REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VICTORIAS FOODS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8668

Members:

Castañeda, Jr., *Chairperson,*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

MAY 2 0 2016
4:20 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

STATEMENT OF THE CASE

This is a Petition for Review filed by Victorias Food Corporation seeking the cancellation of deficiency income, value-added, and expanded withholding tax assessments for the fiscal year ending August 31, 2009 in the amount of ₱10,131,843.31, including increments, detailed as follows:[1]

	Income Tax	VAT	EWT	Total
Basic	₱ 5,394,439.64	₱ 1,082,892.71	₱ 73,173.21	₱ 6,550,505.56
Interest	2,831,465.00	616,606.03	42,266.72	3,490,337.75
Compromise penalty	50,000.00	25,000.00	16,000.00	91,000.00
TOTAL	**₱8,275,904.64**	**₱1,724,498.74**	**₱131,439.93**	**₱10,131,843.31**

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[1] Formal Letter of Demand dated July 4, 2012 issued by the Bureau of Internal Revenue, Revenue Region No. 12, Bacolod City, Exhibit "A-1", Docket Vol. II, pp. 272-273.

STATEMENT OF FACTS

Petitioner Victorias Food Corporation (VFC) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines, with office address at the VMC Compound, Victorias City, Negros Occidental, Philippines.[2]

VFC is principally engaged in the business of acquiring or owning factories and other manufacturing facilities by lease, purchase or otherwise and to operate the same for the processing, preservation and packaging of food products and to sell the same at wholesale.[3]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who is responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

In a Letter of Authority (LOA) dated February 18, 2011,[5] which was received by VFC on March 2, 2011,[6] Respondent authorized its revenue officers to examine VFC's books of account and other accounting records for Calendar Year (CY) ended December 31, 2009.

In a letter dated March 2, 2011, petitioner acknowledged the receipt of the LOA and requested for clarification whether the respondent would like to examine records for CY ended December 31, 2009 or for Fiscal Year (FY) ended August 31, 2009.[7]

Thereafter, in three transmittal letters, VFC submitted several documents to comply with the examination.[8]

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[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket Vol. IV, p. 2064; Respondent's Formal Offer of Evidence, Exhibit R-6, Docket Vol. IV, p. 2255; BIR Records, p. 599.
[3] Articles of Incorporation, Exhibit C, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2160.
[4] Par. 2, JSFI, Docket Vol. IV, p. 2064.
[5] Letter of Authority SN eLA201000024127 / LOA-076-2011-00000045, Exhibit B, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2160.
[6] Letter of Authority SN eLA201000024127 / LOA-076-2011-00000045, Exhibit B, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2160.
[7] Letter dated March 2, 2011, Exhibit D, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2160.
[8] Letter dated March 11, 2011 (Exhibit D-1) transmitting unaudited books of account, Articles of Incorporation and By-Laws, and other supporting documents; undated letter (Exhibit D-2) transmitting BIR withholding tax returns or BIR Forms 1601 and 1604; and letter dated April 7, 2011 (Exhibit D-3) transmitting original check vouchers for Fiscal Year (FY) 2008-2009 and Certificates of Creditable Tax Withheld at Source.

In a LOA dated March 23, 2011[9] and in reply to petitioner's letter dated March 2, 2011,[10] respondent amended the period covered by the examination to FY ended August 31, 2009.

Subsequently, in a Notice of Informal Conference dated December 1, 2011 with attached Computation of Tax Deficiency, Summary of Disallowed Deduction, Summary of Disallowed Deduction, Summary of Disallowed Salaries, Wages and Other Employee Benefits and Details of Discrepancy, respondent invited VFC to discuss the foregoing findings of the examiners and to present evidence to refute the same.[11] The Notice of Informal Conference with the computation, summaries and details, which was received by VFC on December 2, 2011,[12] informed the petitioner of its alleged tax income, value-added and expanded withholding tax deficiencies for FY ended August 31, 2009 amounting to ₱9,634,172.07,[13] computed as follows:[14]

	Income Tax	VAT	EWT	Total
Basic	₱ 5,691,827.91	₱ 1,082,892.71	₱ 73,173.21	₱ 6,847,893.83
Interest	2,276,731.16	Php476,472.79	33,074.29	3,490,337.75
TOTAL	**₱ 7,968,559.07**	**₱ 1,559,365.50**	**₱ 106,247.50**	**₱ 9,634,172.07**

Thereafter, respondent issued a Preliminary Assessment Notice (PAN) dated February 13, 2012[15] with attached Details of Discrepancy, assessing VFC of the total amount of ₱10,007,436.01[16] as the alleged deficiency income, value-added, and expanded withholding taxes, computed as follows:[17]

	Income Tax	VAT	EWT	Total
Basic	₱ 5,691,827.91	₱ 1,082,892.71	₱ 73,173.21	₱ 6,847,893.83
Interest	2,507,250.19	525,202.96	36,089.03	3,068,542.18
Compromise Penalties				91,000.00
TOTAL	**₱8,199,078.10**	**₱1,608,095.67**	**₱ 109,262.24**	**₱ 10,007,436.01**

[9] Letter of Authority dated March 23, 2011, SN eLA201000024141 / LOA -076-2011-00000060, Exhibit E, Petitioner's Formal Offer of Evidence, Docket Vol. IV, pp. 2160-2161.
[10] Letter dated March 2, 2011, Exhibit D, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2160.
[11] Exhibit F, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2161.
[12] Exhibit F, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2161.
[13] Par. 3, JSFI, docket, p. 2064.
[14] Notice of Informal Conference dated December 1, 2011 with Computation of Tax Deficiency, Summary of Disallowed Deduction, Summary of Disallowed Salaries, Wages and Other Employee Benefits and Details of Discrepancy, Exhibit F, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2161.
[15] Exhibit G, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2161; Respondent's Formal Offer of Evidence, Exhibit R-8, BIR Records, pp. 640-641.
[16] Par. 4, JSFI, Docket Vol. IV, p. 2064-2065.
[17] Preliminary Assessment Notice dated February 13, 2012, Exhibit G, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2161.

In a letter dated March 14, 2012, VFC acknowledged receipt of the PAN on February 23, 2009 and stated in detail the grounds for its Protest[18] and enclosed therein supporting documents.[19]

In a letter dated May 8, 2012,[20] respondent acknowledged receipt of VFC's March 14, 2012 protest letter and its photocopied documents. The May 8, 2012 letter also informed VFC that the docket of the case including the Protest letter and the supporting documents enclosed with the same will be "forwarded to Revenue District No. 76, Victorias City, for reinvestigation." Finally, the May 8, 2012 letter requested VFC to submit the original copies of the supporting documents to the District Office on or before May 31, 2012.

In a letter dated May 14, 2012,[21] respondent again requested VFC to submit the original copies of the documents supporting its rebuttal of the PAN on or before May 31, 2012.

In a letter dated May 27, 2012,[22] referring to respondent's May 14, 2012 letter, VFC requested that the examination of the original documents be conducted in its office premises to facilitate the retrieval process and to prevent the loss of said originals.

In a letter dated May 29, 2012,[23] respondent denied VFC's request and insisted on the "physical submission" of the documents to the office premises of the BIR.

In a Memorandum dated June 5, 2012,[24] respondent's examiners stated that as of report date (June 5, 2012), VFC failed to submit the required documents despite written notices to comply on or before May 31, 2012. Accordingly, the Memorandum addressed to the Regional Director recommended that the case be forwarded to the Assessment Division for issuance of Final Assessment Notice and Demand Letter.

In a transmittal letter dated June 13, 2012,[25] VFC submitted original documents consisting of Check Vouchers, Journal Vouchers and other documents to comply with the May 29, 2012 letter of the respondent.

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[18] Exhibit H, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2161.
[19] May 8, 2012 letter of the BIR, Exhibit I, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2161.
[20] Exhibit I, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2161.
[21] Exhibit I-1, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2161.
[22] Exhibit J, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2161-2162.
[23] Exhibit K., Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2162.
[24] Exhibit R-12, Respondent's Formal Offer of Evidence, Docket Vol. IV, p. 2257; BIR Records, p. 852.
[25] Exhibit L, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2162.

In a letter dated July 4, 2012,[26] which was mailed on July 6, 2012,[27] Regional Director Perfecto L. Aranas upheld the assessment against the Petitioner and demanded payment for the amount of ₱10,131,843.31 as deficiency income, value-added, and expanded withholding taxes.[28] Said July 4, 2012 letter enclosed the Final Assessment Notices (FAN), the Formal Letter of Demand (FLD), Details of Discrepancy and Computation of Tax Liabilities summarized as follows.[29]

	Income Tax	VAT	EWT	Total
Basic	₱ 5,394,439.64	₱ 1,082,892.71	₱ 73,173.21	₱ 6,550,505.56
Interest	2,831,465.00	616,606.03	42,266.72	3,490,337.75
Subtotal				**₱ 10,040,843.31**
Compromise Penalties				91,000.00
TOTAL	**₱ 8,225,904.64**	**₱ 1,699,498.74**	**₱ 115,439.93**	**₱ 10,131,843.31**

On July 11, 2012,[30] petitioner received the July 4, 2012 letter, the FAN, FLD, Details of Discrepancy and Computation of Tax Liabilities.

In a letter dated August 9, 2012,[31] VFC filed its protest against the FAN, which was denied by Regional Director Perfecto Aranas in a letter dated October 1, 2012.[32] Thereafter, VFC sought for reconsideration of the October 1, 2012 denial in a letter dated December 6, 2012 addressed to Commissioner Kim S. Jacinto-Henares.[33]

On July 4, 2013, the Petitioner filed the Petition for Review with the Court.[34] Respondent filed her Answer by registered mail on September 25, 2013.[35]

Thereafter the case was set for pre-trial conference on November 7, 2013.[36]

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[26] Exhibit A, A-1, and A-2, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2159-2160; Exhibit R-13, Respondent's Formal Offer of Evidence, Docket Vol. IV, p. 2257-2258; BIR Records, pp. 859-868.
[27] Exhibit R-13, Respondent's Formal Offer of Evidence, Docket Vol. IV, p. 2257-2258; ; BIR Records, pp. 859-868.
[28] Annex B-1, Petition for Review, Docket Vol. I, p. 56; par. 5, JSFI, docket, p. 2065.
[29] Annex B-2, Petition for Review, Docket Vol. I, p. 57; par. 5, JSFI, docket, p. 2065.
[30] Annex B, Petition for Review, Docket Vol. I, p. 37; Exhibit M, Letter Protest addressed to Regional Director Perfecto L. Aranas dated August 9, 2012, stating that "VFC received 11 July 2012 the following formal deficiency tax assessments for taxable year 2009"; Petitioner's Formal Offer of Evidence; Docket Vol. IV, pp. 2159-2160.
[31] Exhibit M, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2162-2163.
[32] Exhibit N, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2160.
[33] Exhibit O, Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2164.
[34] Petition for Review, Docket Vol. I, pp. 6-124.
[35] Answer, Docket Vol. I, pp. 138-152.
[36] Notice of Pre-Trial Conference, Docket Vol. I, p. 154.

Accordingly, petitioner and respondent submitted their Pre-Trial Briefs on December 10, 2013[37] and November 4, 2013,[38] respectively.

On February 17, 2014, the parties submitted their Joint Stipulation of Facts and Issues.[39] Accordingly, the case was set for presentation of evidence.

Petitioner presented as its witnesses, Jefferson V. Yu,[40] Head of Accounting, and, Richard S. Querido,[41] the Independent Certified Public Accountant, who was commissioned by the Court.

Petitioner filed its Formal Offer of Evidence on August 11, 2014[42] and submitted the hard and soft copies of its list of exhibits in its Compliance on August 13, 2014.

In a Resolution dated September 26, 2014, the Court admitted all of Petitioner's exhibits, except Exhibits C-1, D-1, D-2, K, T, U and W and Z-1 to Z-255.[43] Upon Motion for Partial Reconsideration, the Court admitted Exhibits Z-1 to Z-255.[44]

Respondent presented two witnesses, namely, Revenue Officers Irene D. Poblacion and Allan B. Arreglado.[45] Subsequently, respondent filed her Formal Offer of Evidence on November 6, 2014.[46] In the Resolution dated January 20, 2015, the Court admitted respondent's exhibits.[47]

On February 4, 2015, petitioner filed the Judicial Affidavit of Nelson Sotomil, General Manager of VFC, as additional/rebuttal witness.[48]

In a Manifestation dated June 9, 2015, respondent stated that in lieu of filing the Memorandum, she is adopting her Answer as her Memorandum.[49] Petitioner, likewise filed a similar Manifestation dated July 15, 2015 stating that it is adopting its Petition for Review as its Final Memorandum.

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[37] Docket Vol. II, pp. 250-254.
[38] Docket Vol. I, pp. 156-162.
[39] JSFI, Docket Vol. IV, pp. 2064-2069.
[40] Judicial Affidavit of Jefferson V. Yu, Docket Vol. II, pp. 256-270.
[41] Judicial Affidavit of Richard S. Querido with attached Independent CPA report (Exhibit WW), Docket Vol. IV, pp. 2134-2151.
[42] Docket Vol. IV, pp. 2159-2192.
[43] Docket Vol. IV, pp. 2226-2227.
[44] Resolution dated May 8, 2015, Docket Vol. IV, 2318-2319.
[45] Judicial Affidavit of Allan B. Arreglado, Exhibit R-15 and Judicial Affidavit of Irene D. Poblacion, Exhibit R-16, Respondent's Formal Offer of Evidence, Docket Vol. IV, pp. 2258-2259.
[46] Docket Vol. IV, pp. 2253-2262.
[47] Docket Vol. IV, pp. 2282-2283.
[48] Docket Vol. IV, pp. 2287-2292.
[49] Docket Vol. IV, pp.2320.

Accordingly, in a Resolution dated July 20, 2015, the Court considered the case submitted for decision.[50]

ISSUE

The sole issue the parties stipulated for resolution of the Court is whether Petitioner is liable to pay the total amount of Php10,131,843.31 as deficiency income, value-added and expanded withholding taxes for the FY ending August 31, 2009.[51]

RULING

Prescription

In its Petition for Review,[52] Petitioner asserts that respondent's right to assess deficiency taxes has prescribed pursuant to Section 203 of the National Internal Revenue Code of 1997 (NIRC), as amended, which provides:

> **SEC. 203.** *Period of Limitation Upon Assessment and Collection.*—Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period**: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. *(Emphasis supplied.)*

Respondent argues otherwise, noting that when petitioner protested the Preliminary Assessment Notice (PAN), it essentially requested for a reinvestigation since some photocopied documents were submitted and the protest letter mentioned that petitioner is "still compiling supporting documents to substantiate the remaining tax findings." The same request was granted by respondent, hence, the running of the prescriptive period on making an assessment and

[50] Docket Vol. IV, pp. 2330.
[51] Simplification of Issues, JSFI, Docket Vol. IV, p. 2065.
[52] Petition for Review, Docket Vol. I, pp. 9-16.

collection of taxes was suspended[53] in accordance with Section 223 of the NIRC of 1997, as amended, which is quoted hereafter:

> **SEC. 223.** *Suspension of Running of Statute of Limitations.*—**The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment** and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, **shall be suspended for the period during which the Commissioner is prohibited from making the assessment** or beginning distraint or levy or a proceeding in court **and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided*, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. *(Emphasis supplied.)*

Reckoned from the last day of the filing of tax returns and the dates when petitioner's returns were actually filed, the last days of the 3-year prescriptive period are the following dates:

Exhibit	Period	Date Filed	Last Day of Filing	Last day of 3-year period
INCOME TAX				
"T-1"	FY 2009	12/15/2009	12/15/2009	12/15/2012
VAT				
"Q"	1st	12/15/2008	12/25/2008	12/25/2011
"Q-1"	2nd	3/19/2009	3/25/2009	3/25/2012
"Q-2"	3rd	6/19/2009	6/25/2009	6/25/2012
"Q-3"	4th	9/18/2009	9/25/2009	9/25/2012
EWT				
"R"	Sep-08	10/10/2008	10/10/2008	10/10/2011
"R-1"	Oct-08	11/12/2008	11/12/2008	11/12/2011
"R-2"	Nov-08	12/9/2008	12/10/2008	12/10/2011
"R-3"	Dec-08	1/13/2009	1/15/2009	1/15/2012
"R-4"	Jan-09	2/11/2009	2/11/2009	2/11/2012
"R-5"	Feb-09	3/11/2009	3/11/2009	3/11/2012

[53] Paragraph 8.3.1 of Respondent's Answer, Docket Vol. I, p. 144.

"R-6"	Mar-09	4/7/2009	4/10/2009	4/10/2012
"R-7"	Apr-09	5/11/2009	5/11/2009	5/11/2012
"R-8"	May-09	6/9/2009	6/10/2009	6/10/2012
"R-9"	Jun-09	7/9/2009	7/10/2009	7/10/2012
"R-10"	Jul-09	8/6/2009	8/10/2009	8/10/2012
"R-11"	Aug-09	9/9/2009	9/10/2009	9/10/2012

An examination of the records shows that the letter dated July 4, 2012 which was accompanied by the FAN, FLD, Details of Discrepancy and Computation of Tax Liabilities was mailed by respondent on July 6, 2012[54] and was received by petitioner on July 11, 2012.[55]

Clearly since the FAN, FLD and other details of assessment were issued only on July 6, 2011 respondent's right to assess value-added taxes for the first to the third fiscal quarters and expanded withholding tax for the months of September 2008 to May 2009 have already prescribed.

We now proceed to discuss the *remaining* items of respondent's deficiency income tax, VAT, and expanded withholding tax assessments for FY ended August 31, 2009.

Deficiency Income Tax and Deficiency Expanded Withholding Tax

Petitioner was assessed of deficiency income tax including interest for the fiscal year ended August 31, 2009 in the amount of ₱8,225,904.64 as follows:[56]

Net taxable income per return	₱ -
Add/Deduct:	
Overstatement of NOLCO for 2008	₱ 941,522.00
Unsupported impairment losses	1,499.00
Disallowed purchases	10,294,175.24
Disallowed expenses due to non-withholding	3,469,585.85
Unsupported Rental/Tolling Fees	193,790.00
Overstatement of salaries and wages	2,045,314.87
Unreported purchases of food ingredients	52,403.52
Total amount subject to income tax	₱ 16,998,290.48
Tax Rate	31.67%

[54] Exhibit R-13, Respondent's Formal Offer of Evidence, Docket Vol. IV, p. 2257-2258; BIR Records, pp. 859-868.
[55] Exhibits A and P to P-3, Docket Vol. II, pp. 271 and 377 to 380; Exhibit M, Letter Protest addressed to Regional Director Perfecto L. Aranas dated August 9, 2012, stating that "VFC received 11 July 2012 the following formal deficiency tax assessments for taxable year 2009"; Petitioner's Formal Offer of Evidence, Docket Vol. IV, p. 2162.
[56] Exhibit A-1, Docket Vol. II, p. 272.

Income tax due	₱ 5,383,358.60
Add: Unsupported creditable tax withheld	11,081.04
Total income tax deficiency	₱ 5,394,439.64
Add: Interest from 12.16.2009 to 7.31.2012 (0.52489)	2,831,465.00
TOTAL INCOME TAX DEFICIENCY	**₱8,225,904.64**

a. Overstatement of NOLCO for 2008—₱941,522.00

Respondent's examiner found that for the taxable year 2008, petitioner's General and Administrative Expenses is understated[57] while Depreciation Expense is overstated,[58] resulting to an overstatement of NOLCO in the amount of ₱941,522.00, computed thus:[59]

Understatement of General and Administrative Expenses	₱ 326,090.00
Overstatement of Depreciation Expense	1,267,612.00
Undeclared sales/income	**₱ 941,522.00**

Petitioner avers that deductions reported in its Income Tax Return (ITR) for the fiscal year 2008 which was "filed on December 15, 2008 cannot be questioned anymore by the BIR since the same has already prescribed on December 15, 2011."[60]

Respondent, on the other hand, argues that the "overstatement of NOLCO for the taxable year 2008 was the result of the adjustments made on certain expense accounts for said year which were adjusted to the taxable income for taxable year 2009 per Final Income Tax Return and the Audited Financial Statements attached thereto. This matter is still within the scope of the year under audit since the NOLCO carried over was overstated."[61]

Examination of petitioner's ITR for the fiscal year 2008 disclosed that petitioner incurred net loss amounting to ₱2,410,161.00.[62] The same amount was reported in its ITR for the fiscal year 2009 as Net Operating Loss Carry Over (NOLCO). Petitioner utilized NOLCO in the fiscal year 2009 amounting to ₱1,915,014.00, broken down as follows:[63] Jr

[57] Note 19, Audited Financial Statements, BIR Records p. 53.
[58] Note 9, Audited Financial Statements, BIR Records p. 59.
[59] Exhibit A-2, Docket Vol. II, p. 274.
[60] Petition for Review, Page 13, Docket Vol. I, p. 18.
[61] Respondent's Answer, Par. 9.1, Docket Vol. I, p. 145.
[62] Exhibit T, Docket Vol. II, pp. 583 to 585.
[63] Exhibit T-1, Schedule 5B, Docket Vol. II, pp. 592 to 594.

Net Operating Loss		Net Operating Loss Carry Over			Net Operating Loss (Unapplied)
Year Incurred	**Amount**	**Applied Previous Year**	**Applied Current Year**	**Expired**	
2006	₱1,084,240.00	-	₱ (1,084,240.00)	-	
2007	397,357.00	-	(397,357.00)	-	
2008	2,410,161.00	-	(433,417.00)	-	₱ 1,976,744.00
TOTAL			**₱(1,915,014.00)**		

As correctly pointed out by petitioner, even if the net operating loss for the fiscal year 2008 would be adjusted to reflect the overstatement in allowable deductions, the amount of NOLCO applied in the succeeding fiscal year will not be affected considering that only ₱433,417.00 was utilized, as shown hereafter:[64]

NOLCO for 2008	₱ 2,410,161.00
Deduct: BIR alleged overstatement of NOLCO	941,522.00
Total Available NOLCO for 2008	₱ 1,468,639.00
2008 NOLCO applied in 2009	433,417.00
Balance	**₱1,035,222.00**

Further, the undersigned found that petitioner made several adjustments to its net loss for the fiscal year 2008, not just the understatement of general and administrative expenses and overstatement of depreciation expenses. Perusal of the notes to petitioner's audited financial statements attached to the annual income tax return for the fiscal year 2009 shows thus:[65]

> A reconciliation of the net loss, as previously reported, to the restated net loss for the year ended August 31, 2008 follows:

	Note	**2008**
Net loss, as previously reported		(P4,233,871)
Adjustments on the:		
Miscomputation of depreciation expense for fiscal year 2008	*9*	1,267,612
Worthless input taxes reported in fiscal year 2008	*8, 19*	(1,236,871)
Salaries, wages and benefits for fiscal year 2008	*17, 19, 20*	(304,568)
Deferred tax effect of the restated retirement benefit obligation	*23*	85,343
Interest income recognized in fiscal year 2008	*18*	19,236
Various other expenses in fiscal year 2008	*17, 19*	11,314
		(157,934)
Net loss, as restated		**(P4,391,805)**

Based on the foregoing, petitioner's <u>net loss</u> for the fiscal year <u>increased</u> from ₱4,233,871.00 to ₱4,391,805.00 after all the adjustments, which is contrary to respondent's findings. Apparently,

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[64] Petition for Review, Page 12, Docket Vol. I, p. 17.
[65] Exhibit T, Notes to the Financial Statements, Note 25.

there were adjustments not considered by respondent's examiner resulting to the assessment of deficiency income tax. All of the adjustments should have been taken into consideration, not just a selected few.

Hence, respondent's deficiency income tax assessment due to the disallowance of petitioner's NOLCO in the amount of ₱941,522.00 should be cancelled being bereft of factual basis.

b. Unsupported impairment losses—₱1,499.00

Respondent's examiner found that petitioner claimed impairment losses in the amount of ₱1,499.00 but the same was not supported by pertinent documents.[66]

In its protest to the Preliminary Assessment Notice (PAN)[67] and Formal Letter of Demand (FLD),[68] even in the Petition for Review,[69] petitioner made no mention of this item of assessment.

For petitioner's failure to disprove the findings, the disallowed impairment losses are hereby affirmed.

c. Disallowed purchases—₱10,294,175.24

Respondent's examiner found that petitioner reported purchases which are subjected to presumptive input tax in its Quarterly VAT Returns for the fiscal year 2009,[70] thus:

Exhibit	Period	Amount
Q	1st Quarter	₱ 1,252,118.87
Q-1	2nd Quarter	1,919,438.40
Q-2	3rd Quarter	3,354,915.36
Q-3	4th Quarter	3,767,702.62
TOTAL		**₱10,294,175.25**

It is likewise found that the above-mentioned purchases are not properly supported.

Petitioner asserts that the said purchases pertain to primary agricultural products and it has submitted the supporting documents thereof consisting of invoices/receipts, journal vouchers, check vouchers and cash vouchers. Further, petitioner avers that these

[66] Exhibit R-7, BIR Records pp. 617-625.
[67] Exhibit H, Docket Vol. II, pp. 321-324.
[68] Exhibit M, Docket Vol. II, pp. 336-354.
[69] Docket Vol. I, pp. 6-30.
[70] Line 20D of BIR Form No. 2550Q Quarterly Value-Added Tax Return.

products were bought from fishermen who do not issue sales invoices because they are not registered with the BIR. Petitioner maintains that even so, the purchases are allowable pursuant to BIR Ruling DA-206-08 dated March 28, 2008.[71]

The independent CPA[72] commissioned by the Court reports:[73]

> The total purchases with presumptive input tax for the taxable year 2009 per Quarterly VAT Return versus the amount of purchases with presumptive input tax per "Schedule of Purchases with Presumptive Input Tax" resulted to an unaccounted difference of ₱1,500.36.
>
> Table 1:

Remarks	Annexes	Amount
With supporting documents	A-1	₱ 9,983,466.34
Without supporting documents	A-2	309,208.55
Total		₱ 10,292,674.89
Total Quarterly VAT Returns		10,294,175.25
Difference		**₱ 1,500.36**

It should be noted that petitioner declared the gross amount of purchases subject to presumptive input tax in its Quarterly VAT returns, while it records the same purchases net of presumptive input tax in its books of accounts.

Examination of the supporting documents submitted by petitioner shows that the foregoing amounts include presumptive input tax claimed by petitioner. Without the presumptive input tax, the adjusted computation yields an unaccounted difference of ₱412,267.01, as shown hereafter:

Remarks	Annexes	Amount
With supporting documents	A-1	₱ 9,576,902.36
Without supporting documents	A-2	305,005.88
Total		₱ 9,881,908.24
Total Quarterly VAT Returns		10,294,175.25
Unaccounted Difference		**₱ 412,267.01**

Further, after scrutiny of the documents submitted to the Court, the undersigned found the following: Je

[71] Petition for Review, pp. 13-15, Docket Vol. I, pp. 18-20.
[72] Mr. Richard S. Querido of Mendoza Querido & Co.
[73] Exhibit WW, p. 3.

Exh.	OR/ Invoice No.	Date	Supplier	Amount per schedule (net of VAT)	Amount in Supporting Document
1. Supported by invoices and/or official receipts and duly registered cash slips and receipts with delivery slips and order slips					
X-4B	186	10/14/2008	Victorias Leather Products & Food Caterer	₱ 9,792.00	₱ 15,640.00
X-8B	187	10/17/2008	Victorias Leather Products & Food Caterer	26,259.84	21,914.00
X-9C	319	11/28/2008	Asia Pacific Aquamarine, Inc.	323,381.76	333,487.44
X-10C	128	11/27/2008	Resilyn Y. Debayde	258,816.00	269,600.00
X-16B	130	12/2/2008	Resilyn Y. Debayde	257,725.44	268,464.00
X-22B	015	1/12/2009	Resilyn Y. Debayde	113,558.40	118,290.00
X-26B	0202	1/26/2009	RPJ Mall	36,161.28	20,387.34
X-29C	5753	2/28/2009	Gidor Fishing Corporation	214,839.84	58,881.00
X-29D	5751	2/26/2009	Gidor Fishing Corporation		44,821.00
X-29E	5752	2/27/2009	Gidor Fishing Corporation		120,089.50
X-35C	4342	3/26/2009	Mardal Corporation	59,655.36	62,141.00
X-36B	5754	3/3/2009	Gidor Fishing Corporation	244,589.28	59,783.50
X-36C	5755	3/4/2009	Gidor Fishing Corporation		194,997.00
X-37B	051	3/10/2009	Asia Pacific Aquamarine, Inc.	247,411.20	257,720.00
X-40B	3887	3/13/2009	Mardal Corporation	61,396.80	63,955.00
X-41B	052	3/14/2009	Asia Pacific Aquamarine, Inc.	191,520.96	199,501.00
X-42B	188	3/17/2009	Victorias Leather Products & Food Caterer	11,614.08	12,098.00
X-46C	457	4/27/2009	Southern Negros Ace Fishing Corp.	39,617.28	41,268.00
X-47C	458	4/28/2009	Southern Negros Ace Fishing Corp.	152,659.68	159,020.50
X-48C	0722	5/5/2009	Sherwin A. Sy	121,018.75	134,330.81
X-51B	124	4/3/2009	J. Santibañez Enterprises	35,124.00	36,221.62
X-52B	562	4/8/2009	Technopacer Engineering Services	172,663.10	178,058.83
X-58B	565	5/8/2009	Technopacer Engineering Services	177,510.14	183,057.34
X-59B	0101	5/4/2009	Yuseq Agro Industrial Trading	309,355.10	322,244.90
X-63B	054	5/25/2009	Asia Pacific Aquamarine, Inc.	209,223.74	217,941.40
X-64B	0102	5/24/2009	Yuseq Agro Industrial Trading	203,321.09	211,792.80
X-65B	0103	5/23/2009	Adonis Abellar Poultry Farm	268,093.44	279,264.00
X-67B	0104	6/16/2009	Yuseq Agro Industrial Trading	119,734.56	124,723.50
X-69B	9601	6/18/2009	Roberto L. Sanson Aqua Farm	193,465.92	48,272.00
X-69C	9602	6/19/2009	Roberto L. Sanson Aqua Farm		153,255.00
X-70B	8467	6/21/2009	Amodia Glassware & Sari-sari Store	24,988.80	26,030.00
X-71B	053	6/22/2009	Vamda Fishing Corporation	212,794.56	221,661.00
X-72B	053	6/24/2009	Asia Pacific Aquamarine, Inc.	211,553.28	220,368.00
X-74C	1529	6/15/2009	New Victorias Ice Plant & Cold Storage, Inc.	714.29	792.86
X-75B	052	7/8/2009	Vamda Fishing Corporation	87,759.36	91,416.00
X-76B	051	7/8/2009	Vamda Fishing Corporation	92,305.92	96,152.00
X-78B	1695	5/18/2009	Freddie J. Yap	193,024.80	201,067.50
X-80B	4907	6/19/2009	Mardal Corporation	60,230.40	62,740.00
X-82B	127	7/3/2009	J. Santibañez Enterprises	137,994.24	143,744.00
X-83B	9607	7/1/2009	Roberto L. Sanson Aqua Farm	213,531.84	222,429.00
X-85B	009	7/6/2009	Resilyn Y. Debayde	250,360.32	260,792.00
X-86B	242	7/6/2009	J. Santibañez Enterprises	88,488.96	49,872.00
	237	7/6/2009	J. Santibañez Enterprises		42,304.00

X-87B	2573	7/8/2009	J'Alfred Grill & Restobar	31,788.48	33,113.00
X-88B	804	7/28/2009	Alrac, Inc.	121,616.64	125,417.16
X-89B	0869	8/19/2009	RPJ Mall	70,755.84	72,966.96
X-90B	0203	8/26/2009	RPJ Mall	112,700.16	116,222.04
Subtotal				***₱5,969,116.93***	***₱6,198,308.00***
2. Supported by official receipt dated outside the fiscal period					
X-95B	805	9/2/2009	Alrac, Inc.	₱ 127,057.73	₱ 131,028.28
Subtotal				***₱ 127,057.73***	***₱ 131,028.28***
3. Supported by cash slips or receipts which are not duly registered with the BIR					
X-31B	0001	2/11/2009	Jose Maria Mendezona	₱ 67,050.24	₱ 69,145.56
X-32B	0002	2/18/2009	Jose Maria Mendezona	65,426.88	67,927.17
X-68B		6/20/2009	Ely Olvido	161,126.40	100,720.00
X-68C		6/22/2009	Ely Olvido		67,120.00
X-81B		7/1/2009	Ely Olvido	166,763.52	173,712.00
Subtotal				***₱ 460,367.04***	***₱ 478,624.73***
4. Supported by bank fund transfer application form					
X-15A	211309	11/6/2008	Victorias Milling Company, Inc.	₱ 458,757.00	₱ 473,123.15
X-25A	211319	1/22/2009	Victorias Milling Company, Inc.	497,637.00	513,218.15
X-66A	211334	6/8/2009	Victorias Milling Company, Inc.	607,996.53	627,026.42
Subtotal				***₱1,564,390.53***	***₱1,613,367.72***
5. Supported by delivery receipts					
X-49B	0401	4/1/2009	F-C Seafoods Dealer	₱ 59,372.16	₱ 61,846.00
X-50B	0402	4/2/2009	F-C Seafoods Dealer	53,733.60	55,972.50
X-54B	0403	4/7/2009	F-C Seafoods Dealer	23,990.40	24,990.00
Subtotal				***₱ 137,096.16***	***₱ 142,808.50***
TOTAL				**₱8,258,028.39**	**₱8,564,137.23**

Purchases under Item 2, 3, 4 and 5 should be disallowed for not being properly supported. These purchases are from individuals and juridical entities registered with the BIR, contrary to petitioner's allegation that they are individuals who are not registered with the BIR. In the check vouchers submitted, petitioner even withheld creditable taxes from these suppliers.

Section 237 of the NIRC of 1997, as amended, provides:

> **SEC. 237.** *Issuance of Receipts or Sales or Commercial Invoices.*—**All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature or service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client. *(Emphasis supplied.)* ge

It is likewise noteworthy that Item No. 3 is comprised of purchases from Victorias Milling Company, Inc., petitioner's parent company, but are not supported by duly registered invoices/official receipts.

Thus, out of the purchases declared in petitioner's VAT Returns in the aggregate amount of ₱10,294,175.24, only ₱5,969,116.93 is substantiated "with sufficient evidence, such as official receipts or other adequate records," pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended, computed as follows:

Total purchases per VAT Returns			₱ 10,294,175.25
Less: Disallowances			
a) Per ICPA findings:			
1. Without supporting documents (net of VAT)		₱ 305,005.88	
2. Unaccounted difference - adjusted		412,267.01	
Total disallowance per ICPA findings		₱ 717,272.89	
b) Per Court's findings:			
1. Without supporting documents:			
Purchases with supporting documents per ICPA report	₱9,576,902.36		
Purchases with supporting documents per Court's findings	8,258,028.39	₱1,318,873.97	
2. Supported by official receipt dated outside the fiscal period		127,057.73	
3. Supported by cash slips or receipts which are not duly registered with the BIR		460,367.04	
4. Supported by bank transfer application form		1,564,390.53	
5. Supported by delivery receipts		137,096.16	
Total disallowance per Court's findings		₱3,607,785.43	
Total disallowances			4,325,058.32
Purchases substantiated with sufficient evidence			**₱5,969,116.93**

Consequently, the unsubstantiated purchases of ₱4,325,058.32 may be disallowed as deductible expenses or cost of goods sold for income tax purposes.

Nevertheless, respondent failed to show that the subject purchases were reported as cost of goods sold in petitioner's books and was deducted from sales thereby reducing petitioner's income tax liability for the fiscal year 2009. It should be noted that purchases of raw materials are recorded as part of inventory, not as an expense. Even though some of these raw materials form part of the cost of goods processed and sold, some of them undeniably remain in petitioner's inventory as canned goods. Thus, respondent's computation and disallowance of purchases for the computation of deficiency income tax are flawed, and the Court is constrained to cancel the same.

d. Disallowed expenses due to non-withholding— ₱3,469,585.85

The examiners compared petitioner's expenses as recorded in its books with the alphalist and found the following discrepancies:[74]

	Per Books	Per Alphalist	Difference
1. Expenses subject to 2% WT			
Services-Summary List	₱ 3,801,369.84		
Tolling fee-VMC	323,445.00		
Security services	508,330.00		
Travel & communication-G&A	241,605.00		
Repairs & maintenance-G&A	46,548.00		
Freight & handling-G&A	1,499.00		
Freight & handling-selling	465,725.00		
Advertising & promotion	138,909.00		
Travel & communication-selling	103,607.00		
Repairs & maintenance-selling	46,754.00		
Insurance-selling	1,339.00		
Subtotal	*₱ 5,679,130.84*	₱3,829,393.00	₱ 1,849,737.84
2. Expenses subject to 10% WT			
Professional fees	*₱ 507,769.00*	285,769.30	221,999.70
3. Expenses subject to 1% WT			
Purchases/Presumptive	₱10,294,175.25		
Purchases other than capital goods	12,690,540.22		
Other purchases not qualified for input	1,599,714.84		
Stationery & supplies-G&A	125,195.00		
Representation & entertainment	21,430.00		
Subscription	8,232.00		
Packaging & other materials-G&A	1,583.00		
Miscellaneous-G&A	2,637.00		
Packaging & other materials-selling	19,107.00		
Stationery & supplies-selling	3,256.00		
Miscellaneous-selling	28,111.00		
Subtotal	*₱24,793,981.31*	23,396,133.00	1,397,848.31
TOTAL			**₱3,469,585.85**

The amounts of expenses for Services-Summary List, Purchases/Presumptive, Purchases Other Than Capital Goods and Other Purchases Not Qualified for Input are the aggregate amounts per petitioner's Quarterly VAT Returns as summarized by the examiner.[75] The rest of the expenses are based on the amounts declared by petitioner in its annual income tax return for the fiscal year 2009.[76]

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[74] Schedule 1, Exhibit R-7, BIR Records p. 597.
[75] BIR Records, p. 590.
[76] Exhibit T-1, Docket Vol. II, pp. 592-594.

Contrary to petitioner's allegation and the findings of the ICPA that tolling fees in the amount of ₱323,445.00 cannot be ascertained,[77] the undersigned found that the same amount was reported in the notes to petitioner's audited financial statements for the fiscal year 2009.[78]

It should be noted that the amounts taken up by the respondent's examiner to be from the alphalist[79] actually pertain to the total amount of payments subjected to expanded withholding tax for the fiscal year ending August 31, 2009 per petitioner's Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E).[80]

Petitioner avers that in the computation of the disallowed expenses due to non-withholding, respondent's examiner did not consider petitioner's casual purchases and those which are exempt or not subject to withholding tax. But in order to overthrow the disallowance of the subject expenses, petitioner has to substantiate and prove that the amounts reported per Audited Financial Statements and Quarterly VAT Returns are either already subjected to expanded withholding tax or not subject to withholding tax under the pertinent laws and regulations.

As regards the substantiation of the foregoing expenses, the ICPA found the following:[81]

Table 4	**Per Schedule**	**Per Amended Quarterly VAT Returns**	**Difference**
Services	₱3,796,064.49	₱ 3,801,369.84	₱ 5,305.35
Purchases with presumptive input tax	10,292,674.89	10,294,175.25	1,500.36
Purchases other than capital goods	10,484,688.26	12,690,540.22	2,205,851.96
Other purchases not qualified for input tax	748,157.05	1,599,714.84	851,557.79
TOTAL			**₱3,064,215.46**

Table 5	**Per Schedule**	**Per Audited Financial Statements**	**Difference**
Security services	₱ 514,364.82	₱ 508,330.00	₱ (6,034.82)
Travel and communication - G&A	281,455.97	241,605.00	(39,850.97)
Repairs and maintenance - G&A	45,508.10	46,548.00	1,039.90
Freight and handling - G&A	1,498.97	1,499.00	0.03
Freight and handling - Selling	465,202.86	465,725.00	522.14
Advertising and promotion	121,000.00	138,909.00	17,909.00

[77] Exhibit WW, p. 6.
[78] Exhibit T-1, Audited Financial Statements attached to Annual Income Tax Return for the Fiscal Year ending August 31, 2009, Note 14 Related Party Transactions, Notes to the Financial Statements, p. 19.
[79] BIR Records, p. 593.
[80] Exhibits R to R-11, Docket Vol. II, pp. 482-580.
[81] Exhibit WW, p. 6.

Travel and communication - Selling	99,433.80	103,607.00	4,173.20
Repairs and maintenance - Selling	45,485.68	46,754.00	1,268.32
Insurance - Selling	1,339.29	1,339.00	(0.29)
Professional Fees	479,852.56	507,769.00	27,916.44
Packaging and other materials - G&A	1,573.97	1,583.00	9.03
Stationery and supplies - G&A	118,654.88	125,195.00	6,540.12
Representation and entertainment	20,526.30	21,430.00	903.70
Subscription	8,288.00	8,232.00	(56.00)
Miscellaneous - G&A	4,810.89	2,637.00	(2,173.89)
Packaging and other materials - Selling	1,648.22	19,107.00	17,458.78
Stationery and supplies - Selling	2,379.22	3,256.00	876.78
Miscellaneous - Selling	24,810.00	28,111.00	3,301.00
TOTAL			**₱ 33,802.47**

The differences of ₱3,064,215.46 and ₱33,802.47 are unaccounted.[82]

Even so, the Court would like to call attention to the following items taken up from petitioner's Quarterly VAT Returns, which are included in respondent's computation of disallowed expenses due to non-withholding creditable tax:

1. Purchase of services
2. Purchase of goods other than capital goods
3. Purchases not qualified for input tax
4. Purchases with presumptive input tax

Respondent's disallowance of petitioner's expenses and the deficiency income tax assessment arising therefrom in the amount of ₱3,469,585.85 is bereft of factual basis. By including the purchase amounts per Quarterly VAT Returns in the computation, respondent failed to consider the fact that these purchases can be recorded as expenses or assets in petitioner's financial statements. So that, for example, some items under purchases of services are also listed under repairs and maintenance or professional fees. On the other hand, some items under purchases with presumptive input tax are also recorded as inventory. By doing so, respondent merely relied on the assumption, without obtaining any evidence corroborating such findings, that the purchases per Quarterly VAT Returns are different from the expenses reported in petitioner's financial statements. This is contrary to the doctrine laid down by the Supreme Court in *Collector of Internal Revenue vs. Benipayo,*[83] wherein it was held that:

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[82] Exhibit WW, p. 6.
[83] G.R. No. L-13656, January 31, 1962.

> "xxx An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, **assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be** xxx.
>
> **In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption** xxx" *(Emphasis supplied.)*

Likewise, the deficiency expanded withholding tax assessment pertaining to the same disallowed expenses in the amount of ₱73,173.21 should be cancelled for lack of factual basis.

e) Unsupported Rental/Tolling Fees—₱193,790.00

Respondent found that petitioner recorded tolling fees amounting to ₱193,790.00 in its Cost of Goods Sold – Direct Materials but failed to support the same with official receipts.[84]

Petitioner counters that "tolling fees, which were paid for tolling refined sugar were subjected to withholding tax of 5% under RR 2-98 as amended by RR 14-02....Documents evidencing these transactions were already submitted to the BIR."[85]

Examination of the said supporting documents show that the tolling fees were supported only by check vouchers and bank fund transfer application forms.[86] It is noteworthy that the beneficiary of the bank transfer application is Victorias Milling Corporation, petitioner's parent company.

The requirement of proper substantiation is clearly provided in Section 34(A)(b) of the NIRC of 1997, as amended:

> **SEC. 34.** *Deductions from Gross Income.—xxx*
>
> xxx xxx xxx
>
> (A) *Expenses.—*
> (a) *In General.—xxx*
>
> xxx xxx xxx

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[84] Exhibit A-2, Docket Vol. II, p. 274.
[85] Exhibit M, Docket Vol. II, p. 344.
[86] Annex D-1 of Exhibit WW and Exhibits AA-1 to AA-3, including sub-markings.

> (b) *Substantiation Requirements.*—**No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts** or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer. *(Emphasis supplied.)*

Thus, for failure to substantiate its tolling fees with official receipts, the same should not be allowed as deduction from petitioner's gross income.

f. Overstatement of salaries and wages—₱2,045,314.87

By comparing petitioner's financial statements and the related books of accounts, respondent found a discrepancy in the salaries, wages and other employees benefits account, thus:

Salaries, wages and other employees benefits	
Per Financial Statements	₱ 8,516,978.00
Per Books of Accounts	6,471,663.13
Difference	**₱2,045,314.87**

Petitioner argues that "the amounts in the financial statements and the trial balance reflect similar amounts. It is believed that any difference is due to the classifications used by the Company."[87]

The ICPA examined a total of ₱8,362,795.20, and found that only ₱6,967,168.73 is with supporting documents, to wit:[88]

Remarks	**Annexes**	**Amount**
With supporting documents	C-1	₱ 6,967,168.73
Without supporting documents	C-2	1,395,626.47
Total		**₱ 8,362,795.20**

Based on the foregoing, the Court is constrained to uphold the disallowance of the overstated salaries and wages in the adjusted amount of ₱1,549,809.27, computed thus:

Salaries & wages per financial statements	₱ 8,516,978.00
Substantiated salaries & wages per ICPA report	6,967,168.73
Disallowed salaries and wages	**₱1,549,809.27**

[87] Petition for Review, Docket Vol. I, p. 21.
[88] Annex C of Exhibit WW.

g. Unreported purchases of food ingredients—₱52,403.52

Per Details of Discrepancy attached to the Formal Letter of Demand, respondent alleged that petitioner has unreported purchases of food ingredients from Jose de los Santos amounting to ₱52,403.52, which is verified with the Summary List of Purchases.[89]

Petitioner counters that it cannot find anything under the subject name of supplier despite efforts exerted to check the Summary List of Purchases or other sources. No basis for reference was provided by the BIR as to the source of this assessment.[90]

Scrutiny of the BIR Records shows the following report on the details of discrepancy by respondent's examiner:[91]

> "10. Purchase of Food ingredients from Jose de los Santos in the total amount of P52,403.52 was not
>
> Verification disclosed that the afore-stated supplier is not among the suppliers listed in the quarterly list of suppliers submitted to this office. The said purchases is considered income on your part and be included in the computation of income tax (Preaz v. CTA & CIR L-10507 dated 5/30/58)." *(sic)*

The Court finds for the petitioner. If the name of the supplier Jose de los Santos is not included in the list of suppliers submitted to respondent's Bureau, it begs the question of where the name of the supplier and amount of purchases were found. For failure to state the basis of its assessment, the same should be cancelled.

h. Unsupported creditable tax withheld—₱11,081.04

In its Annual ITR for the fiscal year ended August 31, 2009, petitioner reported creditable tax withheld for the first three Quarters in the amount of ₱88,060.00.[92] Respondent, however, found that ₱11,081.04 of the creditable tax withheld are unsupported.

Petitioner did not contest the disallowance, hence the same should be upheld. *gr*

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[89] Exhibit A-2, Docket Vol. II, p. 274.
[90] Exhibit M, Docket Vol. II, p. 345.
[91] BIR Records, p. 595.
[92] Exhibit T-1, Line 28C, Docket Vol. II, p. 592.

In fine, petitioner's deficiency income tax liability is ₱563,695.49, computed as follows:

Net taxable income per return	₱ -
Add/Deduct:	
Unsupported impairment losses	₱ 1,499.00
Unsupported Rental/Tolling Fees	193,790.00
Overstatement of salaries and wages	1,549,809.27
Total amount subject to income tax	₱ 1,745,098.27
Tax Rate	31.67%
Income tax due	₱ 552,614.45
Add: Unsupported creditable tax withheld	11,081.04
Deficiency income tax	**₱ 563,695.49**

Deficiency Value-Added Tax

Upon examination of petitioner's records, respondent's examiner found the following deficiency value-added tax:[93]

Gross taxable sales per audit	₱ 31,607,410.00
Output tax	3,792,889.20
Less: Creditable input tax	1,760,543.06
VAT due	2,032,346.14
Less: Value-added tax payments/withheld	949,453.43
Value added tax deficiency	**₱ 1,082,892.71**

It is represented that zero-rated sales in the amount of ₱2,044,224.00 was not supported by sales invoices, thus subjected to VAT. Further, presumptive input tax of ₱411,767.01 was disallowed for failure to support the purchases of primary agricultural products which were used as inputs for production.[94]

Petitioner argues that there is no basis for the computation of the deficiency VAT. Moreover, as discussed previously, respondent's right to assess deficiency VAT the first to the third quarters has prescribed.

Thus, the Court will only consider the deficiency VAT assessment for the Fourth Quarter of the FY ended August 31, 2009.

Per its Quarterly VAT Returns, petitioner declared total sales for the fiscal year ending August 31, 2009 in the aggregate amount of ₱35,529,939.01, broken down as follows:

[93] Exhibit A-1, Docket Vol. II, p. 272.
[94] Exhibit A-2, Docket Vol. II, p. 274.

Exhibit	Period	VATable Sales	Exempt Sales	Zero-rated Sales	Total Sales
"Q"	1st Qtr Sep-Nov 08	₱ 5,517,513.84	₱ 1,182,278.32	₱ 425,088.00	₱ 7,124,880.16
"Q-1"	2nd Qtr Dec 08-Feb 09	7,906,768.58	949,400.91	-	8,856,169.49
"Q-2"	3rd Qtr Mar-May 09	8,753,638.85	940,418.23	1,202,592.00	10,896,649.08
"Q-3"	4th Qtr Jun-Aug 09	7,385,264.73	850,431.55	416,544.00	8,652,240.28
	TOTAL	**₱29,563,186.00**	**₱3,922,529.01**	**₱2,044,224.00**	**₱35,529,939.01**

Petitioner likewise reported the following input taxes and VAT payments in its VAT Returns for the same taxable period:

Exhibit	Period	Input tax from purchase of goods & services	Presumptive Input tax	Total Input Taxes	VAT Payments[95]
"Q"	1st Qtr Sep-Nov 08	₱ 253,622.66	₱ 50,084.72	₱ 303,707.38	₱ 350,964.10
"Q-1"	2nd Qtr Dec 08-Feb 09	610,576.77	76,777.54	687,354.31	191,286.02
"Q-2"	3rd Qtr Mar-May 09	627,526.49	134,196.63	761,723.12	270,795.24
"Q-3"	4th Qtr Jun-Aug 09	487,303.27	150,708.10	638,011.37	146,408.07
TOTAL		**₱ 1,979,029.19**	**₱411,766.99**	**₱2,390,796.18**	**₱ 959,453.43**

Taking into consideration the prescribed portion of the assessment, the adjusted deficiency VAT assessment is as follows:

Gross taxable sales per audit	₱ 7,801,808.73
Output tax	₱ 936,217.05
Less: Input tax attributable to taxable sales[96]	439,406.07
VAT due	₱ 496,810.98
Less: VAT payments	146,408.07
Value added tax deficiency	**₱ 350,402.91**

Respondent found that petitioner's zero-rated sales are not properly substantiated, thus included in its taxable sales. Moreover, petitioner's presumptive input taxes, which were found to be unsubstantiated, were not included in the input taxes used to offset the output tax due.

In response, petitioner submitted its zero-rated sales invoices for the first and third quarters[97] but failed to submit the invoice for the fourth quarter. Anent its purchases subject to presumptive input

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[95] BIR Records, pp. 293-324 and 590.

[96] Computed as:
Input tax attributable to taxable sales = (Total taxable sales/Total sales) x Total input taxes
₱439,406.07 = (₱7,801,808.73/₱8,652,240.28) x ₱487,303.27

[97] Exhibits V and V-1.

tax, the same has been discussed previously under the deficiency income tax assessment. Considering only the portion not barred by prescription, the presumptive input tax for the Fourth Quarter amounting to ₱150,708.10 should be properly supported. However, documents submitted only accounted for ₱91,439.30 of the presumptive input tax for the quarter:

Exhibit	Date	Supplier	Purchases	Presumptive Input Tax
X-67B	6/16/2009	Yuseq Agro Industrial Trading	₱ 124,723.50	₱ 4,988.94
X-69B	6/18/2009	Roberto L. Sanson Aqua Farm	48,272.00	1,930.88
X-69C	6/19/2009	Roberto L. Sanson Aqua Farm	153,255.00	6,130.20
X-70B	6/21/2009	Amodia Glassware & Sari-sari Store	26,030.00	1,041.20
X-71B	6/22/2009	Vamda Fishing Corporation	221,661.00	8,866.44
X-72B	6/24/2009	Asia Pacific Aquamarine, Inc.	220,368.00	8,814.72
X-74C	6/15/2009	New Victorias Ice Plant & Cold Storage, Inc.	792.86	31.71
X-75B	7/8/2009	Vamda Fishing Corporation	91,416.00	3,656.64
X-76B	7/8/2009	Vamda Fishing Corporation	96,152.00	3,846.08
X-80B	6/19/2009	Mardal Corporation	62,740.00	2,509.60
X-81B	7/1/2009	Ely Olvido	173,712.00	6,948.48
X-82B	7/3/2009	J. Santibañez Enterprises	143,744.00	5,749.76
X-83B	7/1/2009	Roberto L. Sanson Aqua Farm	222,429.00	8,897.16
X-85B	7/6/2009	Resilyn Y. Debayde	260,792.00	10,431.68
X-86B	7/6/2009	J. Santibañez Enterprises	49,872.00	1,994.88
	7/6/2009	J. Santibañez Enterprises	42,304.00	1,692.16
X-87B	7/8/2009	J'Alfred Grill & Restobar	33,113.00	1,324.52
X-88B	7/28/2009	Alrac, Inc.	125,417.16	5,016.69
X-89B	8/19/2009	RPJ Mall	72,966.96	2,918.68
X-90B	8/26/2009	RPJ Mall	116,222.04	4,648.88
		TOTAL	**₱ 2,285,982.52**	**₱ 91,439.30**

Hence, petitioner still has deficiency VAT liability in the reduced amount of ₱267,851.21, computed as follows:

Gross taxable sales per audit	₱ 7,801,808.73
Output tax	₱ 936,217.05
Less: Input tax attributable to taxable sales[98]	521,857.77
VAT due	₱ 414,359.28
Less: VAT payments	146,408.07
Value added tax deficiency	**₱ 267,951.21**

Compromise Penalty

[98] Computed as:
Input tax attributable to taxable sales = (Total taxable sales/Total sales) x Total input taxes
₱521,857.77 = (₱7,801,808.73/₱8,652,240.28) x (₱487,303.27 + ₱91,439.30)

In connection with the subject assessments, respondent suggested the following compromise penalties:

a) For failure to pay the correct income tax due (Sec. 255 of the NIRC, as amended)	₱ 50,000.00
b) For failure to pay the correct value-added tax due (Sec. 255 of the NIRC, as amended)	25,000.00
c) For failure to withhold and remit expanded withholding tax on income payments (Sec. 255 of the NIRC, as amended)	16,000.00
Total	**₱ 91,000.00**

Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-07, compromise penalties are only 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. Thus, compromise penalties imply mutual agreement between the taxpayer, on one hand, and the CIR, on the other. Absent any showing that petitioner consented to the compromise penalties, the same should not be imposed. Seeing that petitioner has sought relief by filing a Petition for Review before this Court, it is clear that it did not consent to the assessments and the suggested compromise penalties.

CONCLUSION

To recapitulate, Petitioner's total basic deficiency tax liability amounts to ₱831,646.70, broken down as follows:

Tax Type	Basic Deficiency
Income tax	₱ 563,695.49
Value-added tax	267,951.21
TOTAL	**₱ 831,646.70**

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**.

Accordingly, Petitioner is **ORDERED TO PAY** the Respondent basic deficiency income and value-added tax for the fiscal year ending August 31, 2009 in the amount of One Million Thirty Nine Thousand Five Hundred Fifty Eight and 37/100 Pesos (₱1,039,558.37), inclusive of 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows: *jc*

Tax Type	Basic Deficiency	Surcharge (25%)	Total
Income tax	₱ 563,695.49	₱ 140,923.87	₱ 704,619.36
VAT	267,951.21	66,987.80	334,939.01
TOTAL	**₱ 831,646.70**	**₱ 207,911.67**	**₱1,039,558.37**

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

(a) 20% per annum deficiency interest pursuant to Section 249(B) of the NIRC of 1997, as amended, on the basic deficiency income tax, and value-added tax computed from December 15, 2009 and September 25, 2009, respectively, until full payment thereof ; and

(b) 20% per annum delinquency interest on the total amounts of ₱704,619.36 and ₱334,939.01 deficiency income tax and value-added tax, respectively, and on the deficiency interest which have accrued as stated in (a) computed from July 31, 2012[97] until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[97] Formal Letter of Demand, Exhibit "A-1", Docket Vol. II, pp. 272-273.

ATTESTATION

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

JUANITO C. CASTANEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and 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