REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

IP CONTACT CENTER OUTSOURCING, INC.,
Petitioner,

-versus-

HON. COMMISSIONER KIM S. JACINTO-HENARES, HON. NESTOR S. VALEROSO, Regional Director, Revenue Region No. 8,
Respondents.

CTA CASE NO. 8605

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

APR 18 2016 2:43 p.m.

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DECISION

***Fabon-Victorino, J.*:**

This Petition for Review assails the inaction on the protest filed by petitioner IP Contact Center Outsourcing, Inc. against the Formal Assessment Notice (FAN) dated April 11, 2012 issued by respondent Kim S. Jacinto-Henares, finding it liable for deficiency Income Tax (IT), Value-Added Tax (VAT), and Expanded Withholding Tax (EWT) in the aggregate amount of ₱1,969,274.69, inclusive of interest for taxable year 2008.

Petitioner is a domestic corporation, with office address at 34th Floor Tower II Plaza, Ayala Avenue, Makati City.

Respondent Kim S. Jacinto-Henares is the Commissioner of Internal Revenue (CIR) with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The other respondent Nestor S. Valeroso is the Regional Director of Revenue Region No. 8, with office address at the Bureau of Internal Revenue (BIR) Regional Office Building at 313 Sen. Gil Puyat Avenue, Makati City.[1]

A Preliminary Assessment Notice (PAN)[2] dated March 21, 2012, with Details of Discrepancies, was sent to petitioner assessing it of deficiency IT, VAT, and EWT for taxable year 2008. Thereafter, petitioner received a FAN[3] dated April 11, 2012, with Details of Discrepancies[4], Assessment Notice No. IT-LA12555-08-12-0406[5], Assessment Notice No. VT-LA12555-08-12-0406[6], and Assessment Notice No. WE-LA12555-08-12-0406[7], for deficiency IT, VAT, and EWT in the total amount of One Million Nine Hundred Sixty-Nine Thousand Two Hundred Seventy-Four and 69/100 (₱1,969,274.69), inclusive of interest for taxable year 2008, broken down as follows:

Deficiency Tax	Basic	Interest	Total
Income Tax	₱ 118,007.58	₱ 72,679.74	₱ 190,687.32
Value-Added Tax	130,361.51	86,002.88	216,364.39
Expanded Withholding Tax	938,156.28	624,066.70	1,562,222.98
	₱1,186,525.37	**₱782,749.32**	**₱1,969,274.69**

On May 11, 2012, petitioner filed its Protest Letter[8] to the FAN with the Assessment Division of BIR Revenue Region No. 8-Makati.

In a letter dated May 30, 2012, received on June 5, 2012, petitioner was informed by Revenue Region No. 8 that the entire docket of its case together with its Protest Letter against the 2008 FAN was indorsed to Revenue District Office (RDO) No. 50.[9]

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[1] Par. 2, Stipulation of Facts, JSFSI, docket, p. 280.
[2] Exhibit "R-3", BIR Records, pp. 386-389.
[3] Exhibits "P-4" and "P-4-a", BIR Records, pp. 396-397.
[4] Exhibit "P-5", BIR Records, pp. 394-395.
[5] Exhibit "P-1", BIR Records, p. 404.
[6] Exhibit "P-2", BIR Records, p. 399.
[7] Exhibit "P-3", BIR Records, p. 398.
[8] Exhibits "P-6" to "P-6-h", BIR Records, pp. 412-420.
[9] Par. 4, Stipulation of Facts, JSFSI, docket, p. 280.

In letter dated July 10, 2012[10], petitioner informed respondent Valeroso of its submission of supporting documents.

On February 5, 2013, petitioner filed the instant Petition for Review.[11]

In their Answer[12], respondents states that petitioner is engaged in the business of providing services and should be taxed based on gross receipts pursuant to Section 108 of the NIRC. A comparison of receipts appearing in petitioner's books and those in its VAT Returns shows receipts not subjected to IT. Further comparison of receipts subject to VAT per audit and receipts per VAT returns shows receipts not subjected to VAT. Also, a portion of petitioner's rent expense was not explained or accounted for in its Financial Statement/Income Tax Return (ITR). The said amount was considered as petitioner's undeclared source of income. In addition, petitioner failed to pay appropriate EWT due on their various income payments in violation of Section 2.57.2 of Revenue Regulations No. 2-98, as amended by Revenue Regulation No. 17-2003. Finally, the burden is on petitioner to prove the invalidity of the assessment which is presumed to be correct.

After the parties filed their Joint Stipulation of Facts and Simplification of Issues,[13] the Pre-Trial Conference was deemed terminated on January 3, 2014[14].

Petitioner presented its lone witness, **Mary Jenelle Palma** who executed four (4) Judicial Affidavits marked as Exhibits P-14 to P-14-I, P-15 to P-15-h, P-16 to P-16-a, and P-17 to P-17-a. However, the said Judicial Affidavits were denied admission, with finality[15], for failure to comply with the attestation clause required under Section 3(b) of Administrative Matter No. 12-8-8-SC, also known as the Judicial Affidavit Rule.

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[10] Exhibits "P-8", "P-8-a", and "P-8-b", BIR Records, pp. 487-489.
[11] Docket, pp. 7-23.
[12] Answer dated April 4, 2013, docket pp. 77-79.
[13] Docket, pp. 279-285.
[14] Pre-Trial Order, docket, pp. 298-304.
[15] Resolution dated January 30, 2015, docket, pp. 544-549.

Respondent, for her part, presented Revenue Officer (RO) **Jocelyn A. De Guzman**, who declared in her Judicial Affidavit[16] that she continued the investigation of petitioner's internal revenue tax liabilities for taxable year 2008 pursuant to Memorandum dated January 28, 2010, and Letter of Authority (LOA) No. 00012555 dated May 22, 2009. After petitioner was served with a Notice of Informal Conference dated September 15, 2011, she prepared a Memorandum Report showing petitioner's deficiency IT, VAT and EWT. On March 21, 2012, the PAN of even date with Details of Discrepancies was served to petitioner. The service of FAN dated April 11, 2012, with Details of Discrepancies followed, showing petitioner's deficiency IT of ₱190,687.32, deficiency VAT of ₱216,364.39, and deficiency EWT of ₱1,562,222.98.

After formal offer[17] of her evidence, respondent rested and the case was deemed for decision on April 22, 2015.[18]

THE ISSUES[19]

The parties stipulated the following issues for the resolution of the Court:

a. Whether the petitioner is liable for deficiency IT in the amount of One Hundred Ninety Thousand Six Hundred Eighty Seven and 32/100 Pesos (₱190,687.32) until 11 May 2012;

b. Whether the petitioner is liable for deficiency VAT in the amount of Two Hundred Sixteen Thousand Three Hundred Sixty Four and 39/100 Pesos (₱216,364.39) until 11 May 2012; and

c. Whether the petitioner is liable for deficiency EWT in the amount of One Million Five Hundred Sixty Two Thousand Two Hundred and Twenty

[16] Exhibit "R-5", docket, pp. 453-456.
[17] Docket, pp. 450-452.
[18] Docket, p. 583.
[19] JSFSI, docket, p. 300.

Two and 98/100 Pesos (₱1,562,222.98) until 11 May 2012.

THE RULING OF THE COURT

On the timeliness of the filing of the Petition for Review

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

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x
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> x x x x x x x x x
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> 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.

Corollary to the foregoing provision is Section 3.1.5 of Revenue Regulations (RR) No. 12-99[20], which reads, as follows:

> 3.1.5 *Disputed Assessment*. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
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> The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect*. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
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> The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.
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> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within

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[20] Certain Sections of RR No. 12-99, in relation to the due process requirement in the issuance of a Deficiency Tax Assessment, have been amended by virtue of RR No. 18-13. Section 3.1.5 of RR No. 12-99 was renumbered as Section 3.1.4.

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

As provided in the above provision, respondent CIR has 180 days from the submission of supporting documents by the taxpayer to act on the protest. Within 30 days from receipt of an adverse decision, or from the lapse of the 180-day period without action on the protest, the taxpayer can appeal to this Court.[21]

Petitioner filed its Protest Letter[22] to the FAN with the Assessment Division of BIR Revenue Region No. 8-Makati on May 11, 2012. Within sixty (60) days from the filing of such Protest Letter, petitioner sent another letter dated July 10, 2012[23], advising respondent of its submission of documents

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[21] *Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue, et al.*, G.R. No. 208731, January 27, 2016.
[22] Exhibits "P-6" to "P-6-h", BIR Records, pp. 412-420.
[23] Exhibits "P-8", "P-8-a", and "P-8-b", BIR Records, pp. 487-489.

in support of the protest to the FAN. From the date of submission of supporting documents on July 10, 2012, the CIR had 180 days or until January 6, 2013, within which to act on the protest.

As there was no action on the protest within the 180-day period, petitioner seasonably filed this Petition for Review on February 5, 2013, or within the 30-day period to appeal.

On the alleged deficiencies:

A. Income Tax (₱190,687.32)

Based on the FAN[24], petitioner was assessed for deficiency income tax pursuant to Section 32 of the NIRC of 1997, computed as follows:

Taxable Income (Loss) per Return		₱29,696,587.42
Add: Adjustments		
Receipts not subjected to Income tax		2,360,151.84
Total		₱32,056,739.26
Tax Due (5% GIT)		₱ 1,602,836.96
Less: Allowable Tax Credits		
Payments to Other Agencies[25]	₱890,897.63	
Payments per Return[26]	593,931.75	1,484,829.38
Basic Tax Due		₱ 118,007.58
Add: Interest (04.16.09 to 05.14.12)		72,679.74
TOTAL AMOUNT DUE		**₱ 190,687.32**

According to respondent, the deficiency IT assessment arose from the receipts that were not subjected to IT in the amount of ₱2,360,151.84. The said amount was determined by comparing petitioner's receipts per VAT returns and receipts per Books[27], to wit:

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[24] Exhibit "P-4", BIR Records, p. 397.
[25] *Payments to Other Agencies per Return actually amounts to ₱593,931.75,* Line 26, Income Tax Return (ITR), BIR Records, p. 46.
[26] *Payments per Return actually amounts to ₱890,897.63,* Line 29, ITR, BIR Records, p. 46.
[27] Exhibit "P-5", BIR Records, p. 395.

Receipts per VAT Returns	₱105,171,969.86
Receipts per Books	102,811,818.02
Receipts not subjected to income tax	**₱2,360,151.84**

But per petitioner, there were adjusting journal entries for the year 2008 which were not considered in respondent's computation. Further, the adjusted items should not be included in the computation of IT as they were already included in the adjusting entries at the end of the taxable year to reflect and correct the entries in the general ledger. Allegedly, the adjusting journal entries[28] as appearing in the Petition for Review are as follows:

	Debit	**Credit**
Reversal of remaining receivables from Local.com		
Services Fees	1,470,185.93	
Telecommunications Cost	14,474.04	
Miscellaneous Expense	6,140.70	
Other Receivables		20,614.74
Account Receivables - Trade		1,470,185.93
Reversal of receivable from Watchguard - Jan 2008 Billing		
Other Receivables	10,327.81	
Telecommunication Cost		10,327.81
To write-off LI-001 (leasehold improvements for the RCBC Office)		
Advances from Customers	609,835.00	
Account Receivables - Trade		609,835.00
To record last year CAJE		
Account Receivables - Trade	252,247.19	

[28] Docket, p. 17.

	Services Fees		252,247.19
		2,363,210.67	***2,363,210.67***

The assessment on deficiency IT must be sustained.

Aside from mere allegations in the petition, no other evidence was presented to support petitioner's stance. Note that the schedules of adjusting entries were denied admission for failure of petitioner to present the originals for comparison. Even if considered, the said documents are insufficient to warrant the cancellation of the assessment. Respondent's findings should be upheld on the ground that the trail of transactions causing the adjustments, the source documents, and ultimately, the link to the outcome of the transaction, were not shown or substantiated.

Neither were the bases of adjustments shown nor the time or period when the adjusting entries were effected. Petitioner failed to overturn the principle that tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[29] Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[30] Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[31]

On account of the foregoing finding, the deficiency income tax assessment is upheld.

B. Value-Added Tax (₱216,364.39)

Respondent computed the deficiency VAT assessment in the FAN in the amount of ₱216,364.39 as follows:[32]

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[29] *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzales, et al.*, G.R. No. 177279, October 13, 2010.
[30] *LNS International Manpower Services vs. Armando C. Padua, Jr.*, G.R. No. 179792, March 5, 2010.
[31] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.
[32] Exhibit "P-4", BIR Records, p. 397.

Vatable Sales per Return		₱12,055,830.51
Add: Receipts not subjected to VAT	₱731,213.95	
Unaccounted Rent	355,131.95	1,086,345.90
Total Income subject to VAT		₱13,142,176.41
Output Tax		₱ 1,577,061.17
Less: Input Tax Carried Over from Previous Period		52,465.42
VAT Payable		₱ 1,524,595.75
Less: Payments per Returns		1,394,234.24
Basic Tax Due		₱ 130,361.51
Add: Interest (1.26.09 to 05.14.12)		86,002.88
TOTAL AMOUNT DUE		**₱ 216,364.39**

The cited deficiency arose from the (i) receipts not subjected to VAT and (ii) unaccounted rent expense.

B.1. Receipts not subjected to VAT (₱731,213.95)

The amount of ₱731,213.95,[33] allegedly representing petitioner's receipts not subjected to 12% VAT was arrived at by comparing receipts per audit and receipts per VAT returns, to wit:

Receipts subject to VAT per audit	₱12,787,044.46
Receipts per VAT returns	12,055,830.51
Receipts not subjected to VAT	**₱ 731,213.95**

Petitioner claims that the amount under "Receipts subject to VAT per Audit" cannot be traced from either the sales receipts in its Audited Financial Statement (AFS) or in its VAT returns. Thus, respondent's failure to explain how it arrived at such assessment violates the clear mandate of Section 228 of the NIRC of 1997, as implemented by Section 3.1.4 of RR No. 12-99[34] providing that taxpayers must be

[33] Exhibit "P-5", BIR Records, p. 395.
[34] 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall

informed of the law and the facts on which the assessment is made.

It is evident that from the filing of its Protest Letter on May 11, 2012, petitioner had consistently requested the details of the "Receipts subject to VAT per Audit" amounting to ₱12,787,044.46, but such was left unheeded by respondent. Plain from the record that the factual basis and the composition of "Receipts subject to VAT per Audit" were not disclosed in the FAN and in the Details of Discrepancies.

Considering that the basis of assessment is the comparison of the receipts per VAT returns and receipts per audit conducted by respondent, the working computation or the details of the receipts per audit should have been presented to show how the amount was computed. However, no evidence was adduced to allow petitioner to effectively and intelligently refute the alleged discrepancy. *Sans* any vital documents from which the Court may verify its correctness, the assessment for deficiency VAT should be cancelled.

Let it be stressed that the requirement of informing the taxpayer of the law and facts upon which the assessment is made, is mandatory as required explicitly in Section 228 of the NIRC of 1997. Non-compliance with this requirement renders the assessment void. And a void assessment bears no valid fruit.[35] To stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[36]

Thus, the deficiency VAT assessment on receipts not subject to VAT is cancelled for failure of respondent to comply with the provisions of Section 228 of the NIRC of 1997.

B.2. Unaccounted rent expense (₱355,131.95)

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be void xxx. The same shall be sent to the taxpayer only by registered mail or by personal delivery. xxx

[35] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189-190 (2006).

[36] *Commission of Internal Revenue vs. Hantex Trading Co. Inc.*, G.R. No. 136975, March 31, 2005.

Per respondent, a portion of petitioner's rent expense is unexplained or unaccounted for in petitioner's AFS and ITR for taxable year 2008. Respondent treated the unaccounted rent expense as undeclared source of income following the ruling in the case of *Perez vs. Court of Tax Appeals, et al.*[37], wherein it was held that unreflected sources of funds not accounted for in the taxpayer's returns led to the inference that part of his income has not been reported, hence, shall be subject to VAT pursuant to Sections 105 and 108 of the NIRC of 1997, in relation to Section 4.105-3 of RR No. 16-2005.

The alleged unaccounted rent expense is computed as follows:[38]

Unaccounted Rent expense			
	Per Alphalist	**Per FS/ITR**	**Unaccounted**
Rent	₱ 5,814,356.36	₱ 5,459,244.41	**₱ 355,111.95**

Since the amount per alphalist is higher than the rent expense reflected in the ITR/FS, respondent simply inferred that petitioner had undeclared income.

Petitioner claims that some of the expenses, as enumerated in the protest, were already re-classified under the "Other Items" in the Financial Statement and properly subjected to 5% EWT; thus, should not have been subjected to VAT.

The Court rules for petitioner.

The concept known as matching principle, where revenues are matched with expenditures, finds application in this matter. This matching principle is a method of handling expense deductions where the expense in a given year is matched with the associated tax benefit.[39] Costs directly associated with the revenue of a particular taxable period are properly allocable to that period.[40] Guided by this principle, even if the expenses per alphalist were to be considered as income subject to output VAT, the same shall

[37] G.R. No. L-10507, May 30, 1958.
[38] Exhibit "P-5", BIR Records, p. 395.
[39] According to Blacks' Law Dictionary, (Eighth Edition) p. 998, Matching Principle is defined as "a method of handling expense deductions, by which the depreciation in a given year is matched by the associated tax benefit".
[40] Merten's *The Law of Federal Income Taxation*, Section 12A.101, Volume 2, (1995).

be offset by treating the equivalent payments as purchases for which input tax credits may be claimed. Thus, even if these alleged unaccounted expenses are to be considered as income, they may be offset by recording the equivalent payments as expenses.

As held in several cases[41] before the Court, when the only basis of assessment was the finding that the income payments per alphalist were greater than the expense per AFS and ITR, and no other proof was presented to show that the difference brought about by the mathematical comparison was an actual source of taxable income, the assessment must be cancelled.

In this instance, the basis of assessment is a mere conjecture which is not valid to support the finding of a transaction subject to VAT. It must be reiterated that an assessment must be based on facts to stand judicial scrutiny. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[42]

For lack of factual basis, the deficiency VAT assessment corresponding to the alleged unaccounted rent expense should as well be cancelled.

C. Expanded Withholding Tax (₱1,562,222.98)

As shown in Schedule 4 of Details of Discrepancies[43], respondent computed the basic deficiency EWT in the amount of ₱938,156.28 as follows:

Income Payment	Per FS/Audit	Per Alphalist	Difference	Rate	Tax Due
A. Management Fees	₱ 8,220,000.00	₱ -	₱ 8,220,000.00	10%	₱ 822,000.00
B. Professional Fees	1,775,209.00	1,000,833.78	774,375.22	15%	116,156.28
TOTAL	**₱9,995,209.00**	**₱1,000,833.78**	**₱8,994,375.22**		**₱938,156.28**

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41 *East Asia Power Resources Corp. vs. Commissioner of Internal Revenue,* CTA Case No. 8182, Resolution dated April 14, 2014; *Shinko Electric Industries Co., Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 8213, February 10, 2014; *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 7830, December 11, 2012.

42 *Commission of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

43 Exhibit "P-5", BIR Records, p. 394.

Respondent maintains that petitioner failed to pay the appropriate EWT due on the above income payments, in violation of Section 2.57.2 of RR No. 2-98, as amended.

C.1. Management fees

Per Note 15.2 of the Notes to AFS[44], the management fee in the amount of ₱8,220,000.00 was classified as Purchase of Goods and Services from related parties. The said amount was specifically paid to IPVG pursuant to a Management Agreement entered into between petitioner and IPVG. The agreement covers the services provided by IPVG including, but not limited to, general management, business development, legal, human resources, finance and accounting, office maintenance and support.

The management contract between petitioner and IPVG falls under Section 2.57.2(B) of RR No. 2-98, as amended. Respondent correctly subjected the management fees paid to IPVG to EWT since these fees were not reported in the Alphalist of Payees subject to Withholding Tax.[45]

Petitioner failed to offer any explanation or to provide supporting documents to justify the non-withholding. That being the case, the management fees amounting to ₱8,220,000.00 should be subjected to EWT, but at the rate of 15% EWT, instead of 10% used by respondent, as prescribed in Section 2.57.2(B) of RR No. 2-98, as amended by RR No. 30-03, to wit:

> Sec. 2.57.2 *Income payments subject to creditable withholding tax and rates prescribed thereon.* –
>
> xxx xxx 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 per cent (15%), if the gross income for the current year exceeds ₱720,000**; and Ten percent (10%), if otherwise;
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> xxx xxx xxx

[44] Note 15.2 Purchases of Goods and Services, Audited Financial Statements for year ended December 31, 2008, BIR Records, p. 10.

[45] BIR Records, pp. 282-291.

(6) Management and technical consultants;

xxx xxx xxx

(B) *Professional fees, talent fees, etc., for services of taxable juridical persons.* - On the gross professional, promotional and talent fees, or any other form of remuneration enumerated in the preceding subparagraph for the services of taxable juridical persons - **Fifteen per cent (15%), if the gross income for the current year exceeds ₱720,000; and Ten percent (10%), if otherwise**; *(Emphasis supplied)*

Considering that the payment of management fees exceeded the ₱720,000.00 threshold as provided in the above-mentioned rule, petitioner is liable to pay the basic deficiency EWT on management fee in the amount of ₱1,233,000.00 (₱8,220,000 x 15%).

C.2. Professional fees

As regards the professional fees reported in the AFS amounting to ₱1,775,209.00, petitioner claims that not all entries in the AFS should be subjected to EWT such as the payments to general professional partnerships (GPPs) in the light of the CTA decision in *Metro, Inc. vs. Commissioner of Internal Revenue*[46], which provides that "income payments made to a general professional partnership as a juridical person is exempt from IT, and consequently, EWT. It is the partners who are liable in their individual capacity for the payment of IT pursuant to Section 23 of the Tax Code of 1977, as amended".

Petitioner provided a breakdown of professional fees not subjected to EWT for payments to GPPs. Also provided was a breakdown of payments subjected to EWT:[47]

Professional fees:	**₱1,775,207.90**
A. Not subject to Withholding	
Punongbayan & Araullo - Audit Fees	315,417.00
Arreza & Associates - Legal Fees	90,000.00

[46] CTA Case No. 6356, June 9, 2009.
[47] Docket, p. 20.

Sub-total	***405,417.00***
B. Subjected to Withholding	
EC Human	50,000.00
Global Executive	274,560.00
Infosoft	31,000.00
IP Converge	124,468.00
Ong Bangay, Villamor & Fabiosa	26,960.00
ITC Consultants	522,553.83
MG House of Management	5,000.00
Q Interaction	333,249.07
Rodolfo Espina	2,000.00
Sub-total	***1,369,790.90***
Grand Total	**₱1,775,207.90**

A revisit of the record[48] shows that the income payment to Arreza & Associates amounting to ₱90,000.00 was subjected to 15% EWT and was included in petitioner's Alphalist of Payees subject to EWT as of December 31, 2008,[49] contrary to petitioner's claim that the same was made to a GPP. Also, petitioner failed to prove that the income payment amounting to ₱315,417.00 was indeed paid to a GPP, Punongbayan & Araullo. For lack of supporting documents, the nature of the alleged payment cannot be ascertained. Consequently, the deficiency EWT assessment on the payment amounting to ₱315,417.00 must be sustained.

As to the remaining amount of ₱1,369,790.90, petitioner claims that it was properly subjected to EWT. But upon verification, only the following income payments were indeed subjected to EWT at 10%:

Subjected to EWT	Income Payments	Rate	Tax Withheld
EC Human Resource Solutions[50]	₱ 50,000.00	10%	₱ 5,000.00
Infosoft International Solutions[51]	18,000.00	10%	1,800.00

[48] BIR Records, p. 290.
[49] *Ibid.*
[50] BIR Records, p. 240 and p. 288.

IP Converge Data Center Inc.[52]	89,906.25	10%	8,990.62
ITC Consultants[53]	697,553.84	10%	69,755.38
MG House of Management Consultation[54]	40,000.00	10%	4,000.00
Rodolfo Espina[55]	2,000.00	10%	200.00
White Marketing and Development Corp.[56]	13,373.53	10%	1,337.35
Total	**₱910,833.62**		**₱91,083.35**

Consequently, the deficiency EWT assessment on the remaining income payments amounting to ₱458,957.28 (₱1,369,790.90 less ₱910,833.62) is upheld. Also, considering that the above income payments were subjected to only 10% EWT, petitioner is liable to the additional five percent (5%) or in the amount of ₱45,541.68. Accordingly, petitioner is liable to pay deficiency EWT of ₱161,697.82 on professional fees, computed as follows:

	Income Payments	**EWT**
Income Payments not subjected to EWT (₱315,417.00+₱458,957.28)	₱774,374.28	₱ 116,156.14
Add: 5% EWT (in addition to 10%)	910,833.62	45,541.68
Basic deficiency EWT on professional fees		**₱161,697.82**

In sum, petitioner is liable to pay basic deficiency EWT of ₱1,394,697.82, as computed below:

Income Payment	**Deficiency EWT**
A. Management Fees	₱ 1,233,000.00
B. Professional Fees	161,697.82

[51] BIR Records, p. 252 and p. 256.
[52] BIR Records, p. 247.
[53] BIR Records, pp. 235-291.
[54] BIR Records, p. 279.
[55] BIR Records, p. 243.
[56] BIR Records, p. 240.

TOTAL	₱1,394,697.82

WHEREFORE, the Petition for Review dated February 5, 2013 of IP Contact Center Outsourcing, Inc. is hereby **PARTIALLY GRANTED**.

Consequently, Assessment Notice No. VT-LA12555-08-12-0406 for deficiency VAT in the amount of ₱216,364.39 for taxable year 2008 is hereby **CANCELLED**.

The Assessment Notice No. IT-LA12555-08-12-0406 for deficiency Income Tax and Assessment Notice No. WE-LA12555-08-12-0406 for deficiency Expanded Withholding Tax for taxable year 2008 are **AFFIRMED WITH MODIFICATIONS**. Accordingly, petitioner IP Contact Center Outsourcing, Inc. is **ORDERED TO PAY ONE MILLION EIGHT HUNDRED NINETY THOUSAND EIGHT HUNDRED EIGHTY-ONE PESOS and 76/100 (₱1,890,881.76)** for taxable year 2008, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Deficiency Tax	Basic	Surcharge	Total
Income Tax	₱ 118,007.58	₱ 29,501.90	₱ 147,509.48
Expanded Withholding Tax	1,394,697.82	348,674.46	1,743,372.28
Total	**₱1,512,705.40**	**₱378,176.36**	**₱1,890,881.76**

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 and Expanded Withholding Tax computed from the dates indicated below until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Deficiency interest computed from
Deficiency IT	₱ 118,007.58	April 15, 2009
Deficiency EWT	₱1,394,697.82	January 11, 2009

(b) Delinquency interest at the rate of 20% per annum on the total amount of **₱1,890,881.76** and on the 20%

deficiency interest which have accrued as afore-stated in (a) computed from May 11, 2012 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice