REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ACER PHILIPPINES, INC., Petitioner,	C.T.A. CASE NO. 8372
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 31 2016 4:30 p.m.

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DECISION

In this Petition for Review filed on November 10, 2011, petitioner Acer Philippines, Inc. prays for the cancellation and setting aside of the Amended Assessment Notices Nos. VT-TVN147552-05-11-0374 and IT-TVN147552-05-11-0374 and the Final Decision on Disputed Assessment (FDDA), all dated March 21, 2011, issued by respondent Commissioner of Internal Revenue (CIR), for deficiency Income Tax (IT) in the amount of ₱633,973.60, deficiency Value Added Tax (VAT) in the amount of ₱6,307,292.69, and interest in the amount of ₱7,240,570.967, or in the aggregate amount of ₱14,181,837.25 for taxable year 2005.

THE FACTS

Petitioner is a domestic corporation with principal office at 3402 PBCOM Bldg., Ayala Avenue, Makati City. It is engaged in wholesale trading of ACER products and is registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 50 of Revenue Region No. 8-South Makati City.

Respondent is the Commissioner of the BIR with the power to assess and collect all national internal revenue taxes, fees and charges and to enforce all forfeitures, penalties and fines connected with such taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

In October 2006, respondent issued Letter of Authority (LOA) No. 28386 dated October 3, 2006, authorizing the examination and audit of petitioner's internal revenue taxes for the period from January 1, 2005 to December 31, 2005.

After audit, a Notice for Informal Conference dated November 13, 2008[1] was issued assessing petitioner for alleged deficiency internal revenue taxes for taxable year 2005 in the total amount of ₱22,079,093.82, inclusive of interest and compromise penalties, to wit:

Tax Type	Basic	Interest	Compromise	Total
Income Tax	6,836,244.84	3,588,248.15	25,000.00	₱10,449,492.99
Value Added Tax	7,180,434.11	4,088,585.08	25,000.00	11,294,019.19
Expanded Withholding Tax	202,293.69	116,647.95	16,000.00	335,581.64
TOTAL				₱22,079,093.82

After a series of informal discussions, respondent issued a Preliminary Assessment Notice (PAN) dated January 14, 2009, assessing petitioner for deficiency taxes, inclusive of interest, in total amount of ₱17,301,312.69, broken down as follows:

Tax Type	Basic	Interest	Compromise	Total
Income Tax				₱6,707,483.03
Value Added Tax				10,265,593.64
Expanded Withholding Tax				328,236.02
TOTAL				₱17,301,312.69

Per the PAN, petitioner timely filed a protest contesting the factual and legal bases of respondent's assessment.

[1] Exhibit "D".

In April 2009, respondent issued Tax Verification Notice (TVN) No. 47552 for the reinvestigation of the protested assessment.

On September 3, 2009, respondent found petitioner liable for IT and VAT deficiencies in the aggregate amount of ₱12,024,956.11, detailed as follows:

Tax Type	Basic	Interest	Compromise	Total
Income Tax	636,023.85	440,163.36		₱1,076,187.21
Value Added Tax	6,307,292.69	4,641,476.21		₱10,948,768.90
TOTAL				₱12,024,956.11

On March 25, 2011, petitioner received the FDDA[2] with Details of Discrepancies[3] and Amended Assessment Notices[4], denying its protest and requiring payment of the alleged tax deficiencies or file an appeal with respondent within thirty (30) days from receipt on March 25, 2011 or until April 24, 2011.

On April 15, 2011, petitioner appealed the FDDA with respondent.[5]

On November 10, 2011, petitioner filed the instant Petition for Review with the Court in Division.

In her Answer[6] posted on January 5, 2012, respondent argues that the disputed assessments were issued in accordance with law, rules and regulations and that investigation revealed that petitioner has undeclared sales of ₱1,126,623.17, which represents the amount of receipted sales that were not included in the summary list of sales per audit. It was also discovered that petitioner has an unaccounted source of cash which was treated as undeclared income amounting to ₱1,887,603.30, which is the difference between the Salaries and other income payments per Alphabetical List and the amounts reflected per Financial

[2] Exhibits "A" and "R-1".
[3] Exhibits "B" and "R-2".
[4] Exhibit "C".
[5] Exhibits "E" and "R-3".
[6] Docket, pp. 53-54.

Statement. Finally, respondent invokes the presumption that tax assessments are valid and correct.

After the Pre-trial Conference, the parties filed their Joint Stipulation of Facts[7] on May 14, 2012. Thereafter, a Pre-Trial Order[8] was issued terminating the pre-trial proceeding.

During the trial, petitioner presented witnesses Gina Yu Peralta and Ma. Luisa A. Caleon.

Witness **Gina Yu-Peralta** testified that she was petitioner's accountant in 2005 and later became its Accounting Manager. As such, she ensured petitioner's compliance with government regulations, such as those of the BIR, which included the payment of IT, VAT and EWT, among others.

Petitioner received a Notice of Informal Conference dated November 13, 2008 for alleged deficiency assessments for IT, VAT and EWT in the total amount of ₱22,079,093.82. However, after discussion with the assigned BIR RO, the total deficiency assessment was reduced to ₱12,024,956.11.

Within 30 days from receipt of the FDDA, petitioner submitted supporting documents to respondent. Petitioner also filed a Reply, but no action was taken by respondent within the one hundred eighty (180)-day period from such submission.

Under the FDDA, petitioner was assessed for IT deficiency due to an unaccounted source of cash treated as undeclared income amounting to ₱1,887,603.13. She attributed the difference to petitioner's use of accrual accounting method in reporting its income. Petitioner already recorded accrued expense for 2004 in the amount of ₱1,887,603.13 although it was given to its employees in 2005. In any event, the said amount was reflected in

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[7] Docket, pp. 87 to 92.
[8] Docket, pp. 164-170.

petitioner's 2005 Annual Income Tax Return (ITR)[9]. She also clarified that the correct amount of discrepancy as appearing in petitioner's Annual ITR was ₱1,890,604.34 and not ₱1,887,603.13 as indicated in the FDDA.

She was aware of petitioner's deficiency VAT in the amount of ₱6,111,323.89, however, the said assessment was incorrect since the assessed amount was only part of petitioner's total claimed input tax on importation amounting to ₱31,817,935.40. Prior to the assessment, petitioner submitted supporting documents for its claimed input taxes in the amount of ₱31,817,935.40, such as Summary List of Importation[10] together with the importation documents for 2005 pursuant to Revenue Regulation (RR) No. 8-2002. The FDDA however stated that the said documents were not properly arranged and some copies were not even legible[11] resulting in a presumption that they were not considered.

On respondent's disallowance of petitioner's claimed Net Operating Loss Carry Over (NOLCO) amounting to ₱1,046,416.00, witness Peralta maintained that petitioner actually suffered a net loss in 2005 as shown in its Audited Financial Statement (AFS). Respondent however insisted that per her audit findings, petitioner should not have reported a loss since it in fact underpaid its IT and VAT for 2005.

The witness further declared that the amount of deficiency assessment for undeclared sales of ₱1,126,623.17 was reduced to ₱63,084.70 in the FDDA. The said undeclared sales were actually the refund of security deposits for rentals of promo spaces to SM Prime Holdings, with corresponding receipts.

She also believed that the interests and penalties assessments are not correct since petitioner paid all the taxes due to the BIR.

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[9] Exhibits "F" and "F-1".
[10] Exhibit "I".
[11] Exhibits "B" and B-1".

Witness Peralta confirmed that the Salaries and Wages per Alphalist amounted to ₱15,335,299.30, while the Salaries and Wages per Financial Statement amounted to P13,447,696.94. Further she confirmed that petitioner's claimed NOLCO for 2005 in the amount of ₱1,046,415.00 was carried over and credited to petitioner's 2006 tax due. Petitioner carried over and applied the amount of ₱2,771,205.00 to 2006.

With respect to petitioner's alleged unsupported Income Tax in the amount of ₱6,111,333.89, witness Peralta declared that petitioner submitted the Summary List of Importation and other importation documents with the Import Entry Number and the amount of VAT paid to the BIR Assessment Division to support such claim.

The Court-commissioned Independent Certified Public Accountant **(ICPA) Ma. Luisa A. Caleon** testified[12] that she examined and audited petitioner's documents pertaining to the questioned FDDA dated March 21, 2011. Her examination revealed[13] that out of the ₱9,240,743.89 Input Taxes claimed by petitioner, the amounts of ₱6,140,414.00 and ₱629,950.00 were supported by BOC Certifications and original BOC documents, hence, only the amount of ₱2,470,379.89 Input Taxes remained unsupported.

With respect to petitioner's deficiency IT assessment amounting to ₱1,887,603.30, the discrepancy was due to the difference between the salaries, wages and employees' benefits per Statements of Income for 2005 amounting to ₱13,447,696 and salaries per Alphalist of Employees for 2005 amounting to ₱15,335,299.30. There was also a typographical error when the RO indicated in his audit findings the amount of ₱15,335,299.30, which should be ₱15,338,299.30, thus, the difference would be ₱1,887,603.30. The alleged deficiency or discrepancy was brought about by the setting up of accrued bonus in 2004 and 2005 and not due to unaccounted source of cash or undeclared income.

[12] Exhibits "U" and "U-1".
[13] Exhibits "T" and "T-1".

Finally, she found that petitioner indeed suffered a net loss of ₱1,046,415.00 in 2005, which was reported in its Annual ITR for 2005 and was deducted in its 2006 Net Taxable Income.

After petitioner rested[14], respondent opted not to present any evidence and simply adopted some of petitioner's exhibits as its own[15], which the Court admitted in the Resolution dated August 27, 2013[16].

On March 11, 2014, petitioner filed a Motion to Reopen for Reception of Additional Evidence[17], to which respondent posted Comment/Opposition with Motion to Dismiss on April 28, 2014[18].

In a Resolution dated June 10, 2014, the Court granted petitioner's motion for reception of additional evidence.[19]

On September 1, 2014, **ICPA Ma. Luisa A. Caleon** was recalled to the witness stand. She testified[20] that after examination and evaluation of petitioner's additional documents pertinent to its claimed input taxes in the total amount of ₱9,240,743.89, she found the additional amount of ₱1,368,196.00 supported by original BOC documents, leaving a balance of ₱1,102,183.89 Input Taxes as unsupported.

On November 17, 2014, the Court admitted petitioner's additional exhibits.[21]

On March 31, 2015, the case was submitted for decision[22] with petitioner's Memorandum filed on October 26, 2013[23] and Supplemental Memorandum filed on March 10, 2015[24], *sans* any from respondent, despite directive.

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[14] Vol. III docket, p. 1599
[15] Resolution dated July 8, 2013, *ibid.,* p. 1608.
[16] Vol. III docket, p. 1616.
[17] *Ibid.,* pp. 1634-1637.
[18] *Ibid.,* pp. 1757-1763.
[19] *Ibid.,* pp. 1766-1769.
[20] Exhibits "X" and "X-1".
[21] Vol. III docket, pp. 2067-2068.
[22] *Ibid.,* p. 2087.
[23] *Ibid.,* pp. 1620 to 1628
[24] *Ibid.,* pp. 2074 to 2084

THE ISSUES

The lone issue[25] for the Court's determination is as follows:

> Whether petitioner is liable for deficiency IT, VAT, and EWT in the total amount of ₱12,024,956.11, plus interests and penalties, for taxable year 2005.

THE COURT'S RULING

The timeliness of the filing of the Petition for Review must first be ascertained.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, relevantly states, thus:

> "Sec. 228. *Protesting 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:
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> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> 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

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[25] The Issues, Joint Stipulation of Facts, Vol. I docket, p. 89.

representative shall issue an assessment based on his findings.

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

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

In relation to the foregoing, Sections 3.1.4 and 3.1.5 of Revenue Regulations (RR) No. 12-99, state:

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

xxx xxx xxx

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

"3.1.5 *Disputed Assessment*. - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. 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.

xxx xxx xxx

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within 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.**" (emphases supplied)

Clearly, it is the decision of respondent or her duly authorized representative that is appealable to the Court of Tax Appeals (CTA) within 30 days from receipt thereof; otherwise, the assessment shall become final, executory and demandable. The taxpayer is given a choice to either appeal the decision to respondent or to elevate the same to the CTA via a petition for review. If the taxpayer chooses the first option, the decision of respondent's authorized representative shall not attain finality and respondent herself shall decide the protest.[26]

It is undisputed that petitioner protested the PAN issued against it, precisely a re-investigation was conducted. Thereafter, or on March 25, 2011, petitioner received the assailed FDDA with Details of Discrepancies and Amended Assessment Notices denying its protest and requiring payment of tax deficiencies stated therein. The assessment notices further provided that in case of disagreement, petitioner had the option to file an appeal with respondent or seek judicial intervention through a petition for review filed with the CTA within thirty (30) days from notice. Petitioner opted to assail the FDDA with Details of Discrepancies and Amended Assessment Notices before respondent on April 15, 2011. By so doing, petitioner exercised its option as provided in the above-cited provisions.

The action taken by petitioner shall therefore be deemed as a protest which remained unresolved after the lapse of the 180-day period on October 12, 2011. With respondent's failure to act on the appeal within the said allowable 180-day period, petitioner had thirty (30) days or until November 12, 2011, within which to seek judicial intervention. In fine, petitioner's Petition for Review was seasonably filed with the CTA in Division on November 10, 2011.

Now, on the merits.

Respondent assessed petitioner for deficiency IT and VAT in the aggregate amount of ₱14,181,837.25 for taxable year 2005, broken down as follows:

INCOME TAX		
Taxable income (Loss) per return		₱ (1,046,415.00)
Add: Adjustments/Disallowances		
a. Undeclared Sales	₱ 63,084.70	
b. Unaccounted sources of cash treated as undeclared income	1,887,603.30	1,950,688.00
Total		₱ 904,273.00
Add: Net Operating Loss Carry Over (NOLCO)		1,046,415.00
Taxable Income per investigation		₱ 1,950,688.00

[26] Moog Controls Corporation Philippine Branch v. Commissioner of Internal Revenue, C.T.A. EB Case No. 44. May 10, 2005.

Basic Income Tax Due per investigation		₱ 633,973.60
Less: Tax Credits		
Creditable Withholding Tax	₱ 2,171,672.00	
Tax Paid per Return	599,533.00	
Total	₱ 2,771,205.00	
Less: Amount carried forward to succeeding year	2,771,205.00	-
Basic Deficiency Income Tax		₱ 633,973.60
Add: Interest (04.16.06 to 04.21.11)		636,057.90
Total Amount Due		**₱ 1,270,031.50**
VALUE-ADDED TAX		
Vatable Sales per Return		₱ 408,009,232.60
Add: Undeclared Sales	₱ 72,084.70	
Unaccounted sources of cash treated as undeclared income	1,887,603.30	1,959,688.00
Total Vatable Sales and Receipts per investigation		₱ 409,968,920.60
Output Tax per investigation		₱ 40,996,892.06
Less: Input Tax Credits		
Input Tax carried over from previous quarter	₱ 726,101.47	
Input Tax claimed	37,500,392.49	
Total	₱ 38,226,493.96	
Less: Unsupported Input Tax	6,111,323.89	32,115,170.07
VAT Payable		₱ 8,881,721.99
Less: VAT paid per return		2,574,429.30
Basic Deficiency VAT		₱ 6,307,292.69
Add: Interest (04.26.06 to 04.21.11)		6,604,513.06
Total Amount Due		**₱ 12,911,805.75**

The components of each assessment are outlined as follows:

I. Deficiency Income Tax	
A. Undeclared sales	₱ 63,084.70
B. Unaccounted sources of cash treated as undeclared income	1,887,603.30
C. Disallowed NOLCO	1,046,415.00
D. Disallowed excess tax credits	2,771,205.00
II. Deficiency Value-Added Tax (VAT)	
A. Undeclared sales	₱ 72,084.70
B. Unaccounted sources of cash treated as undeclared income	1,887,603.30
C. Unsupported input tax	6,111,323.89
III. Deficiency Expanded Withholding Tax (EWT)	₱ 202,923.69

As borne by the record, respondent already cancelled petitioner's deficiency EWT assessment prior to the issuance of the questioned FDDA. As stated in the Details of

Discrepancies[27], the cancellation was due to the fact that petitioner was not part of the top 10,000 corporations during the taxable year 2005, and that being the case, it is not required to withhold on purchases of goods and services other than those income payments subject to withholding tax under existing rules.

Let us now focus on the bases of petitioner's deficiency IT and VAT assessments.

I. Undeclared sales – ₱63,084.70 for Deficiency Income Tax and ₱72,084.70 for Deficiency VAT

The Details of Discrepancies[28] show the following amounts as receipted sales that were not included in the summary list of sales per audit. Hence, petitioner was assessed for deficiency IT pursuant to Section 32 of the NIRC of 1997, as amended, and for deficiency VAT pursuant to Section 4.113-4 of RR No. 16-2005, which imposes output tax on transactions not subject to VAT but with VAT official receipts (ORs) issued:

Customer Name	OR No.	Gross Amount	VAT Component	Amount Subject to Assessment
SM Prime Holdings	2321	13,973.28		
SM Prime Holdings	2322	27,703.80		
SM Prime Holdings	2463	14,222.08		
SM Prime Holdings	2478	13,494.01		
Total Amount - subject to Deficiency Income Tax assessment		₱69,393.17	₱(6,308.47)	**₱63,084.70**
Atty. Olivia Padere	2335	9,900.00		
Total Amount - subject to Deficiency VAT assessment		₱79,293.17	₱(7,208.47)	**₱72,084.70**

Aside from petitioner's bare assertion that such receipts represented non-sale transactions as they arose from refunds of rental deposits, no other evidence was presented to shore up its self-serving contention. In contrast and as pointed out by respondent, there was nothing in the receipts

[27] Exhibits "B" and "R-2".
[28] Exhibits "B" and "R-2".

that showed that the amounts indicated therein were mere refunds of rental deposits and not income. Hence, the IT and VAT deficiency assessments on this item must not be disturbed. The findings of respondent on the matter is presumed correct and made in good faith for failure of the taxpayer to prove otherwise.[29]

Unaccounted sources of cash treated as undeclared income – ₱1,887,603.30

Respondent's comparison of the salaries and wages reflected in petitioner's Alphalist with those reported in its financial statements (FS) disclosed a discrepancy in the amount of ₱1,887,603.30. Respondent treated the said discrepancy as undeclared income and assessed petitioner of deficiency IT pursuant to Section 32 of the NIRC of 1997, as amended, and in accordance with the ruling in the case of Perez v. Court of Tax Appeals and Collector of Internal Revenue[30]. By virtue of such finding, respondent also assessed petitioner of the corresponding deficiency VAT invoking Sections 105 and 108 of the NIRC of 1997, as amended. The discrepancy was computed as follows:[31]

Salaries and wages per Alphalist	₱ 15,335,299.30
Less: Salaries and wages per FS	13,447,696.00
Discrepancy	**₱1,887,603.30**

However, per the ICPA's report, the actual discrepancy amounted to ₱1,890,604.06, computed as follows:[32]

Salaries per 2005 Alphalist	₱ 15,338,300.00
Less: Salaries per AFS	13,447,695.94
Discrepancy	**₱1,890,604.06**

Per the ICPA's report[33], the discrepancy consisted of the accrued bonus given by petitioner to its employees in 2004 and was included in petitioner's Salaries expense for

[29] Commissioner of Internal Revenue v. Construction Resources of Asia, Inc., et al., G.R. No. L-68230, November 25, 1986.
[30] G.R. No. L-10507, May 30, 1958.
[31] Exhibits "B" and "R-2".
[32] Exhibit "T".
[33] Exhibit "T".

that year but paid in 2005 and declared as compensation of its employees in the 2005 Alphalist[34]; and the accrued bonus of petitioner's employees in 2005 and was included in the Salaries expense in 2005 but paid in 2006 and included in the 2006 Alphalist[35]. Said accrued bonuses can be summarized in the reconciliation below:

Accrued bonus in 2004 declared as salaries in 2004 but included in the Alphalist of 2005	₱ 2,890,604.36
Accrued bonus in 2005 declared as salaries in 2005 but included in the Alphalist of 2006	(1,000,000.00)
Discrepancy as accounted per audit	**₱1,890,604.36**

Petitioner contends that the difference is a permanent reconciling item in determining the income per tax return against income per AFS. Allegedly, this is the result of accrual basis of accounting, where petitioner accrues the unpaid salaries and bonuses pertaining to a specific year, even if payments were actually made on the following year.

An examination of Section E of petitioner's Annual ITR[36] for taxable year 2005 shows that the amount of ₱1,890,604.00, representing payment of accrued bonus, was deducted from the net income per books for 2005, hence, an additional expense, to arrive at the taxable income/loss for the year 2005. In other words, the employees' bonus of ₱1,890,604.00 was recognized as expense in petitioner's books of accounts and AFS in 2004 but was claimed as deductible expense in its Annual ITR for 2005. Thus, the entire amount of ₱15,338,300.00[37] reflected as deduction for "Salaries and Allowances" in Section D of the 2005 Annual ITR included the 2004 accrued bonus of ₱1,890,604.00.

Evidently, the discrepancy in salaries and wages noted by respondent does not represent undeclared income. Income, in a broad sense, means all wealth which flows into the taxpayer other than as return of capital.[38] The accrual of the ₱1,890,604.00 bonus due to petitioner's employees does not involve an inflow of wealth. The said amount is an

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[34] Exhibit "R3".
[35] Exhibit "R4".
[36] Exhibit "F-1".
[37] Exhibit "F".
[38] Section 36 of Revenue Regulations No. 2-40.

overclaimed expense deduction of petitioner in its Annual ITR for taxable year 2005.

The record abounds with admission that for financial reporting purposes, petitioner adopts the accrual basis of accounting which is recognized in Section 43 of the NIRC of 1997, as amended, to wit:

> "SEC. 43. *General Rule*. - The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) **in accordance with the method of accounting regularly employed in keeping the books of such taxpayer,** but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income. xxxx" *(Emphasis supplied)*

Corollary to the foregoing is Section 45 of the NIRC of 1997, as amended, which states the basis for the time of claiming deductions, thus:

> "SEC. 45. *Period for which Deductions and Credits Taken*. - The deductions provided for in this Title shall be taken for the taxable year in which 'paid or accrued' or 'paid or incurred', **dependent upon the method of accounting** upon the basis of which the net income is computed, unless in order to clearly reflect the income, the deductions should be taken as of a different period. xxxx" *(Emphasis supplied)*

To repeat, petitioner adopted accrual method of accounting wherein income was recognized in the period it was earned irrespective of whether it was received or not. In the same manner, expenses were accounted for in the period they were incurred and not in the period they were paid. Thus, although paid only in 2005, the employees' bonus of ₱1,890,604.00 which accrued in 2004 was a proper deduction for income tax purposes in the year 2004 and not in 2005.

The test of deductibility of an expense for income tax purposes was elucidated by the Supreme Court in the case of Commissioner of Internal Revenue v. Isabela Cultural Corporation[39], in this wise:

> "The requisite that it must have been paid or incurred during the taxable year is further qualified by Section 45 of the National Internal Revenue Code (NIRC) which states that: '[t]he deduction provided for in this Title shall be taken for the taxable year in which 'paid or accrued' or 'paid or incurred', dependent upon the method of accounting upon the basis of which the net income is computed xxx'.
>
> Accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions. In the instant case, the accounting method used by ICC is the accrual method.
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> **Revenue Audit Memorandum Order No. 1-2000, provides that under the accrual method of accounting, expenses not being claimed as deductions by a taxpayer in the current year when they are incurred cannot be claimed as deduction from income for the succeeding year**. Thus, a taxpayer who is authorized to deduct certain expenses and other allowable deductions for the current year but failed to do so cannot deduct the same for the next year.
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> **The accrual method relies upon the taxpayer's right to receive amounts or its obligation to pay them**, in opposition to actual receipt or payment, which characterizes the cash method of accounting. **Amounts of income**

[39] G.R. No. 172231, February 12, 2007.

> **accrue where the right to receive them become fixed, where there is created an enforceable liability. Similarly, liabilities are accrued when fixed and determinable in amount, without regard to indeterminacy merely of time of payment.**
>
> **For a taxpayer using the accrual method, the determinative question is, when do the facts present themselves in such a manner that the taxpayer must recognize income or expense?** The accrual of income and expense is permitted when the all-events test has been met. This test requires: (1) fixing of a right to income or liability to pay; and (2) the availability of the reasonable accurate determination of such income or liability.
>
> The all-events test requires the right to income or liability be fixed, and the amount of such income or liability be determined with reasonable accuracy. However, the test does not demand that the amount of income or liability be known absolutely, only that a taxpayer has at his disposal the information necessary to compute the amount with reasonable accuracy. The all-events test is satisfied where computation remains uncertain, if its basis is unchangeable; the test is satisfied where a computation may be unknown, but is not as much as unknowable, within the taxable year. The amount of liability does not have to be determined exactly; it must be determined with 'reasonable accuracy.' Accordingly, the term 'reasonable accuracy' implies something less than an exact or completely accurate amount." *(Emphases supplied)*

The fact that petitioner had accrued in its books of accounts for 2004 the ₱1,890,604.00 bonuses due to its employees, it had recognized as of the end of 2004 a fixed liability to pay such amount. Accordingly, for income tax purposes, petitioner should have deducted the amount of ₱1,890,604.00 from its taxable income in 2004 and not in 2005.

Since the accrued bonus of ₱1,890,604.00 was a proper deduction in 2004, it shall be disallowed from petitioner's claimed deductions for salaries and allowances for taxable year 2005. However, since the amount of ₱1,890,604.00 was higher than the assessed amount of ₱1,887,603.30, the Court is constrained to affirm only the latter amount. Thus, petitioner shall be liable for deficiency income tax on the overclaimed salaries and allowances of ₱1,887,603.30 for taxable year 2005.

With regard to the deficiency VAT assessment on the amount of ₱1,887,603.30, the same shall be cancelled considering that it does not represent sales of goods or services on the part of petitioner.

Deficiency Income Tax:
Disallowed NOLCO – ₱1,046,415.00

Petitioner's operations for taxable year 2005 resulted in taxable net loss of ₱1,046,415.00[40]. Respondent added back the said amount to the alleged adjusted taxable income of petitioner, claiming that the tax benefit thereof had already been forwarded to the succeeding periods as provided for under Section 34(D)(3) of the NIRC of 1997, as amended,[41] which states that the net operating loss of the business or enterprise for any taxable year immediately preceding the current taxable year, which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next three (3) consecutive taxable years immediately following the year of such loss.

However, in the assessment she issued, respondent failed to establish that petitioner used its 2005 net loss as NOLCO in the succeeding years. Furthermore, the said NOLCO was beyond the scope of the present assessment since it could only be the subject of assessment in the taxable year when it was claimed as a deduction. All said, adding back the net loss of ₱1,046,415.00 to petitioner's taxable income was erroneous.

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[40] Exhibit "F", line 20B.
[41] Exhibits "B" and "R-2".

Deficiency Income Tax: Disallowed Excess Tax Credits – ₱2,771,205.00

According to respondent, petitioner's excess tax credit of ₱2,771,205.00 could not be credited against its deficiency IT since the said amount was already carried forward to the succeeding year 2006 pursuant to Section 2.58.3 of Revenue Regulations No. 2-98.[42]

The Court does not agree.

The benefit of excess tax credit carry-over redounded to the succeeding year. As such, it was inappropriate to disallow it simply because it was beyond the scope of the subject assessment.

In fine, notwithstanding petitioner's undeclared sales of ₱63,084.70 and overclaimed salaries and allowances of ₱1,887,603.30, the income tax due thereon should be offset against petitioner's total tax credits in the amount of ₱2,771,205.00. As such, petitioner would not be liable for any deficiency IT for taxable year 2005, as computed below:

Taxable Income (Loss) per Return		₱ (1,046,415.00)
Add: Adjustments/Disallowances		
a. Undeclared Sales	₱ 63,084.70	
b. Overclaimed Salaries and Allowances	1,887,603.30	1,950,688.00
Taxable Income per Court's Verification		₱ 904,273.00
Basic Income Tax Due (35%)		₱ 316,495.55
Less: Tax Credits/Payment		
Creditable withholding tax	₱2,171,672.00	
Tax Paid per Return	599,533.00	
Total Tax Credits/Payment		2,771,205.00
Excess Tax Credits/Payment		**₱(2,454,709.45)**

Deficiency Value-added Tax: Unsupported Input Tax – ₱6,111,323.89

[42] Exhibits "B" and "R-2".

Respondent disallowed petitioner from claiming ₱6,111,323.89 worth of input tax credits from importations due to its failure to submit supporting documents.[43] Petitioner however claimed otherwise. Allegedly, it fully substantiated its input taxes from importations for the year 2005.

The disallowance should be partially upheld.

Based on petitioner's quarterly VAT returns[44] for the year 2005, it incurred a total of ₱31,817,935.40 input taxes from importations, broken down as follows:

Taxable Year 2005	Exhibit No.	Input Tax on Importations (Goods other than Capital Goods)
1st Quarter	J-1[45]	₱ 4,594,892.00
2nd Quarter	J-2[46]	6,937,195.00
3rd Quarter	J-3[47]	14,343,673.40
4th Quarter	J-4[48]	5,942,175.00
	Total	**₱31,817,935.40**

However, respondent claims that petitioner failed to support the amount of ₱6,111,323.89 input tax.

To account for the ₱6,111,323.89 unsupported input tax, the ICPA presented the reconciliation[49] between the summary lists of importations prepared by petitioner[50] and that of respondent[51], as follows:

	Acer	BIR	Difference
Input VAT on importation	₱ 31,817,935.00	₱ 25,706,612.00	₱ 6,111,323.00
Add (deduct):			
Input taxes not claimed by Acer but included in BIR findings		(3,129,420.00)	3,129,420.00
Input taxes claimed by Acer but not included in BIR findings	-	9,240,744.00	(9,240,744.00)
Total input VAT on importation	**₱31,817,935.00**	**₱31,817,936.00**	**₱ -**

[43] Exhibits "B" and "R-2".
[44] Exhibits "J-1" to "J-4".
[45] Vol. II docket, p. 986.
[46] *Ibid.*, p. 988.
[47] *Ibid.*, p. 990.
[48] *Ibid.*, p. 992.
[49] Exhibits "T" and "J".
[50] Exhibit "K".
[51] Exhibit "L".

The ICPA Report further indicated that out of the ₱9,240,744.00 input VAT claimed by petitioner that was not considered by respondent, the amount of ₱6,140,414.00[52] was supported by BOC Certification[53] dated November 7, 2012.

However, the said BOC Certification could not be given weight and credence considering that the amounts per BOC ORs and Import Entry and Internal Revenue Declarations (IEIRDs) were mostly composed of import duties, processing fees, and VAT paid by the importer of goods. Thus, the amounts certified by the BOC as reflected in the ORs or IEIRDs did not pertain to the VAT amount alone. Without the actual breakdown in the Certification, the Court would not be able to determine how much of the certified amount was credited to petitioner's input VAT. While the ICPA provided a schedule[54] segregating the amounts pertaining to input VAT, customs duties, and import processing fees, the Court could still not ascertain the veracity thereof without the corresponding BOC ORs and IEIRDs.

Nevertheless, the amount of ₱1,700,700.00, duly supported by BOC ORs/BDO Transfer Transaction Tickets, can be allowed as input tax credits in accordance with Section 4.110-8(a)(1) of Revenue Regulations No. 16-05, as amended. Below is the breakdown of the ₱1,700,700.00 input VAT:

Exhibit	OR No.	Date	VAT Amount
Q-1.1	55342	8/19/2005	₱ 12,100.00
Q-1.2	55492	8/22/2005	51,976.00
Q-1.3	55483	8/22/2005	9,636.00
Q-1.4	125984826	8/24/2005	7,056.00
Q-1.5	125610213	7/26/2005	3,243.00
Q-1.6	125969356	8/16/2005	2,407.00
Q-1.8	125977363	8/18/2005	3,058.00
Q-1.13	126101315	8/30/2005	2,520.00
Q-1.15	57676	9/6/2005	40,807.00
Q-1.16	122267302	3/15/2005	1,721.00
Q-1.17	122726387	3/28/2005	779.00
Q-1.18	58359	9/12/2005	3,616.00
Q-1.19	58970	9/15/2005	14,026.00
Q-1.20	59371	9/16/2005	12,775.00
Q-1.21	60415	9/26/2005	4,646.00

[52] Exhibit "V".
[53] Exhibit "P".
[54] Exhibit "P-1".

Q-1.22	60416	9/26/2005	8,111.00
Q-1.23	126347821	9/14/2005	3,608.00
Q-1.24	61162	9/30/2005	54,921.00
Q-1.26	61627	10/4/2005	6,574.00
Q-1.29	62396	10/10/2005	5,776.00
Q-1.32	63643	10/19/2005	10,151.00
Q-1.34	126351127	9/15/2005	2,718.00
Q-1.43	126736653	9/30/2005	518.00
Q-1.46	125760126	8/8/2005	6,309.00
Q-1.47	53129	8/3/2005	38,302.00
Q-1.48	124538346	8/8/2005	1,153.00
Q-1.50	53674	8/8/2005	9,278.00
Q-1.51	124419233	6/22/2005	9,782.00
Q-1.60	124489276	7/4/2005	13,321.00
Q-1.63	125690381	8/1/2005	5,954.00
Q-1.64	124376637	6/24/2005	14,016.00
Q-1.65	124375167	6/20/2005	18,821.00
Q-1.66	124376585	6/24/2005	3,745.00
Q-1.67	124377197	6/27/2005	47,466.00
Q-1.68	124488061	6/29/2005	3,713.00
Q-1.69	53629	8/8/2005	10,160.00
Q-1.71	124480693	7/2/2005	3,896.00
Q-1.76	125759033	8/9/2005	1,514.00
Q-1.78	124541557	7/21/2005	22,259.00
Q-1.80	125761081	8/10/2005	8,605.00
Q-1.81	125761273	8/10/2005	40,267.00
Q-1.82	125761386	8/11/2005	16,226.00
Q-1.83	54303	8/12/2005	19,314.00
Q-1.84	124539511	7/8/2005	683.00
Q-1.85	55106	8/18/2005	7,719.00
Q-1.86	125095101	7/11/2005	921.00
W-4	125748122	08/05/05	498.00
W-6	121737156	2/18/2005	556.00
W-8	123669025	5/17/2005	601.00
W-11	122944351	4/11/2005	620.00
W-14	121731671	2/17/2005	669.00
W-15	123178596	4/21/2005	783.00
W-18	127940382	11/9/2005	1,014.00
W-21	122326321	3/16/2005	1,573.00
W-23	121023621	2/1/2005	1,090.00
W-33	123823917	5/24/2005	1,600.00
W-38	124533674	7/7/2005	1,509.00
W-43	125610344	7/22/2005	1,806.00
W-46	121122723	2/7/2005	1,908.00
W-48	125617782	7/28/2005	1,927.00
W-49	122339637	3/21/2005	1,933.00
W-51	127303924	10/17/2005	1,991.00
W-56	123665096	5/16/2005	2,162.00
W-58	123201145	4/21/2005	2,235.00
W-60	127944984	11/10/2005	2,278.00
W-64	123114555	4/11/2005	2,468.00
W-69	123269072	4/29/2005	2,530.00
W-71	123721586	5/20/2005	2,641.00
W-72	123237965	4/26/2005	2,798.00
W-73	127196535	10/6/2005	3,124.00
W-77	0042111	5/15/2005	3,990.00
W-78	123243766	4/28/2005	4,080.00
W-79	122057302	3/14/2005	4,138.00

W-86	0046257	6/15/2005	8,572.00
W-87	0049092	7/6/2005	10,203.00
W-88	122057293	3/14/2005	22,999.00
W-91	BDO Transfer Transaction Ticket	5/20/2005	211,537.00
W-92	BDO Transfer Transaction Ticket	11/9/2005	356,792.00
W-93	BDO Transfer Transaction Ticket	9/13/2005	471,908.00
			₱1,700,700.00

However, the rest of the supporting BOC ORs could not be given credence because some had no payment date or if dated, the year was not indicated. In other words, it could not be ascertained whether such payments were made in 2005.

Consequently, out of the unsupported input VAT assessed by respondent, only ₱1,700,700.00 was properly supported, hence, the disallowed input VAT credits should be reduced to ₱4,410,623.89 (₱6,111,323.89 less ₱1,700,700.00).

In sum, the Court finds that the deficiency VAT assessment must be upheld but in the reduced amount of ₱4,417,832.36, computed as follows:

Vatable sales per return		₱408,009,232.60
Add: Undeclared sales	₱ 72,084.70	
Unaccounted sources of cash treated as undeclared income	-	72,084.70
Total Vatable sales and receipts per investigation		₱408,081,317.30
Output tax per investigation		₱ 40,808,131.73
Less: Input tax credits		
Input tax carried over from previous quarter	₱ 726,101.47	
Input tax claimed	37,500,392.49	
Total	₱38,226,493.96	
Less: Unsupported input tax	4,410,623.89	33,815,870.07
VAT payable		₱ 6,992,261.66
Less: VAT paid per return		2,574,429.30
Basic deficiency VAT		**₱4,417,832.36**

WHEREFORE, the instant Petition for Review dated November 10, 2011 filed by petitioner Acer Philippines, Inc., is hereby **PARTIALLY GRANTED**.

Consequently, the assessment issued by respondent Commissioner of Internal Revenue against petitioner Acer Philippines, Inc. for taxable year 2005 covering deficiency Income Tax in the amount of ₱1,270,031.50 is hereby **CANCELLED AND SET ASIDE**. However, the assessment for taxable year 2005 covering deficiency Value-Added Tax is hereby **UPHELD IN PART**. Accordingly, petitioner is **DIRECTED TO PAY** respondent the amount of FIVE MILLION FIVE HUNDRED TWENTY-TWO THOUSAND TWO HUNDRED NINETY PESOS AND 45/100 (₱5,522,290.45), representing basic deficiency VAT and the corresponding twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic Tax	₱ 4,417,832.36
25% Surcharge	1,104,458.09
Total	**₱5,522,290.45**

In addition, petitioner is **ORDERED TO PAY** (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱4,417,832.36 computed from January 25, 2006 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and (b) Delinquency interest at the rate of 20% per annum on the amount of ₱5,522,290.45 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from April 21, 2011 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
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice