REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SOUMAK COLLECTIONS, INC.,
Petitioner,

CTA CASE NO. 8686

-versus-

Members:

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

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 24 2016
10:40 a.m.

x---x

DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

The Petition for Review seeks to set aside the Final Decision on Disputed Assessment (FDDA) dated July 8, 2013 finding Soumak Collections, Inc. liable for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and documentary stamp tax (DST) in the aggregate amount of ₱2,827,881.27 for taxable year 2008.

STATEMENT OF FACTS

Petitioner Soumak Collections, Inc. is a domestic corporation duly organized and validly existing under Philippine laws, with business office at 101 Bormaheco Condominium, Zapote Street cor. Metropolitan Avenue, Makati City.[1] It engages in, conducts, and carries on the business of buying, selling, distributing, marketing at wholesale and retail insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description, and enters into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale or retail and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise or products whether natural or artificial.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to issue assessments, to decide disputed assessments, and to cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On October 13, 2009, respondent issued a Letter of Authority, which petitioner received on October 28, 2009, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes covering taxable year 2008.[3] Consequently, respondent required petitioner to submit documents pertinent to the investigation.[4]

Respondent sent petitioner a Final Notice[5] dated January 5, 2010 in connection with the subject investigation, which petitioner received on January 14, 2010.[6] Thereafter, petitioner transmitted the required documents to respondent.[7]

Subsequently, respondent issued a Notice for Informal Conference, which was received by petitioner on October 6, 2011.[8] On October 20, 2011, petitioner replied to the said notice for informal conference and submitted additional documents.[9]

On November 15, 2011, petitioner received a letter dated November 3, 2011 from respondent, stating that certain claimed input taxes were disallowed

---

[1] Par. 2, Stipulation of Facts, Joint Stipulation of Facts (JSF), docket, p. 763.
[2] Exhibit "P-2", docket, pp. 529 to 539
[3] Exhibits "R-1", "R-1-a" and "R-1-b", BIR records, p. 50
[4] Exhibits "R-2", "R-2-a" and "R-2-b", BIR records, p. 49
[5] Exhibit "P-3", docket, p. 557; Exhibits "R-4", "R-4-a" and "R-4-b", BIR records, p. 54
[6] Par. 3, Stipulation of Facts, JSF, docket, p. 763
[7] Exhibits "P-4", "P-4-A", "P-4-B" "P-4-C" and "P-4-D", docket, pp. 558, 574, 575, 576 and 577, respectively
[8] Exhibit "P-5", docket, p. 578; Exhibits "R-5", "R-5-a" and 'R-5-b", BIR records, p. 731
[9] Exhibit "P-6", docket, pp. 583 to 586

because some of petitioner's suppliers did not issue receipts, and attached therewith is a revised computation of the deficiency taxes.[10]

Petitioner replied to the letter dated November 3, 2011 and submitted again additional documents on December 9, 2011.[11] However, respondent still disallowed petitioner's input tax through a letter which was received by petitioner on December 13, 2011.[12]

Respondent issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies both dated December 23, 2011, which was received by petitioner on January 2, 2012.[13]

On January 11, 2012, a Waiver of the Defense of Prescription was executed by Yolanda P. Johnson, President and General Manager of the petitioner[14]

On January 12, 2012, respondent issued a Formal Assessment Notice (FAN), informing petitioner of its income tax, VAT, EWT, and DST deficiencies for taxable year 2008, detailed as follows:[15]

Income Tax			
Taxable income/(loss) per ITR			₱ 526,827.00
Add: Unsupported Expenses (Annex B)			531,147.72
Taxable Income per Audit			₱ 1,057,974.72
Basic Income Tax Due			₱ 370,291.15
Less: Tax Paid per ITR			
Prior year excess tax credit		₱ 849,854.00	
Creditable tax withheld		-	
Total		₱ 849,854.00	
Less: Deductions/Disallowance			
Disallowed prior years excess tax credit		₱ 849,854.00	
Excess tax credit carried over to succeeding quarter		787,146.76	(787,146.76)
Basic Deficiency Income Tax			₱ 1,157,437.91
Add: Interest (04/16/09 to 2/20/12)			659,581.06
TOTAL AMOUNT DUE			₱ 1,817,018.97
VALUE-ADDED TAX			
Vatable Sales per Return			₱ 12,720,419.86
Less: Creditable Input Tax			₱ 1,526,450.38
Claimed Input Taxes		696,923.23	
Less: Deductions from Input Tax			
Unsupported Input Taxes (Annex B)	₱ 90,041.65		
Disallowed Input Taxes claimed per Return (Schedule 1)	102,742.91	192,784.56	504,138.67
VAT Payable/(Excess Input Tax)			₱ 1,022,311.71
Less: Tax Paid per Return			720,737.95

[10] Par. 4, Stipulation of Facts, JSF, docket, pp. 763-764; Exhibit "P-7", docket, p. 636; Exhibits "R-6" and "R-6-a", BIR records, p. 737

[11] Exhibit "P-8", docket, pp. 644 to 647

[12] Exhibit "P-9", docket, p. 648

[13] Par. 6, Stipulation of Facts, JSF, docket, p. 764; Exhibit "P-10", docket, pp. 649 to 652

[14] Par. 7, Stipulation of Facts, JSF, docket, p. 764; Exhibit "P-11", docket, p. 653

[15] Par. 8, Stipulation of Facts, JSF, docket, p. 764; Exhibit "P-12", docket, p. 655 to 656

Basic Deficiency Value-Added Tax			₱ 301,573.76
Add: Interest (01/26/09 to 02/20/12)			185,075.41
TOTAL AMOUNT DUE			₱ 486,649.17
EXPANDED WITHHOLDING TAX			
Basic Tax Due (Schedule 2)			₱ 3,970.39
Add: Interest (1/16/09 to 2/20/12)			2,458.38
TOTAL AMOUNT DUE			₱ 6,428.77
DOCUMENTARY STAMP TAX			
Basic Tax Due (Schedule 2)			₱ 31,692.00
Add: 50% Surcharge		₱ 15,846.00	
Interest (01/06/09 to 02/20/12)		19,796.65	35,642.65
TOTAL AMOUNT DUE			67,334.65

Thereafter, petitioner filed its protest to the FAN. Respondent received the protest letter on January 17, 2012.[16] This was followed by another letter sent by petitioner to respondent dated February 8, 2012, stating that it attached thereto a copy of the tally it prepared and photocopies of its January, February, and 1st Quarter of 2008 returns for the latter's appreciation.[17]

Petitioner paid basic tax due for EWT in the amount of ₱3,970.39 and interest as of the time of payment on March 27, 2012.[18] This is the same basic tax due forming part of the EWT assessed in the FDDA in the total amount of ₱7,625.33.[19]

Petitioner paid the basic tax due for DST in the amount of ₱31,692.00, surcharge in the amount of ₱15,846.00, and interest as of the time of payment on March 27, 2012.[20] These amounts are the same basic tax due and surcharge forming part of the DST assessed in the FDDA in the total amount of ₱76,885.66.[21]

On June 19, 2012, petitioner sent a letter to respondent, manifesting that the disallowed prior year's excess tax credit amounting to ₱849,854.00 claimed in the income tax return for 2008 did not appear in petitioner's income tax return for 2007, and based on the reported Financial Statement for 2007, the said amount was the balance of Deferred Tax Assets for the year 2007.[22]

Thereafter, respondent sent petitioner a letter dated November 29, 2012, which was received by petitioner on December 4, 2012. In the said letter, respondent informed petitioner that its case was already forwarded to the Assessment Division for the issuance of the FDDA.[23]

---

16 Exhibit "P-13", docket, p. 663
17 Exhibit "14", docket, p. 664
18 Exhibits "P-18", "P-19", "P-19-a", docket, pp. 688 to 691
19 Par. 11, Stipulation of Facts, JSF, docket, p. 764
20 Exhibits "P-18", "P-20", "P-20-a", "P-20-b", docket, pp. 688 to 689, p. 693, p. 694 and p. 695, respectively
21 Par. 12, Stipulation of Facts, JSF, docket, p. 764
22 Exhibit "P-15", docket, p. 682
23 Par. 9, Stipulation of Facts, JSF, docket, p. 764; Exhibit "P-17", docket, pp. 686 to 687

On July 8, 2013, respondent issued the FDDA with Details of Discrepancies, which petitioner received on July 11, 2013.[24] In the said FDDA, respondent assessed petitioner for deficiency income tax in the amount of ₱2,165,835.87, deficiency VAT in the amount of ₱577,534.41, deficiency EWT in the amount of ₱7,625.33, and deficiency DST in the amount of ₱76,885.66, all inclusive of interest.

As a result, petitioner filed the instant Petition for Review[25] on August 7, 2013.

Respondent filed her Answer[26] by registered mail on October 18, 2013. In the Answer, respondent interposed as her special and affirmative defenses the following: that "Assessment are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed; that the Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction; that Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals provides that only decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue can be subject of appeal before this Court. And considering that the petitioner failed to file the necessary supporting documents, the assessment in the instant case already became final and executory, and demandable; that the Final Decision on Disputed Assessment issued on July 8, 2013 which adopted the findings embodied in the Formal Assessment Notice (FAN) and its Details of Discrepancies both dated January 12, 2013 for failure of the petitioner to submit any supporting paper/documents to its protest, reflects the internal revenue liabilities of the petitioner for the taxable year 2008 as a result of its failure to pay Income Tax in the amount of ₱2,165,835.87, VAT in the amount of ₱577,534.41, Expanded Withholding Tax in the amount of ₱7,625.33, Withholding Tax on Compensation in the amount of ₱15,344.73, and Documentary Stamp Tax in the amount of ₱76,885.66, exclusive of the 50% surcharges and 20% interest per annum; that the bases of the findings in the aforementioned assessment are enumerated in the Details of Discrepancies.

Thereafter, the case was set for Pre-Trial Conference on January 23, 2014.[27] Subsequently, petitioner's Pre-Trial Brief[28] and the Pre-Trial Brief (for

[24] Exhibit "P-1", docket, pp. 524 to 527
[25] Docket, pp. 6 to 24
[26] Docket, pp. 254 to 259
[27] Notice of Pre-Trial Conference issued on October 29, 2013, docket, p. 260
[28] Docket, pp. 283 to 290

the Respondent)[29] were filed on January 20, 2014 and January 16, 2014, respectively.

On February 25, 2014, the parties filed with this Court their Joint Stipulation of Facts[30]. The Pre-Trial Order[31] was later issued by the Court on May 19, 2014.

During trial, both parties presented their respective documentary and testimonial evidence.

After presentation, marking, identification, and offer of evidence, the Court admitted as part of petitioner's documentary evidence Exhibits "P-1" to "P-22", with the exception of Exhibits "P-21", "P-21-L", "P-21-M", and "P-21-N", which were denied admission for petitioner's failure to submit the originals for comparison.[32]

On the other hand, the Court admitted as part of respondent's evidence Exhibits "R-1" to "R-7-a"; while Exhibits "R-8" and "R-8-a" were denied admission for failure to correspond with the documents actually marked.[33]

Petitioner filed its Memorandum[34] on February 18, 2015. Respondent failed to submit her Memorandum as per Records Verification Report[35] of the Court's Judicial Records Division dated February 20, 2015.

In the Resolution dated March 9, 2015,[36] the Court declared the case submitted for decision.

STATEMENT OF ISSUES

The parties submitted the following issues[37] for this Court's disposition:

> "1. Whether petitioner is liable for the following taxes for the fiscal year 2008:
>
> A. income taxes in the total amount of ₱2,165,835.87.

---

[29] Docket, pp. 270 to 272
[30] Docket, pp. 763 to 766
[31] Docket, pp. 773 to 779
[32] Resolution dated July 23, 2014, docket, pp. 809 to 810
[33] Resolution dated January 6, 2015, docket, pp. 840 to 842
[34] Docket, pp. 843 to 860
[35] Docket, p. 861
[36] Docket, p. 863
[37] Stipulation of the Issues, JSF, docket, p. 765

B. value-added taxes in the total amount of ₱577,534.41."

DISCUSSION/RULING

JURISDICTION OF THE COURT

Section 228 of the National Internal Revenue Code of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, that a pre-assessment notice shall not be required in the following cases:
>
> 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.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> 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."

Respondent issued the FAN on January 12, 2012, which petitioner protested on January 17, 2012.[38] On February 8, 2012, petitioner submitted documents such as the tally sheet that petitioner prepared and the photocopies of its January, February, and 1st Quarter of 2008 returns.[39]

Respondent released the FDDA denying the said protest on July 8, 2013, and petitioner received the FDDA on July 11, 2013.[40] Accordingly, petitioner had thirty (30) days from July 11, 2013 or until August 10, 2013 within which to appeal the adverse decision of respondent.

Petitioner filed the instant Petition for Review on August 7, 2013, hence, the Court has jurisdiction over this case.

The Court shall now proceed to determine whether petitioner is liable for the assessed deficiency taxes.

Petitioner was assessed for alleged deficiency income tax, VAT, EWT, and DST for taxable year 2008, computed as follows:[41]

		Basic Tax	Interest	Total
I.	Income Tax	₱ 1,157,437.91	₱ 1,008,397.96	₱ 2,165,835.87
II.	VAT	301,573.76	275,960.65	577,534.41
III.	EWT	3,970.39	3,654.94	7,625.33
IV.	DST	31,692.00	45,193.66	76,885.66
Total		**₱1,494,674.06**	**₱1,333,207.21**	**₱2,827,881.27**

I. DEFICIENCY INCOME TAX – ₱2,165,835.87

Respondent assessed petitioner for deficiency income tax covering taxable year 2008 amounting to ₱2,165,835.87, inclusive of interest, computed as follows:[42]

Taxable income (loss) per ITR	₱ 526,827.00
Add: Unsupported Expenses (Annex B)	531,147.72
Taxable Income per Audit	₱ 1,057,974.72
Basic Income Tax Due (35%)	₱ 370,291.15

[38] Exhibits "P-12" and "P-13", docket, pp. 655 to 656 and 663
[39] Exhibit "P-14", docket, p. 664
[40] Exhibit "P-1", docket, pp. 524 to 528
[41] Exhibit "P-1"
[42] Exhibit "P-1"

Less: Tax Paid per ITR			
Prior year excess tax credit		₱ 849,854.00	
Creditable tax withheld		-	
Total		₱ 849,854.00	
Less: Deductions/Disallowance			
Disallowed prior year's excess tax credit	₱849,854.00		
Excess tax credit carried over to succeeding quarter	787,146.76	1,637,000.76	(787,146.76)
Basic Deficiency Income Tax			₱ 1,157,437.91
Add: Interest (04/16/09 to 08/23/13)			1,008,397.96
TOTAL AMOUNT DUE			**₱2,165,835.87**

The resolution of whether or not the 2008 deficiency income tax assessment of ₱2,165,835.87 is correct basically hinges on the propriety of the expenses and tax credits disallowed by respondent, namely:

A.	Unsupported expenses	₱531,147.72
B.	Disallowed prior year's excess tax credit	₱849,854.00
C.	Amount carried over to succeeding year	₱787,146.76

A. Unsupported Expenses – ₱531,147.72

Invoking Section 34(A)(1)(b) of the NIRC of 1997, as amended, respondent disallowed petitioner's claimed expenses in the aggregate amount of ₱531,147.72 for being unsupported by official receipts or invoices.[43]

While petitioner concedes to the disallowance of the amount of ₱63,147.00, petitioner asserts that the remaining amount of ₱468,000.72 (₱531,147.72 less ₱63,147.00) has been substantiated by official receipts and invoices.[44]

However, perusal of the evidence submitted would lead to the following unsupported expenses totaling ₱121,320.10, detailed as follows:

	Per BIR's Audit[45]		Supporting Documents (Exhibit Number)		Per this Court's Verification		
	CV#	Disallowed Amount	Sales Invoice	Official Receipt	Allowable Expense Deduction	Input VAT	Disallowed Expense Deduction

[43] Exhibit "P-1", Details of Discrepancies, docket, p. 526
[44] Petitioner's Memorandum, docket, pp. 848 to 851
[45] Exhibit "P-1", Annex B, docket, p. 528

Romeo Roderico Valdizno	3892	₱ 6,300.00					₱ 6,300.00
Apolinar Maylon Jr.	3872	2,866.09	"P-21-B"	"P-21-C"	₱ 2,866.09		-
Apolinar Maylon Jr.	3870	14,000.00	"P-21-F"		12,500.00	₱ 1,500.00	-
Teresa Marble Corp.	3861	32,450.00					32,450.00
Oscar Bullan	3853	54,100.00					54,100.00
E. Murio Inc.		37,747.50					37,747.50
Ocean-link Container Term Inc.	3816	24,924.21					24,924.21
First Imperial Cargo	3799	42,568.41					42,568.41
Nanette Kagaoan	3792	49,062.00	"P-21-AA"	"P-21-AA"	27,733.03	3,328.07	18,000.90
Crispin Lohan	3788	5,200.00					5,200.00
Nanette Kagaoan	3787	2,940.00	"P-21-H"	"P-21-G"	2,625.00	315	-
Eusebio Cruz	3907	3,125.00					3,125.00
Teresa Marble Corp.	4047	64,900.00	"P-21-I"		57,946.43	6,953.57	-
Crispin Lohan	4038	1,386.00					1,386.00
Osmundo Esguerra	4033	41,852.58					41,852.58
Toyotacars Motor Parts	4078	15,680.00					15,680.00
PLDT/BIR Form 2307 under the name of Fibex Phils. Inc.		5,917.19					5,917.19
Best Shipping Lines	4032	13,353.75					13,353.75
Eliza Reyes	4031	40,500.00	"P-21-K"		40,500.00		-
Nanette Kagaoan	4029	5,446.43					5,446.43
Nora Abastillas	4026	4,400.00					4,400.00
Nora Abastillas	3965	13,800.00					13,800.00
Eliza Reyes	4010	30,546.45					30,546.45
Eliza Reyes	4009	7,942.08					7,942.08
Joel Tiyad	4007	38,313.00					38,313.00
Eliza Reyes	4006	40,095.00	"P-21-P"		40,095.00		-
Crispin Lohan	4003	12,200.00					12,200.00
Daniel Ramon Viloria	3997	22,674.63		"P-21-R"	20,245.21	2,429.42	-
Salvador Yasona	3995	3,920.40					3,920.40
Eliza Reyes	3991	80,190.00	"P-21-T", "P-21-U"		80,190.00		-
Marina Nabejet/Office Warehouse	3955	3,045.00					3,045.00
Joel Tiyad	4135	57,750.00					57,750.00
First Imperial Cargo	4134	(377,357.00)					(377,357.00)
Nanette Kagaoan	4130	92,960.00	"P-21-W"	"P-21-X"	81,340.00	9,760.80	1,859.20
Crispin Lohan	4128	2,989.00					2,989.00
Vivien D. Smith	4121	13,860.00					13,860.00
Eliza Reyes	4107	19,500.00	"P-21-Z"		19,500.00		-
		₱531,147.72			**₱385,540.76**	**₱24,286.86**	**₱121,320.10**

Thus, the Court will sustain the disallowance of the amount of ₱121,320.10 as deduction from petitioner's taxable gross income for the year 2008 in accordance with Section 34(A)(1)(b) of the NIRC of 1997, as amended, which states:

> "SEC. 34. *Deductions from Gross Income.* – xxx
>
> (A) *Expenses.* –
>
> (1) *Ordinary and Necessary Trade, Business or Professional Expenses.* –
>
> xxx xxx xxx
>
> (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.

B. Disallowed Prior Year's Excess Tax Credit – ₱849,854.00

Pursuant to Section 76 of the NIRC of 1997, as amended, respondent disallowed the prior year's excess tax credit in the total amount of ₱849,854.00 as per evaluation of petitioner's 2007 Annual Income Tax Return (ITR) which does not have excess tax credit to be carried over to the succeeding taxable year 2008.[46]

Records reveal that petitioner did not submit evidence such as the prior year's ITR and Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) to refute the afore-mentioned disallowance. Moreover, petitioner did not contest the disallowance since the filing of its Petition for Review up to the submission of its Memorandum. Thus, being an erroneous claim of tax credit on the part of petitioner, respondent's disallowance thereof should be upheld.

C. Amount Carried Over to Succeeding Years – ₱787,146.76

Respondent disallowed excess tax credit carried over to succeeding taxable years in the amount of ₱787,146.76 in order to allegedly recapture the tax benefit realized by petitioner.[47]

The Court opines that it is improper for respondent to add back such amount. Respondent failed to state her basis in establishing the allegation that

[46] Exhibit "P-1", Details of Discrepancies, docket, p. 526
[47] Exhibit "P-1", Details of Discrepancies, docket, p. 526

petitioner used the excess tax credit in the succeeding years. Since the tax benefit will be in the succeeding years, at most, petitioner may only be assessed in the said succeeding years.

In sum, petitioner is liable to pay basic deficiency income tax for taxable year 2008 in the amount of ₱105,169.28, computed as follows:

Taxable income/(loss) per ITR	₱ 526,827.00
Add: Unsupported Expenses	121,320.10
Taxable Income per Audit	₱ 648,147.10
Basic Income Tax Due	₱ 226,851.49
Less: Tax Payments for the first three quarters	121,682.21
Basic Deficiency Income Tax	**₱105,169.28**

II. DEFICIENCY VALUE-ADDED TAX – ₱577,534.41

Respondent computed the deficiency VAT assessment in the amount of ₱577,534.41, inclusive of interest, as follows:[48]

Vatable Sales per Return			₱12,720,419.86
Output Tax (12%)			₱ 1,526,450.38
Less: Creditable Input Tax			
Claimed Input Taxes		₱696,923.23	
Less: Deductions from Input Tax			
Unsupported Input Taxes (Annex B)	₱ 90,041.65		
Disallowed Input Taxes Claimed per Return (Schedule 1)	102,742.91	192,784.56	504,138.67
VAT Payable/(Excess Input Tax)			₱ 1,022,311.71
Less: Tax Paid per Return			720,737.95
Basic Deficiency Value-Added Tax			₱ 301,573.76
Add: Interest (01/26/09 to 08/23/13)			275,960.65
TOTAL AMOUNT DUE			**₱ 577,534.41**

Two items of the assessment are vital in the determination of whether or not petitioner is liable of any deficiency VAT for taxable year 2008, namely:

1.	Unsupported Input Taxes	₱ 90,041.65
2.	Disallowed Input Taxes Claimed per Return	₱102,742.91

A. Unsupported Input Taxes – ₱90,041.65

[48] Exhibit "P-1", docket, p. 524

Pursuant to Sections 110 and 113 of the NIRC of 1997, as amended, respondent disallowed unsupported input tax credits claimed by petitioner in the amount of ₱90,041.65, detailed as follows:[49]

	CV#	Input VAT
Best Shipping Lines	4032	₱ 1,430.75
Nanette Kagaoan	4029	653.57
Ramon Daniel Viloria	3997	2,451.28
Marina Nabejet/Office Warehouse	3955	326.25
		₱ 4,861.85
Eliza Reyes	3896	₱ 7,118.44
Joel Tiyad	3895	39,618.86
Nanette Kagaoan	3894	8,522.40
Joselito Roxas	3878	1,446.43
Apolinar Maylon, Jr.	3872	343.93
Apolinar Maylon, Jr.	3870	1,500.00
Joel Tiyad	3834	2,571.43
Eliza Reyes	3832	6,463.89
Eusebio Cruz	3821	4,350.00
Luminaire Printing	3819	803.57
First Imperial Cargo	3799	4,560.90
Nanette Kagaoan	3792	3,328.08
Nanette Kagaoan	3939	1,467.86
Crispin Lohan	3918	428.51
Sobair Comilao	3911	330.00
Toyota Motor Parts	4078	1,680.00
PLDT/BIR From 2307 under Fibex Phils		645.51
		₱ 85,179.80
Total Unsupported Input Tax		**₱ 90,041.65**[50]

Petitioner asserts that out of the total disallowance of ₱90,041.65, ₱55,863.67 was not claimed as input tax and ₱29,768.15 was properly supported by official receipts and/or sales invoices; thus, only the balance of ₱4,409.83 should be disallowed.[51]

The Court finds petitioner's contention of unclaimed input taxes in the amount of ₱55,863.67 meritorious. The schedules of input taxes[52] for the months of January to December 2008 disclose that the said input taxes were not claimed by petitioner as input tax credits for the subject year. Therefore, it

[49] Exhibit "P-1", Annex B, docket, pp. 526 and 528

[50] ₱90,071.66 instead of ₱90,041.65, (₱4,861.85 + 85,179.81 = ₱90,071.66), computational error on the part of respondent

[51] Petitioner's Memorandum, docket, pp. 852 to 856

[52] Exhibits "P-22" and sub-markings, docket, pp. 724 to 728

is erroneous on the part of respondent to disallow the amount of ₱55,863.67, detailed below, since petitioner did not derive any tax benefit therefrom:

	CV#	Input VAT
Eliza Reyes	3896	₱ 7,118.44
Joel Tiyad	3895	39,618.86
Joselito Roxas	3878	1,446.43
Joel Tiyad	3834	2,571.43
Eusebio Cruz	3821	4,350.00
Crispin Lohan	3918	428.51
Sobair Comilao	3911	330.00
Total		**₱55,863.67**

With regard to the input taxes claimed by petitioner as being supported by proper documentation totalling ₱29,768.15, perusal of the evidence submitted shows that only the amount of ₱14,999.21 represents petitioner's valid creditable input VAT as duly supported by VAT invoices/official receipts pursuant to Section 110(A)(1) in relation to Section 113(A)(1) and (2) of the NIRC of 1997, as amended. Below is the breakdown of the amount of ₱14,999.21:

		INPUT VAT				**Supporting Documents (Exhibit Number)**	
	CV#	**Disallowed Per BIR's Audit**	**Claimed Per VAT Return**	**Creditable Per Inv/OR**	**Disallowed per this Court's verification**	**Invoice**	**Official Receipt**
Nanette Kagaoan	3894	₱ 8,522.40	₱ 8,522.40	₱ 8,380.41	₱141.99	"P-23-A"	"P-23-B"
Nanette Kagaoan	3792	3,328.08	3,328.08	3,328.07	0.01	"P-23-C"	"P-23-C"
Nanette Kagaoan	3939	1,467.86	1,467.86	1,446.80	21.06	"P-23-I"	"P-23-J"
Apolinar Maylon, Jr.	3872	343.93	343.93	343.93		"P-23-F"	"P-23-G"
Apolinar Maylon, Jr.	3870	1,500.00	1,500.00	1,500.00		"P-23-M"	
		₱15,162.27	**₱15,162.27**	**₱14,999.21**	**₱163.06**		

As indicated in the above table, petitioner's claimed input VAT per returns amounted to ₱15,162.27 instead of the creditable input VAT of ₱14,999.21. Thus, the discrepancy in the amount of ₱163.06 representing over-claimed input VAT shall be disallowed.

Included in the ₱29,768.15 input VAT claimed by petitioner to be properly supported is the amount of ₱4,560.90, pertaining to petitioner's alleged payment to First Imperial Cargo per CV#3799. A scrutiny of CV#3799[53] and the related Bureau of Customs Import Entry and Declaration

[53] Attachment of Exhibit "P-6", docket, p. 587

Form[54], Bill of Lading[55], Temporary Assessment Notice[56] and Assessment Notice[57] shows petitioner's payment for customs duties (CUD) in the amount of ₱42,068.00 and import processing fees (IPF) in the amount of ₱500.00 totalling ₱42,568.00 and VAT in the amount of ₱37,687.00 in the aggregate sum of ₱80,255.00 on its importation of bedding products and fabric in January 2008. While the amount of VAT paid by petitioner on the importation was ₱37,687.00, respondent disallowed the amount of ₱4,560.90 representing 12% of ₱42,568.00, the sum of the CUD and IPF. Since the VAT due on the importation in the amount of ₱37,687.00 was paid, it was erroneous on the part of respondent to disallow the amount of ₱4,560.90.

As to the remaining disallowed input VAT of ₱10,044.98, included in the ₱29,768.15 input VAT claimed by petitioner to be properly supported, the same shall be disallowed for petitioner's failure to substantiate by proper VAT invoices or official receipts in accordance with Sections 110(A) in relation to Section 113(A)(1) and (2) of the NIRC of 1997, as amended, detailed as follows:

	CV#	Disallowed Input VAT per this Court's verification	Reason for Disallowance
Ramon Daniel Viloria	3997	₱ 2,451.28	Although supported by VAT OR, it cannot be determined from the OR whether the input VATclaim pertains to goods or services
Marina Nabejet/Office Warehouse	3955	326.25	Input VAT claim on purchase of goods supported by tape receipt instead of VAT invoice
Luminaire Printing	3819	803.57	Input VAT claim on purchase of services supported by VAT invoice instead of VAT OR
Eliza Reyes	3832	6,463.89	Input VAT claim merely supported by a receiving form
	Total	**₱10,044.99**	

In sum, petitioner's unsupported input VAT that should be disallowed amounted to ₱14,617.87, computed as follows:

Unsupported Input VAT per BIR's audit		₱ 90,041.65
Less: Properly Supported Input VAT	₱14,999.21	
Unclaimed input VAT	55,863.67	
Erroneously disallowed input VAT on importation	4,560.90	75,423.78
Unsupported Input VAT per this Court's verification		**₱14,617.87**

[54] Attachment of Exhibit "P-6", docket, p. 588
[55] Attachment of Exhibit "P-6", docket, p. 590
[56] Attachment of Exhibit "P-6", docket, p. 589
[57] Attachment of Exhibit "P-6", docket, p. 591

B. Disallowed Input Taxes Claimed per Return – ₱102,742.91

Respondent's verification disclosed that petitioner's claimed input tax per VAT returns for the four quarters of taxable year 2008 amounting to ₱696,923.23 was in excess of the allowable input tax of twelve percent (12%) of purchases for the same period. As a result, pursuant to Sections 110 and 113 of the NIRC of 1997, as amended, respondent disallowed the excess amounting to ₱102,742.91, computed as follows:[58]

	Purchases per VAT Return	Input Tax per Return	Should be	Discrepancy
1st Quarter	₱ 1,753,789.82	₱ 320,407.50	₱ 210,454.78	₱ 109,952.72
2nd Quarter	1,629,311.04	194,392.77	195,517.32	(1,124.55)
3rd Quarter	1,109,457.30	127,105.07	133,134.88	(6,029.81)
4th Quarter	458,944.51	55,017.89	55,073.34	(55.45)
Total	**₱ 4,951,502.67**	**₱ 696,923.23**	**₱ 594,180.32**	**₱ 102,742.91**

Petitioner contends that it made a typographical error or miscalculation in filling out the VAT return for the first quarter of taxable year 2008 and that instead of the declared purchases of ₱1,753,789.82, the correct amount should be ₱2,665,811.06, composed of domestic purchases in the amount of ₱722,017.40 and imported goods in the amount of ₱314,067.07 for January, domestic purchases in the amount of ₱631,047.84 for February and domestic purchases in the amount of ₱998,678.75 for March. With this adjusted first quarter purchases, petitioner posits that it even overpaid input taxes in the amount of ₱6,699.64.

This Court agrees with petitioner.

Following the correct computation of the total amount of purchases for the first quarter of taxable year 2008, petitioner actually had under-claimed its input tax per returns for the entire year 2008 in the amount of ₱6,699.64, as shown below:

	Purchases per Return	Input Tax per Return	Should be Input Tax	Discrepancy -Input Tax Per Return is higher/(lower)
January				
Domestic purchases	₱ 722,017.40	₱ 86,375.19[59]		
Imported purchases	314,067.08[60]	37,688.05		
February (Domestic purch.)	631,047.84	75,074.28[61]		

[58] Exhibit "P-1", docket, p. 526
[59] Exhibit "P-6", docket, p. 613
[60] Exhibit "P-6", docket, p. 613 (₱37,688.05 ÷ 12%)
[61] Exhibit "P-6", docket, p. 615

March (Domestic purch.)	998,678.75	121,269.98[62]		
1st Quarter	₱2,665,811.07	₱ 320,407.50	₱319,897.33	₱ 510.17
2nd Quarter	1,629,311.04	194,392.77	195,517.32	(1,124.55)
3rd Quarter	1,109,457.30	127,105.07	133,134.88	(6,029.81)
4th Quarter	458,944.51	55,017.89	55,073.34	(55.45)
Total	₱5,863,523.92	₱ 696,923.23	₱703,622.87	₱(6,699.64)

Consequently, the deficiency VAT assessment on the ₱102,742.91 input tax disallowance should be cancelled.

In sum, petitioner is liable to pay basic deficiency VAT for taxable year 2008 in the amount of ₱123,407.07, computed as follows:

VATable Sales per Return		₱12,720,419.86
Output Tax		₱ 1,526,450.38
Less: Creditable Input Tax		
Claimed Input Taxes	₱696,923.23	
Less: Unsupported Input Taxes	14,617.87	682,305.36
VAT Payable (Excess Input Tax)		₱ 844,145.02
Less: Tax Paid per Return		720,737.95
Basic Deficiency Value-Added Tax		**₱ 123,407.07**

III. EXPANDED WITHHOLDING TAX – ₱7,625.33

Pursuant to Section 2.57.2 of Revenue Regulations No. 02-98, as amended, respondent assessed petitioner for deficiency EWT for taxable year 2008 in the aggregate amount of ₱7,625.33, including interest, breakdown of which is as follows:[63]

Basic Tax Due (Schedule 2)	₱3,970.39
Add: Interest (01/16/09 to 08/23/13)	₱3,654.94
Total Amount Due	₱7,625.33

Based on Schedule 2 of the Details of Discrepancies attached to the FDDA, respondent computed the basic deficiency EWT due as follows:[64]

Goods	Amount	Tax Rate	EWT
Additions to Property and Equipment	₱ 37,978.00		

[62] Exhibit "P-6", docket, p. 617
[63] Exhibit "P-1", docket, pp. 525 and 526
[64] Exhibit "P-1", docket, p. 527

Inventory Purchases	6,184,788.99		
Office and Store Supplies	75,812.61		
Gas and Oil Lubricants	79,449.59		
Subtotal	₱ 6,378,029.19	1%	₱ 63,780.29
Services			
Communication, Light and Power	₱ 543,019.00		
Dues and Subscriptions	94,615.00		
Repairs and Maintenance	70,639.00		
Representation and Entertainment	18,384.00		
Insurance Expense	62,081.66		
Advertising and Promotional Expense	29,435.00		
Transportation and Travel	18,647.39		
Subtotal	₱ 836,821.05	2%	16,736.42
Rentals	₱ 1,436,341.00	5%	71,817.05
Professional Fees			
Audit Fees	₱ 20,000.00		
Professional and Legal Fees	177,601.00		
Commission Expenses	78,878.10		
Subtotal	₱ 276,479.10	10%	27,647.91
TOTAL			₱ 179,981.67
Less: Amount Remitted			176,011.28
Basic Tax Due			**₱ 3,970.39**

Petitioner states that it paid the said assessment on March 27, 2012[65], even before the FDDA was issued, in the total amount of ₱6,513.64 consisting of the basic tax of ₱3,970.39 and the deficiency interest of ₱2,543.25. Also, respondent did not dispute this assertion of petitioner. Verily, it is not one of the issues jointly stipulated by the parties for the resolution of the Court. Considering the foregoing, the said assessment should be set aside for having been duly paid by petitioner.

IV. DOCUMENTARY STAMP TAX – ₱76,885.66

Citing the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[66], respondent assessed petitioner for deficiency DST for taxable year 2008 in the total amount of ₱76,885.66, including increments, computed as follows:[67]

Basic Tax Due		₱ 31,692.00
Add: 50% Surcharge	₱15,846.00	
Interest (01/06/09 to 08/23/13)	29,347.66	45,193.66
Total Amount Due		**₱76,885.66**

[65] Exhibit "P-19" and sub-markings, docket, pp. 690 to 692
[66] G.R. Nos. 163653 and 167689, July 19, 2011
[67] Exhibit "P-1", docket, pp. 525 and 527

In Schedule 3 of the Details of Discrepancies attached to the FDDA, respondent computed the basic deficiency DST due as follows:

Advances from Stockholders	₱6,392,370.00
Multiply by: DST Rate	₱1/₱200
Tax Due	**₱ 31,962.00**

Petitioner points out that it paid the above-stated assessment on March 27, 2012[68], even before the FDDA was issued, in the total amount of ₱68,011.90 consisting of the basic tax of ₱31,692.00, surcharge of ₱15,846.00 and deficiency interest of ₱20,473.90. Respondent did not refute this assertion of petitioner. Further, it is not one of the issues jointly stipulated by the parties to be resolved by the Court. Therefore, this assessment should be set aside for having been duly paid by petitioner.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The deficiency EWT and DST assessments are **CANCELLED** in view of petitioner's payment of the same. The deficiency income tax and VAT assessments for taxable year 2008 are **UPHELD** in the modified amount of **TWO HUNDRED EIGHTY-FIVE THOUSAND SEVEN HUNDRED TWENTY PESOS AND 44/100 (₱285,720.44)**. Accordingly, petitioner is **ORDERED TO PAY** the amount of **₱285,720.44**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

TYPE OF TAX	BASIC TAX	SURCHARGE	TOTAL
Income Tax	₱ 105,169.28	₱ 26,292.32	₱ 131,461.60
Value-added Tax	123,407.07	30,851.77	154,258.84
Total	**₱228,576.35**	**₱57,144.09**	**₱285,720.44**

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

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax and value-added tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

TYPE OF TAX	BASIC TAX	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	₱105,169.28	April 15, 2009
Value-added Tax	₱123,407.07	January 25, 2009

[68] Exhibit "P-20" and sub-markings, docket, pp. 693 to 695

(b) Delinquency interest at the rate of 20% per annum on the total amount of **₱285,720.44** and on the 20% deficiency interest which have been accrued as afore-mentioned in (a), computed from August 23, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Ma. Belen S

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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 Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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