REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

\- versus -

FILPRIDE RESOURCES INCORPORATED,
Respondent.

CTA EB No. 1134
(CTA Case No. 8233)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 27 2015
9:33 a.m.

x - x

DECISION

UY, *J.*:

Before Us is a Petition for Review[1] filed by the Commissioner of Internal Revenue, petitioner, against Filpride Resources Incorporated, respondent, on March 26, 2014, seeking reversal and setting aside of the Decision dated November 12, 2013,[2] and the Resolution dated February 12, 2014,[3] both promulgated by the Special Second Division

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[1] EB Docket, pp. 68 to 79.

[2] EB Docket, pp. 80 to 118; Penned by Associate Justice Juanito C. Castañeda Jr., and concurred in by Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla.

[3] EB Docket, pp. 119 to 122; Penned by Associate Justice Juanito C. Castañeda Jr., and concurred in by Associate Justice Caesar A. Casanova. Associate Justice Cielito N. Mindaro-Grulla was on leave.

of this Court (or "Court in Division") in CTA Case No. 8233, entitled *"Filpride Resources Incorporated, Petitioner, versus Commissioner of Internal Revenue, Respondent".* The dispositive portions thereof respectively read:

Decision dated November 12, 2013:

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner covering taxable year 2006 for deficiency income tax and value-added tax are hereby **CANCELLED**. However, respondent's assessment of deficiency expanded withholding tax for taxable year 2006 is hereby **UPHELD** but in the modified amount of ₱20,806.72, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax Due	Surcharge	20% Interest	Total
EWT	₱ 16,068.22	₱ 4,017.06		₱ 20,085.28
Deficiency Increments for late remittance of EWT			₱721.44	721.44
Total	**₱ 16,068.22**	**₱ 4,017.06**	**₱721.44**	**₱ 20,806.72**

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

a. Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency expanded withholding tax of ₱16,068.22 computed from January 15, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

b. Delinquency interest at the rate of 20% per annum on the total EWT due of ₱20,085.28 and on the 20% deficiency interest which have accrued as aforestated in "a", computed from January 19, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended; and

c. Delinquency interest at the rate of 20% per annum on the deficiency increments for late remittance of withholding taxes in the amount of ₱721.44 computed from January 19, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."

<u>Resolution dated February 12, 2014:</u>

"**WHEREFORE,** premises considered, respondent's *Motion for Partial Reconsideration (Re: Decision dated 12 November 2013) is* **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), who is duly appointed and empowered to perform duties of her office, including, among others, the power to decide, cancel and abate tax liabilities as provided by law. She holds office at the 5th floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Filpride Resources Incorporated is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Unit 57 Westgate Office, Sampson Road, Central Business District, Subic Freeport Zone. It is registered with the BIR with Taxpayer's Identification Number 216-589-000, as evidenced by Certificate of Registration No. OCN8RC0000018692 dated March 4, 1998.

Respondent received from petitioner a Preliminary Assessment Notice (PAN) dated November 18, 2009, finding respondent liable for deficiency taxes for taxable year 2006. After filing its Reply to the PAN, respondent received from petitioner a Formal Letter of Demand dated January 19, 2010 and Formal Assessment Notices all dated January 18, 2010, with Details of Discrepancy, alleging that respondent had deficiency taxes for taxable year 2006 in the total amount of ₱759,488,615.53, broken down as follows:

Income Tax	₱ 611,207,996.55
Value-added Tax (VAT)	130,855,305.74
Withholding Tax-Expanded (EWT)	13,418,511.96
Excise Tax	4,006,801.28
TOTAL	**₱759,488,615.53**

On February 24, 2010, respondent filed a letter-protest addressed to petitioner, through Zenaida G. Garcia, the OIC-Assistant Commissioner for the Large Taxpayer's Service-Excise.

On April 26, 2010, respondent submitted relevant documents to petitioner addressed to Sarah B. Mopia, OIC Chief, LT Excise Audit Division I and Luzviminda Pedrosa, Examiner, LT Excise Audit Division I, in support of its protest letter filed on February 24, 2010. Thereafter, on October 26, 2010, respondent submitted additional documents to petitioner addressed to Rolando M. Balbido, Group Supervisor, LT Excise Audit Division I and Luzviminda Pedrosa, Examiner, LT Excise Audit Division I.

On January 19, 2011, respondent received the Final Decision on Disputed Assessment and Audit Result/Assessment Notice all dated January 18, 2011 issued by petitioner. In the said FDDA and revised Assessment Notice, petitioner declared that there is still due from respondent tax liabilities for taxable year 2006 in the reduced amount of ₱61,343,211.66, inclusive of interest and compromise penalties, computed as follows:

TAX TYPE	BASIC	INTEREST	COMPROMISE	TOTAL
Income Tax	₱ 19,863,202.71	₱15,073,985.91	₱ 50,000.00	₱ 34,987,188.62
VAT	14,512,211.98	11,658,095.25	50,000.00	26,220,307.23
EWT	68,393.22	55,322.59	12,000.00	135,715.81
TOTAL	**₱34,443,807.91**	**₱26,787,403.75**	**₱112,000.00**	**₱61,343,211.66**

Hence, on February 18, 2011, respondent filed a Petition for Review before the Court in Division, praying for the cancellation and termination of the said tax assessments for taxable year 2006. The case was docketed as CTA Case No. 8233 entitled "*Filpride Resources Inc., Petitioner, v. Commissioner of Internal Revenue, Respondent*".[4]

On March 23, 2011, petitioner filed her Answer[5] in CTA Case No. 8233, alleging that respondent is liable to pay its deficiency

[4] Division Docket – Vol. I, pp 4 to 22.
[5] Division Docket – Vol. I, pp. 132 to 142.

income tax, VAT and EWT, including increments, in the total amount of **₱61,343,211.66** based on comprehensive study, and that the burden of proof is on respondent-taxpayer to show not only that the Commissioner of Internal Revenue is wrong, but that the taxpayer is right.

Thereafter, respondent filed its Reply[6] to petitioner's Answer in said case on April 8, 2011, alleging that contrary to herein petitioner's position, its allegations are well supported by documentary evidence as shown in the attachments to its Petition for Review in CTA Case No. 8233. Thus, respondent prays that judgment be rendered finding it not liable for deficiency taxes and that herein petitioner be ordered to cancel and terminate the corresponding tax assessments against it for taxable year 2006.

On June 8, 2011, the parties filed with the Court in Division their Joint Stipulation of Facts and Issues.[7] The same was approved in the Resolution dated June 14, 2011.[8] In the same Resolution, the Court in Division further ordered the parties to proceed with trial on the merits and to only present evidence not covered by their Joint Stipulation of Facts.

On August 4, 2011, the Court in Division, upon respondent's Motion for Commissioning of Independent Certified Public Accountant (CPA), appointed Ronald B. Alvarez as duly commissioned Independent CPA.

During trial, respondent presented Aniebeth Dionzon and Ronald B. Alvarez as its witnesses before the Court in Division. Thereafter, respondent filed its Formal Offer of Evidence on April 17, 2012,[9] submitting Exhibits "A" to "JJ", inclusive of sub-markings. These Exhibits were admitted by the Court in Division in the Resolutions dated May 22, 2012[10] and July 19, 2012[11].

On the other hand, petitioner presented as her sole witness Luzviminda A. Pedroso. On September 24, 2012, petitioner filed her Formal Offer of Documentary Evidence,[12] submitting Exhibits "1" to

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[6] Division Docket – Vol. I, pp. 145 to 148.
[7] Division Docket – Vol. I, pp. 182 to 185.
[8] Division Docket – Vol. I, p. 188.
[9] Division Docket – Vol. I, pp. 424 to 452
[10] Division Docket – Vol. I, pp. 464 to 465.
[11] Division Docket – Vol. I, p. 477.
[12] Division Docket – Vol. I, pp. 527 to 536.

"15-a", which the Court in Division admitted in the Resolution dated November 20, 2012.[13]

On February 12, 2013, the case was submitted for decision taking into consideration respondent's Memorandum filed on January 28, 2013,[14] and the Report dated February 6, 2013 of the Records Division that petitioner failed to submit a Memorandum.[15]

As mentioned earlier, the Court in Division partially granted the Petition for Review in the assailed Decision. Aggrieved, petitioner filed a *Motion for Partial Reconsideration (Re: Decision dated 12 November 2013)* on November 29, 2013.[16] The said Motion, however, was denied by the Court in Division in the assailed Resolution.[17]

Hence, petitioner filed before the Court *En Banc* the instant *Petition for Review* on March 26, 2014,[18] by registered mail, within the extension period of fifteen (15) days from March 11, 2014,[19] praying that said Petition be given due course, and the Decision promulgated on 12 November 2013 and the Resolution promulgated on 12 February 2014 be reconsidered and set aside, and a new one be entered.

Without necessarily giving due course to the *Petition for Review*, respondent was ordered by the Court *En Banc* to file a Comment thereon.[20] Correspondingly, respondent filed its *Comment (To the Petition for Review)* on June 24, 2014.[21]

Considering the arguments raised by petitioner in the *Petition for Review* and respondent's *Comment* thereon, the Court *En Banc* resolved to give due course to the instant Petition for Review and required the parties to submit their respective Memorandum.[22]

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[13] Division Docket – Vol. I, pp. 552 to 553.
[14] Division Docket – Vol. I, pp. 567 to 629.
[15] Resolution dated February 12, 2013, Division Docket – Vol. I, p. 632.
[16] Division Docket – Vol. II, pp. 674 to 681.
[17] EB Docket, pp. 60 to 63; Division Docket – Vol. II, pp. 707 to 710.
[18] EB Docket, pp. 68 to 79.
[19] *Motion for Extension of Time (to File Petition for Review)* vis-à-vis Minute Resolution dated March 17, 2014, EB Docket, pp. 1 to 5.
[20] EB Docket, pp. 128 to 129.
[21] EB Docket, pp. 134 to 140.
[22] Resolution dated July 22, 2015, EB Docket, pp. 150 to 151.

Respondent filed its *Memorandum* on August 29, 2014,[23] while petitioner failed to file her Memorandum within the period granted by the Court.[24] Thereafter, the case was submitted for decision on November 27, 2014.[25]

Hence, this Decision.

THE ISSUE

Petitioner raises, in effect, this sole issue for the Court *En Banc*'s resolution, to wit:

> **Whether or not respondent is liable for deficiency income, VAT and EWT, including increments, for taxable year 2006 in the total amount of ₱61,343,211.66.**

Petitioner's Arguments:

Petitioner argues that respondent failed to substantiate its claim that it is not liable for deficiency income tax, VAT and EWT for taxable year 2006.

According to petitioner, it can hardly be denied that the volume of fuel received by respondent per Import Entry Internal Revenue Declaration (IEIRD) is 23,728,291.02 liters, but per Official Register Book (ORB), it is only 22,331,596 liters, thereby resulting to a discrepancy of 1,396,695.02 liters, which consequently must be considered as undeclared sales in the amount of ₱39,735,973.36. The imposition of income tax thereon was sustained pursuant to Section 32 of the National Internal Revenue Code (NIRC).

Moreover, petitioner contends that respondent's sales to Manila International Airport Authority (MIAA) as appearing in the certificates of creditable withholding VAT or BIR Form No. 2306 amounted to ₱14,299,945.59, while the reported sales as appearing in its Summary List of Sales (SLS) amounted to ₱4,131,271.33; thus, the discrepancy amounting to ₱10,168,674.56 was assessed pursuant to Section 32 of the NIRC.

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[23] EB Docket, pp. 152 to 216.
[24] As per Records Verification dated November 10, 2014, EB Docket, p. 217.
[25] Resolution dated November 27, 2014, EB Docket, pp. 219 to 220.

Allegedly, respondent's claim for deduction of income payments amounting to ₱6,839,322.38 were not subjected to withholding tax for lack of substantiation; thus, the same was accordingly disallowed pursuant to Section 34(K) of the NIRC.

Moreover, validation of certificates of creditable withholding tax submitted allegedly disclosed that the amount of ₱2,813.10 is unsupported; hence, the assessment was sustained pursuant to Section 58 of the NIRC, as implemented by Section 2.58.5 of Revenue Regulations No. 2-98.

With respect to VAT assessments, petitioner points out that respondent failed to submit evidence to prove that no VAT deficiency should be assessed on the following amounts: *(a)* discrepancy amounting to ₱2,595,097.18, as per sales reported in respondent's VAT Return and Income Tax Return; *(b)* undeclared receipts of imported diesel amounting to ₱39,735,973.36; *(c)* understatement of sales to MIAA amounting to ₱10,168,674.56; and *(d)* respondent sales to government per SLS amounting to ₱149,137,352.78 with a corresponding output VAT at the rate of 7% only.

Petitioner further claims that the following input taxes were properly disallowed: *(a)* input tax from Herma Shipping and Transport Corporation in the amount of ₱54,124.39 does not pertain to taxable year 2006 as evidenced by official receipts dated January 7 & 8, 2007; and *(b)* input tax from local purchases amounting to ₱643,883.16 are supported by invoices and/or official receipts issued by non-VAT, with invalid TINS, invalid SI/OR, registered as one time taxpayer and cannot be found in the BIR database.

Additionally, petitioner avers that while respondent's Certificate of Final Tax Withheld at Source in support of its claim for VAT credits shows the amount of ₱30,019,105.22, verification disclosed that only the amount of ₱30,076,472.61 pertains to taxable year 2006; hence the difference of ₱57,367.39 was disallowed.

With respect to withholding tax assessments, petitioner avers that reconciliation and analysis of respondent's income payment reveal that the amount of ₱68,393.22 is still due and unpaid; hence, it was properly assessed pursuant to Section 57(B) of the NIRC.

Finally, petitioner asserts that tax assessments are presumed correct and made in good faith. The burden of proof is on the taxpayer contesting the validity and correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise, the presumption of correctness of tax assessment stands.

Respondent's counter-arguments:

For its part, respondent counter-argues that the subject deficiency income, value-added and withholding tax assessments against respondent were correctly cancelled and terminated partially considering that the discrepancy that led to the assessed deficiency income tax and VAT for the alleged undeclared sales from undeclared receipt of imported diesel arose merely from petitioner's erroneous conversion of the weight of the fuel in kilograms to liters and the failure of petitioner to account for the direct deliveries made by respondent to Sea Oil Philippines.

According to respondent, the discrepancy which led to the assessed deficiency income tax and VAT for the alleged understatement of sales to MIAA arose merely from respondent's erroneous inclusion of certain *"Certificates of Final Tax Withheld at Source"* which pertain to sales made in prior years. Respondent further avers that the discrepancy that led to the assessed deficiency income tax for the alleged income payments not subjected to EWT arose merely from the timing difference in remitting the withholding tax pertaining to income payments made in 2006.

As regards the creditable withholding tax in the amount of ₱2,813.10, respondent concedes that said amount is unsupported considering that it cannot locate anymore the relevant certificates of creditable withholding tax.

With respect to the other assessments and findings of petitioner, respondent submits the following defenses:

a) VAT assessments: respondent contends that the discrepancy that led to the assessed deficiency VAT for the alleged understatement of sales arose merely from the VAT rate transition from 10% to 12% during the year 2006. Allegedly, the discrepancy that led to the assessed deficiency VAT for the under computation of output VAT on sales to the government arose merely from petitioner's erroneous computation of the correct output VAT.

b) Disallowed input VAT on purchases from Herma Shipping and Transport Corporation: respondent contends that the corresponding sales invoices relative to purchases were dated 27 October 2006 and 30 November 2006 although the official receipts were dated 2 and 8 January 2007. At any rate, respondent claims that the corresponding input tax for said transaction was applied in the year 2006.

c) Deficiency VAT due to disallowance of input tax on local purchases: respondent claims that based on the findings of the Independent CPA, only the amount of ₱99,339.62 input tax is a valid disallowance. In addition, respondent argues that the discrepancy that led to the assessed deficiency VAT for unsupported creditable withholding VAT arose merely from petitioner's erroneous inclusion of 2005 sales in its computation for 2006 due to respondent's claim of creditable taxes withheld relating to the transaction.

d) Withholding tax assessment: respondent avers that the alleged underpayment of withholding tax on income payment arose merely from the discrepancy on the tax base in computing the expanded withholding tax and based on the findings of the Independent CPA, the EWT still payable amounts to ₱16,068.11 and not ₱68,393.22.

Finally, respondent submits that while it is true that the tax assessments issued by the BIR enjoy the presumption of being correct, such presumption is disputable and in this case, said presumption was clearly and unequivocally overcome by respondent's testamentary and documentary evidence on record.

THE COURT *EN BANC*'S RULING

We find no merit in the instant Petition for Review.

The arguments raised by petitioner in her petition are not new. Said arguments are exactly the same as those interposed by petitioner in her Answer filed in CTA Case No. 8233 with the Court in Division on March 23, 2011, which were sufficiently passed upon and exhaustively discussed in the assailed Decision. Apart from bare reiterations of the details of the subject assessment, petitioner fails to make any specific discussion to support her arguments in the instant petition, and neglects to point out the supposed error in the findings of fact of the Court in Division.

A careful review of the factual findings of the Court in Division in the assailed Decision clearly shows that it is well-supported by law and evidence on record. As between a thoroughly discussed ruling of the Court in Division, and reiterated statements made by petitioner against the said ruling, the former must perforce prevail.

The Court in Division was correct in finding that there were undeclared sales and understated sales, albeit in reduced amounts, in relation to petitioner's deficiency income tax and deficiency EWT assessments against respondent.

Petitioner reiterates her stance regarding the *Undeclared sales from undeclared receipts of imported diesel* in the amount of ₱39,735,973.36; the *Understated sales to MIAA* in the amount of ₱10,168,674.56; and the disallowed expense in the amount ₱6,839,322.38, for the supposed failure to subject the same to withholding tax pursuant to Section 34(K) of the NIRC.

However, the Court in Division was correct in its findings on the said items, to wit:

"**a. Undeclared sales from undeclared receipts of imported diesel - ₱39,735,973.36**

xxx xxx xxx

In fine, only the amount of ₱27,136,623.32 (₱39,735,973.36 less ₱12,599,350.00) shall be considered as undeclared sales of [respondent] for 2006. However, the related cost should be deducted from the undeclared sales based on [respondent]'s cost ratio as computed from the total sales and cost of sales declared in its Annual ITR for the year 2006, detailed as follows:

Total sales	₱ 1,985,241,196.54
Less: Total cost of sales	1,938,163,357.97
Gross Profit	**₱ 47,077,838.57**
Gross Profit Ratio	2.37139%
Cost Ratio	**97.62861%**

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Undeclared sales	₱ 27,136,623.32
Multiply by cost ratio	97.62861%
Cost of undeclared sales	**₱ 26,493,107.77**

Hence, petitioner's (herein respondent) undeclared income from undeclared sales resulting from undeclared receipts of imported diesel amounts to ₱643,515.55, computed as follows:

Undeclared sales from undeclared receipts of imported diesel	₱ 27,136,623.32
Less: Cost of undeclared sales	26,493,107.77
Undeclared income	**₱ 643,515.55**

b. Understated sales to MIAA - ₱10,168,674.56

xxx xxx xxx

Thus, total income payments from MIAA for the year 2006 would amount to ₱4,266,121.19, computed as follows:

Exhibit	Period Covered	VAT Withheld	Income Payments
O-3	1/1/06 to 9/30/06	₱ 164,040.70	₱ 3,263,195.79
O-5	11/1/06 to 11/30/06	14,383.92	287,678.40
O-9	1/1/07 to 1/31/07	35,762.35	715,247.00
TOTAL		₱ 214,186.97	₱ 4,266,121.19

Comparing the said amount with [respondent]'s Summary List of Sales (SLS) to MIAA for the year 2006, there remains a discrepancy of ₱134,849.86, as computed below:

Per Certificate of Creditable WVAT	₱ 4,266,121.19
Per Summary List of Sales	4,131,271.33
Difference	**₱ 134,849.86**

The said unaccounted discrepancy is [respondent]'s undeclared income that should be subjected to income tax.

c. Income payments not subjected to withholding tax - ₱6,839,322.38

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In support of its allegations, [respondent] submitted invoices, statement of accounts, official receipts and checks issued for its purchases from TWA, Inc. for December 2006 and January 2007 and the BIR Form No. 1601-E for the month of January with Alphalist of Payees to prove that the corresponding taxes were withheld therefrom and remitted to the BIR on February 2007, detailed as follows:

Exhibit	Invoice No.	Invoice Date	Gross	Net	WT Due	Net of WT
P-3	23115	12/28/2006	₱1,512,000.00	₱1,350,000.00	₱13,500.00	₱1,498,500.00
P-4	23116	12/28/2006	3,162,000.00	2,823,214.29	28,232.14	3,133,767.86
P-5	21493	12/16/2006	410,200.00	366,250.00	3,662.50	406,537.50
P-6	21966	12/14/2006	367,400.40	328,036.07	3,280.36	364,120.04
P-7	21488	12/14/2006	408,800.00	365,000.00	3,650.00	405,150.00
			5,860,400.40	**5,232,500.36**	**52,325.00**	**5,808,075.40**
P-11	23501	1/12/2007	420,000.00	375,000.00	3,750.00	416,250.00
P-10	SOA 0469	1/16/2007	410,200.00	366,250.00	3,662.50	406,537.50
P-8	SOA 0478	1/25/2007	77,280.00	69,000.00	690.00	76,590.00
P-9	25094	1/29/2007	1,120,000.00	1,000,000.00	10,000.00	1,110,000.00
			2,027,480.00	**1,810,250.00**	**18,102.50**	**2,009,377.50**
TOTAL			**₱7,887,880.40**	**₱7,042,750.36**	**₱70,427.50**	**₱7,817,452.90**
Less: Overpayment on December 2006				843,749.36	8,437.49	
EWT remitted for the month of January 2007				**₱6,199,001.00**	**₱61,990.01**	

As found by the Independent CPA and as verified by this Court, purchases made in December 2006 amounting to ₱5,232,500.36 (net of VAT), which formed part of the purported income payments not subjected to expanded withholding tax, were indeed subjected to expanded withholding taxes in January 2007 and remitted on February 14, 2007. Thus, only the amount of ₱1,606,822.02 remains unaccounted and petitioner should be made liable to pay deficiency income tax and withholding tax only on the said remaining discrepancy.

But, since the income payments of ₱5,232,500.36 was already due and demandable on December 2006 based on the invoice that it received, it is incumbent upon [respondent] to withhold and remit to the collecting agent of the BIR the corresponding taxes thereon, pursuant to Section 2.57.4 of Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 12-01, xxx:

xxx xxx xxx

Considering that the corresponding withholding taxes due thereon in the amount of ₱43,887.51 (₱52,325.00 less ₱8,437.49) was already due for payment on January 15, 2007 but was belatedly remitted only on February 14, 2007, the same shall be imputed with interest computed from January 15, 2007 until February 14, 2007, pursuant to Section 249(A) of the NIRC of 1997."

Petitioner failed to show any error on the foregoing findings by the Court in Division. Correspondingly, the same must be sustained.

As for the amount of ₱2,813.10, representing unsupported creditable withholding tax for the year 2006, this is already a non-issue, as respondent has already conceded to the said finding of petitioner. The assailed Decision declares:

"**d. Unsupported Creditable Withholding Tax - ₱2,813.10**

With regard to respondent's (herein petitioner's) findings of unsupported creditable withholding tax for the year 2006 in the amount of ₱2,813.10, petitioner (herein respondent) **conceded for the reason that it cannot locate anymore the relevant certificates of creditable withholding tax**." *(Emphasis supplied)*

Nevertheless, it must be pointed out that notwithstanding the above-stated findings of the Court in Division of undeclared sales, understated sales, and there are some income payments which were not subjected to withholding tax, the subject deficiency income tax assessment was correctly cancelled. On this score, We quote with approval the Court in Division's ruling on the matter, to wit:

"In fine, petitioner has no deficiency income tax liability for the year 2006, since it has sufficient tax credits to cover its income tax liability for the same year, as shown below:

Taxable Income per ITR		₱ 3,836,582.76
Add: Adjustments per audit		
Undeclared sales from undeclared receipts of imported diesel	₱ 643,515.55	
Understated Sales to MIAA	134,849.86	

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Income payments not subjected to tax		1,606,822.02	2,385,187.43
Taxable Income			**₱ 6,221,770.19**
Tax Due			₱ 2,177,619.57
Less: Tax Credits/ Payments			
Prior Year's Excess Tax Credits		₱ 38,298.48	
Creditable Tax Withheld for the First Three Quarters	₱2,631,872.66		
Creditable Tax Withheld per BIR Form 2307 for the Fourth Quarter	2,406,268.07		
Total CWT for year 2006	₱5,038,140.73		
Less: Unsupported CWT	2,813.00	5,035,327.73	5,073,626.21
Overpayment			**₱(2,896,006.64)**

In the same vein, in relation to the imposition of deficiency EWT, including increments, since We find no reversible error in the following findings of the Court in Division, the same is hereby sustained:

> "However, petitioner (herein respondent) is liable to pay deficiency expanded withholding tax for the year 2006 in the amount of ₱16,068.22, computed as follows:

Income not subjected to EWT	₱ 1,606,822.02
EWT Rate	x 1%
Deficiency EWT	**₱ 16,068.22**

> Likewise, petitioner (herein respondent) shall be liable to pay the deficiency increments of ₱721.44 for late remittance of withholding taxes of ₱43,887.51, as computed below:

Deficiency on Increments for Late Remittance of Withholding Taxes	
Expanded withholding taxes due	₱ 43,887.51
Add: 20% Interest (01-15-07 to 02-14-07)	
[43,887.51 x 20% x 30 days / 365]	721.44
Total Tax Due	₱ 44,608.95
Less: Payment (02-14-07)	43,887.51
Total Amount Due	**₱ 721.44**

With regard to the VAT assessment, petitioner likewise failed to refute the findings of the Court in Division.

The arguments raised by petitioner in relation to the VAT assessment are likewise mere reiterations of its arguments *a quo*. As already stated, the said arguments have already been squarely addressed by the Court in Division, to which We find no irregularity nor error.

As regards the supposed discrepancy between the sales reported in the VAT returns in the amount of ₱2,002,081,196.65 and the sales appearing in the income tax return amounting to ₱2,004,785,459.28, the Court in Division found as follows:

> "After examination of petitioner's (herein respondent's) evidence, the Court finds that petitioner (herein respondent) has no understatement of sales since it clearly illustrated how much of its gross receipts were subjected to 0%, 10% or 12% VAT rate. As correctly pointed out by petitioner (herein respondent), the difference was only due to VAT rate transition from 10% to 12% during the year 2006 by virtue of RA No. 9337, as clarified in Revenue Memorandum Circular (RMC) No. 22-2006. In applying the correct and applicable VAT rate, the total income for VAT purposes will be the same as the total income as reported in petitioner's (herein respondent's) Annual ITR for 2005 in the amount of ₱2,004,785,459.26. Hence, there is no understatement of sales."

Anent the *Sales from undeclared receipts of imported diesel* in the amount of ₱39,735,973.36; and the *Understatement of sales to MIAA* in the amount of ₱10,168,674.56, these two (2) items are related to the findings on the subject income tax assessment, and thus, the Court in Division has only this to say:

> "**b. Sales from undeclared receipts of imported diesel - ₱39,735,973.36**
>
> As previously discussed, petitioner (herein respondent) failed to submit proof of error in the assessment pertaining to the assessed sales from undeclared receipts of imported diesel; hence, the assessment should be upheld but in the modified amount of ₱27,136,623.32.

c. Understatement of sales to MIAA - ₱10,168,674.56

After consideration of evidence presented with regard to respondent's (herein petitioner's) assessment on petitioner's (herein respondent's) understatement of sales to MIAA amounting to ₱10,168,674.56, the Court finds that petitioner should be held liable for deficiency VAT on the adjusted discrepancy amounting to ₱134,849.86, computed as follows:

Per Certificate of Creditable WVAT	₱ 4,266,121.19
Per Summary List of Sales	4,131,271.33
Difference	**₱ 134,849.86**

As regards the VAT assessment in the amount of ₱7,456,867.64, the following findings of the Court in Division were not refuted by petitioner in this Petition, to wit:

"Out of the income payment of ₱606,633,321.08 only the amount of ₱590,281,283.11 (₱606,633,321.08 less ₱16,352,037.97) pertains to sale to government agencies for the year 2006, with a final VAT withheld amounting to ₱29,509,226.59 (₱30,041,840.72 less ₱532,614.13). In line with this, respondent (herein petitioner) allegedly found that the sales to government amounting to ₱149,137,352.78 was subjected only to 7% VAT instead of 12%, thus, assessed for the deficiency tax of ₱7,456,867.64 representing the remaining 5% output VAT.

However, upon verification of petitioner's (herein respondent's) Summary list of Sales, the Court finds that the petitioner's (herein respondent's) sales to government agencies for the months of April, May and June 2006, the period covered by the present assessment, actually amount to ₱142,048,364.35 and the sales were properly subjected to 12% output tax, except for the sale to NPC for the month of June 2006 amounting to ₱255,777.36 which was only subjected to 10% VAT, as shown below:

Period Covered	Customer	Sales	Output Tax	Tax Rate
5/31/2006	DPWH	₱ 1,561,713.93	₱ 187,405.67	12%
6/30/2006	DPWH	1,608,170.89	192,980.51	12%
	Subtotal	***₱ 3,169,884.82***	***₱ 380,386.18***	

nb

4/30/2006	MIAA	₱ 200,700.00	₱ 24,084.00	12%
5/31/2006	MIAA	423,557.14	50,826.86	12%
6/30/2006	MIAA	218,571.43	26,228.57	12%
	Subtotal	***₱ 842,828.57***	***₱ 101,139.43***	
4/30/2006	NPC	₱ 17,374,821.03	₱ 2,084,978.52	12%
5/31/2006	NPC	54,739,223.35	6,568,706.80	12%
6/30/2006	NPC	65,665,829.22	7,879,899.51	12%
6/30/2006	NPC	255,777.36	25,577.74	10%
	Subtotal	***₱138,035,650.96***	***₱16,559,162.57***	
TOTAL		**₱142,048,364.35**	**₱17,040,688.18**	

Accordingly, petitioner (herein respondent) should be made liable only to additional output tax of 2% or in the amount of ₱5,115.54, computed thus:

Sale to NPC for June 2006	₱ 255,777.36
Output tax rate	12%
Tax due	₱ 30,693.28
Less: Output tax applied	25,577.74
Deficiency VAT *on* sales to government	**₱ 5,155.54**

In all of the Court in Division's findings and rulings on the subject VAT assessment, petitioner presented no new arguments to overthrow the same.

With reference, however, to petitioner's arguments regarding the disallowed input tax credits in the amounts of ₱54,124.39, ₱643,883.16, and ₱57,367.39, respectively, We find it unconceivable that petitioner is still questioning the said items, despite the fact that the Court in Division made favorable pronouncements in relation thereto, by thereby upholding the said disallowances. In fact, worthy of note is the Court in Division's finding that the *Unsupported withholding VAT credits* is ₱509,878.52, instead of only the amount of ₱57,367.39, as found by petitioner.

Nonetheless, similar to the findings on the income tax assessment, while it may be true that there are findings on the VAT assessment adverse to respondent, the latter has sufficient input VAT credits to offset the impact of the said adverse findings, as shown below:

Sales per return:				
Vatable sales - Non-government			₱1,395,908,936.48	
Vatable sales - Government			588,227,000.79	
Zero-rated sales			4,032,601.00	₱1,988,168,538.27
Add: Adjustments per audit				
Corrections per VAT Rate Transition				
Total Vatable sales:				
At 10%	₱ 69,740,734.11			
At 12%	1,926,018,658.74			
Zero-rated sales	6,321,803.80	₱2,002,081,196.65		
Reflected per VAT Return		1,988,168,538.27	₱ 13,912,658.38	
Net sales from undeclared receipts of imported diesel			27,136,623.32	
Understatement of sales to MIAA			134,849.86	41,184,131.56
Total sales subject to VAT as corrected				₱2,029,352,669.83
Less: Zero-rated sales				6,321,803.80
Total sales subject to VAT per audit				₱2,023,030,866.03
Output tax:				
At 10%		₱ 69,740,734.11	₱ 6,974,073.41	
At 12%		1,953,290,131.92	234,394,815.83	
		2,023,030,866.03		241,368,889.24
Add: Under-computation of output VAT on sales to government				5,155.54
Total output tax				₱ 241,374,044.78
Less: Input tax credits				
Claimed per VAT Return			₱ 213,493,120.97	
Less: Deductions				
Disallowed input tax				
Input tax from Herma Shipping & Transport Corp.		54,124.39		
Input tax on local purchases		643,883.16	698,007.55	212,795,113.42
VAT Payable				₱ 28,578,931.36
Less: Tax credits/Payments per return				
Total claim per VAT return			₱ 30,088,421.39	
Less: Unsupported creditable VAT			509,878.52	29,578,542.87
Excess Input VAT				**₱ (999,611.51)**

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(No Part)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice