	10,854,574.51		10,854,574.51
	Other scrap sales	2,190,132.50	2,189,507.00	625.50
	Total	**₱ 1,805,755,230.93**	**₱ 1,794,931,406.00**	**₱ 10,823,824.93**
Exempt Sales		180,968,922.24	197,843,088.00	(16,874,165.76)
Not subject to VAT			3,426,600.22	(3,426,600.22)
Total		**₱ 1,986,724,153.17**	**₱ 1,996,201,094.22**	**₱ (9,476,941.05)**

Based on petitioner's reconciliation, the net variance is due to the offsetting of the amounts under-declared or over-declared in its VAT returns vis-a vis its ITR. Since the assessment is based on the alleged sales reported per ITR but were not reported per VAT return, it is deemed reasonable to tackle only the negative variances from petitioner's reconciliation as these are the only items where petitioner appears to have under-reported sales per VAT returns that were not subjected to VAT.

With regard to the Leasing Income, petitioner alleged that the variance of ₱31,375.18,[112] broken down below, is merely due to the error in recognizing the said amount in the utilities amount instead of the rental income account:[113]

Rosburg Sales, Inc. -power consumption-7/13	₱ 4,852.12
Children's Hour Philippines, Inc. -power consumption-8/13	14,640.60
LFM Properties Corp. -power bill-11/13 to 12/12	11,882.55
Total	**₱ 31,375.27**

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110 Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 763; and Schedule 5, Exhibit "R-13", BIR Records (Exhibit "R-14"), p. 749.
111 Par. 91, petitioner's *Memorandum*, Docket – Vol. 3, p. 1226.
112 With discrepancy of 0.09 from the total amount per breakdown due to rounding off.
113 Par. 92, petitioner's *Memorandum*, Docket – Vol. 3, p. 1226.

As confirmed, the above amounts, as supported by Billing Statements,[114] pertained to power consumption and not to rentals, but were included in the schedule of Billing Statement-Rental 2012[115] detailing the amount of ₱21,549,231.00 (rounded off) Leasing Income reported per ITR. Hence, the amount of ₱31,375.18 was properly not subjected to VAT.

As regards the exempt sales, petitioner avers that the variance of ₱16,874,165.76 can be traced to the non-declaration of its exempt sales to LCC for the month of May.[116] A perusal of Annex C[117] of the ICPA Report, showing the breakdown of the amounts of exempt sales per ITR and per VAT returns, confirms that the exempt sales for May accounts for the difference thereon. These exempt sales were evidenced by VAT-Exempt Charge Sales Invoice Nos. 188 and 189,[118] in the respective amounts of ₱16,869,373.44 and ₱4,792.32. Since this item involves exempt sales, no VAT is due therefrom.

Anent the variance in the amount of ₱3,426,600.22, petitioner claims that this pertains to transactions not in the ordinary course of its trade and business, and therefore, not properly subject to VAT, to wit:[119]

Gain from insurance claims	₱ 3,370,717.22
Meralco-Company Refund of Meter & Services	53,860.94
National Home Mortgage Finance Corp	1,816.86
Foreign exchange gain	205.20
Total	**₱ 3,426,600.22**

Of the listed items above, only the gain from insurance claims, in the amount of ₱3,370,717.22, can be verified from Note 18[120] of its Notes to AFS. Verily, the gain from insurance claim does not arise from sale, barter or exchange of goods to be subject to VAT.

On the other hand, the amounts of ₱53,860.94, ₱1,816.86 and ₱205.20 purportedly pertaining to MERALCO refund, National Home Mortgage Finance Corp. and foreign exchange gain, respectively, were not supported. Hence, it cannot be ascertained whether the nature of such income is what petitioner purports it to be. Consequently, of the assessed sales not subjected to VAT, only the amount of ₱55,883.00[121] shall be upheld.

[114] Exhibits "ICPA-P-195" to "ICPA-P-197", USB (Exhibit "P-176-B").
[115] BIR Records (Exhibit "R-14"), pp. 302 to 308.
[116] Par. 96, petitioner's *Memorandum*, Docket – Vol. 3, pp. 1226 to 1227.
[117] USB (Exhibit "P-176-B').
[118] Exhibits "ICPA-P-182-29" and "ICPA-P-182-30", USB (Exhibit "P-176-B").
[119] Pars. 97 to 98, petitioner's *Memorandum*, Docket – Vol. 3, p. 1227.
[120] BIR Records (Exhibit "R-14"), p. 159.
[121] Summation of ₱53,860.94, ₱1,816.86 and ₱205.20.

5. Sales not subjected to VAT

Respondent's comparison of the amounts of revenue per AFS as against the amount of revenues declared per VAT returns resulted in a discrepancy amounting to ₱17,965,336.32, as shown below, which was assessed as undeclared sales pursuant to Sections 105 and 106 of the NIRC of 1997, as amended:[122]

Sales of Goods	₱1,771,192,668.00
Receipts from Rental*	21,805,646.00
Other Income	10,843,888.00
Other Scrap Sales	2,189,507.00
Net Disposal of Assets	814,691.00
Exempt Sales	197,843,088.00
Total Sales	₱2,004,689,488.00
Sales per VAT Returns	1,986,724,151.68
Undeclared Sales subject to VAT	**₱ 17,965,336.32**

Rent Income for the Year	₱ 21,549,231.00
Add: Rent Receivable, Beg. (net of VAT)	2,688,660.00
Subtotal	₱ 24,237,891.00
Less: Rent Receivable, End (net of VAT)	2,432,245.00
Leasing Receipts subject to VAT*	**₱ 21,805,646.00**

Following petitioner's breakdown of its declared amount per VAT returns (under Revenues not subjected to VAT), a comparison of the assessed sales per BIR audit and sales per VAT returns is as follows:

	Per BIR audit	Per VAT returns	Difference
Sales of Goods	₱ 1,771,192,668.00	₱ 1,771,192,668.10	₱ (0.10)
Receipts from Rental	21,805,646.00	21,517,855.82	287,790.18
Other Income	10,843,888.00	10,854,574.51	(10,686.51)
Other Scrap Sales	2,189,507.00	2,190,132.50	(625.50)
Net Disposal of Assets	814,691.00	-	814,691.00
Exempt Sales	197,843,088.00	180,968,922.24	16,874,165.76
Total Sales	**₱ 2,004,689,488.00**	**₱ 1,986,724,153.17**	**₱ 17,965,334.83**

Here, since respondent's assessment is based on certain items of sales that it deemed subject to VAT but were not reported per VAT returns, it is fitting that the discussion be confined to items with resulting positive differences as these are the instances where petitioner seems to have under-reported sales per VAT returns that were not subjected to VAT.

[122] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 762; and Schedule 6, Exhibit "R-13", BIR Records (Exhibit "R-14"), p. 749.

The exempt sales item in this assessment, resulting in a difference of ₱16,874,165.76, is the same with the exempt sales item in the previous discussion under Revenues not subjected to VAT, which was already accounted for by petitioner as due to the non-declaration of its exempt sales in its VAT returns for the month of May and does not give rise to a VAT liability.

With respect to the Receipts from Rental, it can be observed that out of the difference amounting to ₱287,790.18, the amount of ₱31,375.18, as previously discussed under Revenues not subjected to VAT, pertained to power consumption, albeit erroneously included in the ₱21,549,231.00 rental income for the year, hence, properly excluded in its reported sales per VAT returns. The remaining amount of ₱256,415.00, which pertained to the difference between the ₱21,805,646.00 leasing receipts computed by respondent and the ₱21,549,231.00 rental income for the year, actually refers to receipts of rental that petitioner failed to consider and report in its VAT returns. Consequently, petitioner had undeclared Receipts from Rental to the extent of ₱256,415.00 not subjected to VAT.

As to the net disposal of assets amounting to ₱814,691.00, petitioner submits that it does not constitute sales as it is actually a loss due to damage which is not subject to VAT and that it was already offset against the proceeds from insurance claims of ₱4,185,408.00 as evidenced by Acknowledgement Receipt.[123] However, while the said acknowledgement receipt, which is unsigned, purportedly shows the receipt by petitioner of ₱4,185,408.00 net proceeds, the same does not prove that its asset, with a book value of ₱814,691.00, was damaged and that the disposal of the same does not involve sale. Since no other document was presented to support its claim, the assessed net disposal of asset amounting to ₱814,691.00 remains.

In fine, the assessment on undeclared sales subject to VAT shall be sustained but only to the extent of ₱1,071,106.00.[124]

6. Disallowed Input Taxes On Overstated Purchases

Relative to respondent's finding of overstated materials per audit under the income tax amounting to ₱7,486,677.99, the alleged input VAT of ₱898,401.36[125] attributable to such over-claimed purchases was disallowed

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[123] Par. 103, petitioner's *Memorandum*, Docket – Vol. 3, p. 1229; Exhibit "ICPA-P-199", USB (Exhibit "P-176-B").

[124] Total of the differences from Receipts from rental (₱256,415.00) and Net disposal of asset (₱814,691.00).

[125] 12% of ₱7,486,677.99.

pursuant to Section 110, in relation to Section 113, of the NIRC of 1997, as amended.[126]

In the earlier discussion, petitioner failed to disprove that it has overstated Materials Used per AFS in the amount of ₱7,486,677.99, which consequently overstated its Cost of Sales and understated its income. Hence, the assessed disallowance thereon for income tax purposes was upheld.

Such being the case, and without other assertions mentioned to dispute the input tax disallowance of ₱898,401.36, the said amount corresponding to the assessed overstated purchases shall likewise be maintained.

7. Output VAT Payable per FS

Based on respondent's computation of the deficiency VAT assessment for the FDDA, it added output VAT per FS (Note 13) amounting to ₱5,133,119.00 without any explanation pertaining thereto or legal basis for including the same.[127]

Since petitioner was not sufficiently informed of the basis upon which the said assessment was made, the same shall be void pursuant to Section 228[128] of the NIRC of 1997, as amended.

In sum, petitioner's basic deficiency VAT due for CY 2012 amounted to ₱3,949,863.70, computed as follows:

Vatable Sales per VAT returns		₱1,805,755,229.44
Add: Discrepancies		
Undeclared Sales based on SAWT vs. AFS	₱ 5,846,389.06	
Revenues not Subjected to VAT	55,883.00	
Sales not subjected to VAT	1,071,106.00	6,973,378.06
Total VATable Sales per Audit		₱1,812,728,607.50
Output Tax Due		₱ 217,527,432.90
Less: Input Tax claimed per Returns	₱ 24,312,349.04	

[126] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 762.
[127] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 752.
[128] Section 228 of the 1997 NIRC 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 taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

Less: Input Tax Allocated to Exempt Sales	2,214,590.08	
Disallowed Input Taxes On Overstated Purchases	898,401.36	21,199,357.60
VAT Payable		₱ 196,328,075.30
Less: VAT Payments per return	₱ 72,223,449.22	
Creditable VAT	142,824.51	-
Advance VAT Payments	120,011,937.87	192,378,211.60
Basic Deficiency VAT		**₱ 3,949,863.70**

III. DEFICIENCY EWT – ₱3,742,200.36

Respondent assessed petitioner for deficiency EWT for CY 2012, in the amount of ₱3,742,200.36, computed as follows:[129]

Basic Tax Due (Schedule 8)		₱ 1,598,819.10
Add: 20% Interest (01.16.13 to 12.31.17)	₱1,585,678.12	
12% Interest (01.01.18 to 11.27.20)	557,703.14	2,143,381.26
TOTAL AMOUNT DUE		**₱ 3,742,200.36**

Reconciliation of income payments subject to EWT per FS as against the income payment per EWT returns for the subject period disclosed that there were income payments not subjected to EWT, thus, were assessed with deficiency EWT in the amount of ₱1,598,819.10, pursuant to Section 57(B) of the NIRC of 1997, as amended, computed as follows:[130]

Particulars	Income Payments	1%	2%	10%	15%	
Purchases-Local per SLP	₱83,648,611.94	₱83,648,611.94				
Direct Labor	52,020,698.00		₱52,020,698.00			
Overhead: Utilities	54,038,730.00		54,038,730.00			
Repairs and Maintenance	11,494,287.00		11,494,287.00			
Other factory overhead	6,672,754.00			₱6,672,754.00		
Advertising and Promotion	30,482,771.00		20,099,124.80		₱10,383,646.20	
Charitable Contributions	1,321,395.00		1,321,395.00			
Communication, Light and Water	1,072,612.00		1,072,612.00			
Membership and Subscription	621,901.00		621,901.00			
Per Diem	735,000.00		735,000.00			
Insurance	1,400,034.00		1,400,034.00			
Miscellaneous	7,239,840.00		7,239,840.00			
Office Supplies	1,441,995.00	1,441,995.00				
Other Services	3,841,289.00		3,841,289.00			
Repairs and Maintenance-Materials	817,556.00	817,556.00				
Other Expenses, Note 11	6,300,982.00		6,300,982.00			
Other Expenses, Note 16	5,092,120.00		5,092,120.00			
Security Services	5,293,823.00		5,293,823.00			

[129] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 752.
[130] Exhibit "R-13", BIR Records (Exhibit "R-14"), at pp. 747 and 762.

Particulars	Income Payments	1%	2%	10%	15%	
Transportation and travel	1,618,723.00		1,618,723.00			
Other Expenses, Note 18	3,839,253.00		3,839,253.00			
Machinery and Equipment	2,146,581.00	2,146,581.00				
Bldg and Bldg Equipment	2,395,826.00	2,395,826.00				
Transportation Equipment	1,294,643.00	1,294,643.00				
Other Equipment	307,106.00	307,106.00				
Construction in Progress	1,425,169.00		1,425,169.00			
Increase in Investment Properties, Note 11	1,293,742.00		1,293,742.00			
Prepaid Expenses-Advances	964,776.00	964,776.00				
Prepaid Expenses-Import Costs	1,006,747.00		1,006,747.00			
Accrued Expenses-Others, Note 13	2,632,932.00		2,632,932.00			
Accrued Expenses-Utilities	209,853.00		209,853.00			
Accrued Expenses-Freight	745,398.00		745,398.00			
Promotion and Marketing Expenses to Related Parties	22,767,857.00		22,767,857.00			
Total		₱93,017,094.94	₱206,111,509.80	₱6,672,754.00	₱10,383,646.20	
Less: Adjustments per Reinvestigation						
Donations Supported with Certificates of Donation			450,000.00			
Adjusted Amounts per Reinvestigation		₱93,017,094.94	₱205,661,509.80	₱6,672,754.00	₱10,383,646.20	
	EWT Rate	1%	2%	10%	15%	
	EWT Due	₱ 930,170.95	₱ 4,113,230.20	₱ 667,275.40	₱ 1,557,546.93	₱ 7,268,223.48
	Less: EWT Paid	598,687.30	3,167,256.76	345,913.39	1,557,546.93	5,669,404.38
TOTAL		**₱ 331,483.65**	**₱ 945,973.44**	**₱321,362.01**	-	**₱ 1,598,819.10**

Petitioner's allegations for certain income payments shall be discussed in *seriatim.*

<u>Repairs and Maintenance/ Other Factory Overhead/ Advertising and Promotion/ Insurance</u>

Petitioner posits that the majority of the alleged discrepancies are actually prepaid accounts, such as Repairs and Maintenance, Other Factory Overhead, Advertising and Promotion, and Insurance, where the EWT is recognized upon payment thereof and charged to expense only upon issuance of actual use. The ICPA further states that the Repairs and Maintenance expense amounting to ₱10,726,337.30, Other Factory Overhead expense amounting to ₱6,363,857.68, Advertising and Promotion expense amounting to ₱2,909,031.91, and Insurance expense amounting to ₱78,551.74, were not subjected to withholding taxes since these were already subjected to withholding taxes when they were purchased by petitioner and recorded as prepaid accounts.[131]

However, of the accounts mentioned by petitioner, only the Insurance Expense is included in its Prepaid Expenses per Note 8[132] of the Notes to AFS. As to the Repairs and Maintenance, Other Factory Overhead and Advertising and Promotion Expense, no document was presented to prove the alleged prepayments recorded therefor to validate the actual prepayments subject to EWT. Moreover, the amounts and details provided by the ICPA are mere schedules not backed up by pieces of evidence to verify its veracity. Hence, the assessed computation for these income payments shall not be disturbed.

Purchases-Local per SLP/ Promotion and Marketing Expenses to Related Parties

Petitioner submits that out of its ₱83,648,611.94 local purchases, the amount of ₱35,631,945.69 does not pertain to purchases of raw materials, and that out of the latter amount, ₱26,785,714.28, broken down below, pertains to purchases from related parties, that were already subjected separately to EWT by respondent:[133]

Parity Values Inc	₱ 22,767,857.14
Liberty Commodities Corp.	4,017,857.14
Total	**₱ 26,785,714.28**

Based on the records, the above amounts totaling ₱26,785,714.28 were included as purchases of goods in the total local purchases of ₱83,648,611.94 as per the Consolidated SLP,[134] and the purchase from Parity Values Inc. in the amount of ₱22,767,857.00 (rounded off) was actually separately included by respondent in its computation under Promotion and Marketing Expenses to Related Parties. To clear the double take-up of amounts, the amount of ₱26,785,714.28 shall be properly considered under the Purchases-Local per SLP and shall not be considered under Promotion and Marketing Expenses to Related Parties. Consequently, the assessed Purchases-Local per SLP in the amount of ₱83,648,611.94 shall be maintained as subject to 1% EWT, since petitioner did not prove otherwise, while the assessed Promotion and Marketing Expenses to Related Parties amounting to ₱22,767,857.00 shall be removed.

[131] Exhibit "P-176" (unmarked), items c to f, Docket – Vol. 3, pp. 1058 to 1059.
[132] BIR Records (Exhibit "R-14"), p. 164.
[133] Pars. 115 to 116, petitioner's *Memorandum*, Docket – Vol. 3, p. 1231.
[134] BIR Records (Exhibit "R-14"), p. 212.

Direct Labor

Petitioner alleges that the Direct Labor amounting to ₱52,020,698.00 includes expenses subject to withholding taxes on compensation in the amount of ₱34,205,731.97. Further, it allegedly includes payments to Toplis Solution in the amount of ₱645,201.95 and purchases from Asia Cooperative, an exempt cooperative entity, in the amount of ₱17,125,699.08, which are expenses not subject to withholding tax.[135]

Petitioner, however, did not provide the details of the alleged expenses worth ₱34,205,731.97. Moreover, the alleged expenses to Toplis Solution and Asia Cooperative and exemption from withholding cannot be validated without the related documentary evidence supporting the same. Hence, the amount of Direct Labor assessed as subject to EWT stands.

Miscellaneous Expenses

Petitioner provided the breakdown of the assessed Miscellaneous Expense amounting to ₱7,239,841.05, as shown below, and argues that these expenses were already considered in other accounts:[136]

Particulars	Amount	Included in other accounts
Membership & Subscription	₱ 621,901.29	Membership & Subscription
Miscellaneous	53,851.95	Other Expenses, Note 18
Premises-Light & Water	633,080.98	Other Expenses, Note 18
Premises-Building Repairs & Maintenance	1,927.25	Other Expenses, Note 11
Telephone-BA Makati	2,946.43	Other Expenses, Note 11
Personnel Recruitment & Hiring-Others	1,680.00	Other Expenses, Note 16
Per Diem	735,000.00	Per Diem
Food Allowance-Board Meeting	37,760.72	Other Expenses, Note 11
Other Expenses-Miscellaneous	5,090,439.57	Other Expenses, Note 16
Bank Charges-Miscellaneous	61,252.86	Other Expenses, Note 18
Total	**₱ 7,239,841.05**	

Of the expenses listed above, only the Membership & Subscription of ₱621,901.00 (rounded off), Per Diem of ₱735,000.00, and Personnel Recruitment & Hiring-Others and Other Expenses-Miscellaneous, in the total amount of ₱5,092,120.00 (rounded off), or the aggregate amount of ₱6,449,021.00, were found as already included in respondent's computation under other accounts. Hence, the assessed Miscellaneous Expense that shall remain subject to EWT shall be reduced to ₱790,819.00.[137]

[135] Exhibit "P-176" (unmarked), item b, Docket – Vol. 3, p. 1058.
[136] Par. 118, petitioner's *Memorandum*, Docket – Vol. 3, p. 1231.
[137] ₱7,239,840.00 (assessed amount per respondent) less ₱6,449,021.00.

Office Supplies/ Other Services

Petitioner alleges that out of the Office Supplies and Other Services expenses, the respective amounts of ₱3,549.68 and ₱1,407,090.56 are not subject to withholding since these expenses are from General Professional Partnerships (GPPs).[138]

Since petitioner did not present proof that the said amounts pertain to payments to GPPs, the assessed Office Supplies and Other Services shall not be disturbed.

Other Expenses, Note 11

Out of this account amounting to ₱6,300,982.00, petitioner alleges that the amount of ₱3,613,391.11, broken down below, pertains to Salaries and Wages, Security & Janitorial Services and Depreciation, and that only agency fees from Security & Janitorial Services are subject to withholding taxes, while the rest are not:[139]

Salaries & wages	₱ 637,062.06
Security & janitorial services	1,745,747.09
Depreciation	1,230,581.96
Total	**₱ 3,613,391.11**

It is, however, noted that petitioner did not provide the details of the ₱6,300,982.00 reported expenses per AFS, and the ICPA failed to fully account the said amount per its Schedule-Other Expenses, Note 11[140] as there appears to be an unaccounted difference of ₱43,466.74. Such being the case, the inclusion of the alleged amounts by petitioner and the alleged amounts detailed in the ICPA schedule cannot be determined with certainty. Hence, the assessed amount under Other Expenses, Note 11 stands.

Security Services

Anent the Security Services of ₱5,293,823.00, it is alleged that the amount of ₱4,496,397.50 pertains to expenses not subject to withholding tax since these are from security agencies and as such only the agency fees are subject to EWT.[141]

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[138] Par. 119, petitioner's *Memorandum*, Docket – Vol. 3, p. 1232.
[139] Par. 120, petitioner's *Memorandum*, Docket – Vol. 3, p. 1232.
[140] Annex D of ICPA Report, USB (Exhibit "P-176-B"), p. 20.
[141] Par. 122, petitioner's *Memorandum*, Docket – Vol. 3, p. 1232.

As for security services, under Revenue Memorandum Circular No. 39-2007,[142] only the agency fees and not the salaries of the security personnel are subject to withholding taxes. Petitioner regrettably failed to establish with documentary support the nature of the assessed Security Services and the basis of the Agency fee which would enable this Court to verify which amount pertained to agency fees, and which pertained to security personnel's salaries. Correspondingly, We are constrained to retain the assessed Security Services of ₱5,293,823.00.

Other Expenses, Note 18

According to petitioner, this account included the amount of ₱3,048,432.92, as detailed below, which pertains to Security Services, that was already considered in EWT under a separate account:[143]

Security Services	₱ 5,293,823.16
Other Income	(2,245,390.24)
Total	**₱ 3,048,432.92**

Here, the details presented by the ICPA for the assessed amount of ₱3,839,253.00 per Schedule of Other Expenses, Note 18[144] show that there was an unaccounted difference of ₱43,786.93. As such, it cannot be ascertained whether the amounts included therein, including the ₱3,048,432.92, indeed composed the said assessed amount of ₱3,839,253.00 as the total of the alleged accounted amounts does not tally with the total assessed amount. Hence, the assessed Other Expenses, Note 18 shall be maintained.

Increase in Investment Properties, Note 11

Petitioner argues that the increase in Investment Properties, Note 11, in the amount of ₱1,293,742.00, was made during CY 2011 and, therefore, should not be considered as taxable in CY 2012.[145]

As petitioner aptly pointed out, the amount of ₱1,293,742.00 pertained to Additions to Building and Building Equipment as of December 31, 2011, as gleaned from Note 11[146] of the Notes to AFS. Since the said amount pertained to transaction during CY 2011, it is improper to tax the

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SUBJECT: Clarifying the Income Tax and VAT Treatment of Agency Fees/Gross Receipts of Security Agencies Including the Withholding of Taxes Due thereon.

143 Par. 123, petitioner's *Memorandum*, Docket – Vol. 3, p. 1232.
144 Annex D of ICPA Report, USB (Exhibit "P-176-B"), p. 23.
145 Par. 125, petitioner's *Memorandum*, Docket – Vol. 3, p. 1232.
146 BIR Records (Exhibit "R-14'), p. 163.

same in CY 2012. Hence, the assessed ₱1,293,742.00 increase in Investment Properties, Note 11 must be removed as part of the assessment.

Accrued Expenses

Petitioner alleges that these accrued expenses were already considered in the assessment of expenses, and that these payables were subsequently reversed at the start of the next period.[147]

As observed, respondent assessed petitioner based on the ending balances of the Accrued Expenses-Others, Accrued Expenses-Utilities and Accrued Expenses-Freight in the respective amounts of ₱2,632,932.00, ₱209,853.00 and ₱745,398.00.[148]

The Court, however, finds it improper to assess petitioner's expenses with EWT on the basis of its Accrued Expense accounts ending balance. When Accrued Expenses are recorded, it is accompanied by a record to the corresponding Expense account but when the certain Accrued expenses were paid, the balance of the said account is diminished. As such, the ending balance of Accrued Expense does not account for the entire expenses that should be subject to EWT for the taxable period, it being net of expenses already paid, and the expenses recorded in these Accrued Expense accounts were already included in the related Expense accounts assessed as subject to EWT. Hence, it is apt that the assessed amounts under Accrued Expenses-Others, Accrued Expenses-Utilities and Accrued Expenses-Freight be struck down.

Considering the foregoing, petitioner's basic deficiency EWT due for CY 2012 amounted to ₱916,843.04, computed as follows:

	1%	2%	10%	15%	Total
Amounts per BIR reinvestigation subject to EWT	₱93,017,094.94	₱205,661,509.80	₱6,672,754.00	₱10,383,646.20	
Less: Adjustments per verification					
Miscellaneous	-	6,449,021.00	-	-	
Increase in Investment Properties, Note 11	-	1,293,742.00	-	-	
Accrued Expenses-Others, Note 13	-	2,632,932.00	-	-	
Accrued Expenses-Utilities	-	209,853.00	-	-	
Accrued Expenses-Freight	-	745,398.00	-	-	
Promotional and Marketing Expenses to Related Parties	-	22,767,857.00	-	-	
Adjusted Amounts subject to EWT	₱93,017,094.94	₱171,562,706.80	₱6,672,754.00	₱10,383,646.20	
EWT Rate	1%	2%	10%	15%	
EWT Due	₱ 930,170.95	₱ 3,431,254.14	₱ 667,275.40	₱ 1,557,546.93	₱6,586,247.42
Less: EWT Paid	598,687.30	3,167,256.76	345,913.39	1,557,546.93	5,669,404.38

[147] Par. 126, petitioner's *Memorandum*, Docket – Vol. 3, p. 1232.
[148] Note 13 to Notes to AFS, BIR Records (Exhibit "R-14"), p. 161.

Basic Deficiency EWT	**₱ 331,483.65**	**₱ 263,997.38**	**₱ 321,362.01**	**-**	**₱ 916,843.04**

IV. DEFICIENCY WTC – ₱3,466,291.54

Respondent assessed petitioner for deficiency WTC for CY 2012, in the amount of ₱3,466,291.54, computed as follows:[149]

Basic Tax Due (Schedule 9)		₱ 1,480,939.71
Add: 20% Interest (01.16.13 to 12.31.17)	₱1,468,767.60	
12% Interest (01.01.18 to 11.27.20)	516,584.23	1,985,351.83
TOTAL AMOUNT DUE		**₱ 3,466,291.54**

Reconciliation of Salaries and Wages per ITR as against the amounts reported per withholding tax returns resulted in discrepancy amounting to ₱7,723,527.67, thus, assessed of corresponding WTC of ₱1,480,939.71, pursuant to Section 79(A) of the NIRC of 1997, as amended, computed as follows:[150]

Gross Compensation per FS (Schedule 8)	₱ 95,863,718.00
Less: Non-taxable Compensation per Return	10,939,981.57
Taxable Compensation per Audit	₱ 84,923,736.43
Taxable Compensation per Returns	77,200,208.76
Compensation not subjected to WC	**₱ 7,723,527.67**
Multiplied by: Withholding Tax rate	19.17%
Basic Tax Due	**₱ 1,480,939.71**
Tax due per 1601C	₱ 14,802,673.06
Divided By: Withholding Tax rate	77,200,208.76
Withholding Tax Rate	**19.17%**

Petitioner submits that the discrepancy is due to the fact that some amounts reported as part of Salaries and Wages per AFS were income payments not subject to WTC. Allegedly, the amount of ₱95,863,718.00 is inclusive of Director's Fees worth ₱39,003,429.00 and Salaries & Allowance worth ₱56,860,289.00.[151]

Anent the Director's Fees of ₱39,003,429.00, the same pertains to Management Bonus, which were allegedly accrued in CY 2012, but paid only in February and June of 2013, and that a portion of this is not subject to WTC but rather to 15% EWT, as shown below:[152]

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[149] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 751.

[150] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 762; and Schedule 9, Exhibit "R-13", BIR Records (Exhibit "R-14"), p. 749.

[151] Par. 130, petitioner's *Memorandum*, Docket – Vol. 3, p. 1233.

[152] Par. 131, petitioner's *Memorandum*, Docket – Vol. 3, pp. 1233 to 1234.

Director Fees	Paid on Feb 2013	Paid on June 2013	Total
Subject to WC	₱9,348,290.18	₱ 9,922,178.73	₱ 19,270,468.91
Subject to 15% EWT	9,572,649.16	10,160,310.93	19,732,960.09
Total	18,920,939.34	20,082,489.66	**₱ 39,003,429.00**

Petitioner's allegations, however, are unsubstantiated. There were no documentary evidence presented to prove the details, the nature and the time of payments of such Director's Fees, and to support its treatment as to why a portion of Director's Fees is subject to EWT, and not to WTC.

As to the ₱56,860,289.00 Salaries & Allowance, the amount of ₱15,911,727.72, broken down hereunder, allegedly pertained to uniforms, ration/supplies, social amelioration and other miscellaneous expense, as well as retirement benefits, which are not subject to WTC pursuant to RR No. 2-98:[153]

Salaries-Administrative-Flour & Feeds	₱ 419,341.31
Hosp. & Other Medical Expenses-Flour & Feeds	263,737.62
Miscellaneous-Flour & Feeds	79,711.69
Uniform-Flour & Feeds	190,227.35
Ration/Supplies-Flour & Feeds	1,150,717.75
Social Amelioration	1,500,000.00
Retirement Benefit	12,307,992.00
Salaries & Allowances not subject to WC	**₱ 15,911,727.72**

Section 2.78.1(A)(3) of RR No. 2-98, as amended by RR Nos. 5-2011[154] and 8-2012,[155] provides for the list of facilities and privileges of a relatively small value, otherwise known as *de minimis* benefits, which are not subject to WTC, to wit:

> Sec. 2.78.1 *Withholding of Income Tax on Compensation Income.* –
>
> (A) xxx xxx xxx
>
> xxx xxx xxx
>
> (3) *Facilities and privileges of relatively small value.* — xxx
>
> xxx xxx xxx
>
> The following shall be considered as '*de minimis*' benefits not subject to income tax as well as withholding tax on compensation income of both managerial and rank and file employees:

[153] Pars. 132 to 133, petitioner's *Memorandum*, Docket – Vol. 3, p. 1234.
[154] SUBJECT: Further Amendments to Revenue Regulations Nos. 2-98 and 3-98, as Last Amended by Revenue Regulations No. 5-2008, with Respect to "De Minimis Benefits".
[155] SUBJECT: Further Amendments to Revenue Regulations Nos. 2-98 and 3-98, as Last Amended by Revenue Regulations Nos. 5-2008 and 5-2011, with Respect to "De Minimis Benefits".

> (a) Monetized unused vacation leave credits of private employees not exceeding ten (10) days during the year;
>
> (b) Monetized value of vacation and sick leave credits paid to government officials and employees;
>
> (c) Medical cash allowance to dependents of employees, not exceeding P750 per employee per semester or P125 per month;
>
> (d) Rice subsidy of P1,500.00 or one (1) sack of 50 kg. rice per month amounting to not more than P1,500;
>
> (e) Uniform and Clothing allowance not exceeding P5,000 *per annum;*
>
> (f) Actual medical assistance, *e.g.,* medical allowance to cover medical and healthcare needs, annual medical/executive check-up, maternity assistance, and consultations, not exceeding P10,000.00 per annum;
>
> (g) Laundry allowance not exceeding P300 per month;
>
> (h) Employees achievement awards, *e.g.*, for length of services 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 P10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;
>
> (i) Gifts given during Christmas and major anniversary celebrations not exceeding P5,000 per employee per annum;
>
> (j) Daily meal allowance for overtime work and night/graveyard shift not exceeding twenty-five percent (25%) of the basic minimum wage on a per region basis; xxx

While some of the Salaries & Allowances listed by petitioner may be related to the *de minimis* benefits based on its description, the utter lack of factual substantiation makes its allegations futile. Without any corroborating documents, the alleged amounts cannot be verified as there is no basis for the details of the benefits received by each employee to determine the extent of each employee's benefits that fall under the *de minimis* benefits.

As to the Retirement Benefit in the amount of ₱12,307,992.00, the same represents the Retirement Benefit Costs as reflected in Note 19[156] of the Notes to AFS, which is under a formal tax-qualified non-contributory defined benefit retirement plan covering its regular employees, and is paid upon reaching compulsory retirement age of 65 or optional retirement age of 50, with completion of 20 years credited service. This item of benefit is

[156] BIR Records (Exhibit "R-14"), p. 159.

exempt from withholding tax on compensation pursuant to Section 2.78.1 (B)(1)(a) of RR No. 2-98, as amended, which provides:

> Sec. 2.78.1 *Withholding of Income Tax on Compensation Income.* –
>
> xxx xxx xxx
>
> (B) *Exemption from withholding tax on compensation.* – The following income payments are exempted from the requirement of withholding tax on compensation:
>
> (1) *Remunerations received as an incident of employment, as follows:*
>
> (a) Retirement benefit received under Republic Act 7641 and those received by officials and employees of private firms, whether individual or corporate, under a reasonable private benefit plan maintained by the employer which meet the following requirements:
>
> (i) The plan must be reasonable;
>
> (ii) The benefit plan must be approved by the Bureau;
>
> (iii) The retiring official or employee must have been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of retirement; and
>
> (iv) The retiring official or employee should not have previously availed of the privilege under the retirement benefit plan of the same or another employer.

However, since petitioner did not provide the details or breakdown of its Non-taxable Compensation reported in its *Monthly Remittance Returns of Income Taxes Withheld on Compensation* (BIR Form No. 1601-C)[157] amounting to ₱10,939,981.66, it cannot be said for certain that the Retirement Benefit of ₱12,307,992.00 was not included in the former amount which was deducted from the gross compensation in computing the assessed compensation not subjected to WTC.

Respondent applied the correct withholding tax rate. Since the employees to whom the compensation pertained to were not individually identified, the appropriate tax rate to be used should be the effective rate computed based on the total WTC paid divided by the total amount of taxable compensation reported during CY 2012.

For petitioner's failure to successfully controvert the assessed compensation not subjected to WTC in the amount of ₱7,723,527.67, the related WTC amounting to ₱1,480,939.71 shall be sustained.

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[157] BIR Records (Exhibit "R-14"), pp. 96 to 108.

Thus, petitioner's basic deficiency WTC due for CY 2012 amounted to ₱1,480,939.71.

V. COMPROMISE PENALTY – ₱210,000.00

Respondent imposed compromise penalties against petitioner pursuant to RMO No. 19-2007, Sections 255 and 250 of NIRC of 1997, as amended, for failure to file and/or pay any internal revenue tax at the time or times required by law or regulation.[158] The compromise penalties of ₱210,000.00, broken down below, imposed on petitioner's deficiency taxes for CY 2012 must be cancelled absent a showing that petitioner consented to the same:

Failure to Pay Income Tax	₱ 50,000.00
Failure to Pay VAT	50,000.00
Failure to Pay EWT	25,000.00
Failure to Pay WTC	25,000.00
Failure to Pay FBT	30,000.00
Failure to Pay DST	30,000.00
Total	**₱ 210,000.00**

It must be stressed, however, that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the NIRC of 1997, as amended.[159] Pursuant to RMO No. 19-2007,[160] 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. Clearly, compromise penalty implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. Hence, the imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[161]

Thus, the compromise penalties as above-listed cannot be imposed on petitioner.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

Accordingly, the assessments issued by respondent against petitioner covering compromise penalties for calendar year (CY) 2012 is

[158] Exhibit "R-13", BIR Records (Exhibit "R-14"), at p. 762.
[159] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[160] SUBJECT: The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.
[161] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.* et al., G.R. No. L-35266, January 21, 1991.

CANCELLED and **SET ASIDE.** However, the assessments issued against petitioner covering deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), fringe benefit tax (FBT) and documentary stamp tax (DST) for CY 2012 are **UPHELD IN PART**.

Consequently, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **₱27,642,950.08**, inclusive of 25% surcharge and 20% and 12% deficiency interests imposed under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended, computed as follows:

	Income tax	**VAT**	**EWT**	**WTC**	**FBT**	**DST**	**Total**
Basic Tax Due	₱3,611,749.54	₱3,949,863.70	₱916,843.04	₱1,480,939.71	₱717,275.23	₱547,849.00	₱11,224,520.22
Add: 25% Surcharge	902,937.39	987,465.93	229,210.76	370,234.93	179,318.81	136,962.25	2,806,130.07
20% Deficiency Interest:							
IT: From Apr. 16, 2013 to Dec. 31, 2017 *[₱3,611,749.54 x 20% x 1,721/365 days]*	3,405,929.29						3,405,929.29
VAT: From Jan. 26, 2013 to Dec. 31, 2017 *[₱3,949,863.70 x 20% x 1,801/365 days]*		3,897,920.29					3,897,920.29
EWT: From Jan. 22, 2013 to Dec. 31, 2017 *[₱916,843.04 x 20% x 1,805/365 days]*			906,795.45				906,795.45
WTC: From Jan. 22, 2013 to Dec. 31, 2017 *[₱1,480,939.71 x 20% x 1,805/365 days]*				1,464,710.23			1,464,710.23
FBT: From January 16, 2013 to December 31, 2017 *[₱717,275.23 x 20% x 1,811/365 days]*					711,772.84		711,772.84
DST: From Jan. 8, 2013 to Dec. 31, 2017 *[₱547,849.00 x 20% x 1,819/365 days]*						546,047.85	546,047.85
12% Deficiency Interest from Jan. 1, 2018 to Dec. 27, 2019							
IT: *[₱3,611,749.54 x 12% x 726/365 days]*	862,070.19						862,070.19
VAT: *[₱3,949,863.70 x 12% x 726/365 days]*		942,772.95					942,772.95
EWT: *[₱916,843.04 x 12% x 726/365 days]*			218,836.62				218,836.62
WTC: *[₱1,480,939.71 x 12% x 726/365 days]*				353,477.99			353,477.99
FBT: *[₱717,275.23 x 12% x 726/365 days]*					171,202.79		171,202.79

	Income tax	VAT	EWT	WTC	FBT	DST	Total
DST: *[P547,849.00 x 12% x 726/365 days]*						130,763.30	130,763.30
Total Amount Due as of December 27, 2019[162]	**₱8,782,686.41**	**₱9,778,022.87**	**₱2,271,685.87**	**₱3,669,362.86**	**₱1,779,569.67**	**₱ 1,361,622.40**	**₱27,642,950.08**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of 12% per annum on the total unpaid deficiency taxes due as of December 27, 2019, in the amount of ₱27,642,950.08 or equivalent to ₱9,088.09[163] per day, computed from December 28, 2019 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion and as implemented by RR No. 21-2018.

Lastly, pursuant to Section 13 of RA No. 9282, considering that this decision is partly favorable to the national government, the BIR, through respondent, is hereby authorized to seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of petitioner in sufficient quantity to satisfy the tax or charge with any increment thereto incident to delinquency.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[162] The due date appearing in the *Assessment Notices*, Exhibit "R-12", BIR Records (Exhibit "R-14"), pp. 540 to 546.
[163] ₱27,642,950.08 x 12% / 365 days.

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice