Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ORGANIZATIONAL CHANGE CONSULTANTS INTERNATIONAL CENTER FOR LEARNING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8625

Members:
CASTAÑEDA, JR., *Chairperson*,
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
FEB 10 2017
1:35 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review, filed by petitioner Organizational Change Consultants International Center for Learning, Inc., prays for the cancellation and setting aside of the assessment notices issued by respondent Commissioner of Internal Revenue, for petitioner's alleged deficiency tax liabilities in the aggregate amount of ₱11,319,038.78 for taxable year (TY) 2009.[1]

Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal place of business at 6th Floor Emerald Building, No. 24 F. Ortigas Jr. Road, San Antonio, Ortigas Center, Pasig City.[2] It is primarily engaged to establish and operate a center for learning which shall provide courses of study in vocational-technical curriculum and similar short-term activities such as but not limited to technical training and language skills for call center agents and the public in general.[3]

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[1] Par. I, Summary of the Case, Pre-Trial Order, Docket (Vol. II), p. 1136
[2] Par. 1.3, Joint Stipulation of Facts (JSF), Docket (Vol. II), pp. 1129 to 1130; Exhibit "P-199"
[3] Exhibit "P-200"

Respondent is the duly appointed Commissioner of Internal Revenue vested by law to implement and enforce the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws.[4]

On April 15, 2010, petitioner submitted its Annual Income Tax Return (AITR) for TY 2009.[5] Petitioner also filed its 1st, 2nd, 3rd, and 4th Quarterly Value-Added Tax (VAT) Returns for TY 2009 on April 24, 2009, July 24, 2009, October 23, 2009, and January 25, 2010, respectively.[6]

On September 15, 2010, respondent issued a Letter of Authority No. LOA-43-A-2010-00000261, which was received by petitioner on September 17, 2010, authorizing his revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1, 2009 to December 31, 2009.[7] Accordingly, respondent requested that petitioner make available its pertinent records/documents for tax audit.[8] Respondent, likewise, asked petitioner, through the First Request for Presentation of Records[9] and Second and Final Request for Presentation of Records[10], to submit its accounting records at Revenue District Office in East-Pasig City,[11] which petitioner received on October 6[12] and 20[13], 2010, respectively.

Petitioner subsequently received a Notice for Informal Conference on March 21, 2011, containing a computation of its deficiency taxes for TY 2009.[14] Petitioner sent a Letter dated April 28, 2011 questioning the legal and factual bases of the said computations.[15]

Then, respondent issued the Revenue Officer's Audit Reports on Documentary Stamp Tax (DST), Expanded Withholding Tax (EWT), Value-Added Tax (VAT), and Income Tax (IT).[16] Another Notice for a

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[4] Par. 1.4, JSF, Docket (Vol. II), p. 1130
[5] Exhibit "P-21"
[6] Exhibits "P-24", "P-25", "P-26", and "P-27"
[7] Pars. 1.8 and 1.9, JSF, Docket (Vol. II), p. 1130; Exhibit "P-1"
[8] Exhibit "P-2"
[9] Exhibit "P-3"; Exhibit "R-3"
[10] Exhibit "P-4"; Exhibit "R-4"
[11] Par. 1.10, JSF, Docket (Vol. II), p. 1131
[12] Exhibit "R-3-A"
[13] Exhibit "R-4-A"
[14] Par. 1.11, JSF, Docket (Vol. II), p. 1131; Exhibit "P-5"; Exhibit "R-6"
[15] Par. 1.12, JSF, Docket (Vol. II), p 1131; Exhibit "P-6"
[16] Exhibits "R-7", "R-8", "R-9", and "R-10"

Informal Conference was issued on March 1, 2012, which petitioner received on March 5, 2012.[17]

On July 20, 2012, petitioner received a Preliminary Assessment Notice (PAN) dated July 13, 2012, assessing it for the following deficiency taxes (DST)[18]:

I. DEFICIENCY INCOME TAX			
Taxable income/loss per ITR			₱ 594,096.00
Add: Adjustments per investigation:			
Disallowed Expenses		₱ 7,503,175.00	
Non-deductible representation expense		407,486.86	
Rental expense not subjected to withholding tax		2,345,923.00	
Salaries and wages not subjected to withholding tax		911,544.38	
Undeclared sales		5,287,034.18	
Unaccounted Source of Cash		1,206,119.50	17,661,282.92
Taxable income per investigation			**₱ 18,255,378.92**
Income tax due thereon			₱ 5,476,613.68
Add: Disallowable tax credits/payments:			
Creditable Withholding tax		₱ 300,505.00	
Tax Payments		107,839.00	
Total		₱ 408,344.00	
Less: Unsupported creditable withholding tax		300,505.00	
Excess tax credits carried over to succeeding period		232,705.00	124,866.00
Deficiency Income Tax			₱ 5,601,479.68
Add: 20% Interest p.a. (04/16/2010 to 7/20/12)			2,535,245.05
TOTAL AMOUNT DUE			**₱ 8,136,724.73**
II. DEFICIENCY VALUE ADDED TAX			
Taxable revenue/receipts per VAT returns			₱ 24,477,925.02
Add: Adjustment per Investigation			
Revenue not subjected to VAT		₱ 7,124,300,94	
Unaccounted Source of Cash		1,206,119.50	8,330,420.44
Taxable sales/receipts per Investigation			₱ 32,808,345.46
Output tax due thereon			₱ 3,937,001.46
Less: Allowed Tax Credits/Payments			
Input tax carried over from previous qtr		₱ 110,390.42	
Creditable VAT withheld		42,472.68	
Input Tax		332,505.79	
VAT Paid		1,937,957.72	2,423,326.61
Deficiency value added tax			₱ 1,513,674.84
Add: 20% Interest p.a. (01/26/2010 to 7/20/12)			751,446.25
TOTAL AMOUNT DUE			**₱ 2,265,121.09**
III. DEFICIENCY EXPANDED WITHHOLDING TAX			
	Amount	EWT rate	Amount due
Payments subject to 15%	₱ 5,800,000.00	15%	₱ 870,000.00
Commission	1,288,800.00	10%	128,880.00

[17] Exhibit "R-12"

[18] Par. 1.5, JSF, Docket (Vol. II), p. 1130; Exhibit "P-7"; Exhibit "R-13"

Rentals	4,068,923.00	5%	203,446.15
Total			₱ 1,202,326.15
Less: Remittances			803,490.88
Deficiency expanded withholding tax			₱ 398,835.27
Add: 20% Interest p.a. (01/16/2010 to 7/20/12)			200,182.52
TOTAL AMOUNT DUE			₱ 599,017.79
IV. DEFICIENCY DOCUMENTARY STAMP TAX			
Amounts not subjected to DST			₱ 5,891,800.00
Rate 1/200			1/200
Documentary Stamp Tax			29,459.00
Add: 25% Surcharge		₱ 7,364.75	
20% Interest p.a. (01/06/2010 to 7/20/12)		14,947.42	
Compromise Penalty		6,000.00	28,312.17
Total Amount Due			₱ 57,771.17

Thus, petitioner protested the PAN and Details of Discrepancies on August 2, 2012.[19]

Respondent likewise served a Formal Letter of Demand (FLD) together with the Assessment Notices (FAN)[20], all dated August 21, 2012, which petitioner received on August 24, 2012,[21] assessing the latter as follows:

I. DEFICIENCY INCOME TAX			
Taxable income/loss per ITR			₱ 594,096.00
Add: Adjustments per investigation:			
Disallowed Expenses		₱ 7,503,175.00	
Non-deductible representation expense		407,486.86	
Rental expense not subjected to withholding tax		2,345,923.00	
Salaries and wages not subjected to withholding tax		911,544.38	
Undeclared sales		5,287,034.18	
Unaccounted Source of Cash		1,206,119.50	17,661,282.92
Taxable income per investigation			**₱ 18,255,378.92**
Income tax due thereon			₱ 5,476,613.68
Add: Disallowable tax credits/payments:			
Creditable Withholding tax		₱ 300,505.00	
Tax Payments		107,839.00	
Total		₱ 408,344.00	
Less: Unsupported creditable withholding tax		300,505.00	
Excess tax credits carried over to succeeding period		232,705.00	124,866.00
Deficiency Income Tax			₱ 5,601,479.68
Add: 20% Interest p.a. (04/16/2010 to 9/21/12)			2,728,611.20
TOTAL AMOUNT DUE			₱ 8,330,090.88
II. DEFICIENCY VALUE ADDED TAX			

[19] Par. 1.12, JSF, Docket (Vol. II), p. 1131; Exhibit "P-9"
[20] Exhibit "R-15"
[21] Par. 1.5, JSF, Docket (Vol. II), p. 1130; Exhibits "P-10", "P-10-A", and "P-10-B"

Taxable revenue/receipts per VAT returns			₱ 24,477,925.02
Add: Adjustment per Investigation			
Revenue not subjected to VAT		₱ 7,124,300.94	8,330,420.44
Unaccounted Source of Cash		1,206,119.50	
Taxable sales/receipts per Investigation			₱ 32,808,345.46
Output tax due thereon			₱ 3,937,001.46
Less: Allowed Tax Credits/Payments			
Input tax carried over from previous qtr		₱ 110,390.42	
Creditable VAT withheld		42,472.68	
Input Tax		332,505.79	
VAT Paid		1,937,957.72	2,423,326.61
Deficiency value added tax			₱ 1,513,674.84
Add: 20% Interest p.a. (01/26/2010 to 9/21/12)			803,699.14
TOTAL AMOUNT DUE			**₱ 2,317,373.98**
III. DEFICIENCY EXPANDED WITHHOLDING TAX			
	Amount	EWT rate	Amount due
Payments subject to 15%	₱ 5,800,000.00	15%	₱ 870,000.00
Commission	1,288,800.00	10%	128,880.00
Rentals	4,068,923.00	5%	203,446.15
Total			₱ 1,202,326.15
Less: Remittances			803,490.88
Deficiency expanded withholding tax			₱ 398,835.27
Add: 20% Interest p.a. (01/16/2010 to 9/21/12)			213,950.54
TOTAL AMOUNT DUE			**₱ 612,785.81**
IV. DEFICIENCY DOCUMENTARY STAMP TAX			
Amounts not subjected to DST			₱ 5,891,800.00
Rate 1/200			1/200
Documentary Stamp Tax			29,459.00
Add: 25% Surcharge		₱ 7,364.75	
20% Interest p.a. (01/06/2010 to 9/21/12)		15,964.36	23,329.11
Total Amount Due			**₱ 52,788.11**

Petitioner disputed the FLD and FAN on September 17, 2012.[22]

On February 27, 2013, petitioner received a Preliminary Collection Notice dated February 21, 2013.[23]

Consequently, petitioner filed this Petition for Review[24] on April 1, 2013.

Respondent issued a Final Notice Before Seizure on June 20, 2013, which petitioner received on July 4, 2013.[25] Petitioner then informed respondent, through a Letter dated July 9, 2013, that a

22 Exhibit "P-11"
23 Par. 1.7, JSF, Docket (Vol. II), p. 1130; Exhibit "P-12"; Exhibit "R-18"
24 Docket (Vol. I), pp. 6-24
25 Par. 1.13, JSF, Docket (Vol. II), p. 1131; Exhibit "P-14"; Exhibit "R-20"

Petition for Review has already been filed questioning the subject assessment.[26]

On May 17, 2013, respondent filed an Omnibus Motion[27], praying for the amendment of the Petition for Review in order to comply with Section 2(a), Rule 7 of the Revised Rules of Court, which the Court granted on July 10, 2013.[28] Accordingly, petitioner filed its Amended Petition for Review[29] on July 18, 2013.

In the Answer[30] filed on July 29, 2013, respondent interposed the following special and affirmative defenses:

> "12. All presumptions are in favor of the correctness of the Assessment;
>
> 13. The Assessment/Demand Letter No. 043A-B056-09 dated 21 August 2012 for the year 2009 against the petitioner was issued in compliance with the provisions of Section 228 of the National Internal Revenue Code and in accordance to existing Revenue Rules and Regulations relative to the right of the taxpayer/petitioner to be informed of the factual and legal bases upon which the assessment was made.
>
> 14. The herein Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Petitioner, contained, in detail, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment.
>
> 15. Verification disclosed that the petitioner failed to properly support with valid documentary evidence certain expenses, hence disallowed as deductions from gross income pursuant to the provisions of Section 34(1)(B) of the National Internal Revenue Code, as amended.

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26 Exhibit "P-15"
27 Docket (Vol. I), pp. 61-63
28 Resolution, Docket (Vol. I), pp. 70-72
29 Docket, (Vol. I), pp. 75-94
30 Docket, (Vol. I), pp. 97-101

16. Verification disclosed that representations claimed by petitioner per ITR/FS exceeds the statutory ceiling set forth under Revenue Regulations No. 10-2002. hence disallowed as deduction from gross income.

17. Verification disclosed that the petitioner failed to subject portion of rental expense and salaries and wages to withholding tax as required under RR No. 2-98 thus disallowed as deductions from gross income pursuant to Section 34(k) of the NIRC, as amended.

18. Verification disclosed that the sales reported per income tax return is understated by ₱5,287,034.18 as compared to sales reported per investigation thereby resulting to understatement of your taxable income. hence *(sic)*, assessed pursuant to Section 31, in relation to Section 32.

19. Verification disclosed that portions of income payments of petitioner to prime subcontractor were not reported in the financial statement. The discrepancy was considered as unaccounted source of cash which led to the inference that part of the income of the petitioner has not been declared as enunciated in the case of Perez vs. CTA L10507 dated 30 May 1958. Therefore the amount is added to reported taxable income pursuant to Section 31 of the NIRC.

20. Verification disclosed that certain creditable withholding tax has not been supported with appropriate documentary evidence, hence disallowed and assessed pursuant to Revenue Regulation No. 4-2002

21. Verification disclosed that petitioner failed to subject gross receipts to value added tax as determined during investigation, hence assessed pursuant to Section 106 and 108 of the NIRC, as amended.

22. Verification disclosed that petitioner failed to subject portion of income payments to expanded withholding tax as required under Revenue Regulations No. 2-98.

> 23. Verification disclosed that petitioner failed to pay documentary stamp tax on transaction as listed in the Formal Demand Letter. DST was assessed pursuant to Section 179 of the NIRC, as amended.
>
> 24. The 20% interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC.
>
> 25. The 25% surcharge must be impose *(sic)* pursuant to the provisions of Section 248 (A) of the NIRC."

Pre-Trial Brief for the Respondent[31] and Pre-Trial Brief (For the Petitioner)[32] were, respectively, filed on October 24, 2013 and November 4, 2013. Then, the parties submitted their Joint Stipulations of Facts[33] on April 22, 2014, and consequently, the Court issued a Pre-Trial Order[34] on April 28, 2014.

To prove its claim, petitioner presented its witnesses, namely: Ms. Ma. Soledad D. Lopez, and Ms. Hazel S. Maximo. Thereafter, petitioner formally offered its documentary exhibits which were admitted by the Court except Exhibits "P-16", "P-19-G", "P-20-A" to "P-20-J", "P-21-A", "P-21-B", "P-23", "P-33-B" to "P-33-E", "P-34-E" to "P-34-G", "P-34-J", "P-34-K", "P-34-L", "P-36-B", "P-38-A" to "P-38-L", "P-39-C" to "P-39-F", and "P-198".[35]

On the other hand, to refute petitioner's allegations, respondent presented the following witnesses: Ms. Gemina B. Salvador, Mr. Charlie de Leon, and Ms. Ma. Flor A. Lising. Respondent, likewise, formally offered his documentary evidence which the Court admitted on August 13, 2015.[36]

On rebuttal, petitioner again presented Ms. Ma. Soledad D. Lopez and formally offered her testimony, as well as its documentary evidence, which were all admitted by the Court in a resolution[37] dated November 6, 2015. Considering, the manifestation of respondent's counsel that he would no longer present sur-rebuttal evidence, this

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[31] Docket (Vol. I), pp. 117-130
[32] Docket (Vol. I), pp. 132-144
[33] Docket (Vol. II), pp. 1129-1134
[34] Docket (Vol. II), pp. 1136-1171
[35] Resolutions dated July 2, 2014 and October 30, 2014, Docket (Vol. III), pp. 1605-1606, and pp. 1652-1658, respectively
[36] Resolution, Docket (Vol. IV), pp. 1785-1786
[37] Resolution dated November 6, Docket (Vol. IV), pp. 1831 to 1832

Court granted the parties a period of thirty (30) days within which to submit their respective Memoranda.[38]

Thus, on January 18, 2016, petitioner submitted its Memorandum[39], while respondent, on the other hand, failed to submit his as per Records Verification[40] dated February 22, 2016.

Accordingly, the instant case was deemed submitted for decision on March 1, 2016.[41]

However, on March 18, 2016, respondent filed a Motion for Leave of Court to Admit Memorandum[42] seeking the kind indulgence of this Court to admit his Memorandum (for Respondent), as attached therein, to form part of the records of the case.

In a Resolution[43] dated March 29, 2016, this Court granted respondent's Motion, thereby admitting his Memorandum.

The parties stipulated the following issues[44] to be resolved by the Court:

> "1. Whether or not respondent CIR gravely erred in failing to provide some factual basis for the disallowances, thus rendering the preliminary collection notice void;
>
> 2. Whether or not respondent CIR gravely erred in assessing petitioner deficiency income tax in the principal amount of Php5,601,479.68 with interest of Php2,728,611.20 as a result of disallowing various expenses, subjecting rental expense to withholding tax, subjecting certain salaries and wages to withholding tax, considering undeclared sales and finding unaccounted source of cash;

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[38] Resolution dated December 7, 2015, Docket (Vol. IV), p. 1836
[39] Docket (Vol. IV), pp. 1837-1871
[40] Docket (Vol. IV), p. 1872
[41] Resolution, Docket (Vol. IV), p. 1873
[42] Docket (Vol. IV), pp. 1874-1877
[43] Docket (Vol. IV), p. 1884
[44] JSF, Docket (Vol. II), pp. 1131-1132

3. Whether or not respondent CIR gravely erred in assessing petitioner Value-Added Tax (VAT) deficiency in the principal amount of Php1,513,674.84 with interest of Php803,699.14;

4. Whether or not respondent CIR gravely erred in assessing petitioner expanded withholding tax deficiency in the principal amount of Php398,835.27 with interest of Php213,950.54;

5. Whether or not respondent CIR gravely erred in assessing petitioner documentary stamp tax deficiency in the principal amount of Php29,459.00 with surcharges of Php7,364.76 and interest of Php15,964.36;

6. Whether or not respondent CIR gravely erred in assessing petitioner compromise penalty in the amount of Php6,000.00; and

7. Whether or not the Honorable Court has jurisdiction over the case considering the fact that the instant petition filed by petitioner pertains to preliminary collection letter and not to a final decision on disputed assessment."

After careful scrutiny, the above-stated issues may be summarized into the following, to wit:

> Whether the Court has jurisdiction over the case considering the fact that the instant petition filed by petitioner pertains to preliminary collection letter, and not to a final decision on disputed assessment;
>
> Whether the FAN and FLD provide factual basis for the disallowances, rendering the preliminary collection notice void; and
>
> Whether respondent gravely erred in assessing petitioner for deficiency income tax, VAT, expanded withholding tax, documentary stamp tax, and compromise penalty;

The Court shall resolve the first and second issues simultaneously.

Petitioner contends that after it filed a request for reconsideration on FLD, respondent issued the Preliminary Collection Notice within the one hundred eighty days (180) on which he was supposed to act on the said request for reconsideration. In view of the foregoing, the alleged Preliminary Collection Notice is in effect a final demand letter reiterating the immediate payment of the tax deficiency; thus, the said notice is tantamount to a final decision on disputed assessment. Petitioner, likewise, claims that the Preliminary Collection Notice contained statement in a way denying its request for reconsideration.

Respondent, on the other hand, alleges that the assessment became final, executory and demandable by reason of the failure of the petitioner to timely file the instant petition, pursuant to Section 228 of the Tax Code, as amended. Respondent points out that this petition is directed against the Preliminary Collection Letter issued by the BIR.

As regards the factual basis of the assessment, petitioner argues that respondent was silent on how the assessment was made precluding the former from formulating a proper response in the protest of the same. Thus, the FAN and FLD are allegedly void.

Respondent, however, insists that the Assessment/Demand Letter No. 043A-B056-79 contained the factual and legal bases upon which the same was made. Respondent avers that petitioner was fully apprised of the facts and the law on which the FAN was issued. Allegedly, the FAN and FLD with Details of Discrepancies contain in detail the manner of computation, the facts and the provisions of law on which the assessment was based.

Section 228 of the NIRC of 1997, as amended, provides:

> "SEC. 228. **Protesting of Assessment.** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Relative thereto are Sections 3.1.4 and 3.1.5 of Revenue Regulation No. 12-99 to implement the aforesaid provision, to wit:

"3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* xxx.

> 3.1.5 Disputed Assessment. – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx.
>
> xxx xxx xxx
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable; Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable."

Based on the foregoing, petitioner has thirty days from receipt of respondent's final decision within which to appeal such final decision.

In the instant case, petitioner received a Preliminary Collection Notice on February 27, 2013, instead of a final decision. As such, petitioner filed this Petition for Review on April 1, 2013.

At this junction, the Court is now tasked to determine whether the Preliminary Collection Notice is a final decision as contemplated in the foregoing provisions.

In the case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*[45], the Supreme Court held that the decision of the Commissioner of Internal Revenue (CIR) is final when it is indicated in a clear and unequivocal language that it is such, to wit:

> "A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.
>
> We laid down the rule that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment, thus:
>
> . . . we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.
>
> The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment – and, consequently, the collection of the amount demanded as taxes – by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter

[45] G.R. No. 148380, December 9, 2005

> the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action."

A final demand letter from the Bureau of Internal Revenue, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to a final decision on a disputed assessment and is thus appealable to the Court of Tax Appeals (CTA).[46]

After a careful evaluation of the Preliminary Collection Notice[47], the Court finds that the same is a final decision. The aforesaid notice has reiterated the petitioner's tax liabilities and requested for the payment of the same to avoid accumulation of interest and surcharges. It is also indicated in the notice that if petitioner failed to pay the same, respondent would be constrained to serve and execute the Administrative Summary Remedies to enforce the collection of petitioner's tax liabilities, *viz*:

> "Our records show that we sent you an assessment notice for the collection of your internal revenue tax liability/ies described hereunder which remain unpaid to date

Kind of Tax	Basic Tax	Surcharge	Interest	Compromise	Total Due
IT	5,601,479.68		2,728,611.20		8,330,090.88
VT	1,513,674.84		803,699.14		2,317,373.98
EWT	398,835.27		213,950.54		612,785.81
DST	29,459.00	7,364.75	15,964.36		52,788.11
CP				6,000.00	6,000.00
TOTAL					11,319,038.78

Ass./Demand No. 043A-B056-09 Taxable year 2009 Date Issued 9/21/2012

> **To avoid the accumulation of interest and surcharges, it is requested that you pay the aforesaid tax liability/ies within five (5) days from receipt hereof**. However, if payment had already been made, please inform Revenue District Office No. 43A, East

[46] *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001

[47] Exhibit "P-12"

> Pasig, Collection Section, 2nd Floor Rudgen Bldg., Shaw Blvd. corner Meralco Ave., Kapitolyo, Pasig City. **Should we fail to hear from you within this period, this Office, much to our regret, will be constrained to serve and/execute the Administrative Summary Remedies to enforce the collection of the account. Simultaneously, to protect the interest of the government, your case will be referred to the Legal Division for filing of the appropriate judicial action.**" (*Emphasis supplied*)

Thus, the Preliminary Collection Notice is deemed the final decision of respondent.

The Supreme Court has already ruled in the case of *Allied Banking Corporation vs. Commissioner Internal Revenue*[48] that CIR must indicate clearly and unequivocally to the taxpayer whether an action constitutes a final determination on a disputed assessment, to wit:

> "The key to effective communication is clarity.
>
> The Commissioner of Internal Revenue (CIR) as well as his duly authorized representative must indicate clearly and unequivocally to the taxpayer whether an action constitutes a final determination on a disputed assessment. Words must be carefully chosen in order to avoid any confusion that could adversely affect the rights and interest of the taxpayer."

As regards the contention that the assessment lacks factual basis, the Court finds it otherwise.

Based on the above-stated provisions of laws and regulations, a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against the same. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.

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[48] G.R. 175097, February 5, 2010

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory.[49]

After a thorough evaluation of the FAN and the FLD[50] with Details of Discrepancies[51], the Court finds that they contained factual basis for petitioner's tax liabilities. Thus, they are compliant with the requirements laid down under Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of Revenue Regulations No. 12-99.

An examination of petitioner's protest to the FLD shows that it was able to explain each and every item appearing in the assessment. The fact that petitioner was able to intelligently protest the assessment implies that it had substantial understanding of the factual and legal bases of the assessments.

In a long line of cases decided by this Court, We consistently stressed that the requirement of the law to inform the taxpayer of the basis of the assessment should not be construed as limiting to the assessment notice itself. Upon a careful study of the law, it is noteworthy to emphasize that assessment notices need not be a full narration of the facts and laws on which the assessment is based. Further, the law mandates that the notice to acquaint the taxpayer the basis of his assessment must be in writing but it does not categorically state that the assessment itself must contain such information. It is enough that petitioner be substantially informed of the law and the facts on which the assessment for a tax liability is made in any other written document presented to the taxpayer. Thus, so long as the parties are notified and were given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[52]

The Court shall now proceed to determine whether petitioner is liable for any deficiency taxes.

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[49] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014

[50] Exhibit "P-10-A"

[51] Exhibit "P-10-B"

[52] *Southern Negros Development Corporation vs. Commissioner of Internal Revenue,* CTA EB Case No. 162 (CTA Case No. 7075), August 8, 2006, citing the case *Calma, et. al. vs. Court of Appeals, et. al.,* G.R. No. 122787, February 9, 1999

Respondent issued to petitioner a Formal Letter of Demand (FLD)[53] with the schedule of Details of Discrepancies dated August 21, 2012, assessing petitioner of deficiency income tax, value-added tax, expanded withholding tax, documentary stamp tax and compromise penalty for the TY 2009 in the aggregate amount of ₱11,319,038.78, broken down as follows:

Tax Type	Basic	25% Surcharge	Interest	Total Due
Income tax	₱ 5,601,479.68		₱ 2,728,611.20	₱ 8,330,090.88
Value-added tax	1,513,674.84		803,699.14	2,317,373.98
Expanded withholding tax	398,835.27		213,950.54	612,785.81
Documentary stamp tax	29,459.00	₱ 7,364.75	15,964.36	52,788.11
Compromise penalty	6,000.00			6,000.00
Total	**₱7,549,448.79**	**₱7,364.75**	**₱3,762,225.24**	**₱11,319,038.78**

I. Deficiency Income Tax – ₱8,330,090.88

As per FLD, respondent computed the deficiency income tax for CY 2009 as follows:

Taxable income/loss per ITR		₱ 594,096.00
Add: Adjustments per investigation		
Disallowed Expenses	₱ 7,503,175.00	
Non-deductible representation expense	407,486.86	
Rental expense not subjected to withholding tax	2,345,923.00	
Salaries and wages not subjected to withholding tax	911,544.38	
Undeclared sales	5,287,034.18	
Unaccounted Source of Cash	1,206,119.50	17,661,282.92
Taxable income per investigation		₱ 18,255,378.92
Income tax due thereon		₱ 5,476,613.68
Add: Disallowable tax credits/payments		
Creditable Withholding Tax	₱ 300,505.00	
Tax Payments	107,839.00	
Total	₱ 408,344.00	
Less: Unsupported creditable withholding tax	300,505.00	
Excess tax credits carried over to succeeding period	232,705.00	(124,866.00)
Deficiency Income Tax		**₱ 5,601,479.68**
Add: 20% Interest p.a. (04/16/2010 to 9/21/12)		2,728,611.20
Total Amount Due		**₱ 8,330,090.88**

[53] Exhibits "P-10", "P-10-A" and "P-10-B"

The Court will scrutinize the validity of the above assessment by delving into the propriety of the income imputed as well as the expense deductions and tax credits disallowed by respondent, namely:

A. Disallowed expenses	₱ 7,503,175.00
B. Non-deductible representation expenses	407,486.86
C. Rental expense not subjected to withholding tax	2,345,923.00
D. Salaries and wages not subjected to withholding tax	911,544.38
E. Undeclared sales	5,287,034.18
F. Unaccounted source of cash	1,206,119.50
G. Unsupported creditable withholding tax	300,505.00
H. Disallowed excess tax credits carried over to succeeding period	232,705.00

A. Disallowed Expenses – ₱7,503,175.00

Respondent's verification disclosed that some of petitioner's expenses, as listed below, were not properly supported by valid documentary evidence, basically unsubstantiated, hence, disallowed as deduction from petitioner's gross income pursuant to the provision of Section 34(1)(B) of the NIRC of 1997, as amended:

Bad debts	₱ 251,547.00
Donations	162,828.00
Consultant	1,359,750.00
Commission	1,288,800.00
Professional fee	367,750.00
Facilitators Fee	4,072,500.00
Total Disallowed Expenses	**₱ 7,503,175.00**

Petitioner, on the other hand, alleges that the *(a)* consultant fees; *(b)* commissions; *(c)* professional fees; and *(d)* facilitators (or educators) fees, in the total amount of ₱7,088,800.00, were duly covered by contracts of services, and their corresponding withholding taxes were remitted to the government. As such, the expenses are allegedly valid and legitimate.

Petitioner's contention is untenable.

Based on the service agreements, the following facilitators were engaged by petitioner to conduct and facilitate seminars, team building activities and other leadership programs offered by the latter to the general public, government institutions and private companies:

Service Agreement	Facilitator
Exhibit "P-181"	Maria Belinda L. Villavicencio
Exhibit "P-182"	Benjamin T. Leogardo
Exhibit "P-183"	Carmen L. Santos
Exhibit "P-184"	Maria Soledad D. Lopez
Exhibit "P-185"	Claude Gregory M. Sta. Clara
Exhibit "P-186"	Ma. Wilhelmina M. Manalo

While it is true that the service agreements had established the fact that petitioner entered into agreements with the facilitators named therein, the Court, however, cannot ascertain whether the disallowed expenses actually pertain to the fees received by the facilitators by virtue of the said service agreements. Based on the service agreements, the professional fees to be received by facilitators as remuneration for their services shall be ₱5,000.00 per day. However, given only with this information, the Court cannot determine how many days were rendered by each facilitators so as to determine the total fees actually incurred by petitioner during TY 2009.

Moreover, even if the Court considers the Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307), issued by petitioner to its facilitators, the income payments reflected therein do not tally with the disallowed expenses, as shown below. Absent any reconciliation of the difference, the Court cannot ascertain whether the payments per Certificates form part of the disallowed expenses as to merit partial allowance.

Exhibit	Payee	Management and Technical Consultancy (WI 050)	Commissions (WI 515)	Professional/ Talent Fees (WI 010)
"P-33-B"*	Claude Gregory M. Sta. Clara	₱ 35,000.00	-	-
"P-33-C"*		35,000.00	-	-
"P-33-D"*		80,000.00	-	-
"P-33-E"*		130,000.00	-	-
"P-34-C"	Maria Belinda L. Villavicencio	15,000.00	-	-
"P-34-D"		-	₱ 7,000.00	-
"P-34-E"*		109,000.00	-	-
"P-34-F"*		124,000.00	-	-
"P-34-G"*		2,500.00	-	-
"P-34-H"		-	-	₱ 34,000.00
"P-34-I"		10,000.00	-	-
"P-34-J"*		-	40,200.00	-
"P-34-K"*		272,500.00	-	-
"P-34-L"*		-	20,400.00	-
"P-34-M"		150,000.00	-	-
"P-34-N"		18,500.00	-	-
"P-35-C"	Carmen L. Santos	40,000.00	-	-
"P-35-D"		-	57,000.00	-

"P-35-E"		102,000.00	-	-
"P-35-F"		269,000.00	-	-
"P-35-G"		10,000.00	-	-
"P-35-H"		13,000.00	-	-
"P-35-I"		168,000.00	-	-
"P-35-J"		-	36,500.00	-
"P-36-B"*	Benjamin T. Leogardo	125,000.00	-	-
"P-36-C"		210,000.00	-	-
"P-36-D"		150,000.00	-	-
"P-36-E"		328,350.00	-	-
"P-37-C"	Maria Soledad D. Lopez	3,000.00	-	-
"P-37-D"		69,000.00	-	-
"P-37-E"		28,500.00	-	-
"P-37-F"		84,500.00	-	-
"P-37-G"		190,500.00	-	-
"P-37-H"		25,500.00	-	-
"P-37-I"		130,000.00	-	-
"P-38-C"*	Maximo S. Salazar	170,600.00	-	-
"P-38-D"*		15,000.00	-	-
"P-38-E"*		162,500.00	-	-
"P-38-F"*		-	18,500.00	-
"P-38-G"*		20,000.00	-	-
"P-38-H"*		309,500.00	-	-
"P-38-I"*		-	99,000.00	-
"P-38-J"*		15,000.00	-	-
"P-38-K"*		173,000.00	-	-
"P-38-L"*		52,500.00	-	-
"P-39-C"*	Ma. Teresa S. Quiambao	-	127,237.80	-
"P-39-D"*		-	148,096.00	-
"P-39-E"*		-	173,785.10	-
"P-39-F"*		-	180,000.00	-
"P-40-B"	Aquarius T. Juson	5,000.00	-	-
"P-40-C"		186,000.00	-	-
"P-40-D"		2,500.00	-	-
"P-40-E"		160,000.00	-	-
"P-40-F"		193,000.00	-	-
"P-40-G"		-	12,000.00	-
"P-40-H"		10,000.00	-	-
"P-40-I"		-	91,600.00	-
"P-40-J"		180,000.00	-	-
	Total	**₱4,582,450.00**	**₱1,011,318.90**	**₱ 34,000.00**

Note: Exhibits denied as per this Court's Resolution dated October 30, 2014.

Likewise, the Annual Income Tax Returns[54] of the above named facilitators do not substantiate petitioner's claimed expenses as the income received by the former may come not only from the petitioner but from other sources as well.

As to the disallowed bad debts and donations in the respective amounts of ₱251,547.00 and ₱162,828.00, petitioner did not refute the examiner's findings nor offer any documentary evidence to substantiate the same. Thus, the disallowances shall be upheld, in line

[54] Exhibits "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", and "P-40"

with the principle that tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[55] Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[56]

Considering the foregoing, respondent's disallowance of the subject expenses shall be upheld.

B. Non-Deductible Representation Expenses – ₱407,486.86

Respondent's verification disclosed that the representation expenses claimed per Income Tax Return/Financial Statements (ITR/FS) exceeded the statutory ceiling set forth under Revenue Regulations (RR) No. 10-2002; hence, it was disallowed as deduction from gross income.

Representation claimed per FS/ITR		₱ 644,394.00
Less: Statutory ceiling per RR No. 10-2002		
Income per FS/ITR	₱ 23,690,714.00	
Percentage of limitation for sale of services	1%	236,907.14
Non-Deductible Representation Expenses		**₱ 407,486.86**

Same as bad debts and donations, the disallowance of representation expenses has not been contested by the petitioner. Thus, the same shall be upheld.

C. Rental Expense Not Subjected to Withholding Tax – ₱2,345,923.00

Upon verification of respondent, it was disclosed that petitioner failed to subject portion of its rental expenses to EWT, as required under RR No. 2-98, thus, disallowed as deduction from its gross income pursuant to Section 34(K) of the NIRC of 1997, as amended, to wit:

Rental expense per FS		
Venue rental	₱ 3,318,923.00	
Office rental	750,000.00	₱ 4,068,923.00

[55] *Commissioner of Internal Revenue vs. Gonzales*, G.R. No. 177279, October 13, 2010.
[56] *Marcos II vs. Court of Appeals*, G.R. No. 120880, June 5, 1997

Rental expense per return		1,723,000.00
Rental Expense Not Subjected to Withholding Tax		**₱ 2,345,923.00**

Petitioner contends that respondent failed to reclassify the venue rental and events subcontracting expenses which are both subject to different withholding tax rates. Thus, the following are the components of the venue and events subcontracting account, which have been subjected to withholding taxes duly remitted and paid to government:

Venue rental (training center)	₱	973,000.00
Events subcontracting		1,601,935.50
Purchase of chairs and tables for events		743,987.50
Total	**₱**	**3,318,923.00**

Petitioner's contention is partially correct.

A perusal of the monthly remittance returns[57] shows that the rental expense per return amounting to ₱1,723,000.00 consists of rentals of the office and venue (training center) to Armstrong Realty Investments, Inc. in the amounts of ₱750,000.00 and ₱973,000.00, respectively. The said rentals are covered by a Memorandum of Agreement and Contracts of Lease[58]. Also, the same are accordingly subjected to 5% withholding tax.

Based on the same returns and the Certificates of Creditable Tax Withheld (BIR Form No. 2307) [59], the events subcontracting expense in the amount of ₱1,601,935.50 was also subjected to withholding tax at the rate of 2%. Said expense pertains to the use of the venue of the MMLDC Foundation, Inc. (MMLDC).

According to petitioner, it contracted MMLDC's services for the purpose of hosting the 2-day seminars which included, among others, provisions for food, venue and all amenities generally provided by events coordinators.[60]

[57] BIR records, pp. 77-101
[58] Exhibits "P-187" to "P-189"
[59] Exhibits "P-194" to "P-197"
[60] A55, Judicial Affidavit of Ma. Soledad D. Lopez, Docket (Vol. I), p. 242

The monthly payments of the rental and events subcontracting expenses are detailed as follows:[61]

Taxable Month	Rental (Real Property)	Service (Accommodation)
January	₱ 135,000.00	₱ 105,000.00
February	235,000.00	105,000.00
March	-	105,000.00
April	135,000.00	158,123.00
May	170,000.00	100,000.00
June	208,000.00	143,815.50
July	140,000.00	105,000.00
August	140,000.00	105,000.00
September	140,000.00	145,003.00
October	140,000.00	132,498.50
November	140,000.00	264,997.00
December	140,000.00	132,498.50
Total	**₱ 1,723,000.00**	**₱ 1,601,935.50**

As regards the purchase of chairs and tables for events in the amount of ₱743,987.50, petitioner's Vice President testified that this was part of the events subcontracting services provided by MMLDC; thus, it was subjected also to 2% tax.[62] However, the above table clearly shows that the said amount did not form part of the service (accommodation) subjected to withholding tax. Contrary to petitioner's contentions, the purchase of chairs and tables amounting to ₱743,987.50 has not yet been subject to tax.

In fine, the assessment on rental expense with regard only to the purchase of chairs and tables, amounting to ₱743,987.50, shall be upheld.

D. Salaries and Wages Not Subjected to Withholding Tax – ₱911,544.18

Upon respondent's investigation, it showed that petitioner failed to subject portion of its salaries and wages to withholding tax, as required under RR No. 2-98, thus, disallowed as deduction from its gross income pursuant to Section 34(K) of the NIRC of 1997, as amended, to wit:

[61] BIR records, pp. 77-101
[62] A56, Judicial Affidavit of Ma. Soledad D. Lopez, Docket (Vol. I), p. 242

Salaries and wages per FS		
Salaries and wages	₱ 3,095,517.00	
Employee's benefits	365,670.00	₱ 3,461,187.00
Salaries and wages per alphalist		
Salaries and wages	2,222,832.57	
13th Month pay	240,673.55	
SSS, GSIS, PHIC, PAG-IBIG, etc.	86,136.50	2,549,642.62
Salaries and Wages Not Subjected to Withholding Tax		**₱ 911,544.38**

Petitioner asserts that the salaries and wages per FS pertained to salaries and other benefits, while those per alphalist were purely salaries and wages. Allegedly, the difference of ₱911,544.38 is attributable to other benefits such as meals, transportation allowance, cash incentives and others, which are in the nature of *de minimis* benefits; thus, these benefits are not subject to withholding tax.

The Court finds the same without merit.

While the Court agrees with petitioner that *de minimis* benefits or facilities or privileges furnished or offered by an employer to his employees are not subject to withholding tax on compensation, pursuant to Sections 2.78.1(A)(3) and (6)(b) of RR No. 2-98, provided such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees, the Court holds that petitioner must present clear and convincing evidence to substantiate its allegations, for basic is the rule that mere allegations are not equivalent to proof. Considering that petitioner failed to present evidence to overturn respondent's assessment, the disallowance of the same as deduction from petitioner's gross income shall be upheld.

E. Undeclared Sales – ₱5,287,034.18

Respondent's verification disclosed that the sales reported per income tax return is understated by ₱5,287,034.18 as compared to the result of the investigation. This resulted to the understatement of its taxable income, hence, assessed pursuant to Section 31, in relation to Section 32 of the NIRC of 1997, as amended:

Total revenues		
Total amount per OR issued	₱ 31,602,225.96	
Divided by	1.12	

Net	28,216,273.18	
Add: Trade receivables, end – net of VAT	1,581,151.79	
Less: Trade receivables, beg – net of VAT	819,676.79	₱ 28,977,748.18
Sales per ITR		23,690,714.00
Undeclared Sales		**₱ 5,287,034.18**

Petitioner contends that some of the official receipts it issued pertained to cash received which do not involve sales transactions, such as: *(i)* payments made by stockholders as deposit for future stock subscriptions; *(ii)* return of unused/excess cash advances; and *(iii)* other miscellaneous income. Thus, respondent erroneously considered the foregoing ORs pertaining to sales transactions.

The Court finds the same partially correct.

An examination of the official receipts issued by petitioner in 2009 reveals that the transactions enumerated below, totaling to ₱1,009,239.80, pertain to stock subscriptions, liquidations of advances and reimbursements. The said transactions do not constitute sales or income, thus, not subject to tax:

Exhibit	OR No.	Payor	Date	Amount
"P-41"	15409	Ma. Teresa Quiambao	10-Dec-09	₱ 10,000.00
"P-42"	15486	Carminda Pullantes	28-Dec-09	33,000.00
"P-43"	15392	Carminda Pullantes	11-Dec-09	11,000.00
"P-44"	12438	Carminda Pullantes	3-Nov-09	5,000.00
"P-45"	12493	Carminda Pullantes	11-Nov-09	18,000.00
"P-46"	15214	Carminda Pullantes	20-Nov-09	5,000.00
"P-47"	12183	Ma. Wilhelmina Manalo	2-Oct-09	27,000.00
"P-48"	12405	Ma. Wilhelmina Manalo	21-Oct-09	18,000.00
"P-50"	10207	William Ty	15-Jan-09	140,000.00
"P-67"	10353	Aquarius Juson	14-Jan-09	70,000.00
"P-68"	10590	Ma. Wilhelmina Manalo	26-Feb-09	9,000.00
"P-69"	10591	Dioscoro Baylon	26-Feb-09	9,000.00
"P-70"	10592	Dioscoro Baylon	26-Feb-09	2,700.00
"P-71"	10402	Dioscoro Baylon	3-Feb-09	13,500.00
"P-72"	10403	Ma. Wilhelmina Manalo	3-Feb-09	9,000.00
"P-73"	10985	Gener Mendoza	30-Apr-09	115,000.00
"P-74"	10806	Ma. Wilhelmina Manalo	2-Apr-09	9,000.00
"P-75"	11357	Lyvia Martinez	17-Jun-09	25,000.00
"P-76"	11254	Gener Mendoza	5-Jun-09	115,000.00
"P-77"	11214	Ma. Soledad Lopez	2-Jun-09	20,400.00
"P-78"	11215	Godofredo Eala	2-Jun-09	40,000.00
"P-79"	11216	Ma. Wilhelmina Manalo	3-Jun-09	9,000.00
"P-80"	11093	Benjamin Leogardo	2-Jun-09	70,000.00

"P-81"	11592	Ma. Wilhelmina Manalo	30-Jul-09	9,000.00
"P-82"	11442	Ma. Belinda Villavicencio	9-Jul-09	50,000.00
"P-83"	15492	Besol Lopez	29-Dec-09	203.00
"P-84"	15462	Cecile Mendoza	17-Dec-09	1,203.45
"P-85"	15463	Armin Pullantes	17-Dec-09	737.75
"P-86"	15328	Cecile Mendoza	8-Dec-09	1,948.50
"P-87"	15090	Cecile Mendoza	16-Nov-09	1,591.75
"P-88"	15095	Adel Agustin	16-Nov-09	318.00
"P-89"	12325	Carmen Santos	19-Oct-09	360.00
"P-90"	12261	Armin Pullantes	18-Oct-09	2,304.00
"P-91"	12298	Cecile Mendoza	15-Oct-09	1,462.75
"P-92"	10399	Armin Pullantes	4-Feb-09	1,622.95
"P-93"	10408	Shiela Dames	5-Feb-09	132.00
"P-94"	10409	Chona Santos	9-Feb-09	632.00
"P-95"	10487	Alvin Rex Caro	18-Feb-09	1,068.40
"P-96"	10733	Alvin Rex Caro	23-Mar-09	1,355.75
"P-97"	10665	Alvin Rex Caro	10-Mar-09	283.90
"P-98"	10664	Alvin Rex Caro	10-Mar-09	200.00
"P-99"	10633	Alvin Rex Caro	9-Mar-09	1,227.25
"P-100"	10634	Alvin Rex Caro	9-Mar-09	2,242.25
"P-101"	10807	Carmen Santos	3-Apr-09	1,200.00
"P-102"	11099	Armin Pullantes	9-Jun-09	4,698.85
"P-103"	11100	Cecile Mendoza	10-Jun-09	100.00
"P-104"	11534	Besol Lopez	29-Jul-09	40.00
"P-105"	11669	Cecile Mendoza	12-Aug-09	205.80
"P-106"	11747	Carmen Santos	26-Aug-09	492.00
"P-107"	12179	Carmen Santos	25-Sep-09	5,770.00
"P-108"	10204	Cecile Mendoza	15-Jan-09	1,977.37
"P-109"	10337	Binoy Caro	9-Jan-09	42.75
"P-110"	15484	Alvin Rex Caro	28-Dec-09	3,112.50
"P-111"	15319	Alvin Rex Caro	3-Dec-09	3,112.50
"P-112"	15030	Hazel Sabado	12-Nov-09	5,000.00
"P-113"	12342	Godofredo Eala	22-Oct-09	10,000.00
"P-114"	12346	Ma. Soledad Lopez	22-Oct-09	36,000.00
"P-115"	12345	Carmen Santos	23-Oct-09	63,814.33

"P-116"	12196	Jaypee Solano	5-Oct-09	1,000.00
"P-117"	11593	Godofredo Eala	30-Jul-09	7,500.00
"P-129"	12263	Ultra Seer	8-Oct-09	50.00
"P-130"	10534	Chona Santos	23-Feb-09	1,400.00
"P-131"	10734	PEZA c/o Rowena Montes	24-Mar-09	830.00
"P-134"	11597	BLSI	4-Aug-09	1,400.00
		Total		**₱1,009,239.80**

Other receipts, according to petitioner's Accountant/Bookkeeper, pertain to miscellaneous income. In her judicial affidavit, she has explained the nature of the transactions in this wise:

For *Exhibits "P-118" to "P-127"*:

"As indicated in the receipts, the amounts received from the payee were in payment of FLEX manuals. FLEX manuals are part of the kits given to those attending seminars conducted by OCCI and are part of the seminars that they pay. As a matter of policy, the FLEX manuals are not sold separately. One has to attend the seminar to be able to get the FLEX manual. The problem however is that many of those who attended and completed the seminars would lose or misplace their FLEX manuals or sometimes, their FLEX manuals would be torn apart. Thus, they go to us for new copies. Once we are able to ascertain that they have attended and completed the seminars, we would give them copies of the FLEX manual."[63]

For *Exhibits "P-128" to "P-144"*:

"These receipts were issued to acknowledge cash payments for various items."

For *Exhibits "P-145" to "P-169"*:

"As indicated in the receipts, the money received were in payment of the book known as Rizal is my President. This is a project of OCCI Fullness of Life Foundation, Inc., a separate and distinct company. OCCI would issue the receipt but would in turn remit the

[63] Judicial Affidavit of Hazel S. Maximo, Docket (Vol. I), p. 215

payment to OCCI Fullness of Life Foundation, Inc. In other words, this is money due the foundation and not of OCCI."[64]

For *Exhibits "P-170" to "P-178"*:

"As indicated in the receipts, these were payments made in connection with the seminars conducted by OCCI."[65]

For *Exhibits "P-179" to "P-180"*:

"As indicated in the receipts, these were payments for facilitation fees or for the seminars conducted by OCCI."[66]

Contrary to petitioner's contention, miscellaneous income is subject to income tax. This is consistent with Section 32 of the NIRC of 1997, as amended which provides that gross income means all income derived from whatever source. Thus, the following receipts, totaling to ₱1,313,965.97, are subject to income tax:

Exhibit	OR No.	Payor	Date	Amount
"P-118"	15114	Larry	12-Nov-09	₱ 75.00
"P-119"	15119	-	12-Nov-09	140.00
"P-120"	15091	-	16-Nov-09	1,360.00
"P-121"	12190	Maevie Ortiz	3-Oct-09	250.00
"P-122"	12189	Chicouy Estinosa	3-Oct-09	50.00
"P-123"	12350	Cash	26-Oct-09	70.00
"P-124"	10541	Cash	24-Feb-09	900.00
"P-125"	10663	-	9-Mar-09	150.00
"P-126"	10836	BLSI	6-Apr-09	8,140.00
"P-127"	11849	-	4-Sep-09	150.00
"P-128"	12188	The Knights of Rizal	2-Oct-09	20,000.00
"P-132"	10862	Linda Realizan	17-Apr-09	70.00
"P-133"	11530	Linda Realizan	27-Jul-09	70.00
"P-135"	11739	Arsenio Cruz	17-Aug-09	700.00
"P-136"	11740	Hazel Sabado	17-Aug-09	200.00
"P-137"	11741	Gil Dimaano	17-Aug-09	650.00
"P-138"	11748	Hazel Sabado	27-Aug-09	250.00
"P-139"	12080	-	17-Sep-09	100.00
"P-140"	15316	Godofredo Eala	3-Dec-09	11,930.45
"P-141"	15317	Ma. Soledad Lopez	3-Dec-09	1,142.70
"P-142"	12347	OCCI Fullness of Life (RIMP)	23-Oct-09	60,300.00
"P-143"	12432	Kobe David	30-Oct-09	1,081.00
"P-144"	11885	-	10-Sep-09	50.00
"P-145"	12299	Noemi Casiño	19-Oct-09	1,000.00

[64] Judicial Affidavit of Hazel S. Maximo, Docket (Vol. I), pp. 219-220
[65] Judicial Affidavit of Hazel S. Maximo, Docket (Vol. I), p. 220
[66] Judicial Affidavit of Hazel S. Maximo, Docket (Vol. I), p. 221

"P-146"	12336	Fullness of Life Foundation, Inc.	21-Oct-09	6,500.00
"P-147"	10539	Clare Amador	24-Feb-09	350.00
"P-148"	10546	Seventh Day Adventist	24-Feb-09	350.00
"P-149"	10547	Godofredo Eala	24-Feb-09	900.00
"P-150"	10549	Various	25-Feb-09	9,450.00
"P-151"	10696	Uno Highschool	24-Feb-09	4,200.00
"P-152"	11351	Filcols	20-Feb-09	700.00
"P-153"	11353	The Knights of Rizal	24-Feb-09	30,000.00
"P-154"	11352	Roger Sipalay	20-Feb-09	350.00
"P-155"	10732	Manya Rogriguez	23-Mar-09	700.00
"P-156"	10699	Uno Highschool	18-Mar-09	3,500.00
"P-157"	10730	Abet Siopao	20-Mar-09	350.00
"P-158"	10690	Raymond Gonzales	17-Mar-09	350.00
"P-159"	10695	Chary Sollano	18-Mar-09	350.00
"P-160"	10859	Print Town, Inc.	17-Apr-09	350.00
"P-161"	10860	Charette Regala	17-Apr-09	350.00
"P-162"	10865	Ritchie Melu	20-Apr-09	350.00
"P-163"	10883	- Davao	23-Apr-09	350.00
"P-164"	10925	-	27-Apr-09	1,750.00
"P-165"	10965	Rosalina Remolona	27-Apr-09	350.00
"P-166"	11571	DLSU	24-Jul-09	16,000.00
"P-167"	11595	-	3-Aug-09	1,500.00
"P-168"	11668	Getz Pharma	11-Aug-09	700.00
"P-169"	12198	OCCI Fullness of Life	6-Oct-09	400,000.00
"P-170"	10232	William /Michelle Ty	18-Jun-09	10,000.00
"P-171"	15225	OCCI Fullness of Life	25-Nov-09	100,000.00
"P-172"	10672	PEZA	13-Mar-09	168,000.00
"P-173"	11248	Jollibee Worldwide Services	15-Jun-09	63,905.89
"P-174"	11887	Jollibee Worldwide Services	11-Sep-09	63,905.89
"P-175"	11888	Jollibee Worldwide Services	11-Sep-09	63,905.89
"P-176"	12001	Myra Manibog	9-Sep-09	1,000.00
"P-177"	12184	Hazel Dee	2-Oct-09	12,636.00
"P-178"	12047	Dela Salle College	18-Sep-09	70,000.00
"P-179"	12418	Carmen Santos	28-Oct-09	4,000.00
"P-180"	15213	OCCI Fullness of Life	19-Nov-09	168,033.15
		Total		**₱ 1,313,965.97**

Further, the following receipts totaling ₱2,251,700.00, though pertaining to stock subscriptions, are dated not within the subject taxable period 2009; thus, the same cannot be given consideration:

Exhibit	OR No.	Payor	Date	Amount
"P-49"	10216	Benjamin Leogardo	28-Dec-07	₱ 188,900.00
"P-51"	10217	Ma. Soledad Lopez	28-Dec-07	188,800.00
"P-52"	10218	Maximo Salazar	28-Dec-07	188,900.00
"P-53"	10220	Cynthia Sico	28-Dec-07	188,900.00
"P-54"	10219	Carmen Santos	28-Dec-07	188,900.00
"P-55"	10222	Michelle Ty	28-Dec-07	188,900.00
"P-56"	10221	Claude Gregory Sta. Clara	28-Dec-07	188,900.00

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"P-57"	10224	Ma. Belinda Villavicencio	28-Dec-07	188,900.00
"P-58"	10223	William Ty	28-Dec-07	188,900.00
"P-59"	10226	Ma. Soledad Lopez	23-Jun-08	20,400.00
"P-60"	10225	Cynthia Sico	27-Jun-08	20,000.00
"P-61"	10228	Juan Kanapi	26-Jun-08	90,000.00
"P-62"	10227	Godofredo Eala	23-Jun-08	90,000.00
"P-63"	10236	Aquarius Juson	18-Jun-08	100,000.00
"P-64"	10237	Benjamin Leogardo	24-Jun-08	71,100.00
"P-65"	10233	William/Michelle Ty	18-Jun-08	142,200.00
"P-66"	10234	Ma. Wilhelmina Manalo	24-Jun-08	18,000.00
		Total		**₱ 2,251,700.00**

Considering the foregoing, petitioner has undeclared sales in the reduced amount of ₱4,277,794.38, as shown below:

Undeclared sales per assessment	₱	5,287,034.18
Less: Non-revenue items		1,009,239.80
Adjusted Undeclared Sales	**₱**	**4,277,794.38**

F. Unaccounted source of cash – ₱1,206,119.50

Respondent's verification disclosed that portion of petitioner's income payments to prime/sub-contractor was not reported in the FS. The discrepancy was considered as unaccounted source of cash which led to the inference that part of its income has not been declared as enunciated by the Court in the case of *Perez vs. CTA & CIR, G.R. No. L-10507, dated May 30, 1958.* Therefore, the amount is added to petitioner's reported taxable income, pursuant to Section 31 of the NIRC of 1997, as amended, to wit:

Income payments to prime/sub-contractor per return		₱ 1,601,935.50
Income payments to prime/sub-contractor per FS		
Ads & promo	₱ 239,775.00	
Repairs & maintenance	151,753.00	
Janitorials	4,288.00	395,816.00
Unaccounted Source of Cash		**₱1,206,119.50**

Petitioner contends that the gross amount of ₱1,601,935.50 pertained to the income payment to subcontractor, which was recorded under "Venue Rental and Events Subcontracting", the corresponding withholding tax of which was paid. Allegedly, the expenses such as ads and promo, repairs and maintenance pertain to advertising materials and maintenance supplies, which are not subject to 2% subcontractor's tax.

The Court finds respondent's assessment devoid of merit.

An examination of petitioner's Audited FS[67], particularly its Notes 15 and 16, disclosed that petitioner incurred, among others, the following costs/expenses for TY 2009:

	Direct Costs	**Administrative Expenses**	**Total**
Venue rental	₱ 3,318,923.00	-	₱ 3,318,923.00
Advertising & Promotions	134,325.00	₱ 105,450.00	239,775.00
Repairs & Maintenance	30,687.00	121,066.00	151,753.00
Janitorial services	-	4,288.00	4,288.00

The venue rental, as mentioned earlier, is comprised of the following items:[68]

Venue rental (training center)	₱ 973,000.00
Events subcontracting	1,601,935.50
Purchase of chairs and tables for events	743,987.50
Total	**₱ 3,318,923.00**

Based on the above table, the income payments of ₱1,601,935.50 pertain to events subcontracting that formed part of the venue rental account, another line item in the Notes. As discussed earlier, petitioner has properly withheld the tax on these income payments.

Notably, respondent's assessment was anchored on his inference that the discrepancy in income payments to prime/sub-contractor was not declared as part of its income. Considering that the income payments to prime/sub-contractor per return amounting to ₱1,601,935.50 has, in fact, been declared in the FS as part of the Venue Rental Account of ₱3,318,923.00, respondent's assessment, therefore, is without basis. Accordingly, the assessment pertaining thereto shall be cancelled.

G. Unsupported creditable withholding tax – ₱300,505.00

Respondent's verification disclosed that petitioner's claimed creditable withholding tax (CWT) was not supported by appropriate

[67] Exhibit "R-5"
[68] Exhibit "P-11"

documentary evidence; hence, the same was disallowed and assessed pursuant to RR No. 4-2002, as amended.

Claimed creditable withholding tax per return	₱ 300,505.00
Attached tax credit certificate (BIR Form No. 2307)	-
Unsupported Creditable Withholding Tax	**₱ 300,505.00**

Petitioner insists that its tax credit certificates (TCC) are always available upon request. According to petitioner, even after petitioner has presented the same to the respondent, the said TCCs have been ignored.

The disallowance of petitioner's CWT is partially sustained.

Contrary to respondent's assessment, petitioner's CWTs totaling to ₱300,506.32[69], are supported by Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307), as shown below:

Exhibit	Payor	Income Payment	Tax Withheld
"P-17-A"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	₱ 6,250.00	₱ 125.00
"P-17-B"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	10,714.29	214.29
"P-17-C"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	17,857.14	357.14
"P-17-D"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	3,571.43	71.43
"P-17-E"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	18,750.00	375.00
"P-17-F"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	3,571.43	71.43
"P-17-G"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	3,571.43	71.43
"P-17-H"	Noritsu Philippines, Inc.	5,357.14	107.14
"P-17-I"	Philippine International Convention Center	79,910.71	1,598.21
"P-17-J"	Philippine International Convention Center	20,000.00	400.00
"P-17-K"	Dangerous Drugs Board	44,642.86	892.86
"P-17-L"	Philippine Economic Zone Authority	179,200.00	3,200.00
"P-17-M"	Philippine Economic Zone Authority	179,200.00	3,200.00

69 Difference is due to rounding

"P-17-N"	Philippine Economic Zone Authority	179,200.00	3,200.00
"P-17-O"	United Graphics Expression Corporation	89,600.00	1,600.00
	Sub-Total – 1st Quarter	***₱ 841,396.43***	***₱ 15,483.93***
"P-18-A"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	₱ 7,142.86	₱ 142.86
"P-18-B"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	25,000.00	500.00
"P-18-C"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	6,250.00	125.00
"P-18-D"	Bank of the Philippine Islands	10,000.00	50.00
"P-18-E"	Scan Livingston Graphics, Inc.	103,950.89	10,395.09
"P-18-F"	Moog Controls Corporation- Philippine branch	90,000.00	1,800.00
"P-18-G"	Yokohama Tire Philippines, Inc.	110,000.00	2,200.00
"P-18-H"	Yokohama Tire Philippines, Inc.	290,816.33	5,816.33
"P-18-I"	Matimco Incorporated	60,000.00	9,000.00
	Sub-Total – 2nd Quarter	***₱ 703,160.08***	***₱ 30,029.28***
"P-19-A"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	₱ 14,285.50	₱ 285.71
"P-19-B"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	3,571.50	71.43
"P-19-C"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	893.00	17.86
"P-19-D"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	12,500.00	250.00
"P-19-E"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	3,571.50	71.43
"P-19-F"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	12,500.00	250.00
"P-19-G"	Cagayan Electric Power & Light Co., Inc.	228,480.00	4,080.00
"P-19-H"	Cagayan Electric Power & Light Co., Inc.	182,358.57	3,300.00
"P-19-I"	Scan Livingston Graphics, Inc.	56,160.71	5,616.07
"P-19-J"	Ajinomoto Philippines Corporation	4,821.50	96.43
"P-19-K"	Yokohama Tire Philippines, Inc.	234,693.88	4,693.88
"P-19-L"	Banco de Oro Unibank, Inc.	77,926.00	389.63
"P-19-M"	Philippine Economic Zone Authority	29,120.00	520.00
"P-19-N"	Philippine Economic Zone Authority	36,400.00	650.00
"P-19-O"	Philippine Economic Zone Authority	94,640.00	1,690.00
	Sub-Total – 3rd Quarter	***₱ 991,922.16***	***₱ 21,982.44***

"P-20-A"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	₱ 3,571.50	₱ 71.43
"P-20-B"	Scan Livingston Graphics, Inc.	403,783.49	40,378.35
"P-20-C"	Scan Livingston Graphics, Inc.	156,875.00	15,687.50
"P-20-D"	Ajinomoto Philippines Corporation	7,232.00	144.64
"P-20-E"	Globe Telecom, Inc.	240,000.00	36,000.00
"P-20-F"	Globe Telecom, Inc.	275,000.00	41,250.00
"P-20-G"	Globe Telecom, Inc.	660,000.00	99,000.00
"P-20-H"	Banco de Oro Unibank, Inc.	54,750.00	273.75
"P-20-I"	Banco de Oro Unibank, Inc.	14,000.00	70.00
"P-20-J"	Banco de Oro Unibank, Inc.	27,000.00	135.00
	Sub-Total – 4th Quarter	***₱ 1,842,211.99***	***₱ 233,010.67***
	Grand Total	**₱ 4,378,690.66**	**₱ 300,506.32**

However, the Court denied the admission of **Exhibits "P-19-G"** and **"P-20-A" to "P-20-J"** for failure of petitioner to submit the originals for comparison.[70]

Accordingly, the disallowance of CWTs totaling to ₱237,090.67, supported by these denied exhibits, as detailed below, shall be sustained, and the remaining CWTs totaling to ₱63,415.65 (₱300,506.32 less ₱237,090.67) shall be allowed:

Exhibit	Payor	Income Payment	Tax Withheld
"P-19-G"	Cagayan Electric Power & Light Co., Inc.	₱ 228,480.00	₱ 4,080.00
"P-20-A"	La Sallian Educational Innovators Foundation (DLS-CSB), Inc.	3,571.50	71.43
"P-20-B"	Scan Livingston Graphics, Inc.	403,783.49	40,378.35
"P-20-C"	Scan Livingston Graphics, Inc.	156,875.00	15,687.50
"P-20-D"	Ajinomoto Philippines Corporation	7,232.00	144.64
"P-20-E"	Globe Telecom, Inc.	240,000.00	36,000.00
"P-20-F"	Globe Telecom, Inc.	275,000.00	41,250.00
"P-20-G"	Globe Telecom, Inc.	660,000.00	99,000.00
"P-20-H"	Banco de Oro Unibank, Inc.	54,750.00	273.75
"P-20-I"	Banco de Oro Unibank, Inc.	14,000.00	70.00

[70] Resolutions dated July 2, 2014 and October 30, 2014, respectively, Docket (Vol. III), pp. 1605-1606 and 1652-1658

"P-20-J"	Banco de Oro Unibank, Inc.	27,000.00	135.00
	TOTAL	**₱2,070,691.99**	**₱ 237,090.67**

H. Disallowed Excess Tax Credits Carried Over to Succeeding Period (₱232,705.00)

Respondent disallowed petitioner's excess tax credits for the TY 2009 amounting to ₱232,705.00[71], but gave no explanation in the FLD in doing so. The Court can only surmise that the tax credits carried over to the succeeding year was disallowed in order to recapture the tax benefit realized by petitioner in carrying the said amount to the succeeding year.

However, the Court finds it improper for respondent to disallow the said excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2010. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In sum, petitioner is liable for deficiency income tax amounting to ₱4,160,170.59, as computed below:

Taxable income/loss per ITR		₱ 594,096.00
Add: Adjustments per investigation		
Disallowed expenses	₱ 7,503,175.00	
Non-deductible representation expense	407,486.86	
Rental expense not subjected to withholding tax	743,987.50	
Salaries and wages not subjected to withholding tax	911,544.38	
Undeclared sales	4,277,794.38	13,843,988.12
Taxable income per investigation		₱14,438,084.12
Income tax due thereon		₱ 4,331,425.24
Less: Tax credits		
Supported creditable withholding tax	63,415.65	
Tax payments	107,839.00	171,254.65
Deficiency Income Tax		**₱4,160,170.59**

II. Deficiency Value-Added Tax – ₱2,317,373.98

[71] Exhibit "P-21", Line 31

Respondent computed the deficiency VAT for TY 2009 as follows:

Taxable revenue/receipts per VAT returns		₱ 24,477,925.02
Add: Adjustment per investigation		
Revenue not subjected to VAT	₱7,124,300.94	
Unaccounted source of cash	1,206,119.50	8,330,420.44
Taxable sales/receipts per investigation		32,808,345.46
Output tax due thereon		3,937,001.46
Less: Allowed tax credits/payments		
Input tax carried over from previous quarter	110,390.42	
Creditable VAT withheld	42,472.68	
Input tax	332,505.79	
VAT paid	1,937,957.72	2,423,326.61
Deficiency value-added tax		1,513,674.8[5]
Add: 20% interest p.a. (01/26/2010 to 9/21/12)		803,699.14
Total Amount Due		**₱2,317,373.9[9]**

A. Revenue Not Subjected to VAT – ₱7,124,300.94

Respondent's verification disclosed that petitioner failed to fully subject its gross receipts to VAT, hence, the latter was assessed pursuant to Sections 106 and 108 of the NIRC of 1997, as amended, to wit:

Total amount of revenue per ORs issued[72]	₱	31,602,225.96
Taxable revenue declared per VAT		24,477,925.02
Revenue Not Subjected to VAT	**₱**	**7,124,300.94**

Following the respondent's computation for undeclared sales, the total amount of revenue per ORs still includes VAT. Thus, the revenue not subjected to VAT per assessment should amount only to ₱3,738,348.16, as determined below:

Total amount of revenue per ORs issued	₱	31,602,225.96
Divided by		1.12
Total revenue, net of VAT	₱	28,216,273.18
Less: Taxable revenue declared per VAT		24,477,925.02
Revenue Not Subjected to VAT	**₱**	**3,738,348.16**

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[72] The total amount of revenue per ORs issued in the amount of ₱31,602,225.96 is correlated to the undeclared sales discussed under item *I.E.* above

As discussed earlier, out of the ₱31,602,225.96 purportedly supported by ORs, the receipts totaling to ₱1,099,239.80 pertained to stock subscriptions, liquidations of advances and reimbursements. The same do not constitute sales or income, thus, not subject to tax.

In view of the foregoing, petitioner is liable to pay VAT on the reduced revenue amount of ₱2,639,108.36, as computed below:

Revenue not subjected to VAT	₱ 3,738,348.16
Less: Non-revenue items	1,009,239.80
Adjusted Revenue Not Subjected to VAT	**₱ 2,729,108.36**

B. Unaccounted Source of Cash – ₱1,206,119.50

In relation to the unaccounted source of cash in item *I.(F.)* above, it was likewise subjected by respondent to VAT pursuant to Sections 106 and 108 of the NIRC of 1997, as amended.

As held earlier, petitioner has no unaccounted source of cash. Thus, respondent's assessment on the same shall be cancelled.

In fine, petitioner is liable to pay deficiency VAT in the total amount of ₱830,717.40, computed as follows:

Taxable revenue/receipts per VAT returns		₱ 24,477,925.02
Add: Revenue not subjected to VAT		2,729,108.36
Taxable sales/receipts per investigation		₱ 27,207,033.38
Output tax due thereon		₱ 3,264,844.01
Less: Allowed tax credits/payments		
Input tax carried over from previous quarter	₱ 110,390.42	
Creditable VAT withheld	42,472.68	
Input tax	332,505.79	
VAT paid	1,937,957.72	2,423,326.61
Deficiency value-added tax		**₱ 841,517.40**

III. Deficiency Expanded Withholding Tax – ₱612,785.81

Respondent's verification disclosed that petitioner failed to subject portion of its income payments to EWT as required under RR No. 2-98, as amended, as shown below:

Payments subject to 15%			
Facilitator's fee	₱ 4,072,500.00		
Professional fee	367,750.00		
Consultants	1,359,750.00	₱ 5,800,000.00	₱ 870,000.00
Commission (10%)		1,288,800.00	128,880.00
Rentals (5%)		4,068,923.00	203,446.15
Total			₱ 1,202,326.15
Less: Remittances			803,490.88
Deficiency EWT			**₱ 398,835.27**

Petitioner argues that the corresponding withholding taxes were remitted to the government.

As earlier discussed, out of the alleged rental of ₱4,068,923.00, the amount of ₱1,601,935.50 pertained to events subcontracting which was accordingly subjected to 2% withholding taxes of ₱32,038.71. Thus, the rentals subject to 5% withholding tax actually amounts to ₱2,466,987.50 (₱4,068,923.00 less ₱1,601,935.50). However, records[73] show that only the rental of ₱1,723,000.00 was subjected to withholding tax of ₱86,150.00. Consequently, petitioner shall be liable for the deficiency EWT on rentals in the amount of ₱37,199.38.

As to the EWT of ₱870,000.00 and ₱128,880.00 on payments subject to 15% and 10%, respectively, records show that only the EWTs of ₱581,762.78 and ₱103,539.39 were duly remitted to the BIR. Consequently, petitioner shall be liable for the deficiency EWT on the same in the amounts of ₱288,237.22 and ₱25,340.61.

In sum, petitioner is liable to pay the basic deficiency EWT amounting to ₱350,777.21, as computed below:

Particulars	Tax Base	Tax Rate	Tax Due	Tax Withheld	Deficiency EWT
Rentals	₱2,466,987.50	5%	₱123,349.38	₱ 86,150.00	₱ 37,199.38
Payments subject to 15%	5,800,000.00	15%	870,000.00	581,762.78	288,237.22
Payments subject to 10%	1,288,800.00	10%	128,880.00	103,539.39	25,340.61
Basic Deficiency EWT					**₱350,777.21**

IV. Deficiency Documentary Stamp Tax – ₱52,788.11

[73] BIR records, pp. 77-101

Respondent's verification disclosed that petitioner failed to pay DST on the following transactions listed below; hence, the corresponding DST was assessed pursuant to Section 179 of the NIRC of 1997, as amended.

Capital stock	₱	1,000,000.00
Deposit for future subscription		4,891,800.00
Total amount subject to DST		5,891,800.00
Amount subjected to DST		-
Amount Not Subjected to DST	**₱**	**5,891,800.00**

Petitioner avers that the DST on capital stock of ₱1Million was previously paid. Thus, the respondent patently erred in assessing petitioner DST on the original issue.

Section 174 of the NIRC of 1997, as amended, imposes DST on the original issue of shares of stock, to wit:

> "SEC. 174. *Stamp Tax on Original Issue of Shares of Stock.* – On every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by any association, company or corporation, there shall be collected a **documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the par value, of such shares of stock**: *Provided,* That in the case of the original issue of shares of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for the issuance of such shares of stock: *Provided, further,* That in the case of stock dividends, on the actual value represented by each share." (Boldfacing supplied)

A perusal of its Amended Articles of Incorporation[74] disclosed that petitioner has authorized capital stock of ₱1,000,000.00 divided into 100,000 shares with a par value of ₱10.00 each.

Moreover, based on its Audited FS as of the end of taxable year 2008, petitioner's authorized capital stock amounts to ₱1,000,000.00, which means that the same had already been issued and paid in years prior to TY 2009. Whether the corresponding DST had already been paid or not is of no moment since the subject period of assessment covers only TY 2009. Consequently, the DST assessment pertaining to the capital stock of ₱1,000,000.00 shall be cancelled.

[74] Exhibits "P-199" to "P-200"

As regards the remaining balance of ₱4,891,800.00, petitioner argues that the same pertained to stockholders' deposit for future stock subscription, which was the subject of an application for increase in capitalization filed with the Securities and Exchange Commission (SEC). The corresponding DST of which would be paid upon approval of such increase by the SEC. Thus, it was allegedly premature for the respondent to assess the deposit to any DST.

Notably, respondent's Revenue Officer Charlie De Leon testified as follows:[75]

> "Q: Now as far as the documentary stamp tax on original issue of subscription, you would agree with me that upon issuance by the Securities and Exchange Commission of Certificate of Registration that would be the reckoning point of payment of documentary stamp tax?
>
> A: The payment of documentary stamp tax should be paid on or before the fifth of the following month.
>
> Q: But reckoned from the issuance of the Certificate of Registration, that is the original issue?
>
> A: Yes, sir.
>
> Q: How about the increase of capital stock, that will be reckoned from the issuance of the Certificate approving the increase of the SEC?
>
> A: Yes, sir.
>
> Q: So if there was no approval, the documentary stamp tax will not be issued, correct?
>
> A: Yes, sir."

According to petitioner's President, "the company has put on hold the application for increase of the capital stock of OCCI."[76] She explained that "initially, the stockholders and Board of Directors saw the need to increase the capital stock of the company and so many of the stockholders even before we could complete and finalize all of the

[75] TSN, March 11, 2015, pp. 14-15
[76] A7, Judicial Affidavit of Ma. Soledad D. Lopez (Rebuttal Evidence), Docket (Vol. IV), p. 1789

documentary requirements of the Securities and Exchange Commission wanted to pay their respective contribution for the increase. They said that they would rather pay in installments rather than be later asked to pay everything in lump sum. Thus, as we were preparing the documents, the stockholders would pay in installments. However, when they learned about the deficiency assessments made by the respondent on the company, they got concerned and worried. Thus, the consensus was for the company to put on hold the increase until the issue of the deficiency assessment is resolved."[77]

As alleged by petitioner, the increase of the capital stock of petitioner has not been approved by the SEC. Thus, the assessment of DST on future subscriptions is allegedly erroneous and without any legal basis.

The Court finds for petitioner.

In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*[78], the Supreme Court ruled that deposits on future subscription of shares of stock are not subject to DST for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation, to wit:

> "In Section 175 of the Tax Code, DST is imposed on the original issue of shares of stock. The DST, as an excise tax, is levied upon the privilege, the opportunity and the facility of issuing shares of stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*, this Court explained that the DST attaches upon acceptance of the stockholders subscription in the corporations capital stock regardless of actual or constructive delivery of the certificates of stock. Citing *Philippine Consolidated Coconut Ind., Inc. v. Collector of Internal Revenue*, the Court held:
>
>> 'The documentary stamp tax under this provision of the law may be levied only once, that is upon the original issue of the certificate. The crucial point therefore, in the case before Us is the proper interpretation of the word 'issue'. In other words, when is the certificate of stock deemed 'issued' for the purpose of imposing the documentary stamp tax? Is it at the time the certificates of stock are printed, at the time they are filled up (in whose name the stocks represented in the certificate appear as certified by the proper officials of the corporation), at the time they are

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[77] A8, Judicial Affidavit of Ma. Soledad D. Lopez (Rebuttal Evidence), Docket (Vol. IV), p. 1790
[78] G.R. Nos. 172045-46, June 16, 2009

> released by the corporation, or at the time they are in the possession (actual or constructive) of the stockholders owning them?
>
> x x x
>
> Ordinarily, when a corporation issues a certificate of stock (representing the ownership of stocks in the corporation to fully paid subscription) the certificate of stock can be utilized for the exercise of the attributes of ownership over the stocks mentioned on its face. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate as issued by the corporation, irrespective of whether or not it is in the actual or constructive possession of the stockholder, is considered issued because it is with value and hence the documentary stamp tax must be paid as imposed by Section 212 of the National Internal Revenue Code, as amended.'
>
> x x x

Revenue Memorandum Order No. 08-98 (RMO 08-98) provides the guidelines on the corporate stock documentary stamp tax program. RMO 08-98 states that:

> '1. All existing corporations shall file the Corporation Stock DST Declaration, and the DST Return, if applicable **when DST is still due on the subscribed share issued by the corporation**, on or before the tenth day of the month following publication of this Order.
>
> x x x
>
> 3. All existing corporations with authorization for increased capital stock shall file their Corporate Stock DST Declaration, together with the DST Return, if applicable **when DST is due on subscriptions made after the authorization**, on or before the tenth day of the month following the date of authorization.' (Boldfacing supplied)

RMO 08-98, reiterating Revenue Memorandum Circular No. 47-97 (RMC 47-97), also states that what is being taxed is the privilege of issuing shares of stock, and, therefore, the taxes accrue at the time the shares are issued. RMC 47-97 also defines issuance

> as the point in which the stockholder acquires and may exercise attributes of ownership over the stocks.
>
> As pointed out by the CTA, Sections 175 and 176 of the Tax Code contemplate a subscription agreement in order for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed. A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same.
>
> x x x
>
> x x x [T]he deposit on stock subscription refers to an amount of money received by the corporation as a deposit with the possibility of applying the same as payment for the future issuance of capital stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*, we held:
>
> > 'We are firmly convinced that the Government stands to lose nothing in imposing the documentary stamp tax only on those stock certificates duly issued, or wherein the stockholders can freely exercise the attributes of ownership and with value at the time they are originally issued. **As regards those certificates of stocks temporarily subject to suspensive conditions they shall be liable for said tax only when released from said conditions, for then and only then shall they truly acquire any practical value for their owners.**' (Boldfacing supplied)
>
> x x x The deposit on stock subscription is merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen. The person making a deposit on stock subscription does not have the standing of a stockholder and he is not entitled to dividends, voting rights or other prerogatives and attributes of a stockholder. Hence, respondent is not liable for the payment of DST on its deposit on subscription for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation."

Moreover, in BIR Ruling No. 015-2003 dated November 17, 2003, the BIR, quoting this Court's ruling in the case of *First Southern Philippines Enterprises, Inc. v. Commissioner of Internal Revenue*[79],

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[79] CTA Case No. 5988, January 17, 2002

ruled that deposit on stock subscription is not subject to the payment of documentary stamp tax. The BIR further explained in this wise:

> x x x [C]apital stock issued connotes permanence of funds flowing into a corporation which cannot be withdrawn. The phrase "*issuance of shares of stock*" upon which the documentary stamp tax is to be computed must likewise be viewed as permanent in character. It is considered as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. Consequently, to be so categorized, all conditions and requirements, such as the execution of the subscription agreements, and approval by regulatory authorities must be secured to facilitate the issuance of the shares of stock.
>
> x x x
>
> Viewed from the foregoing, it can be inferred that future subscription to an increase in capital stock is not an original issue of shares of stock nor is it a sale or transfer of shares of stock contemplated under Sections 175 and 176 of the Tax Code of 1997, but it is a standard accounting term which refers to an amount of money transmitted by a stockholder to a corporation on deposit with the possibility of the same being later subscribed in the company's capital."

Clearly, petitioner is not liable for the payment of DST on its deposits for future subscription. Thus, respondent's assessment shall be cancelled.

V. Compromise Penalty – ₱6,000.00

Respondent imposed compromise penalty of ₱6,000.00 for petitioner's alleged non/late filing of documentary stamp tax, pursuant to Sections 250 and 255 of the NIRC of 1997, as amended, with reference to Revenue Memorandum Order (RMO) No. 1-90, as amended.

Under Revenue Memorandum Order No. 01-90, 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. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it 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.[80] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[81]

WHEREFORE, premises considered, the assessments issued by respondent against petitioner for taxable year 2009 covering deficiency documentary stamp tax and compromise penalty are hereby **CANCELLED**. However, the assessments issued by respondent against petitioner for taxable year 2009 covering deficiency income tax, value-added tax and expanded withholding tax are hereby **AFFIRMED** but with modifications. Accordingly, petitioner is ordered to pay **SIX MILLION SIX HUNDRED NINETY THOUSAND FIVE HUNDRED EIGHTY ONE AND 50/100 (₱6,690,581.50)** for the taxable year 2009, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	25% Surcharge	Total Due
Income tax	₱ 4,160,170.59	₱ 1,040,042.65	₱ 5,200,213.24
Value-added tax	841,517.40	210,379.35	1,051,896.75
Expanded withholding tax	350,777.21	87,694.30	438,471.51
Total	**₱ 5,352,465.20**	**₱1,338,116.30**	**₱ 6,690,581.50**

In addition, petitioner is ordered to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, value added tax, and expanded withholding tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Deficiency Interest Computed From
Income Tax	₱ 4,160,170.59	April 15, 2010
Value-Added Tax	841,517.40	January 25, 2010
Expanded Withholding Tax	350,777.21	January 15, 2010

[80] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962

[81] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et. al.*, G.R. No. L-35266, January 21, 1991.

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱6,690,581.50 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from July 14, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice