REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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WILLORE PHARMA CORPORATION, Petitioner,	**CTA Case No. 8602**
	Members:
- versus -	**DEL ROSARIO,** P.J., **UY,** and **MINDARO-GRULLA,** JJ.
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUN 22 2016, 4:05 p.m.

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DECISION

UY, J.:

Before this Court is the *Petition for Review* filed by Willore Pharma Corporation on January 10, 2013, praying for the reversal and setting aside of the assessment for taxable year 2008 issued against it under Demand No. 043A-B004-08 covering alleged deficiency income tax, expanded withholding tax (EWT), fringe benefits tax (FBT), final withholding tax (FWT), final withholding on value-added tax (FWVAT), and inclusive of surcharge, interest and compromise penalties, in the aggregate amount of ₱7,952,418.72.

THE FACTS

Petitioner Willore Pharma Corporation is a corporation duly organized and existing under Philippine laws, with address at Unit 1514 Medical Plaza Ortigas, 25 San Miguel Avenue, Pasig City. It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. (TIN) 241-953-587-000.[1]

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[1] Par. II.A.1, Pre-Trial Order dated May 12, 2014, Docket—Vol. III, p. 1418.

On the other hand, respondent Commissioner of Internal Revenue is the officer vested by law with the power to enforce and implement the provisions of the National Internal Revenue Code (NIRC), and all appurtenant rules and regulations. She holds office at the Bureau of Internal Revenue (BIR), BIR Road, Diliman, Quezon City.[2]

On March 21, 2012, petitioner, through its marketing statistician, Mildred Garcia, received the *Preliminary Assessment Notice* (PAN) with an attached *Details of Discrepancies*,[3] informing petitioner of its deficiency income tax, EWT, FBT, FWT, and FWVAT for taxable year ending December 31, 2008.[4]

Thereafter, respondent issued the *Assessment Notices* for taxable year 2008,[5] covered by *Formal Letter of Demand* dated April 10, 2012 (Demand No. 043A-B004-08), which was received by petitioner on April 18, 2012.[6]

Demand No. 043A-B004-08 assessed petitioner of the following alleged tax liabilities:[7]

Income Tax	₱ 6,196,458.71
EWT	₱ 900,936.46
FBT	₱ 789,695.26
FWT	₱ 32,638.09
FWVAT	₱ 11,190.20
Compromise Penalty	₱ 21,500.00

On November 8, 2012, petitioner, through Mildred Garcia, received the *Preliminary Collection Notice* dated November 5, 2012 relating to the deficiency tax assessments covered by Demand No. 043A-B004-08.[8]

Petitioner acknowledged receipt of the *Preliminary Collection Notice* through the letter dated November 9, 2012.[9] In the same

[2] Par. II.A.2, Pre-Trial Order dated May 12, 2014, Docket—Vol. III, p. 1418.
[3] Par. II.A.6 and 7, Pre-Trial Order dated May 12, 2014, Docket—Vol. III, p. 1419.
[4] Exhibits "R-14" and "R-15", BIR Records, pp. 215 to 219.
[5] Exhibits "P-2", "P-3", "P-4", "P-5", "P-6", and "P-7".
[6] Exhibit "P-1"; Exhibits "R-16" to "R-17-1", BIR Records, pp. 230 to 237.
[7] Exhibits "R-17" and "R-17-1", BIR Records, pp. 229 to 231.
[8] Par. II.A.8, Pre-Trial Order dated May 12, 2014, Docket—Vol. III, p. 1419; BIR Records, p. 245.
[9] Par. II.A.9, Pre-Trial Order dated May 12, 2014, Docket—Vol. III, p. 1419.

letter, petitioner informed respondent that it protested the assessment on April 20, 2012.[10]

Afterwards, petitioner filed the instant *Petition for Review*[11] on January 10, 2013, considering the alleged inaction by respondent on its protest.

Respondent filed her *Answer* on February 19, 2013,[12] and averred the following special and affirmative defenses, to wit :

"SPECIAL AND AFFIMATIVE DEFENSES

4. She reiterates and re-pleads the foregoing paragraphs of this Answer as part of her Special and Affirmative Defenses;

5. All presumptions are in favor of the correctness of the Assessment and the manner by which it was arrived at. Petitioner was accorded due process in the conduct of the investigation of its internal revenue tax.

6. Herein petitioner was fully apprised of the facts and the law upon which the Final Assessment was issued. The Final Assessment Notice, Formal Letter of Demand and details of Discrepancies which were received by the Petitioner detailed the manner of computation, the facts upon which the assessment was based and the law applied in arriving at the deficiency assessment.

   The Investigation of the Revenue Officers concerned resulting in a Deficiency Income Tax amounting to P6,196,458.71 including interest was duly supported by facts and applicable laws.

   Likewise, the Deficiency Expanded Withholding Tax amounting to ₱900,936.46 including interest, Deficiency Fringe Benefits Tax amounting to ₱789,695.26 including interest, Deficiency Final Withholding Tax amounting to ₱32,638.09 including interest and Deficiency Final Withholding Tax on VAT amounting to ₱11,190.20 including interest were all supported by facts and applicable laws.

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[10] Letter dated November 9, 2012, BIR Records, p. 250.
[11] Docket—Vol. I, pp. 8 to 27.
[12] Docket—Vol. I, pp. 263 to 265.

7. Contrary to the assertion of the Petitioner, the Assessment has become final and executory. There is no showing that the Protest allegedly filed by the Petitioner bear an indication that it was duly received by the Bureau of Internal Revenue (BIR). It does not bear any receiving stamp of the BIR or any signature and date indicating receipt of the protest and the date thereof;

8. It is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the NIRC, existing laws and prevailing jurisprudence to validly dispute the Assessment including but not limited to the submission of complete supporting documents;

9. Taxpayer must establish by sufficient and competent evidence that its protest is valid and binding".

On February 21, 2013, the case was set for pre-trial on April 11, 2013.[13] Petitioner filed its *Pre-Trial Brief* on May 16, 2013.[14]

On June 18, 2013, respondent filed her *Omnibus Motion to Set Preliminary Hearing on Affirmative Defenses and to Defer Pre-Trial Conference* on the ground that the Court does not have jurisdiction to act on the instant petition since there was no timely administrative protest filed.[15]

Petitioner filed its *Comment (Re: Omnibus Motion to Set Preliminary Hearing on Affirmative Defenses and To Defer Pretrial Conference)* on June 26, 2013, attaching thereto the original receiving copy of the Letter Protest and Letter Submission.[16]

The Court denied the *Omnibus Motion* because the issues raised therein are questions of fact that could best be determined in a full blown hearing and not on a mere preliminary hearing.[17]

Respondent's *Pre-Trial Brief* was later filed on November 15, 2013.[18]

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[13] Resolution dated February 21, 2013, Docket—Vol. I, p. 267.
[14] Docket—Vol. I, pp. 276 to 280.
[15] Docket—Vol. I, pp. 297 to 300.
[16] Docket—Vol. I, pp. 306 to 313.
[17] Resolution dated September 10, 2013, Docket—Vol. I, pp. 323 to 325.
[18] Docket—Vol. I, pp. 330 to 334.

On February 25, 2014, on March 12, 2014, and on April 14, 2014, the parties submitted their *Joint Stipulation of Facts*,[19] *Supplemental Joint Stipulation*,[20] and *Second Supplemental Joint Stipulation*,[21] respectively; which were approved in the Resolution dated April 29, 2014.[22]

Thereafter, the Court issued the *Pre-Trial Order* dated May 12, 2014 and deemed the pre-trial conference terminated.[23]

During trial, petitioner presented documentary and testimonial evidence. Petitioner presented and offered the testimonies of Katherine Sheena S. Tugade, the Accounting Manager of petitioner,[24] and Atty. Eraño M. Punsalan, the Independent Certified Public Accountant (ICPA).[25]

Petitioner likewise presented, marked, identified, and offered Exhibits "P-1 to P-304-1", which were later admitted by the Court, except for the following exhibits, to wit:[26]

1. Exhibits "P-123" to "P-130", for failure of the documents offered to correspond with the documents actually marked and identified by the witnesses;
2. Exhibits "P-149" and "P-259", for failure of petitioner to submit the originals for comparison;
3. Exhibits "P-279" to "P-291" and "P-292" to "P-302", for failure of petitioner to have the said exhibits identified; and
4. Exhibit "P-291-1", for not being found in the records.

Nevertheless, petitioner filed its *Tender of Excluded Evidence* on November 11, 2014 and moved that the said denied exhibits be attached to and made part of the records of the case, the same having been submitted by the witnesses, and referenced in their Judicial Affidavits.[27] The Court took note of the same in the

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[19] Docket—Vol. I, pp. 494 to 496.
[20] Docket—Vol. I, pp. 857 to 870.
[21] Docket—Vol. I, pp. 885 to 886.
[22] Docket—Vol. I, pp. 889 to 890.
[23] Docket—Vol. III, pp. 1417 to 1452.
[24] Judicial Affidavit of Katherine Sheena S. Tugade, Docket—Vol. I, pp. 284 to 295, Supplemental Judicial Affidavit of Katherine Sheena S. Tugade, Docket—Vol. I, pp. 503 to 518; Transcript of Stenographic Notes (TSN) at the hearing held on March 13, 2014.
[25] Exhibit "P-303", Docket—Vol. III, pp. 1460 to 1465; TSN at the hearing held on March 13, 2014 and September 9, 2014.
[26] Resolution dated September 8, 2014, Docket—Vol. III, pp. 2017 to 2018.
[27] Docket—Vol. III, pp. 2030 to 2034.

Resolution dated December 3, 2014.[28]

As for respondent's evidence, she presented and offered the testimonies of Clea Marie P. Pimentel-Revenue Officer II of Revenue District Office No. 45-Marikina[29] and Benjamin L. Valeriano-Revenue Officer I, Assessment Division, Revenue Region No. 7[30].

Respondent formally offered Exhibits "R-1" to "R-21-1". Except for Exhibit "R-11", which was denied admission for being a mere photocopy, respondent's Exhibits were admitted by the Court.[31]

The case was deemed submitted for decision on June 23, 2015,[32] considering the filing of petitioner's *Memorandum*[33] on April 20, 2015, and for failure of respondent to file a memorandum.

Hence, this Decision.

THE ISSUES

The parties submitted the following issues[34] for the Court's resolution, to wit:

1. Whether the assessment in the total amount of ₱7,952,418.72 under Demand No. 043A-B004-08 should be nullified and set aside; and

2. Whether or not petitioner complied with existing laws and guidelines relative to the filing of protest, the submission of supporting documents, and the filing of Petition for Review.

Petitioner's arguments:

In support of its stance that the assessment in the total amount of ₱7,952,418.72 under Demand No. 043A-B004-08 should be reversed and set aside, petitioner argues the following:

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[28] Docket—Vol. III, p. 2036.
[29] Exhibit "R-19", Docket—Vol. I, pp. 335 to 344; TSN at the hearing held on September 9, 2014, pp. 6 to 11.
[30] Exhibit "R-21", Docket—Vol. I, pp. 415 to 419, TSN at the hearing held on November 11, 2014.
[31] Resolution dated February 18, 2015, Docket—Vol. III, pp. 2067 to 2068.
[32] Resolution dated June 23, 2015, Docket—Vol. III, pp. 2115 to 2116.
[33] Docket—Vol. III, pp. 2081 to 2101.
[34] Pars. II.B.1 and II.B.2, Pre-Trial Order dated May 12, 2014, Docket—Vol. III, p. 1420.

1. With regard to the finding of undeclared income in the amount ₱77,673.26, petitioner posits that while Exhibit "P-11" shows that the amount was debited as a sales discount and credited as an interest expense, the reference under the entry has the annotation "interest incurred from advance collection", thereby indicating that the amount constitutes a financial charge. Petitioner points out that at the time the VAT Return for the said transaction was filed, the financial charge had not been incurred, and could not be reflected on the VAT Return since the advance collection had not been made; and that the financial charge, therefore, had to be reflected, and the appropriate adjustment made, in the Income Tax Return and the Financial Statement. In any event, Section 27 of the NIRC, as amended by Republic Act (RA) No. 9337, "gross income" is exclusive of "sales discounts".

2. As for the amount of ₱808,098.00 which supposedly represents Salaries and Wages not supported by withholding tax, petitioner explains that the portion thereof in the amount of ₱774,571.55 appearing as "social cost" should not be added because it is not the same as the SSS, Pagibig and Philhealth entries in the Alphalist.

3. With reference to the amount of ₱1,621,599.98 as unsupported expenses, petitioner explains that the said amount composed of two (2) aspects: the direct costs aspect, and the operating expenses aspect. According to petitioner, the direct costs aspect is brought about by "cost variance", which in turn, is due to petitioner's use of the standard cost accounting system. Moreover, petitioner avers that the items under operating expenses are properly supported by Exhibits "P-89" to "P-183".

4. As regards the amount of ₱338,883.64 which represents unsupported stock losses, petitioner stresses that the said finding is based on its failure to apply for inventory assets disposal/destruction/loss as required by Revenue Memorandum Order No. 6-2012 dated April 2, 2012; that in 2008, which is the year covered by the assessment, there was no memorandum or circular which provided for rules on inventory assets disposal for expired stocks; and that the only applicable provision was the general rule on obsolescence found in Section 34(F)(1) of the NIRC.

5. As for the deficiency EWT on income payments not subjected to withholding amounting to ₱3,352,196.48, petitioner points to the ICPA Report that withholding tax is due on Professional Fees, Director's Fees, and Rentals in the amount of ₱3,888.00, ₱3,000, and ₱2,883.45, respectively. However, as for the payment to contractors/subcontractors, petitioner likewise points to the ICPA

Report where it was found the deductions allowable under Section 34 of the NIRC, except for expenses amounting to ₱206,075.00, which appear to be unsupported by documents.

6. As for the deficiency FBT amounting to ₱1,535,918.42, petitioner contends that based on Section 2.33(A) of Revenue Regulations (RR) No. 3-98, BIR Ruling No. 055-99 dated April 23, 1999, and BIR Ruling No. 013-2002 dated April 5, 2002, the fringe benefits subject of the assessment are exempt from fringe benefits tax.

7. With regard to the deficiency FWT to the advertising expenses amounting to ₱48,732.00, which was paid to CMP Medica Asia Pte. Ltd. (CMP), petitioner asserts that on the basis of Article 7(1) of the *Convention Between the Government of Singapore and the Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (hereinafter referred to as the "Philippine-Singapore Tax Treaty"), CMP has no permanent establishment in the Philippines, and consequently, any income it derives in the Philippines is not taxable in this jurisdiction. This applies even to VAT pursuant to Article 2(4) of the said Convention.

Respondent's counter-arguments:

In her Answer, respondent contends that all presumptions are in favor of the correctness of the assessment and the manner by which it was arrived at.

According to respondent, petitioner was accorded due process in the conduct of the investigation of its internal revenue tax; and that petitioner was fully apprised of the facts and the law upon which the Final Assessment was issued. Respondent also avers that the tax assessments were all supported by facts and applicable laws.

Moreover, respondent asserts that contrary to the assertion of the petitioner, the assessment has become final and executory; and that there is no showing that the protest allegedly filed by the petitioner bear an indication that it was duly received by the BIR.

Respondent further points out that it is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the NIRC, existing laws and prevailing jurisprudence to validly dispute the assessment including but not limited to the submission of complete supporting documents.

Lastly, respondent stresses that the taxpayer must establish by sufficient and competent evidence that its protest is valid and binding.

THE COURT'S RULING

The Court shall first resolve the issue pertaining to petitioner's compliance with the laws and guidelines on the filing of protest, the submission of supporting documents, and the filing of Petition for Review.

In the instant petition, it is stated that J.P. Tolentino & Co., petitioner's external auditor, filed a letter protest on behalf of petitioner on April 20, 2012 and submitted all supporting documents on June 14, 2012. On the other hand, respondent asserts that the protest allegedly filed by petitioner failed to show that it was duly received by the BIR. It does not bear any receiving stamp of the BIR or any signature and date indicating receipt of the protest.

Notably, respondent also raised the said issue in her *Omnibus Motion to Set Preliminary Hearing on Affirmative Defenses*, arguing that the Court does not have jurisdiction to act on the instant petition since there was no timely administrative protest filed.[35] The Court denied the motion and ruled that the issue could best be determined in a full blown hearing and not during a mere preliminary hearing.[36]

During hearing, petitioner's witness Katherine Sheena S. Tugade testified that petitioner's external auditor filed the April 20, 2012 letter of protest and the supporting documents with respondent.[37] Also, petitioner attached the original receiving copies of the letter of protest and letter of submission to its *Comment (Re: Omnibus Motion to Set Preliminary Hearing on Affirmative Defenses and To Defer Pretrial Conference)* filed on June 26, 2013.[38]

Contrary to respondent's allegation, a perusal of the said letters show that the letter of protest[39] and the letter of submission[40] bear the receiving stamp indicating "April 20, 2012" and "June 14, 2012", as the date of receipt by Nelia A. Delos Reyes of the Billing Section of the BIR.

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[35] Docket—Vol. I, pp. 297 to 300.
[36] Resolution dated September 10, 2013, Docket—Vol. I, pp. 323 to 325.
[37] Judicial Affidavit of Katherine Sheena S. Tugade, Docket—Vol. I, p. 286; TSN at the hearing held on March 13, 2014, pp. 21 to 23.
[38] Docket—Vol. I, pp. 306 to 313.
[39] Docket—Vol. I, pp. 310 to 312.
[40] Exhibit "P-10", Docket—Vol. I, p. 313.

As to the determination of petitioner's compliance with the procedure in protesting assessment notices and in filing the Petition for Review, the Court finds as instructive Section 228 of the NIRC of 1997, the pertinent portion of which are quoted as follows:

> "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
>
> **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." *(Emphases supplied)*

From the foregoing, the taxpayer may protest the assessment within a period of thirty (30) days from receipt thereof. The taxpayer shall likewise submit the documents in support of his protest within sixty (60) days from date of filing of his letter of protest. If the protest is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the inaction may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the 180-day period.

Records show that petitioner received the Assessment Notices for taxable year 2008[41] and Demand No. 043A-B004-08 on April 18, 2012.[42] Thereafter, petitioner filed the protest letter on April 20, 2012 and submitted the supporting documents on June 14, 2012.

Counting from June 14, 2012, respondent had 180 days from said date to act on petitioner's protest, and petitioner had 30 days or until January 10, 2013 within which to file a Petition for Review. Clearly, the instant Petition for Review filed on January 10, 2013 was timely filed.

With the finding that the protest and the instant Petition for Review were timely filed, the Court shall now proceed to resolve the issue on the propriety of the assessments issued by respondent against petitioner.

This case arose from the assessments for taxable year 2008 issued by respondent against petitioner under Demand No. 043A-B004-08 covering alleged deficiency income tax, EWT, FBT, FWT, FWVAT, and compromise penalties in the total amount of ₱7,952,418.72, inclusive of surcharge and interest, broken down as follows:[43]

TYPE OF TAX	AMOUNT
Income Tax	₱ 6,196,458.71
EWT	900,936.46
FBT	789,695.26
FWT	32,638.09
FWVAT	11,190.20
Compromise Penalties	21,500.00
Total	**₱ 7,952,418.72**

Before resolving the propriety of the assessment for deficiency income tax, the Court finds it proper to first determine the propriety of the assessments for deficiency EWT, FBT, FWT, and FWVAT as the Court's findings thereon would affect the computation of the deficiency income tax assessment.

I. DEFICIENCY EWT – ₱900,936.46

Respondent assessed petitioner of deficiency EWT for taxable year 2008 in the amount of ₱900,936.46, computed as follows:[44]

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[41] Exhibits "P-2", "P-3", "P-4", "P-5", "P-6", and "P-7".
[42] Exhibit "P-1"; Exhibits "R-16" to "R-17-1", BIR Records, pp. 230 to 237.
[43] Exhibit "R-17", BIR Records, pp. 229 to 231.
[44] Exhibit "R-17-1", BIR Records, p. 230.

	AMOUNT	TAX RATE	EWT DUE
Professional fees	₱ 25,920.00	15%	₱ 3,888.00
Director's fee	20,000.00	15%	3,000.00
Rentals	126,768.98	5%	6,338.45
Payments to prime contractors/sub-contractors	26,417,219.20	2%	528,344.38
Deficiency expanded withholding tax			₱ 541,570.83
Add: 20% interest p.a. (01.16.09 to 5.10.12)			359,365.63
TOTAL AMOUNT DUE			**₱ 900,936.46**

The assessment resulted from respondent's findings that there were income payments made by petitioner in the year 2008 comprising of professional fees in the amount of ₱25,920.00, director's fees in the amount of ₱20,000.00, rentals in the amount of ₱126,768.98, and payments to prime contractors/sub-contractors in the amount of ₱26,417,219.20 that were not subjected to EWT as required under Revenue Regulations No. 02-98, as amended, detailed as follows:[45]

INCOME PAYMENT	PER AUDIT	PER RETURNS	DIFFERENCE
Professional fees	₱ 25,920.00	-	₱ 25,920.00
Director's fee	20,000.00	-	20,000.00
Rentals	447,228.60	₱320,459.62	126,768.98
Payments to prime contractors/sub-contractors:			
Various expenses – contractors	771,088.26		
Advertising and promotion	1,970,732.41		
Freight cost	437,686.83		
Purchases – contractors	23,237,711.70		
	₱26,417,219.20		₱26,417,219.20

The Court shall discuss each of the above-enumerated categories of income payments.

A. Professional fees – ₱25,920.00

Petitioner admits that it failed to withhold and remit the EWT due of ₱3,888.00 on professional fees paid amounting to ₱25,920.00.[46] Hence, the Court sustains the deficiency EWT assessment of ₱3,888.00 pursuant to Section 2.57.2(A)(1) of RR No. 02-98, as amended, which states:

[45] Exhibit "R-18", item II, BIR Records, p. 227.
[46] Exhibit "P-304", Item II.a, Docket—Vol. III, p. 1501.

"Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. – xxx

(A) *Professional fees, talent fees, etc., for services rendered by individuals.* – On the gross professional, promotional and talent fees or any other form of remuneration for the services of the following individuals – Fifteen percent (15%), if the gross income for the current year exceeds P720,000; and Ten percent (10%), if otherwise;

(1) Those individually engaged in the practice of professions or callings; lawyers; certified public accountants; doctors of medicine; architects; civil, electrical, chemical, mechanical, structural, industrial, mining, sanitary, metallurgical and geodetic engineers; marine surveyors; doctors of veterinary science; dentist; professional appraisers; connoisseurs of tobacco; actuaries; interior decorators, designers and all other profession requiring government licensure examinations and/or regulated by the Professional Regulations Commission, Supreme Court, etc."

B. Director's fees – ₱20,000.00

Petitioner likewise admits that it failed to withhold EWT on per diems paid to corporate directors amounting to ₱20,000.00.[47] Thus, the deficiency EWT assessment thereon in the amount of ₱3,000.00 must be upheld pursuant to Section 2.57.2(A)(9) of RR No. 02-98, as amended, which provides:

"Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. – xxx

(A) *Professional fees, talent fees, etc., for services rendered by individuals.* – On the gross professional, promotional and talent fees or any other form of remuneration for the services of the following individuals – Fifteen percent (15%), if the gross income for the current year exceeds P720,000; and Ten percent (10%), if otherwise;

xxx xxx xxx

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[47] Petition for Review, Docket—Vol. I, p. 17; Exhibit "P-304", item II.b, Docket—Vol. III, p. 1501.

(9) Fees of directors who are not employees of the company paying such fees, whose duties are confined to attendance at and participation in the meetings of the board of directors."

C. Rentals – ₱126,768.98

Section 2.57.2(C)(1) and (2) of RR No. 02-98, as amended by RR No. 14-02, prescribes the withholding of five percent (5%) tax on rentals of real properties used in business and rentals of personal properties in excess of ₱10,000.00 annually, to wit:

> "Sec. 2.57.2. Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (C) Rentals
>
> (1) *Real properties.* – On gross rental for the continued use or possession of real property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity – Five percent (5%);
>
> (2) *Personal properties.* – On gross rental or lease in excess of Ten Thousand Pesos (P10,000.00) per payment for the continued use or possession of personal property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity which include, but not limited to the following: land transport equipment, water transport equipment, air transport equipment, industrial equipment, commercial equipment, scientific equipment, agricultural machinery and equipment, construction/civil engineering machinery and equipment, telecommunication equipment, office furniture/machines/equipment, main frame computer and all other computer machines/equipment, materials handling equipment and auxiliary equipment — Five percent (5%);
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> However, the Ten Thousand Pesos (P10,000.00) threshold shall not apply when the accumulated gross

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rental or lease paid by the lessee to the same lessor exceeds or is reasonably expected to exceed P10,000.00 within the year. In which case, the lessee shall withhold the five percent (5%) withholding tax on the entire amount."

An examination of the records shows that the total rentals of ₱126,768.98, which petitioner allegedly failed to subject to EWT, is composed of the following:

Difference noted between:			
Rental per BIR Forms 1601-E[48]	₱320,459.62		
Rental per Annual Income Tax Return (ITR)[49]	376,128.60		₱ 55,668.98
Other Rentals:[50]			
Other promotion cost	5,000.00	Rental of LCD/projector	
Deposit	2,000.00	Advance parking lot rental	
Training room	49,768.00	Training room rent – Valle Verde	
Other promotion cost	1,100.00	Rental of function room	
Other promotion cost	13,232.00	Rent of function room	71,100.00
Total Rentals			**₱126,768.98**

Petitioner admits in its Memorandum[51] that it failed to withhold on the difference noted between the rental per BIR Form No. 1601-E and per Annual ITR amounting to ₱55,668.98 and on the deposit amounting to ₱2,000.00 as it adopted the Independent CPA's findings on the matter; hence, the deficiency EWT assessments in the amounts of ₱2,783.45 and ₱100.00, respectively, or in the sum of ₱2,883.45 shall remain.

As for the rental of LCD/projector amounting to ₱5,000.00, Section 2.57.2(C)(2) of RR No. 02-98, as amended by RR No. 14-02, quoted earlier, requires a 5% withholding tax on gross rental of personal properties in excess of ₱10,000.00 annually. Since the rental of ₱5,000.00 is below the threshold set by RR No. 02-98, the same is not subject to 5% EWT on personal properties. Thus, the related deficiency EWT assessment shall be cancelled.

The expenses for training room and function room in the respective amounts of ₱49,768.00 and ₱13,232.00 were ascertained to be purchases of food services from Valle Verde Country Club, Inc.,

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48 Exhibit "R-1", BIR Records, pp. 40 to 50.
49 Annual ITR, Line 85, Exhibit "R-1", BIR Records, p. 20.
50 Exhibit "R-8-4", BIR Records, p. 117.
51 Docket—Vol. III, p. 2094.

as evidenced by the related Banquet Agreements[52]. Since the expenses are not in the nature of rentals, it was erroneous on the part of respondent to assess petitioner with deficiency 5% EWT thereon. Neither can these amounts be subjected to a two percent (2%) EWT on purchase of services made by top 20,000 corporations under Section 2.57.2(M) of RR No. 2-98, as amended by RR No. 14-08[53], because petitioner was notified by respondent as belonging to the top 20,000 corporations only on January 29, 2009[54].

As for the other expense for function room amounting to ₱1,100.00, there was no indication in the supporting official receipt[55] as to the nature of the said payment. In the absence of evidence to the contrary, the amount of ₱1,100.00 shall be considered as payment for rent subject to 5% EWT.

In summary, out of the ₱126,768.98 rentals being assessed for deficiency EWT, only the amount of ₱58,768.98 was rightfully assessed by respondent:

Difference noted between:		
Rental per BIR Form No. 1601-E	₱320,459.62	
Rental per Annual ITR	376,128.60	₱ 55,668.98
Other Rentals:		
Deposit	2,000.00	
Other promotion cost	1,100.00	3,100.00
Total		**₱58,768.98**

D. Payments to prime contractors/subcontractors – ₱26,417,219.20

[52] Exhibits "P-176" and "P-181".

[53] Sec. 2.57.2. *Income payment subject to creditable withholding tax and rates prescribed thereon.* – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

xxx xxx xxx

M) *Income payments made by the top twenty thousand (20,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax.* – Income payments made by any of the top twenty thousand (20,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines

Supplier of goods – One percent (1%)

Supplier of services – Two percent (2%)

[54] Exhibit "P-276".

[55] Exhibit "P-172".

Section 2.57.2(E)(4) of RR No. 2-98, as amended by RR No. 30-03, prescribes a 2% withholding tax on income payments to other contractors, as follows:

> "Sec. 2.57.2. *Income payments subject to creditable withholding tax and rates prescribed thereon.* – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines: xxx
>
> xxx xxx xxx
>
> **(E) *Income payments to certain contractors*** – On gross payments to the following contractors, whether individual or corporate – Two percent (2%).
>
> xxx xxx xxx
>
> (4) Other contractors –
> (a) Filling, demolition and salvage work contractors and operators of mine drilling apparatus;
> (b) Operators of dockyards;
> (c) Persons engaged in the installation of water system, and gas or electric light, heat or power;
> (d) Operators of stevedoring, warehousing or forwarding establishments;
> (e) Transportation contractors which include common carriers for the carriage of goods and merchandise of whatever kind by land, air or water, where the gross payments by the payor to the same payee amounts to at least two thousand pesos (P2,000) per month, regardless of the number of shipments during the month;
> (f) Printers, bookbinders, lithographers and publishers except those principally engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale;
> (g) Messengerial, janitorial, private detective and/or security agencies, credit and/or collection agencies and other business agencies;
> (h) Advertising agencies, exclusive of gross payments to media;
> (i) Independent producers of television, radio and stage performances or shows;
> (j) Independent producers of 'jingles';

(k) Labor recruiting agencies;

(l) Persons engaged in the installation of elevators, central air conditioning units, computer machines and other equipment and machineries and the maintenance services thereon;

(m) Persons engaged in the sale of computer services;

(n) Persons engaged in landscaping services;

(o) Persons engaged in the collection and disposal of garbage;

(p) TV and radio station operators on sale of TV and radio airtime; and

(q) TV and radio blocktimers on sale of TV and radio commercial spots."

As enumerated earlier, respondent's 2% deficiency EWT assessment on the ₱26,417,219.20 payments to prime contractors/sub-contractors was based on the following accounts:

	INCOME PAYMENT
Various expenses - contractors	₱ 771,088.26
Advertising and promotion	1,970,732.41
Freight cost	437,686.83
Purchases - contractors	23,237,711.70
Total	**₱ 26,417,219.20**

In light of the afore-quoted Section 2.57.2(E)(4) of RR No. 02-98, as amended, the Court shall now determine whether the above expenses are subject to EWT.

D.1. Various expenses – contractors – ₱771,088.26
Advertising and promotion – ₱1,970,732.41
Freight cost – ₱437,686.83

A careful scrutiny of the records reveals that the above items were obtained from the following:

	AMOUNT	SOURCE
Various expenses – contractors	₱ 771,088.26	Summary of Audit Findings[56]
Advertising and promotion	1,970,732.41	Annual ITR - Line 79
Freight cost	437,686.83	Annual ITR - Line 84

The Summary of Audit Findings reflects the following

[56] Exhibit "R-8-3", BIR Records, pp. 117 to 118.

breakdown for the item "Various expenses – contractors":

ACCOUNT	AMOUNT
Social cost	₱ 13,700.00
Freight cost	449,140.52
Meetings & Confe – Internal	10,400.00
Office supplies	25,491.07
Promotion Materials & Literature	83,105.14
Representation & Ent.	12,375.00
M&R Transport Eqpt.	13,420.10
Recruitment, Training & Dev't	20,160.00
Other Promotion Cost	55,350.00
Membership & subscriptions	10,000.00
Advertising	38,000.00
Commissions	2,946.43
Training	2,000.00
Employee benefits	35,000.00
Total	**₱ 771,088.26**

It appears that respondent subjected to deficiency EWT two classes of "Freight cost" and "Advertising and promotion":

	PER ITR	PER SUMMARY OF AUDIT FINDINGS
Freight cost	₱ 437,686.83	₱ 449,140.52
Advertising and promotion	₱ 1,970,732.41	
Promotion Materials & Literature		₱ 83,103.14
Other Promotion Cost		55,350.00
Advertising		38,000.00
		₱ 176,453.14

The Independent CPA provided in his report a breakdown of Various Expenses – Prime Contractors/Sub Contractors and Suppliers, Advertising and Promotions and Freight Cost[57] and found that some or all amounts in Advertising and Promotions and Freight Cost were duplicated in Various Expenses – Contractors, hence, were accordingly subjected to tax twice. However, these schedules for Advertising and Promotions and Freight Cost were not supported by petitioner's general ledgers. Thus, the Court cannot verify the veracity of the breakdown presented by the Independent CPA for purposes of comparison with respondent's Summary of Audit

[57] Exhibit "P-304", Schedules 19, 20, and 21, Docket—Vol. III, pp. 1485 to 1493.

Findings so as to determine whether or not there are items being taxed twice.

For petitioner's failure to present sufficient documentary proof that the freight as well as advertising and promotion costs included in Various Expenses – Contractor are the same with those separately assessed as "Freight cost" and "Advertising and promotion", the Court is constrained to treat these items as different from each other and uphold the separate deficiency EWT assessments.

As to the other remaining accounts in "Various expenses – contractors", the Court is likewise constrained to uphold the assessment on the same since petitioner failed to present any evidence to prove the nature of such expenses; hence, the Court cannot verify the nature of the transactions and their appropriate tax implications.

D.2. Purchases – contractors – ₱23,237,711.70

Petitioner asserts that it was not yet required to withhold taxes on income payments to its regular suppliers of goods in 2008 since it was notified as belonging to the top 20,000 corporations only on January 29, 2009.[58]

The Court agrees in part with petitioner.

Petitioner's Summary of Purchases for 2008[59], as submitted to respondent during investigation, shows that the purchases from contractors pertain to the following:

SUPPLIER	AMOUNT
Empire Printing	₱ 1,182,448.18
Hizon Laboratories	22,055,263.52
Total	**₱ 23,237,711.70**

A perusal of the suppliers' sales invoices[60] and Annual Inventory List[61] as of December 31, 2008 filed by petitioner with the BIR shows that Empire Printing supplies petitioner with the packaging materials while Hizon Laboratories supplies petitioner with the goods

[58] Exhibit "P-277", Q&A No. 32.
[59] Exhibits "R-6" to "R-6-1", BIR Records, pp. 124 to 125.
[60] Exhibits "P-13", "P-15", "P-17", "P-19", "P-21", "P-23", "P-25", "P-27", "P-29", "P-31", "P-33", "P-35", "'P-37", "P-39", "P-41", "P-43", "P-45", "P-47", "P-49", "P-51", "P-53", "P-55", "P-57", "P-59", "P-61", "P-63", "P-65", "P-67", "P-69", "P-71", "P-73", "P-75", "P-79", "P-81", "P-83", "P-85", and "P-87".
[61] Exhibit "R-1", BIR Records, pp. 91 to 93.

for sale.

The invoices from Empire Printing show that the nature of its business is "OFFSET-LITHOGRAPHERS, PRINTERS, PHOTO-ENGRAVERS, PACKAGING, ADVERTISING". Thus, petitioner's income payments to said entity amounting to ₱1,182,448.18 must be subjected to 2% EWT pursuant to Section 2.57.2(E)(4)(f) of RR No. 02-98, as amended.

This means that only the income payments to Hizon Laboratories amounting to ₱22,055,263.52 are not subject to EWT for not being within the purview of Section 2.57.2(M) of RR No. 2-98, as amended, which requires the top 20,000 corporations to withhold 1% and 2% EWT on their purchases of goods and services, respectively. As stated earlier, respondent notified petitioner that it belongs to the top 20,000 corporations only on January 29, 2009. Thus, it was not yet required to withhold 1% EWT on its purchases of goods in 2008.

In summary, petitioner is liable for basic deficiency EWT in the amount of ₱97,065.56 on income payments of ₱4,466,644.66, computed as follows:

	INCOME PAYMENT	**TAX RATE**	**EWT DUE**
Professional fees	₱ 25,920.00	15%	₱ 3,888.00
Director's fee	20,000.00	15%	3,000.00
Rentals	58,768.98	5%	2,938.45
Payments to prime contractors/sub-contractors:			
Various expenses - contractors	771,088.26	2%	15,421.76
Advertising and promotion	1,970,732.41	2%	39,414.65
Freight cost	437,686.83	2%	8,753.74
Purchases - contractors	1,182,448.18	2%	23,648.96
Total	**₱4,466,644.66**		**₱ 97,065.56**

II. DEFICIENCY FBT – ₱789,695.26

Finding that petitioner failed to subject the vehicles and other fringe benefits to thirty-two percent (32%) FBT pursuant to RR No. 03-98, respondent assessed petitioner in the amount of ₱789,695.26 representing its deficiency FBT, inclusive of surcharge and interest, computed as follows.[62]

62 Exhibits "R-17" and "R-18", item III, BIR Records, pp. 230 and 226, respectively.

Cost of Purchased Vehicles	₱5,196,428.58	
Divided by (in years)	5	
Monetary value	₱1,039,285.72	
Multiply by	50%	
Grossed-up monetary value of purchased vehicles		₱ 519,642.86
Other Fringe Benefits	₱ 523,093.29	
Divided by	68%	
Grossed-up monetary value of other fringe benefits		769,254.84
Total grossed-up monetary value		₱1,288,897.70
Multiply by		32%
Deficiency fringe benefits tax		412,447.26
Add: 25% Surcharge	₱ 103,111.82	
20% Interest p.a. (01.13.09 to 3.9.12)	274,136.18	377,248.00
TOTAL AMOUNT DUE		**₱ 789,695.26**

Petitioner avers that it is a distributor of pharmaceutical products; that its rank and file employees are mostly medical representatives who are always on the field, making visits to doctors, drug stores, and other clients and that in order to facilitate such client calls, these medical representatives are provided motor vehicles and granted certain allowances. Petitioner maintains that these benefits do not constitute "fringe benefits" under BIR Ruling No. 055-99 dated April 23, 1999.[63]

The pertinent portion of RR No. 03-98, as amended, provides:

> "SEC. 2.33. *SPECIAL TREATMENT OF FRINGE BENEFITS* –
>
> (A) *Imposition of Fringe Benefits Tax* – A final withholding tax is hereby imposed on the grossed-up monetary value of fringe benefit furnished, granted or paid by the employer to the employee, except rank and file employees as defined in these Regulations, whether such employer is an individual, professional partnership or a corporation, regardless of whether the corporation is taxable or not, or the government and its instrumentalities except when: (1) the fringe benefit is required by the nature of or necessary to the trade, business or profession of the employer; or (2) when the fringe benefit is for the convenience or advantage of the employer. The

[63] Petition for Review, Docket—Vol. I, p. 20.

fringe benefit tax shall be imposed at the following rates:

Effective January 1, 1998	–	34%
Effective January 1, 1999	–	33%
Effective January 1, 2000	–	32%

xxx xxx xxx

The grossed-up monetary value of the fringe benefit represents the whole amount of income realized by the employee which includes the net amount of money or net monetary value of property which has been received plus the amount of fringe benefit tax thereon otherwise due from the employee but paid by the employer for and in behalf of his employee, pursuant to the provisions of this Section.

Coverage – These Regulations shall cover only those fringe benefits given or furnished to managerial or supervisory employees and not to the rank and file.

The term, 'RANK AND FILE EMPLOYEES' means all employees who are holding neither managerial nor supervisory position. The Labor Code of the Philippines, as amended, defines 'managerial employee' as one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. 'Supervisory employees' are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment.

xxx xxx xxx

(B) *Definition of Fringe Benefit* – In general, except as otherwise provided under these regulations, for purposes of this Section, the term 'FRINGE BENEFIT' means any good, service, or other benefit furnished or granted by an employer in cash or in kind, in addition to basic salaries, to an individual employee (except rank and file employee as defined in these regulations) such as, but not limited to the following:

xxx xxx xxx

(2) *Expense account* –

(a) In general, expenses incurred by the employee but which are paid by his employer shall be treated as taxable fringe benefits, except when the expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the employee.

(b) Expenses paid for by the employee but reimbursed by his employer shall be treated as taxable benefits except only when the expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the said employee.

(c) Personal expenses of the employee (like purchases of groceries for the personal consumption of the employee and his family members) paid for or reimbursed by the employer to the employee shall be treated as taxable fringe benefits of the employee whether or not the same are duly receipted for in the name of the employer.

(d) Representation and transportation allowances which are fixed in amounts and are regularly received by the employees as part of their monthly compensation income shall not be treated as taxable fringe benefits but the same shall be considered as taxable compensation income subject to the tax imposed under Sec. 24 of the Code.

(3) *Motor vehicle of any kind* –

(a) If the **employer purchases the motor vehicle in the name of the employee**, the value of the benefit is the acquisition cost thereof. The monetary value of the fringe benefit shall be the entire value of the benefit, regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the benefit of his employer.

(b) If the **employer provides the employee with cash for the purchase of a motor vehicle, the ownership of which is placed in the name of the employee**, the value of the benefits shall be the amount of cash received by the employee. The monetary value of the fringe benefit shall be the entire value of the benefit regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the benefit of his employer, unless the same was subjected to a withholding tax as compensation income under Revenue Regulations No. 2-98.

(c) If the **employer purchases the car on installment basis, the ownership of which is placed in the name of the employee**, the value of the benefit shall be the acquisition cost exclusive of interest, divided by five (5) years. The monetary value of the fringe benefit shall be the entire value of the benefit regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the benefit of his employer.

(d) If the **employer shoulders a portion of the amount of the purchase price of a motor vehicle the ownership of which is placed in the name of the employee**, the value of the benefit shall be the amount shouldered by the employer. The monetary value of the fringe benefit shall be the entire value of the benefit regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the benefit of his employer.

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

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

MV = [(A)/5] X 50%
where:
MV = Monetary value
A = acquisition cost

(f) If the employer leases and maintains a fleet of motor vehicles for the use of the business and the employees, the value of the benefit shall be the amount of

> rental payments for motor vehicles not normally used for sales, freight, delivery, service and other non-personal use. The monetary value of the fringe benefit shall be fifty per cent (50%) of the value of the benefit. xxx" *(Emphasis supplied)*

Motor Vehicles – ₱519,642.86. For motor vehicles to be subject to FBT, the afore-mentioned provisions state that the ownership of the same must be in the name of the employee and not the employer [Section 2.33(B)(3)(a) to (d)] or the employer owns and maintains a fleet of motor vehicles for the use of the business and the employees [Section 2.33(B)(3)(e)].

It appears that petitioner's motor vehicles fall within the category of owning and maintaining a fleet for the use of the business and the employees. The ownership can be clearly established from the fact that it was presented as petitioner's asset in its Audited Financial Statements as part of its Property and Equipment – Automotive Equipment, amounting to a total cost of ₱8,111,745.00 as of December 31, 2008.[64] Such amount was traced to petitioner's Lapsing Schedule,[65] which was used by respondent as basis for the assessment.

Therefore, it is a matter of the status of the employee (managerial or rank and file) which shall determine if said vehicles are subject to FBT.

One of the main contentions of petitioner is that the users of these motor vehicles are merely "rank and file employees" considering that the nature of its business is to "buy, sell, or otherwise deal in, insofar as permitted by law, for its account as principal or in a representative capacity as a manufacturer, representative, merchandise broker, indentors, commission merchants, factors, or agents upon consignment, all kinds or descriptions of drugs, medicines, chemicals, food supplements, hospital and medical supplies, apparatus and devices";[66] thus, it is alleged that the medical representatives using such vehicles are not managerial employees.

However, records show that petitioner failed to adduce any evidence which will prove that the employees using said motor vehicles are merely rank and file employees, and not managerial employees. This being so, the deficiency FBT assessment should be

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[64] Exhibit "R-1", BIR Records, p. 9.
[65] Exhibit "R-10", BIR Records, p. 86.
[66] Exhibit "R-1", BIR Records, p. 83.

upheld. However, the Court notes that respondent failed to gross-up the monetary value of the subject motor vehicles. Hence, the proper amount subject to FBT on motor vehicles is ₱764,180.68 (monetary value of ₱519,642.86 divided by 68%).

Other fringe benefits – ₱523,093.29. Based on respondent's Summary of Audit Findings,[67] the "Other Fringe Benefits" in the amount of ₱523,093.29 subjected to deficiency FBT, comprised of expenditures for transportation and travel, gas and oil, meetings and conference, amortization of non-trade and other payables, other promotion costs, representation and entertainment, and miscellaneous/various expenses.

Petitioner claims that these expenses are required of and necessary to the business of distributing pharmaceutical products, for which reason such benefits are for the convenience and advantage of the employer.[68] Hence, the same should be exempted from payment of FBT pursuant to Section 2.33(A) of RR No. 3-98, as amended.

Again, petitioner failed to present documentary evidence to prove that it actually incurred such expenses; hence, the Court cannot verify the nature of the same and ascertain the proper tax that should be imposed. Thus, the amount of ₱523,093.29 should also be grossed-up for purposes of the imposition of the FBT.

It bears stressing that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[69]

Accordingly, the Court finds that petitioner is liable to pay basic deficiency FBT in the modified amount of ₱490,699.37, computed as follows:

Grossed-up monetary value of purchased vehicles	₱ 764,180.68
Grossed-up monetary value of other fringe benefits (₱523,093.29 divided by 68%)	769,254.84
Total grossed-up monetary value	₱ 1,533,435.52
Multiply by	32%
Deficiency fringe benefits tax	**₱ 490,699.37**

[67] Exhibit "R-8-2", BIR Records, pp. 118 to 120.
[68] Petition for Review, Docket, Docket—Vol. I, pp. 21 to 22.
[69] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

III. Deficiency FWT – ₱32,638.09

IV. Deficiency FWVAT – ₱11,190.20

Respondent assessed petitioner of deficiency FWT and FWVAT upon the amount of ₱48,372.00, representing advertising expense paid to a non-resident foreign corporation, invoking RR No. 02-98, as amended. Respondent's computation of the assessments for deficiency FWT of ₱32,638.09 and deficiency FWVAT of ₱11,190.20 are reproduced hereunder:

III. DEFICIENCY FINAL WITHHOLDING TAX			
Advertising expense paid to non-resident foreign corporation			₱ 48,732.00
Tax rate			35%
Deficiency final withholding tax			17,056.20
Add:	25% Surcharge	₱ 4,264.05	
	20% interest p.a. (01.16.09 to 5.10.12)	11,317.84	15,581.89
TOTAL AMOUNT DUE			**₱32,638.09**
IV. DEFICIENCY FINAL WITHHOLDING VAT			
Advertising expense paid to non-resident foreign corporation			₱ 48,732.00
Tax rate			12%
Deficiency final withholding tax on VAT			₱ 5,847.84
Add:	25% Surcharge	₱ 1,461.96	
	20% interest p.a. (01.13.09 to 5.10.12)	3,880.40	5,342.36
TOTAL AMOUNT DUE			**₱ 11,190.20**

Petitioner explains that the non-resident foreign corporation in question is CMP, a business entity registered in Singapore, with address at #10-01, 3 Lim Tek Kim Road, Singapore 88934. Petitioner is of the view that payments made to this entity may not be taxed in the Philippines under Article 8 of the Philippines-Singapore Tax Treaty.[70]

According to petitioner, Article 7(1) of the Philippines-Singapore Tax Treaty, which was signed on August 1, 1977, and which entered into force on November 18, 1977, states that:

"ARTICLE 7
Business Profits

1. The profits of an enterprise of a Contracting

[70] Petition for Review, Docket—Vol. I, p. 25.

> State shall be taxable only in that State **unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.** If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment." *(Emphasis supplied)*

Petitioner argues that CMP is a non-resident foreign corporation registered in Singapore and does not have a permanent establishment in the Philippines. Thus, petitioner argues that any income derived by CMP in the Philippines is not taxable in this jurisdiction. This allegedly applies even to VAT since in Article 2(4) of the Philippines-Singapore Tax Treaty provides:

> "4. The Convention **shall apply also to any identical or substantially similar taxes on income which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes.** The Competent Authorities of the Contracting States shall notify each other of the changes which have been made to their respective taxation laws."[71]

We disagree.

There is no evidence to prove that CMP is non-resident foreign corporation and that it has no permanent establishment in the Philippines.

Moreover, there can be no merit in petitioner's contention that the above-quoted Article 2(4) of the Philippines-Singapore Tax Treaty contemplates the inclusion of VAT in the phrase *"identical or substantially similar taxes on income"*, for the simple reason that VAT is **not** a tax on income. In *Contex Corporation vs. Commissioner of Internal Revenue*,[72] the Supreme Court said:

> "xxx it must be stressed that the **VAT is an indirect tax**. As such, the amount of tax paid on the goods properties or services bought, transferred, or leased may be shifted or passed on the by the seller, transferor, or lessor to the buyer, transferee or lessee. **<u>Unlike a direct tax, such as the income tax</u>, which primarily taxes an**

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[71] Petitioner's Memorandum, Docket—Vol. III, p. 2099.
[72] G.R. No. 151135, July 2, 2004.

> **individual's ability to pay based on his income or net wealth, <u>an indirect tax, such as the VAT</u>, is a tax on consumption of goods, services, or certain transaction involving the same.** The VAT, thus, forms a substantial portion of consumer expenditures." *(Emphases supplied)*

Thus, for failure to discharge its burden of proof, petitioner shall be liable for basic deficiency FWT in the amount of ₱17,056.20 and basic deficiency FWVAT in the amount of ₱5,847.84, computed as follows:

DEFICIENCY FINAL WITHHOLDING TAX	
Advertising expense paid to non-resident foreign corporation	₱ 48,732.00
Tax rate	35%
Deficiency final withholding tax	**₱17,056.20**
DEFICIENCY FINAL WITHHOLDING VAT	
Advertising expense paid to non-resident foreign corporation	₱ 48,732.00
Tax rate	12%
Deficiency final withholding VAT	**₱ 5,847.84**

V. DEFICIENCY INCOME TAX - ₱6,196,458.71

Respondent assessed petitioner of deficiency income tax for taxable year 2008 in the amount of ₱6,196,458.71, inclusive of interest, computed as follows:[73]

Taxable income per ITR			₱1,158,029.36
Add:	Adjustments per investigation		
	Undeclared income	₱ 77,673.26	
	Salaries and wages not subjected to withholding tax	808,098.39	
	Unsupported expenses	1,621,599.98	
	Unsupported stock losses	338,883.64	
	Income payments not subjected to withholding tax	3,352,196.48	
	Fringe benefits not subjected to fringe benefits tax	523,093.29	
	Depreciation expense not subjected to fringe benefits tax	1,012,825.13	
	Advertising expense paid to NRFC not subjected to final withholding tax	48,732.00	
	Disallowed donations	53,431.20	
	Disallowed taxes and licenses	3,936.94	7,840,470.31
Taxable Income per investigation			₱8,998,499.67
Income tax due thereon			₱3,149,474.88

[73] Exhibit "R-17", BIR Records, p. 230.

Add:	Disallowed tax credits/payments		
	Prior year's excess credits	319,019.94	
	Payments	-	
	Creditable withholding tax	370,112.49	
	Total	₱ 689,132.43	
	Less: Excess tax credits carried over to succeeding period	689,132.43	
	Unsupported creditable withholding tax	370,112.49	
	Unsupported prior year's excess credits	319,019.94	689,132.43
Deficiency Income Tax			3,838,607.31
Add:	20% Interest p.a. (04.16.09 to 5.10.12)		2,357,851.40
TOTAL AMOUNT DUE			**₱6,196,458.71**

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

A.	Undeclared income	₱ 77,673.26
B.	Salaries and wages not subjected to withholding tax	₱ 808,098.39
C.	Unsupported expenses	₱ 1,621,599.98
D.	Unsupported stock losses	₱ 338,883.64
E.	Income payments not subjected to withholding tax	₱ 3,352,196.48
F.	Fringe benefits not subjected to fringe benefits tax	₱ 523,093.29
	Depreciation expense not subjected to fringe benefits tax	₱ 1,012,825.13
G.	Advertising expense paid to NRFC not subjected to final withholding tax	₱ 48,732.00
H.	Disallowed donations	₱ 53,431.20
I.	Disallowed taxes and licenses	₱ 3,936.94
J.	Excess tax credits carried over to succeeding period	₱ 689,132.43
K.	Unsupported creditable withholding tax	₱ 370,112.49
	Unsupported prior year's excess credits	₱ 319,019.94

The Court shall discuss each of the aforesaid items in *seriatim*.

A. Undeclared income – ₱77,673.26

Upon comparison of petitioner's sales as reported in its VAT Returns and as reflected in its Income Tax Return (ITR) and Financial Statements (FS), respondent found that petitioner understated its sales/income per ITR/FS in the amount of ₱77,673.26, as computed below. Citing Section 31 of the NIRC of 1997, respondent added the amount of ₱77,673.26 to petitioner's reported taxable income.[74]

Sales per VAT returns	₱46,618,005.76
Sales per ITR/FS	46,540,332.50
Undeclared income	**₱ 77,673.26**

[74] Exhibit "R-18", item I.a, BIR Records, p. 228.

Petitioner claims that the difference pertains to sales discounts. Petitioner explains that it usually sells to regular customers on a 30- or 60-day credit and that in certain instances, when petitioner needs a cash influx, it demands payment before the due date, but at a discounted rate. The above difference allegedly arose from such instances, and is substantiated by the Journal Voucher[75] dated November 30, 2008.[76]

As clarified by Ms. Katherine Sheena Tugade, petitioner's Accounting Manager, it is possible that after the VAT Returns have been filed, but before the obligation becomes due, the customer would pay in advance at a discounted price. When the ITR/FS are prepared toward the end of the year, the sales discounts given for such advance payments are reclassified in the Journal Voucher, and then debited from the sales, and credited as interest expense.[77]

Petitioner points out that while Exhibit "P-11" shows that the amount was debited as a sales discount and credited as an interest expense, the reference under the entry has the annotation "interest incurred from advance collection", thereby indicating that the amount constitutes a financial charge. Petitioner further states that at the time the VAT Return for said transaction was filed, the financial charge had not been incurred, and could not be reflected on the VAT Return since the advance collection had not been made, whereas appropriate adjustment had to be reflected in the ITR and the FS.

Petitioner posits that Section 27 of the NIRC of 1997, as amended by RA No. 9337, "gross income" is exclusive of "sales discount", to wit:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> xxx xxx xxx
>
> For purposes of this Section, the term 'gross income' derived from business shall be equivalent to gross sales less sales returns, discounts and allowances and cost of goods sold. *'Cost of goods sold'* shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use."

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[75] Exhibit "P-11".
[76] Petition for Review, Docket—Vol. I, p. 12.
[77] Exhibit "P-277", Q&A No. 12.

The assessment should be upheld.

While petitioner was correct in invoking that sales discounts are excluded from the term "gross income" under Section 27 of the NIRC of 1997, as amended, it, however, failed in proving the existence of such sales discount to the Court.

The Journal Voucher marked as Exhibit "P-11" is self-serving and does not have evidentiary weight to prove the existence of a certain transaction without any accompanying sales invoice or official receipts to support it. Absent any other document to corroborate the allegations it presented, the Court cannot subscribe to the submissions of petitioner.

Further, petitioner's Audited FS[78] and Annual ITR[79] for taxable year 2008 do not show any information indicating that there were sales discounts granted during the year.

Therefore, the under declaration of income found by respondent is upheld.

B. Salaries and wages not subjected to withholding tax – ₱808,098.39

Respondent's verification disclosed that petitioner failed to subject portion of its salaries and wages to withholding tax as required under RR No. 02-98, as amended. Thus, respondent disallowed as deductions from its gross income the said expenses pursuant to Section 34(K) of the NIRC of 1997.[80] The details of which are as follows:

Salaries and wages per Audit		
Salaries and wages	₱10,275,599.22	
Social cost	774,571.55	₱11,050,170.77
Salaries and wages per Alphalist[81]		
Salaries and wages	₱ 9,257,724.64	
13th month pay	644,690.46	
SSS,GSIS,Philhealth,HDMF, & other contributions	339,657.28	10,242,072.38
Salaries and wages not subjected to withholding tax		**₱ 808,098.39**

Petitioner contends the above finding has no basis and that

[78] Exhibit "R-9", BIR Records, pp. 6 to 19.
[79] Annual ITR, Line 40, Exhibit "R-1", BIR Records, p. 21.
[80] Exhibit "R-18", item I.b, BIR Records, p. 228.
[81] Exhibit "R-1", BIR Records, pp. 65 to 67.

as per the Judicial Affidavit of petitioner's witness, Ms. Katherine Sheen Tugade, the "Social cost" of ₱774,571.55 appearing in the FS actually corresponds to the employer's share of contributions to SSS, Pag-ibig, Philhealth, and such other contributions. It is allegedly not part of the "Salaries and wages" since it is not deducted from "Salaries and wages", but is borne by the employer as an expense.

Petitioner avers that under the circumstances, the discrepancy between "Salaries and wages" in the Alphalist as against that in the FS amounted to only ₱33,526.84, thus:

Salaries and wages per Audit		
Salaries and wages		₱10,275,599.22
Salaries and wages per Alphalist:		
Salaries and wages	₱9,257,724.64	
13th month pay	644,690.46	
SSS,GSIS,Philhealth,HDMF, & other contributions	339,657.28	10,242,072.38
Salaries and wages not subject to withholding tax		**₱ 33,526.84**

The said discrepancy could allegedly be attributed to wages paid to intermittent casual employees who had been given odd jobs, and were paid out of petty cash fund.[82]

For his part, the Court-commissioned Independent CPA stated that his analysis of petitioner's records disclosed that the discrepancy found by respondent pertains to the its share, as employer, in SSS, Pag-ibig and Philhealth and other amounts treated as *de minimis* benefits per RR No. 05-08:[83]

EMPLOYER'S SHARE	
SSS	₱ 425,211.90
PAG-IBIG	54,704.97
PHILHEALTH	83,850.00
	₱563,766.87
PHILAM CARE SYSTEMS	₱ 90,727.54
UNIFORM/MEDICAL REIMBURSEMENTS	112,077.14
MISCELLANEOUS	1,000.00
HEALTH GALLERY INC.	7,000.00
CASUAL EMPLOYEES (hired for short period of time)	33,526.84
	₱244,331.52
TOTAL Salaries and Wages not subjected to withholding tax	**₱808,098.39**

[82] Petition for Review, Docket—Vol. I, p. 13.
[83] Exhibit "P-304", Docket—Vol. III, p. 1473.

The Court finds that both petitioner's allegation and the Independent CPA's finding on the matter lack merit as these were not supported by any documentary evidence offered and admitted for the Court's evaluation. Hence, respondent's disallowance of the salaries and wages of ₱808,098.39 shall remain.

C. Unsupported expenses – ₱1,621,599.98

Respondent's verification disclosed that some of petitioner's expenses were unsupported as vouched during the investigation, thus, disallowed as deductions from petitioner's gross income pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended.[84]

Direct costs:		
Cost variance		₱ 899,501.94
Selling and operating expenses:		
Car registration	₱ 13,843.00	
Incentives and commissions	70,132.50	
Transportation and travel	18,092.56	
Repairs and maintenance	2,300.00	
Financing charges	268,186.75	
Meeting and conference	15,967.00	
Membership and subscriptions	7,000.00	
Miscellaneous	10,805.30	
Advertising and promotion	17,400.00	
Professional fees	15,000.00	
Product registration	18,484.00	
Recruitment and training	29,240.00	
Rentals	225,646.93	
Taxes and licenses	10,000.00	722,098.04
Unsupported expenses		**₱1,621,599.98**

Cost variance – ₱899,501.94. Petitioner explains that it uses the "standard cost accounting system" wherein fixed costs are allocated and spread over an accounting period, so that products which are produced during the period, but not sold in the same time frame, may be appropriately recorded in the inventory, and a "standard cost" arrived at, which may be different from "actual cost". Towards the end of the year, the actual cost is the one reflected in the ITR/FS, and a cost variance is credited or debited depending on whether it is favorable or not.[85]

The Independent CPA performed a comparison between the

[84] Exhibit "R-18", item I.c, BIR Records, p. 228.
[85] Exhibit "P-277", Q&A No. 17.

actual purchases, supported by sales invoices[86] from suppliers, and the standard costs[87] calculated by petitioner for the year 2008. This comparison[88] showed that the aggregate amount of purchases was approximately ₱10.8 million. Some of the prices of these items were equal to the prices as projected by the company at the start of the year. However, certain items did not match the projections. Hence, the cost variance that was reported in the financial statements (Actual purchase ₱10,813,238.15 – Projected purchase ₱9,913,736.21 = Standard Cost Variance ₱899,501.94).[89]

Based on Section 27 of the NIRC of 1997, as amended, "cost of goods sold" for trading and merchandising concerns, as in the case of herein petitioner, shall include the **invoice of the goods sold**, plus import duties, freight in transporting the goods to the place where the goods are actually sold, including insurance while the goods are in transit.

Hence, for tax purposes, the Court finds that petitioner is entitled to claim deduction for the actual purchase price based on the sales invoices issued by its suppliers and not just for the standard costs. However, while these goods were all purchased in 2008, petitioner failed to show that such were already sold in 2008 for it to be entitled to claim deduction for the entire costs thereof.

As such, the Court finds that the assessment must be sustained.

Selling and operating expenses – ₱722,098.04. In support of these expenses, petitioner presented various documents (*i.e.*, invoices, official receipts, check vouchers, agreements, certifications) which were verified by the Independent CPA.

Upon perusal of the Independent CPA's findings[90] on the matter, the Court observes that majority of the supporting documents are lacking to warrant full cancellation of the assessment. The Court finds that a total of ₱680,760.86 of the alleged unsupported expenses must be sustained, as summarized below:

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[86] Exhibits "P-13", "P-15", "P-17", "P-19", "P-21", "P-23", "P-25", "P-27", "P-29", "P-31", "P-33", "P-35", "P-37", "P-39", "P-41", "P-43", "P-45", "P-47", "P-49", "P-51", "P-53", "P-55", "P-57", "P-59", "P-61", "P-63", "P-65", "P-67", "P-69", "P-71", "P-73", "P-75", "P-79", "P-81", "P-83", "P-85", and "P-87".
[87] Exhibit "P-88".
[88] Exhibit "P-304", Schedule 1, Docket—Vol. III, p. 1474.
[89] Exhibit "P-304", Docket—Vol. III, p. 1475.
[90] Exhibit "P-304", Docket—Vol. II, pp. 1475 to 1482.

Expense	Amount Disallowed by Respondent	Amount with Supporting Documents per Court's perusal	Exhibit No.	Amount Without Supporting Documents	Nature[91]	Court's Findings	Disallowance Sustained by the Court
Car registration[92]	₱13,843.00	₱ 5,897.18	P-89 to P-90	₱ 7,945.82	Registration and insurance for petitioner's Honda City Sedan 2008 model		₱ 7,945.82
Incentives and commissions[93]	70,132.50	70,132.50	P-92 to P-100	-	Commission to petitioner's sub-distributors: Escalo, Herrera and Estrada	No supporting sub-distributor contract and official receipts	70,132.50
Transportation and travel[94]	18,092.56	3,000.00	P-101 to P-107	15,092.56	Gasoline expense of employees for sales activities		15,092.56
Repairs and maintenance[95]	2,300.00	2,300.00	P-108	-	General cleaning of 1 aircon-ditioning unit	No supporting official receipt	2,300.00
Financing charges[96]	268,186.75	148,625.00	P-111 to P-122 and P-131 to P-136	119,561.75	Interest payments on bridge loans by petitioner's stockholder when working capital was short	No supporting loan agreements and official receipts	268,186.75
Meeting and conference[97]	15,967.00	15,967.00	P-137 to P-140	-	Plane ticket and accommo-dation for attendance in manage-ment meeting	Cash advance amounting to P4,067.00 for plane ticket has no supporting official receipt and/or trip ticket issued by airline	4,067.00

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[91] Based on findings by the ICPA in his report, Exhibit "P-304", Docket—Vol. III, pp. 1475 to 1482.
[92] Exhibit "P-304", Docket—Vol. III, p. 1475.
[93] Schedule 3, *Id.* at p. 1476.
[94] Schedule 4, *Id.* at p. 1476.
[95] Schedule 5, *Id.* at p. 1477.
[96] Schedule 6, *Id.* at pp. 1477 to 1478.
[97] Schedule 7, *Id.* at p. 1478.

Membership and subscriptions[98]	7,000.00	7,000.00	P-141	-	Listing fee for Diabetone, one of petitioner's products, paid to Savemore Drug	No supporting official receipt	7,000.00
Miscellaneous[99]	10,805.30	10,805.30	P-142 to P-146	-	Penalty for late payment of tax and towing service fee	Penalty for late payment of withholding tax amounting to P9,305.30 not allowable deduction; Towing fee amounting to P1,500.00 not supported by official receipt	10,805.30
Advertising and promotion[100]	17,400.00	17,400.00	P-147 to P-148 and P-150 to P-153	-	Listing fee paid to Manson, St. Joseph and Boticarpio de Manila drugstores	Payments to St. Joseph and Boticarpio de Manila amounting to P2,000 and P5,400, respectively, have no supporting official receipts	7,400.00
Professional fees[101]	15,000.00	6,000.00	P-154 to P-155	9,000.00	Payments to accounting firm, Campos, Campos & CPAs, and for honorarium paid to lecturer Dr. Torres	No supporting official receipts	15,000.00
Product registration[102]	18,484.00	18,484.00	P-156 to P-165	-	Registration and other required fees of petitioner's products for publication before the Intellectual	No supporting official receipts	18,484.00

[98] Schedule 8, *Id.* at p. 1478.
[99] Schedule 9, *Id.* at p. 1479.
[100] Schedule 10, *Id.* at p. 1479.
[101] Schedule 11, *Id.* at p. 1480.
[102] Schedule 12, *Id.* at p. 1480.

nb

					Property Office		
Recruitment and training[103]	29,240.00	29,240.00	P-167 to P-170	-	Training allowance of 3 sales represent-tative	Training allowance for Pat Caacbay from Oct. 13-24, 2008 amounting to P3,400 and training allowance from Oct. 20-24, 2008 amounting to P15,300 have no proof of receipt or acknow-ledgment by sales representatives	18,700.00
Rentals[104]	225,646.93	38,900.00	P-177 to P-178 and P-186 to P-192	186,746.93	Rentals for parking and office space	"No supporting lease agreements; Parking space rentals from Apr.-Nov. 2008 amounting to P18,000 have supporting official receipts; Office space rentals amounting to P168,746.93 has no supporting official receipts	225,646.93
Taxes and licenses[105]	10,000.00	10,000.00	P-182 to P-183	-	Renewal of license to operate from BFAD	No official receipt & copy of renewed license	10,000.00
Total	**₱722,098.04**	**₱383,750.98**		**₱338,347.06**			**₱680,760.86**

The penalty for late payment of withholding tax amounting to ₱9,305.30 included as Miscellaneous expense is a non-deductible tax

[103] Schedule 13, *Id.* at p. 1481.
[104] Schedule 14, *Id.* at p. 1481.
[105] Schedule 15, *Id.* at p. 1482.

expense as held in *Gutierrez vs. Collector (now Commissioner) of Internal Revenue*[106], which states:

> "While Section 30 [now Section 34] allows taxes to be deducted from gross income, **it does not specifically allow fines and penalties to be so deducted.** Deductions from gross income are matters of legislative grace; what is not expressly granted by Congress is withheld. Moreover, when acts are condemned by law and their commission is made punishable by fines or forfeitures, to allow them to be deducted from the wrongdoer's gross income, reduces, and so in part defeats, the prescribed punishment." *(Emphasis supplied)*

As provided by Section 34(A)(1)(b) of the NIRC of 1997, the substantiation requirement for deductibility of expenses pertains to sufficient evidence, such as official receipts or other adequate records.

To be entitled to claim a tax deduction, the taxpayer must competently establish the factual and documentary bases of its claim.[107] Deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that he is entitled to the deduction claimed.[108] Reliance on withholding tax returns, cash vouchers, lessor's certifications, and the contracts of lease was futile because such documents had scant probative value. The law required (the taxpayer) to support its claim for deductions with the corresponding official receipts issued by the service providers concerned.[109]

In fine, respondent's assessment on the unsupported expenses should be sustained but in the amount of ₱1,580,262.80, computed as follows:

Cost Variance	₱ 899,501.94
Selling and operating expenses	680,760.86
Total Unsupported Expenses	**₱ 1,580,262.80**

[106] G.R. No. L-19537, May 20, 1965.

[107] *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 173373, July 29, 2013.

[108] *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 148187, April 16, 2008.

[109] *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 173373, July 29, 2013.

D. Unsupported stock losses – ₱338,883.64

Respondent's verification disclosed that stock losses claimed were unsupported as vouched during the investigation, thus, disallowed as deductions from petitioner's gross income pursuant to Section 34(D) of the NIRC of 1997.[110]

Petitioner alleges that the assessment is based on the failure of petitioner to apply for inventory assets disposal/destruction/loss as required by RMO No. 6-2012 dated April 2, 2012.

However, petitioner argues that in 2008, which was the year covered by the assessment, there was no memorandum or circular which provided for the rules on inventory assets disposal for expired stocks. The only applicable provision was the general rule on obsolescence found in Section 34(f) of the NIRC.

Petitioner further states that as a distributor of pharmaceutical products, "stock losses" in the form of expired inventory is a regular occurrence in the business, hence, the applicability of the general rule on obsolescence.

On the other hand, the Independent CPA stated that in RMO No. 6-2012, dated April 2, 2012, taxpayers are required to apply for inventory assets disposal/destruction stock which shall be filed with the Revenue District Office where the principal place of business of the taxpayer is registered. Where everything is in order, after processing and evaluating the application, a Certificate of Deductibility of Inventory Loss is issued. Failure to follow said procedure will mean disallowance of deductibility. However, the Independent CPA believes that the application of the RMO is prospective, hence, it must not affect petitioner's stock loss deduction.[111]

Petitioner presented Journal Voucher No. GJ 000230[112] and Inventory for Destruction as of December 31, 2008 with an Expired/Bloated/Damaged/Stained Stock Inventory Tally Sheet[113] to support its stock losses.

However, a mere journal voucher and schedule of inventory for destruction are self-serving, unless supported by other competent documentary evidence to establish the subject amount actually

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[110] Exhibit "R-18", BIR Records, p. 228.
[111] Exhibit "P-304", Docket—Vol. III, p. 1483.
[112] Exhibit "P-184".
[113] Exhibit "P-185".

pertained to expired inventory. Regardless of the issue on applicability of RMO No. 6-2012, petitioner failed to discharge its burden of proof as to the substantiation of such losses. Thus, the Court finds the disallowance proper and must be sustained.

E. Income payments not subjected to withholding tax – ₱3,352,196.48

Respondent's verification disclosed that petitioner failed to withhold and remit the EWT on certain income payments totaling ₱3,352,196.48 as required under RR No. 2-98, as amended, thus, were disallowed as deductions from petitioner's gross income pursuant to Section 34(K) of the NIRC of 1997. Below is the breakdown of the income payments in the amount of ₱3,352,196.48:

Income Payment	Per Audit	Per Returns	Difference
Professional fees	₱ 25,920.00	-	₱ 25,920.00
Director's fee	20,000.00	-	20,000.00
Rentals	447,228.60	₱320,459.62	126,768.98
Payments to prime contractors/sub-contractors:			
Various expenses - contractors	₱ 771,088.26		
Advertising and promotion	1,970,732.41		
Freight cost	437,686.83		
Total	₱3,179,507.50		₱ 3,179,507.50
Income payments not subjected to withholding tax			**₱3,352,196.48**

In this regard, Section 34(K) of the NIRC of 1997, provides for additional requirements for deductibility of certain payments as follows:

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

Notably, petitioner was also assessed of the corresponding deficiency EWT for the above income payments. Thus, based on the Court's findings under the deficiency EWT assessment *(see item I,* *supra)*, petitioner failed to withhold and remit the proper taxes on the subject income payments but in the reduced amount of ₱3,284,196.48, detailed as follows:

	Income Payment
Professional fees	₱ 25,920.00
Director's fee	20,000.00
Rentals	58,768.98
Payments to prime contractors/sub-contractors:	
Various expenses – contractors	₱ 771,088.26
Advertising and promotion	1,970,732.41
Freight cost	437,686.83
Total	**₱ 3,284,196.48**

Consequently, the amount of ₱3,284,196.48 shall be disallowed from petitioner's claimed deductible expenses pursuant to Section 34(K) of the NIRC of 1997.

F. Fringe benefits not subjected to FBT – ₱523,093.29
Depreciation expense not subjected to FBT – 1,012,825.13

This assessment was based on the same finding under the deficiency FBT assessment *(see item II,* supra*)* that petitioner failed to subject the vehicles and other fringe benefits to thirty-two percent (32%) FBT. As a consequence of petitioner's failure to withhold, the fringe benefits amounting to ₱523,093.29 and depreciation expense amounting to ₱1,012,825.13 were disallowed as deductions from petitioner's gross income pursuant to Section 34(K) of the NIRC of 1997.

The Court finds the disallowances in order. Under the deficiency FBT assessment discussion (supra), petitioner failed to prove that the "Other Fringe Benefits" in the amount of ₱523,093.29 is not subject to FBT; hence, the same cannot be validly deducted from petitioner's gross income for taxable year 2008.

The same holds true with the claimed depreciation expense in the amount of ₱1,012,825.13. Since petitioner failed to prove that the motor vehicles provided to its employees are not subject to FBT *(see item II,* supra*)*, the depreciation expense in the amount of ₱1,012,825.13 cannot be deducted from its gross income for taxable year 2008.

G. Advertising expense paid to Non-Resident Foreign Corporation not subjected to FWT – ₱48,372.00

nA

This assessment was based on the same finding under the deficiency FWT assessment *(see items III and IV*, supra*)* that petitioner failed to subject to FWT the amount of ₱48,372.00 representing advertising expense paid to a non-resident foreign corporation.

As previously mentioned, respondent's deficiency FWT assessment should be upheld for petitioner's failure to disprove respondent's finding that the advertising expense in the amount of ₱48,372.00 is subject to FWT. Since petitioner did not subject the said amount to FWT, the same cannot be claimed by petitioner as deduction from its gross income for taxable year 2008.

H. Disallowed donations – ₱53,431.20

Respondent's verification disclosed that petitioner's donations including those lodged under other expense accounts, as shown below, did not comply with Section 34(H) of the NIRC of 1997, as amended, hence, disallowed as deduction from gross income.[114]

Donations and contributions	₱ 31,331.20
Add: Donations lodged under other expense account per audit	22,100.00
Disallowed donations	**₱53,431.20**

Petitioner asserts that the above identified donations were made to tax-exempt charitable institutions, which are allowed as deductions under Section 34(H) of the NIRC of 1997, as amended.[115]

To substantiate its donations, petitioner submitted check vouchers, requests for cash advance/payment, letter-requests for donations/sponsorship, official receipts, and expense reports.[116]

The disallowance is partially upheld.

Perusal of the records show that petitioner made donations to the following with the aggregated amount of ₱33,600.00:

ASSOCIATION	AMOUNT	EXHIBIT NO.	PURPOSE OF DONATION
Philippine Society of Gastroenterology	₱5,000.00	P-250 to 251	Unknown
Dr. Naheeda Dimacisil	5,000.00	P-250 to 253	Financial assistance to Dr. Naheeda Dimacisil, a

[114] Exhibit "R-18", BIR Records, p. 227.
[115] Petition for Review, Docket—Vol. I, p. 23.
[116] Exhibits "P-250" to "P-272".

			cancer patient
United Way Philippines, Inc.	1,600.00	P-254 to 255	Ticket purchase as fund raising
Med-express	4,000.00	P-256 to 257	Solicitation for Christmas party
UERMMED '84 Alumni Foundation, Inc.	1,500.00	P-258 to 259	Solicitation for an advertisement in souvenir program
Couples for Christ	5,000.00	P-260 to 261	Project sponsorship for Annual Health Fair
Medical Plaza Ortigas	5,000.00	P-262	Christmas contribution
Sheryll Gallandez	1,000.00	P-263 to 264	Reimbursement for donation
UERM Cardiovascular Alumni Group	3,000.00	P-265 to 266	Contribution for post-graduate course event
Dra. De Guia's Birthday	2,500.00	P-269 to 270	Ticket purchase as fund-raising
TOTAL	**₱33,600.00**		

Thus, the remaining claimed donations in the amount of ₱19,831.20 (₱53,431.20 less ₱33,600.00) shall be disallowed outright for petitioner's failure to substantiate the same.

Out of the ₱33,600.00 donations with supporting documents, the Court finds that the amount of ₱1,500.00 paid by petitioner to UERMMED '84 Alumni Foundation, Inc. is in the nature of an advertising expense, instead of a donation/contribution. In consideration of the amount paid by petitioner to UERMMED '84 Alumni Foundation, Inc., petitioner was given an ad placement in the latter's souvenir program. Thus, the amount of ₱1,500.00 should not be treated as a donation, and must not be disallowed as such.

As to the remaining amount of ₱32,100.00 with supporting documents (₱33,600.00 less ₱1,500.00), it is observed that the alleged donations were made to individuals or non-government organizations.

Section 34(H) of the NIRC of 1997 provides for the following:

> "SEC. 34. *Deductions from Gross Income.* – xxx
>
> (H) *Charitable and Other Contributions.* –
>
> (1) *In General.* – **Contributions or gifts actually paid or made within the taxable year** to, or for the use of the Government of the Philippines or any of its agencies or any political subdivision thereof exclusively

for public purposes, or **to accredited domestic corporations or associations organized and operated exclusively for religious, charitable, scientific, youth and sports development, cultural or educational purposes or for the rehabilitation of veterans, or to social welfare institutions, or to non-government organizations,** in accordance with rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, **no part of the net income of which inures to the benefit of any private stockholder or individual in an amount not in excess of ten percent (10%) in the case of an individual, and five percent (5%) in the case of a corporation, of the taxpayer's taxable income derived from trade, business or profession as computed without the benefit of this** and the following subparagraphs.

(2) *Contributions Deductible in Full.* – Notwithstanding the provisions of the preceding subparagraph, donations to the following institutions or entities shall be deductible in full:

xxx xxx xxx

(c) *Donations to Accredited Nongovernment Organizations.* – The term 'nongovernment organization' means a non profit domestic corporation:

(1) Organized and operated exclusively for scientific, research, educational, character-building and youth and sports development, health, social welfare, cultural or charitable purposes, or a combination thereof, no part of the net income of which inures to the benefit of any private individual;

(2) Which, not later than the 15th day of the third month after the close of the accredited nongovernment organizations taxable year in which contributions are received, makes utilization directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated, unless an extended period is granted by the Secretary of Finance in accordance with the rules and regulations to

be promulgated, upon recommendation of the Commissioner;

(3) The level of administrative expense of which shall, on an annual basis, conform with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, but in no case to exceed thirty percent (30%) of the total expenses; and

(4) The assets of which, in the event of dissolution, would be distributed to another nonprofit domestic corporation organized for similar purpose or purposes, or to the state for public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of said court shall best accomplish the general purpose for which the dissolved organization was organized. xxx" *(Emphasis supplied)*

Relevantly, the provisions under RR No. 13-98 clarifies the application of the limitation or full deduction of charitable contributions for income tax purposes, the pertinent portions of which read:

"SECTION 2. *Accreditation of non-stock, non-profit corporations/NGOs by the Accrediting Entity.* –

(a) The Accrediting Entity shall examine, evaluate and accredit non-stock, non-profit corporations and NGOs as a pre-requisite for their registration with the BIR as qualified-donee institutions under Section 34 (H)(1) and (2)(c) of the Tax Code.

xxx xxx xxx

(f) The Accrediting Entity shall issue a Certificate of Accreditation to a non-stock, non-profit corporation/NGO upon determination that it meets the criteria for accreditation; *Provided*, that the Certificate of Accreditation shall be valid for a maximum period of five (5) years for existing non-stock, non-profit corporations/NGOs and three (3) years for newly-organized non-stock, non-profit corporations/NGOs.

xxx xxx xxx

SECTION 3. *Donations to Accredited Non-stock, Non-profit Corporations/NGOs.* – Donations to accredited non-stock, non-profit corporations/NGOs shall be entitled to the following benefits:

(1) *Limited Deductibility.* – Donations, contributions or gifts actually paid or made within the taxable year to accredited non-stock, non-profit corporations shall be allowed limited deductibility in an amount not in excess of ten percent (10%) for an individual donor, and five percent (5%) for a corporate donor, of the donor's income derived from trade, business or profession as computed without the benefit of this deduction.

(2) *Full Deductibility.* – Donations, contributions or gifts actually paid or made within the taxable year to accredited NGOs shall be allowed full deductibility, subject to the following conditions:

(i) The accredited NGO shall make utilization directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated, not later than the fifteenth (15th) day of the third month after the close of the accredited NGOs taxable year in which contributions are received, unless an extended period is granted by the Secretary of Finance, upon recommendation of the Commissioner.

xxx xxx xxx

SECTION 5. *Certificate of Donations.* – All accredited non-stock, non-profit corporation/NGO are required to issue a certificate of donation in such form as prescribed by the BIR, on every donation or gift they receive. Such certificate shall be accomplished by the said accredited non-stock, non-profit corporation/NGO in triplicate and distributed within thirty (30) days after the receipt of the donation, as follows:

(a) Original copy – Donor
(b) Duplicate copy – BIR
(c) Triplicate copy – Donee

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SECTION 8. *Substantiation Requirements.* –

(a) *For Donors.* – Donors claiming donations and contributions to accredited non-stock, non-profit corporation/NGO as deductions from their taxable business income should submit evidences or proofs to the BIR by showing the Certificate/s of Donation and indicating therein the following:

(i) Actual receipt by the accredited non-stock, non-profit corporation/NGO of the donation or contribution and the date of receipt thereof; and

(ii) The amount of the charitable donation or contribution, if in cash; if property, whether real or personal, the acquisition cost of the said property.

On the other hand, donors claiming exemption from donor's tax on their donations and contributions to accredited non-stock, non-profit corporations/NGOs should submit evidences or proofs showing the amount of donation, if in cash; if real property, the zonal value thereof at the time of donation; and if personal property, the acquisition cost thereof, but if said personal property had already been used at the time of donation, the depreciated or book value thereof."

Based on these provisions, it is required that the non-stock, non-profit corporations must be accredited by the BIR before donations to such parties may be allowed as a deduction for income tax purposes by the donor whether it be with limitation or in full.

Petitioner failed to prove that its donees are accredited by the BIR pursuant to Section 2 of RR No. 13-98. Neither did it show any Certificate of Donation issued by the donee, as required by Section 5, for the purpose of substantiating the validity of any donation for income tax purposes, as required by Section 8 thereof.

As such, the Court finds it proper to sustain the disallowance by respondent but only to the extent of ₱51,931.20, computed as follows:

Disallowed Donations per respondent's audit	₱ 53,431.20
Less: Amount pertaining to advertising expense per this Court's verification	1,500.00
Disallowed Donations per this Court's verification	**₱ 51,931.20**

I. Disallowed taxes and licenses – ₱3,936.94

Respondent's verification disclosed that part of petitioner's claimed taxes and licenses amounting to ₱3,936.94 did not comply with Section 34(C) of the NIRC of 1997, as amended, hence, disallowed as deductions from gross income.[117]

The check voucher and official receipt[118] supporting said expense pertain to the payment of special assessment by Medical Plaza Ortigas Condominium Corporation. The official receipt was issued to Willie Orejola, indicating that it is not an expense related to the business of petitioner. As such, the disallowance of the expense is proper.

J. Excess tax credits carried over to succeeding period – ₱689,132.43

The Net Overpayments in Line 31 of the Annual ITR[119] amounting to ₱689,132.43 for taxable year 2008 was disallowed by respondent as tax credits/payments.

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 2009. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

K. Unsupported creditable withholding tax – ₱370,112.49 Unsupported prior year's excess credit – ₱319,019.94

Respondent's verification showed that petitioner's creditable withholding taxes amounting to ₱370,112.49 were not supported with appropriate documentary evidence, hence, disallowed and assessed pursuant to Section 2.53.3 of RR No. 04-02, as amended.[120] The amount of ₱370,112.49 is computed as follows:

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[117] Exhibit "R-18", item I.j, BIR Records, p. 227.
[118] Exhibits "P-273" to "P-274".
[119] Exhibit "R-1", BIR Records, p. 22.
[120] Exhibit "R-18", item I.k, BIR Records, p. 227.

Creditable withholding tax claimed per ITR	₱ 370,112.49
Attached creditable withholding tax certificates (BIR Form 2307)	-
Unsupported creditable withholding tax	**₱ 370,112.49**

Petitioner submitted BIR Forms No. 2307 issued by Metro Drug, Inc.[121] totaling ₱330,728.98. However, as summarized below, these forms are for the years 2006 and 2007:

CWTs dated 2006:	
July-September	₱ 4,283.79
April-June	5,870.59
April-June	7,256.59
January-March	13,760.19
April-June	5,873.56
October-December	6,143.10
October-December	18,276.60
October-December	19,176.50
July-September	2,399.58
July-September	9,907.52
CWTs dated 2007:	
October-December	29,934.11
October-December	25,706.19
October-December	24,376.21
July-September	31,906.60
July-September	16,421.88
July-September	16,196.72
April-June	14,573.64
April-June	27,216.96
January-March	16,004.01
January-March	8,770.96
January-March	7,970.22
April-June	18,703.46
Total	**₱ 330,728.98**

Even though these forms may be attributed to the prior year's excess credits which were likewise disallowed by respondent, the same cannot be given credit by the Court since petitioner failed to prove that such tax credits were indeed unutilized in the previous years (*i.e.*, it was not applied against any income tax due) and was not opted to be refunded or issued with corresponding tax credit certificate in the year it was earned or received, pursuant to Section 2.58.3(C) of RR No. 2-98. Section 2.58.3(C) of the said Regulations reads:

"SECTION 2.58.3. *Claim for Tax Credit or Refund.* –

[121] Exhibit "P-275".

xxx xxx xxx

(C) *Excess Credits* – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, **provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.**" *(Emphasis supplied)*

Further, petitioner did not comply with Section 8(a) of RR No. 4-2002 which requires the payees to submit copies of BIR Form No. 2307, attached to the ITRs, for purposes of claiming or applying creditable taxes withheld against taxes due. Also, records of the case show that petitioner did not present BIR Form No. 2307 for taxable year 2008.

Given the foregoing, respondent was correct in disallowing such tax credits.

In summary, petitioner is liable for basic deficiency income tax for taxable year 2008 in the amount of ₱3,799,814.30, computed as follows:

Taxable income per ITR		₱ 1,158,029.36
Add: Adjustments per investigation		
Undeclared income	₱ 77,673.26	
Salaries and wages not subjected to withholding tax	808,098.39	
Unsupported expenses	1,580,262.80	
Unsupported stock losses	338,883.64	
Income payments not subjected to withholding tax	3,284,196.48	
Fringe benefits not subjected to fringe benefits tax	523,093.29	
Depreciation expense not subject to fringe benefits tax	1,012,825.13	
Advertising expense paid to NRFC not subjected to final withholding tax	48,732.00	
Disallowed donations	51,931.20	
Disallowed taxes and licenses	3,936.94	7,729,633.13
Taxable Income per investigation		₱ 8,887,662.49
Income tax due thereon (35%)		₱ 3,110,681.87
Add: Disallowed tax credits/payments		
Unsupported prior year's excess credits	₱ 319,019.94	

Unsupported creditable taxes withheld during the year	370,112.49	
Total Disallowed tax credits/payments		689,132.43
Deficiency Income Tax		**₱ 3,799,814.30**

VI. Compromise penalties – ₱21,500.00

The compromise penalties imposed by respondent in the amount of ₱21,500.00 for petitioner's alleged non/late filing/payment of FBT, FWT and FWVAT must be cancelled.

Pursuant to RMO 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 cannot 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.[122] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the compromise penalty without the taxpayer's conformity is illegal and unauthorized.[123]

All told, it must be reiterated that when assessments are assailed, the burden of proof is upon the complaining party (petitioner). It is incumbent upon petitioner to clearly show that the assessment was erroneous, in order to relieve himself from it.[124]

Furthermore, as cases filed before this Court are litigated *de novo*, party-litigants must prove every minute aspect of their cases.[125]

It is the obligation of petitioner to fully substantiate its claim before this Court. Unlike tax assessments that enjoy the presumption of regularity, taxpayers' claims of no liability against deficiency taxes should be sufficiently established and, by that, clear and convincing evidence should be presented to support such claims.[126]

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[122] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[123] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.
[124] *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., et al.*, G.R. No. L-68230, November 25, 1986.
[125] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[126] *Republic Cement Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 821, July 18, 2012.

To recapitulate, considering that petitioner sufficiently explained and substantiated the deficiency EWT on the rental of LCD/projector, training room and function room, on income payments to Hizon Laboratories, the deficiency EWT, and the deficiency income tax resulting from the disallowance of said expenses and the donation which was found to be in the nature of an advertising expense, should be cancelled.

As for the rest of the deficiency taxes assessed, the evidence presented by petitioner, consisting mainly of its vouchers and schedules, failed to fully explain and reconcile all of the discrepancies found by respondent relating to the deficiency income tax, EWT, FBT, FWT, FWVAT for taxable year 2008, which were derived by respondent upon her audit and examination of petitioner's books of accounts. Consequently, the presumption of correctness of the said deficiency tax assessments stands.

WHEREFORE, in light of all the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. The deficiency EWT on the rental of LCD/projector, training room and function room, on income payments to Hizon Laboratories, and the deficiency income tax resulting from the disallowance of said expenses and the donation which was found to be in the nature of an advertising expense, as well the compromise penalties imposed, are **CANCELLED** and **SET ASIDE**. Accordingly, the assessments issued by respondent against petitioner for taxable year 2008 covering deficiency EWT, FBT, FWT, FWVAT and income tax are **UPHELD** but **WITH MODIFICATIONS**. Petitioner is **ORDERED TO PAY** respondent the amount of **FIVE MILLION FIVE HUNDRED THIRTEEN THOUSAND ONE HUNDRED FOUR PESOS AND 9/100 (₱5,513,104.09)** representing basic deficiency EWT, FBT, FWT, FWVAT and income tax, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, to wit:

TYPE OF TAX	BASIC TAX	25% SURCHARGE	TOTAL
EWT	₱ 97,065.56	₱ 24,266.39	₱ 121,331.95
FBT	490,699.37	122,674.84	613,374.21
FWT	17,056.20	4,264.05	21,320.25
FWVAT	5,847.84	1,461.96	7,309.80
Income Tax	3,799,814.30	949,953.58	4,749,767.88
Total	**₱4,410,483.27**	**₱1,102,620.82**	**₱5,513,104.09**

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 computed from April 15, 2009 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997; and

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱5,513,104.09 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from May 10, 2012 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice