Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

YI WINE CLUB, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8809
For: Assessment

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

AUG 04 2017 : 11:09am

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review[1] filed on April 25, 2014 by Yi Wine Club, Inc., pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125[3], as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] Docket, pp. 14-30.

[2] Sec. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue 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 or other laws administered by the Bureau of Internal Revenue; xxx.

[3] Act Creating the Court of Tax Appeals.

[4] Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue 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 or other laws administered by the Bureau of Internal Revenue.

[5] Sec. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally

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Petitioner seeks the cancellation and withdrawal of the Decision of the Commissioner of Internal Revenue ordering petitioner to pay the aggregate amount of ₱1,857,496.69, covering deficiency income tax, expanded withholding tax (EWT) and compromise penalties, inclusive of increments, for taxable year 2007.

Petitioner Yi Wine Club, Inc. (YWCI) is an enterprise registered with the Clark Special Economic Zone and Freeport Zone, engaged in the restaurant business and in the sale of wines.[6]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, and cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations. He holds office at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.

Letter of Authority No. 00003683 dated January 13, 2009 was issued against petitioner, authorizing Revenue Officer Catheleya C. Aquino under Group Supervisor Virginia D. David of Revenue District Office (RDO) No. 21A-North Pampanga, Angeles City to examine its books of accounts and other accounting records for all internal revenue taxes covering taxable year 2007.[7]

As a result of the investigation conducted by the investigating examiner, a Notice for Informal Conference[8] dated August 2, 2010 was served to petitioner.

Thereafter, a Preliminary Assessment Notice[9] (PAN) dated November 9, 2010 was issued against petitioner demanding payment of the total amount of ₱1,727,017.00, inclusive of increments, as

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collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[6] Par. 2, The Parties, Petition for Review, docket, p. 14; Q&A Nos. 4 and 5, Amended Judicial Affidavit of Rodelio Redota, Docket, pp. 361-362.

[7] Par. 2, Joint Stipulation of Facts, Joint Stipulation Facts and Issues (JSFI), Docket, p. 337.

[8] Exhibit "R-1", BIR Records, p. 286.

[9] Exhibit "R-16", BIR Records, pp. 369-375.

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deficiency income taxes and expanded withholding taxes for taxable year 2007.

A Formal Letter of Demand[10] (FLD) and Assessment Notice No. 021A-07-084098200[11] dated December 16, 2010 was issued against petitioner, demanding payment in the amount of ₱1,629,528.00, ₱97,489.00 and ₱20,000.00, representing deficiency income taxes, expanded withholding taxes and compromise penalties, respectively, for taxable year 2007, pertinent portion of which reads:[12]

"ASSESSMENT NO. 021 A-07-084098200[13]

Sir/ Madam:

Please be informed that after investigation there have been found due from you deficiency income tax, expanded withholding tax and penalties for calendar year 2007 as shown hereunder:

Undeclared Revenue	₱ 1,224,159.00	
Interest Income on Non-Interest bearing Loans to Affiliates	2,843,488.00	4,067,647.00
Taxable Income per Audit		6,106,604.00
Income tax due 5%		163,156.00
35%		995,221.00
Total Income Tax due		1,158,377.00
Less: Tax paid & Tax Credits		101,386.00
Deficiency Income Tax		1,056,991.00
Interest		572,537.00
Total Deficiency Income Tax		**1,629,528.00**

Deficiency Expanded Withholding Tax

Taxable base	₱ 3,124,454.00
Withholding Tax Due	268,852.00
Less: Remittances	214,185.00
VAT Due	54,667.00
Interest	42,822.00
Total Deficiency Expanded Withholding Tax	**97,489.00**

Compromise Penalties

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[10] Exhibit "R-17", BIR Records, pp. 382-389.
[11] Exhibits "R-17-a", "R-17-a", and "R-17-a", BIR Records, pp. 379, 377, and 381.
[12] Par. 5, Joint Stipulation of Facts, JSFI, Docket, pp. 338-339.
[13] Exhibit "R-17", BIR Records, p. 389.

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For failure to file 1701Q 1st qtr, 1601 E	
for March, 1604 CF	3,000.00
Alphabetical list of Employees, SAWT	4,000.00
MAP attachment of 16011E(1,000/MAP)	12,000.00
Inventory list	1,000.00
Total Compromise Penalties	**20,000.00**
Total Amount Payable	**₱1,747,017.00**

Based on the Details of Discrepancies, the above computation is based on the following findings:

a. Unreported/undeclared revenue found per audit was subjected to income tax pursuant to the provisions of Section 23 and 27 of the National Internal Revenue Code.

b. Imputed interest on non-interest bearing loans to affiliates was imposed pursuant to the provisions of Section 50 of the National Internal Revenue Code.

c. Income payments were subjected to expanded withholding tax pursuant to the provisions of Revenue Regulations 2-98 and 17-2003 in relation to Section 57(B) of the National Internal Revenue Code.

Moreover, based on the Details of Discrepancies, the BIR came up with a deficiency expanded withholding tax based on the following computation:

EXPANDED WITHHOLDING TAX	
Professional Fees [taxable at 10% under Section 2.57.2(A) (1), RR 2-98]	₱2,217,333.00
Rent Expense [taxable at 5% under Section 2.57.2 (C), RR 2-98]	236,407.00
Security Services [taxable at 2% under Section 3, RR 17-2003 and Section 2.5.7.2(E) (4) (g), RR 2-98]	397,150.00
Commissions [taxable at 10% under Section 3, RR 17-2003 and Section 2.57.2 (G), RR 2-98]	273,564.00
Taxable basis per Audit	₱3,124,454.00

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Expanded Withholding Tax-Professional Fee/Brokerage Fee	₱221,733.00
Expanded Withholding Tax-Rent Expense	11,820.00
Expanded Withholding Tax-Security Services	7,943.00
Expanded Withholding Tax-Commissions	27,356.00
Expanded Withholding Tax Due	₱268,852.00
Less: Expanded Withholding Tax Remittances	214,185.00
Deficiency Expanded Withholding Tax per Re-audit	₱54,667.00
Add: 20% Interest p.a. (February 2007 to December 2010)	42,822.00
EXPANDED WITHOLDING TAX STILL DUE	**₱97,489.00**

On December 28, 2010, petitioner filed a letter dated December 10, 2010 with Romulo L. Aguila, Jr., then Regional Director of Revenue Region No. 4, San Fernando, Pampanga to protest the FLD/FAN.[14]

Acting on the protest letter of petitioner, Regional Director Romulo L. Aguila Jr. issued a Final Decision on Disputed Assessment (FDDA)[15] dated September 6, 2011.[16]

On September 30, 2011, petitioner appealed the FDDA to respondent.[17]

Thereafter, respondent issued a final Decision dated March 13, 2014. This was allegedly received by petitioner on March 26, 2014[18].

On April 25, 2014, petitioner filed the instant Petition for Review[19] before this Court.

Within the extended time granted by the Court,[20] respondent filed his Answer[21] by registered mail on July 8, 2014 and received by this Court on July 15, 2014. Respondent interposed the following special and affirmative defenses:

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[14] Par. 8, Statement of Facts (With Statement of Material Dates), Petition for Review, Docket, p. 17.
[15] Exhibit "R-24", BIR Records, pp. 641-642.
[16] Par. 9, Statement of Facts (With Statement of Material Dates), Petition for Review, Docket, p. 17.
[17] Par. 10, Statement of Facts (With Statement of Material Dates), Petition for Review, Docket, p. 17.
[18] Annex "C", Petition for Review, Docket, p. 39.
[19] Docket, pp. 14-30.
[20] Order dated May 26, 2016 and Resolution dated June 25, 2016, Docket, pp. 112 and 118.
[21] Docket, pp. 133-142.

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"SPECIAL AND AFFIRMATIVE DEFENSES

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

5. Respondent posits that she observed both procedural and substantial due process in issuing the assessment subject of this case; The deficiency assessment for Income Tax, Expanded Withholding Tax and Compromise Penalties were issued in accordance with law, rules and jurisprudence

6. The Revenue Officers conducted audit on petitioner's books of accounts and records for purposes of ascertaining taxes still due. Consequently, verification of petitioner's books and source documents disclosed that petitioner is liable to pay deficiency Income Tax, Expanded Withholding Tax and Compromise Penalties for taxable year 2007.

7. The following is a summary of the findings of the revenue examiners as a result of the investigation conducted, to wit:

Undeclared Revenue	₱ 1,224,159.00	
Interest Income on Non-Interest bearing Loans to Affiliates	2,843,488.00	4,067,647.00
Taxable Income per Audit		6,106,604.00
Income tax due 5%		163,156.00
35%		995,221.00
Total Income Tax due		1,158,377.00
Less: Tax paid & Tax Credits		101,386.00
Deficiency Income Tax		1,056,991.00
Interest		572,537.00
Total Deficiency Income Tax		**1,629,528.00**

Deficiency Expanded Withholding Tax	
Taxable base	₱ 3,124,454.00
Withholding Tax Due	268,852.00
Less: Remittances	214,185.00
VAT Due	54,667.00
Interest	42,822.00
Total Deficiency Expanded Withholding Tax	97,489.00

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Compromise Penalties	
For failure to file 1701Q 1st qtr, 1601 E for March, 1604 CF	3,000.00
-Alphabetical list of Employees, SAWT	4,000.00
-MAP attachment of 16011E(1,000/MAP)	12,000.00
-Inventory list	1,000.00
Total Compromise Penalties	20,000.00
TOTAL AMOUNTS PAYABLE	**₱1,747,017.00**

PETITIONER'S LIABILITY FOR DEFICIENCY INCOME TAX.

8. Petitioner's total deficiency Income Tax as shown above arose from Interest Income on Non-interest bearing Loans to Affiliates as well as Undeclared Revenue.

<u>As to the Interest Income of P 2,843.448.00</u>

9. Non-interest bearing Loans to Affiliates in the total amount of P41,510,778.00 appeared in the audited balance sheet. Thus, it was subjected to 6.85 % interest based on the Bangko Sentral ng Pilipinas (BSP) lending rate for 2007 which resulted to an Interest Income amounting to P2,843,448.00.

10. Respondent assessed petitioner Interest Income from Non-interest bearing Loans extended to its affiliates pursuant to Section 50 of the National Internal Revenue Code (NIRC) of 1997, which states, to wit:

> 'SEC. 50. Allocation of Income and Deductions. - In the case of two or more organizations, trades or businesses (whether or not incorporated and whether or not organized in the Philippines) owned or controlled directly or indirectly by the same interests, the Commissioner is authorized to distribute, apportion or allocate gross income or deductions between or among such organization, trade or business, if he determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organization, trade or business.'

11. As clearly provided from the foregoing, the Commissioner of Internal Revenue is authorized to distribute, apportion or allocate gross income or deductions between or among organizations owned and controlled directly or indirectly by the same interests, if she determines that such

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distribution, apportionment, or allocation is necessary to prevent evasion of taxes to clearly reflect the income of any such organization.

12. Corollary, petitioner assailed the assessment for Interest Income alleging therein that respondent has no authority to charge income to one of the related parties if no income actually exists; On the contrary, respondent's authority to assess petitioner deficiency Interest Income was made pursuant to Section 50 of the NIRC of 1997.

13. Section 50 of the NIRC of 1997 is presumed to be valid unless the same is declared unconstitutional.

14. In the case of *Farinas v. Executive Secretary, G.R No. 147387, 10 December 2003*, the Honorable Supreme Court held:

> 'It is a time-honored doctrine that all laws are presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.'

15. Likewise, petitioner asserts that Revenue Memorandum Order (RMO) 63-99 which pertains to Section 50 of the NIRC of 1997 is in the nature of a legislative ruling which requires due notice and hearing as well as publication in order to be effective.

16. Respondent vehemently disagrees; RMO No. 63-99 is merely an interpretative rule of the Commissioner of Internal Revenue interpreting the provisions of the NIRC of 1997.

17. It should be understandable that when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed.

18. Hence, being a mere interpretation of the NIRC of 1997, RMO No. 63-99 needs no notice, hearing and publication.

19. Now, petitioner additionally argues that the bank advices and payroll summaries justify that the loans/advances were in the nature of capital contributions to finance the

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working capital of its affiliates and therefore not subject of RMO No. 63-99.

20. Petitioner's bare allegations that such advances were merely financial assistance to sustain its affiliate's operational and capital expenditures deserve scant consideration; The attached documents showing bank advices and payroll does not indisputably prove that the advances made are not loans to be paid and settled by its affiliate.

21. Thus, in the absence of any evidence categorically showing that such advances were indeed capital contributions, the funds extended to its affiliate are covered by RMO No. 63-99 and shall be subjected to imputed interest.

22. Anent petitioner's allegation that a fire broke out in its office last December 7, 2007 which caused the burning of almost all accounting records; petitioner failed to comply with Section 34 D (1) (B) of the NIRC of 1997 which states that taxpayer is required to report the incident in the Bureau not less than thirty (30) days nor more than ninety (90) days from date of incident.

23. Further, it is indeed quizzical for petitioner's external auditor to express the unqualified opinion on petitioner's 2007 Audited Financial Statement despite the alleged fire that broke out.

<u>As to the Undeclared Revenue of P 1,224,159.00</u>

24. Service charges collected from various customers in the amount of P1,224,159.00 and recorded in the cash receipts book constituted taxable revenues. These revenues were not reported by the taxpayer in the Income Tax Return/ Audited Income; thus, its income was understated by the same amount.

25. Petitioner likewise failed to oppose such assessment for failure to submit documents which will contradict such deficiency. The said fact is underscored in the FDDA, to wit:

> '...due to your failure to submit relevant documents to dispute the reported assessment in spite of the several extensions of time given to you (almost five months for the conduct of re-investigation of the factual issues involved in your case and after

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resolution of the Legal issues by the Legal Division, this Revenue Region, no change was made on your deficiency assessment.'

PETITIONER ERRONEOUSLY ASSUMED THAT THE UNDECLARED REVENUE WAS SUBJECTED TO 35% TAX RATE.

26. It is petitioner's highly erroneous asseveration that the undeclared revenues amounting to P 1,224,159.00 was subjected to 35 % tax rate. On the contrary, the same was subjected to 5% preferential tax rate, in lieu of national and local tax.

27. What was subjected to the regular corporate income tax rate of 35% pertains only to the interest income pursuant to the provisions of RR 20-2002 and RMC 32-2005. The said issuances were published to provide guidelines in the tax treatment of income derived from unregistered operations of ECOZONE enterprises.

PETITIONER'S LIABILITY FOR EXPANDED WITHHOLDING TAX.

28. Petitioner's taxable income payments included the following: professional fees, rent, security services, and commissions. These income payments were subjected to Expanded Withholding Tax pursuant to the provisions of Revenue Regulations 2-98 and RR 17-2003 in relation to Section 57 (B) of the NIRC of 1997.

29. A detailed computation of the Expanded Withholding Tax culled from the Formal Letter of Demand is incorporated herein, to wit:

EXPANDED WITHHOLDING TAX	
Professional Fees [taxable at 10% under Section 2.57.2(A) (1), RR 2-98]	2,217,333.00
Rent Expense [taxable at 5% under Section 2.57.2 (C), RR 2-98]	236,407.00
Security Services [taxable at 2% under Section 3, RR 17-2003 and Section 2.5.7.2(E) (4) (g), RR 2-98]	397,150.00
Commissions [taxable at 10% under Section 3, RR 17-2003 and Section 2.57.2 (G), RR 2-98]	273,564.00
Taxable basis per Audit	3,124,454.00

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Expanded Withholding Tax-Professional Fee/Brokerage Fee	221,733.00
Expanded Withholding Tax-Rent Expense	11,820.00
Expanded Withholding Tax-Security Services	7,943.00
Expanded Withholding Tax-Commissions	27,356.00
Expanded Withholding Tax Due	268,852.00
Less: Expanded Withholding Tax Remittances	214,185.00
Deficiency Expanded Withholding Tax per Re-audit	54,667.00
Add: 20% Interest p.a. (February 2007 to December 2010)	42,822.00
EXPANDED WITHOLDING TAX STILL DUE	**97,489.00**

30. It should be noted however that the only item protested by petitioner in its letter protest to the FLD/FAN dated December 28, 2010 on the Expanded Withholding Tax assessment was the imposition of Expanded Withholding Tax on Commissions only. Petitioner failed to rebut the other assessments on Expanded Withholding Taxes. Hence, the said assessments are deemed undisputed which makes it final and demandable in accordance with Revenue Regulations No. 12-99, which states:

> '3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. **If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.** No action shall be taken on the taxpayers disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period of the assessment or collection of the tax or taxes or attributable to the said undisputed issues shall be suspended.' (Emphasis supplied)

31. Thus, the Expanded Withholding Tax assessment on professional fees, rent and security is deemed final and demandable.

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PETITIONER'S LIABILITY FOR COMPROMISE PENALTY

32. The company failed to file various tax/information returns such as the first quarter income tax return (BIR Form 1702Q), March expanded withholding tax return (BIR Form 1601E), Annual Information Return of Taxes Withheld on Compensation (BIR Form 1604 CF) together with the alphabetical list of employees, SAWTs/ Attachment to the quarterly and annual income tax returns, MAPs/Attachment to the monthly expanded withholding tax returns, and the inventory list at year end. Penalties imposed were based on the provisions of Section 250 of the 1997 NIRC and Section 5 of RR 2-2006.

33. Petitioner paid P 18,000.00 of the total P 20,000 assessment for compromise penalties in the FLD/ FAN leaving a balance of P 2,000.00. Petitioner failed to submit documents to dispute the said assessment. Hence, it was assessed for the remaining compromise penalties.

34. Respondent posits that, assessments are 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. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. **(Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997)**

35. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands **(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc, G.R No. 136975, March 31, 2005).** The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

36. All presumptions are in favor of the correctness of tax assessments *(Sy Po vs. Court of tax Appeals, 164 SCRA 524).* Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of

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the assessment will justify the judicial upholding of said assessment notice."

On August 29, 2014, petitioner filed a Request for Admission[22]. This was denied by the Court for lack of merit in the Resolution[23] dated October 10, 2014.

The Pre-Trial Brief[24] of petitioner was filed on October 28, 2014; while respondent's Pre-Trial Brief[25] was filed on January 13, 2015.

On May 5, 2015, the parties filed their Joint Stipulation of Facts and Issues[26]. This was approved by the Court in the Resolution[27] dated May 11, 2015, which also terminated the Pre-Trial. Subsequently, the Court issued the Pre-Trial Order[28] on May 27, 2015.

During trial, petitioner presented the following witnesses: Mr. Rodelio N. Redota[29], its Chief Financial Officer (CFO); Mr. Arvin G. Uylengco[30], administrative personnel of the Public Safety Department of the Clark Development Corporation (CDC); and Randolfh Razon[31], petitioner's employee.

Petitioner's Formal Offer of Evidence[32] was filed on July 20, 2015. In the Resolution[33] dated August 28, 2015, the Court admitted petitioner's Exhibits "P-25", "P-26", "P-33", "P-34", "P-36", "P-38", "P-41", "P-42", "P-43", "P-44", "P-46", "P-53", "P-54", "P-55", "P-56", "P-57", and "P-58". However, it denied the admission of Exhibits "P-32", "P-35", and "P-40", for failure of the marked documents to correspond with the description in petitioner's Formal Offer of Evidence. Likewise, the Court denied Exhibits "P-1", "P-2 to P-24", "P-27", "P-28", "P-29", "P-30", "P-31", "P-37", "P-39", "P-45", "P-47", "P-48", "P-49", "P-50", "P-51", and "P-52", for petitioner's failure to present their originals for

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22 Docket, pp. 147-148.
23 Docket, pp. 166-168.
24 Docket, pp. 254-259.
25 Docket, pp. 264-272.
26 Docket, pp. 337-342.
27 Docket, p. 357.
28 Docket, pp. 408-421.
29 Minutes of the Hearing dated June 2, 2015, Docket, pp. 422-426; Amended Judicial Affidavit of Rodelio Redota, Docket, pp. 360-373.
30 Minutes of the Hearing dated June 2, 2015, Docket, pp. 422-426; Judicial Affidavit of Arvin G. Uylengco, Docket, pp. 349-354.
31 Minutes of the Hearing dated July 7, 2015, Docket, pp. 430-432; Judicial Affidavit of Randolfh Razon, Docket, pp. 181-184.
32 Docket, pp. 435-440.
33 Docket, pp. 506-510.

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comparison and for petitioner's failure to sufficiently lay the bases for their admission as secondary evidence.

Petitioner's documentary evidence are as follows:

Exhibit:	Description:
P-1	Certificate of Tax Exemption and Registration of YWCI
P-2 to P-24	YWCI's bank advices and payroll summaries
P-25	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of January 2007
P-26	Revenue Official Receipt for the month of January 2007
P-27	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of February 2007
P-28	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of February 2007
P-29	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of March 2007
P-30	Revenue Official Receipt for March 2007
P-31	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of May 2007
P-32	Deposit Slip for May 2007 Withholding Tax Remittance
P-33	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of June 2007
P-34	Revenue Official Receipt for June 2007
P-35	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of June 2007
P-36	Revenue Official Receipt for July 2007
P-37	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of August 2007
P-38	Deposit Slip for August 2007 Withholding Tax Remittance
P-39	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of September 2007
P-40	Deposit Slip for September 2007 Withholding Tax Remittance
P-41	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of October 2007
P-42	Deposit Slip for the October 2007 Withholding Tax
P-43	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of November 2007
P-44	Deposit Slip for the November 2007 Withholding Tax
P-45	Monthly Remittance Return on Income Taxes Withheld on Compensation for the month of December 2007
P-46	Deposit Slip for the December 2007 Withholding Tax
P-47	Payroll Sheet for December 1 to 15, 2007
P-48	Payroll for October 2007
P-49	Service Charge Distribution Sheet for September 2007
P-50	Service Charge Distribution Sheet for October 2007
P-51	Service Charge Distribution Sheet for November 2007
P-52	Schedule of Commission Charges
P-53	Payees' Annual Information
P-54	Alphalist

P-55	Memorandum of Fire Marshall
P-56	Amended Judicial Affidavit of Rodel Redota
P-57	Judicial Affidavit of Arvin G. Uylengco
P-58	Judicial Affidavit of Randolph Razon

Thereafter, respondent presented Revenue Officers Catheleya C. Aquino[34], Rey K. Lugtu[35], and Ma. Luisa R. San Antonio[36].

Respondent filed his Formal Offer of Evidence[37] on February 9, 2016. The Court admitted respondent's Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "R-16", "R-17", "R-17-a", "R-17-b", "R-17-c", "R-18", "R-19", "R-20", "R-21", "R-22", "P-23", "P-24", "R-25", "R-25-a", "R-26", "R-26-a", "R-27", and "R-27-a" in the Resolution[38] dated April 14, 2016.

The documentary evidence offered by respondent are:

Exhibit:	Description:
R-1	Notice for Informal Conference (NIC) dated August 02, 2010 with attached Summary of Deficiency Taxes
R-2	Letter dated September 13, 2010
R-3	Letter dated October 12, 2010
R-4	Memorandum Report dated October 12, 2010
R-5	Indorsement Letter dated October 12, 2010
R-6	Routing Slip No. 21-A-0014
R-7	Memorandum of Assignment No. REF.-ASSMT.-021A-2011-0004 dated January 31, 2011
R-8	Letter dated February 07, 2011
R-9	Letter dated March 22, 2011
R-10	Memorandum Report dated March 24, 2011
R-11	Indorsement Letter dated March 24, 2011
R-12	Memorandum dated March 28, 2011
R-13	Letter Requesting for the Submission of Relevant Documents
R-14	Letter dated June 06, 2011
R-15	Indorsement Letter dated June 06, 2011
R-16	Preliminary Assessment Notice (PAN) dated November 09, 2010 with Attached Details of Discrepancies and Summary of Deficiency Taxes/Increments

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[34] Minutes of the Hearing dated December 8, 2015, Docket, pp. 519-520; Judicial Affidavit of Revenue Officer Catheleya C. Aquino, Docket, pp. 278-283.

[35] Minutes of the Hearing dated January 19, 2016, Docket, pp. 524-526; Judicial Affidavit of Revenue Officer Rey K. Lugtu, Docket, pp. 299-304.

[36] Minutes of the Hearing dated January 26, 2016, Docket, pp. 531-532; Judicial Affidavit of Revenue Officer Ma. Luisa R. San Antonio, Docket, pp. 289-294.

[37] Docket, pp. 541-551.

[38] Docket, pp. 561-562.

R-17	Formal Letter of Demand (FLD) dated December 16, 2010 with attached Details of Discrepancies and Summary of Deficiency Taxes and Increments
R-17-a	Audit Result/Assessment Notice for deficiency Income Tax
R-17-b	Audit Result/Assessment Notice for deficiency Expanded Withholding Tax
R-17-c	Audit Result/Assessment Notice for Compromise Penalty
R-18	Memorandum dated January 07, 2011
R-19	Letter dated January 07, 2011
R-20	Reply letter dated June 23, 2011
R-21	Memorandum dated July 11, 2011
R-22	6th Indorsement Letter dated August 22, 2011
R-23	Letter Reply dated August 8, 2011
R-24	Final Decision on Disputed Assessment (FDDA) dated September 06, 2011
R-25	Judicial Affidavit of Revenue Officer Catheleya C. Aquino
R-25-a	Signature of Affiant Catheleya C. Aquino
R-26	Judicial Affidavit of Revenue Office Rey K. Lugtu
R-26-a	Signature of Affiant Rey K. Lugtu
R-27	Judicial Affidavit of Revenue Officer Ma. Luisa R. San Antonio
R-27-a	Signature of Affiant Ma. Luisa R. San Antonio

On May 4, 2016, respondent filed a Manifestation[39] stating that in lieu of filing a Memorandum, he is adopting his Answer dated July 7, 2014 as his Memorandum. Meanwhile, petitioner filed its Memorandum[40] on May 31, 2016. Hence, in the Resolution[41] dated August 30, 2016, the instant case was declared submitted for decision.

The parties submitted the following issue for resolution of this Court:[42]

> Whether petitioner is liable to pay deficiency income tax, expanded withholding tax and compromise penalty for taxable year 2007 in the aggregate amount of ₱1,857,496.69 as well as deficiency and delinquency interests as provided in Sections 248 and 249 of the NIRC.

Respondent issued the Final Decision on Disputed Assessment[43] (FDDA) dated September 6, 2011 against petitioner with total

[39] Docket, pp. 568-570.
[40] Docket, pp. 577-593.
[41] Docket, p. 607.
[42] Joint Stipulation of Issues, JSFI, Docket, pp. 340.
[43] Exhibit "R-24", BIR Folder 1, pp. 641 to 642.

deficiency tax liabilities amounting to ₱1,857,496.69, broken down as follows:

	Basic Tax	Interest	Total
Deficiency income tax	₱1,056,991.00	₱704,660.67	₱ 1,761,651.67
Deficiency expanded withholding tax	54,667.00	39,178.02	93,845.02
Compromise penalties			2,000.00
TOTAL			**₱1,857,496.69**

I. Deficiency income tax - ₱1,761,651.67

The deficiency income tax was computed as follows:

Taxable net income per return		₱ 2,038,957.00
Undeclared revenue	₱1,224,159.00	
Interest income on non-interest bearing loans to affiliates	₱2,843,488.00	4,067,647.00
Taxable income per audit		6,106,604.00
Income tax due - 5%		163,156.00
- 35%		995,221.00
Total income tax due		1,158,377.00
Less: Tax paid and tax credits		101,386.00
Deficiency Income Tax		1,056,991.00
Interest		704,660.67
Total Deficiency Income Tax		**₱1,761,651.67**

The following items from the above assessment were disputed by petitioner:

A. Undeclared revenue	₱1,224,159.00
B. Interest income on non-interest bearing loans to affiliates	₱2,843,488.00

A. Undeclared revenue – ₱1,224,159.00

The unreported/undeclared revenue found per respondent's audit was subjected to income tax pursuant to the provisions of Sections 23 and 27 of the NIRC of 1997, as amended.[44]

The service charges collected from various customers in the amount of ₱1,224,159.00 and recorded in the cash receipts book constituted taxable revenues. These revenues were not reported by petitioner for income tax purposes; thus, its income was understated

[44] Details of Discrepancy FLD, Exhibit "R-17", BIR Folder 2, p. 386.

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by the same amount. The taxable net income was adjusted per audit to reflect the correct taxable income.[45]

Petitioner claims that the said amount was classified as service charge and tips, which were then earmarked for the employees and that petitioner holds the same in trust before distribution. As such, said amount should not be included as part of the gross income of petitioner.[46]

Petitioner posits that it accounts the service charges and tips as a liability. Thereafter, all such amounts are distributed to its regular employees. This policy is in accord with Article 96 of the Labor Code, stating that "all service charges collected by hotels, restaurants and similar establishments shall be distributed at the rate of eighty-five percent (85%) for all covered employees and fifteen percent (15%) for management. The share of the employees shall be equally distributed among them. In case the service charge is abolished, the share of the covered employees shall be considered integrated in their wages."[47]

It further asserts that as held in the case of *Commissioner of Internal Revenue vs. Manila Jockey Club, Inc.*[48], gross receipts of the proprietor of the amusement place should not include any money which although delivered to the amusement place has been especially earmarked by law or regulation for some person other than the proprietor.

Respondent, on the other hand, maintains that petitioner failed to oppose such assessment for failure to submit documents which will contradict such deficiency.[49]

According to petitioner, its records were destroyed during the fire that occurred on December 7, 2007.[50] The uncontested testimony of petitioner's independent witness, Mr. Arvin G. Uylengco, states in clear and uncontested terms about the fact of fire which burned down petitioner's records.[51] In fact, during cross-examination, Revenue

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[45] Details of Discrepancy FLD, Exhibit "R-17", BIR Folder 2, p. 385.
[46] Par. 21, Petitioner's Memorandum, Docket, p. 584; Q&A No. 16 of Exhibit "P-56", Amended Judicial Affidavit of Rodelio Redota, Docket, pp. 364-365.
[47] Petition for Review, Docket, p. 23.
[48] G.R. Nos. L-13887 and L-13890, June 30, 1960.
[49] Pars. 24 to 25, Respondent's Answer, Docket, p. 137.
[50] Memorandum of Fire Marshall, Exhibit "P-55", Docket, p. 499.
[51] Judicial Affidavit of Mr. Arvin G. Uylengco, Exhibit "P-57", Docket, pp. 349 to 354.

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Officer Catheleya C. Aquino confirmed that petitioner's representatives informed her during the tax investigation that said fire destroyed petitioner's accounting documents.[52]

Considering that a fire has indeed destroyed the 2007 records of petitioner, it submitted that the Court must determine whether the deficiency assessment made by the BIR has factual basis in relation to the Best Evidence Obtainable Rule.[53]

The Court finds the assessment in order.

The Best Evidence Obtainable Rule applies when there is a failure on the part of the taxpayer to submit required returns, statements, reports and other documents as laid down in Section 6(B) of the Tax Code, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> xxx xxx xxx
>
> (B) *Failure to Submit Required Returns, Statements, Reports and other Documents* - **When a report required by law as a basis for the assessment** of any national internal revenue tax **shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous**, the **Commissioner shall assess the proper tax on the best evidence obtainable.**
>
> In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes." (*Emphasis supplied*)

In this case, there was no failure on the part of petitioner to submit the required returns, statements, reports and documents.

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[52] TSN, December 8, 2015, p. 10.
[53] Pars. 22.a and 23, Petitioner's Memorandum, Docket, p. 585.

Petitioner was able to submit the documents required for respondent's audit albeit incomplete due to the undisputed fact that a fire broke out in petitioner's premises destroying its accounting documents.

It was even clarified by respondent's witness, Ms. Catheleya C. Aquino, during her re-direct examination that she was informed of the fire incident in petitioner's premises, but it did not totally destroy the accounting documents of the latter, which is why she was able to come up with the deficiency tax assessments based on the remaining documents available at the time she conducted the examination, to wit:[54]

> "ATTY. CHUA:
> Q. Ms. Witness, during the cross-examination, you were asked about the accounting documents that were burned down.
>
> MS. AQUINO:
> A. Oh hm.
>
> ATTY. CHUA:
> Q. What documents, in relation to that question, what documents did petitioner file with the BIR to inform that the accounting documents were indeed burned out? What documents?
>
> MS. AQUINO:
> A. When I was in the process of requesting the documents, the taxpayer requested for an extension within which to submit the documents because according to them, some were partially gutted by fire and some were misplaced. **So, it is not true that 100% of the documents were gutted by fire. So, that is why when I made my assessment, I based my assessment on the documents that they submitted.**" *(Emphasis supplied)*

Indeed, respondent had his basis in finding petitioner liable for deficiency income tax when the Revenue Officer found a total of ₱1,224,159.00 in petitioner's cash receipts books which was not declared by the latter for income tax purposes.

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[54] TSN, December 8, 2015, p. 17.

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In explaining that the assessed amount pertains to service charge and tips, which were then earmarked for the employees and merely held in trust before distribution, petitioner presented the testimony of Mr. Randolfh Razon, one of petitioner's employees during taxable year 2007, attesting that he received a portion of the service charges and tips, which were then added to his monthly salary, that the service charges and tips were being apportioned among the employees and that this had been the practice of petitioner since he became an employee of the latter.[55]

Other than the above testimony, petitioner was not able to present any documentary evidence to sufficiently prove that the amount of ₱1,224,159.00 indeed pertains to service charges and tips which were then actually distributed and received by its employees in order to warrant its claim that they were merely held in trust and must not be subjected to income tax.

Without adequate proof to overturn respondent's findings, the Court deems it proper not to disturb the same.

B. Interest income on non-interest bearing loans to affiliates – ₱2,843,488.00

Respondent imputed interest on petitioner's non-interest bearing loans to affiliate pursuant to the provisions of Section 50 of the National Internal Revenue Code.[56]

According to respondent, the non-interest bearing loans to affiliates in the amount of ₱41,510,778.00 appeared in the audited balance sheet[57] of petitioner. Interest of 6.85% based on the BSP lending rate for 2007 was computed and imputed pursuant to the provisions of Section 50 of the NIRC of 1997.[58]

Petitioner explains that in the course of its business, petitioner transferred a total amount of ₱41,510,778.00 to its affiliates to fund its centralized payroll system and other operational expenses.[59] Such advances to affiliates are in the nature of working capital contributions

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[55] Judicial Affidavit of Mr. Randolfh Razon, Exhibit "P-58", Docket, pp. 181 to 182.
[56] Details of Discrepancy, FLD, Exhibit "R-17", BIR Folder 2, p. 386.
[57] BIR Folder 1, p. 529.
[58] BIR Folder 2, p. 385.
[59] Pars. 15, Petition for Review, Docket, p. 19.

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to finance the working capital of petitioner's affiliates. Said advances remain unpaid by its affiliates. This only shows that the advances were actually contributions by petitioner to its affiliates.[60]

Also, under Article 1956 of the Civil Code, "no interest shall be due unless it has been expressly stipulated in writing." In Philippine jurisprudence, the right to interest arises only by virtue of a contract or by way of damages for delay or failure to pay the principal on which interest is demanded.[61] There can be no "abnormality or distortion of income" to justify allocation of income under Section 50 of the NIRC where there is no actual interest income to speak of. The case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[62] *(Filinvest case)* is more explicit:

> "Despite the broad parameters provided, however, we find that the CIR's powers of distribution, apportionment or allocation of gross income and deductions under Section 43 of the 1993 NIRC and Section 179 of Revenue Regulations No. 2 does not include the power to impute 'theoretical interests' to the controlled taxpayer's transactions. Pursuant to Section 28 of the 1993 NIRC, after all, the term gross income is understood to mean all income from whatever source *derived*, including, but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; prizes and winnings; pensions; and partners distributive share of the gross income of general professional partnership. While it has been held that the phrase '*from whatever source derived*' indicates a legislative policy to include all income not expressly exempted within the class of taxable income under our laws, the term 'income' has been variously interpreted to mean 'cash *received* or its equivalent', 'the amount of money *coming* to a person within a specific time' or 'something distinct from principal or capital.' Otherwise stated, there must be proof of the actual or, at the very least, probable receipt or realization by the controlled taxpayer of the item of gross income sought to be distributed, apportioned or allocated by the CIR."

Indeed, there is no revenue loss incurred by the government. Truth to tell, respondent is imposing an "imaginary income" on petitioner, which has not actually benefited from the afore-mentioned

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[60] Exhibit "P-56", Amended Judicial Affidavit of Rodelio Redota, Docket, pp. 363-364.
[61] *Baretto vs. Santa Marina, et al.*, G.R. No. 11908, February 4, 1918.
[62] G.R. Nos. 163653 and 167689, July 19, 2011.

transaction. And despite the clear ruling by the Supreme Court in the *Filinvest case*, the BIR continued to assess petitioner for such imaginary income. This finding of imputed interest must, therefore, be cancelled.[63]

The Court finds for petitioner.

Indeed, in the afore-cited *Filinvest case*, the Supreme Court ruled with finality that the CIR's powers of distribution, apportionment or allocation of gross income and deductions under Section 43 of the 1993 NIRC[64] and Section 179 of Revenue Regulations No. 2 do not include the power to impute "theoretical interests" to the controlled taxpayer's transactions.

Further, the Supreme Court clarified that:

> "xxx More so, when it is borne in mind that, pursuant to Article 1956 of the *Civil Code of the Philippines*, no interest shall be due unless it has been expressly stipulated in writing. Considering that taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares, the rule is likewise settled that tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. While it is true that taxes are the lifeblood of the government, it has been held that their assessment and collection should be in accordance with law as any arbitrariness will negate the very reason for government itself."

In this case, there was no evidence on record showing any agreement on interest between petitioner and its affiliates as to the former's loans or advances to the latter. Neither did respondent show that petitioner received cash from the alleged interest as it merely based its assessment on the account description and amount presented in petitioner's audited balance sheet and nothing else.

With this in mind, the Court finds that respondent's imputation of interest income on petitioner's non-interest bearing loans to

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[63] Pars. 19 to 20, Petitioner's Memorandum, Docket, pp. 582 to 583.
[64] Now Section 50 of the NIRC of 1997, as amended.

affiliates lacks legal and factual bases and must be removed from the deficiency income tax assessment.

In sum, petitioner is found liable for basic deficiency income tax but in the reduced amount of ₱61,769.80, as computed below:

Taxable net income per return	₱2,038,957.00
Undeclared revenue	1,224,159.00
Taxable income per audit	3,263,116.00
Income tax due 5%	163,155.80
Less: Tax paid and tax credits	101,386.00
Basic Deficiency Income Tax	**₱ 61,769.80**

II. Deficiency expanded withholding tax – ₱93,845.02

Respondent assessed petitioner of deficiency EWT, computed as follows:

Taxable base	₱3,124,454.00
Withholding tax due	268,852.00
Less: Remittances	214,185.00
EWT due	54,667.00
Interest	39,178.02
Total Deficiency Expanded Withholding Tax	**₱ 93,845.02**

As stated in the Details of Discrepancies, the BIR came up with a deficiency expanded withholding tax of ₱93,845.02 based on the following computation:[65]

Professional fees [taxable at 10% under Section 2.57.2(A)(1), RR 2-98]	₱2,217,333.00
Rent expense [taxable at 5% under Section 2.57.2(C), RR 2-98]	236,407.00
Security services [taxable at 2% under Section 3, RR 17-2003 and Section 2.57.2(E)(4)(g), RR 2-98]	397,150.00
Commission [taxable at 10% under Section 3, RR 17-2003 and Section 2.57.2(G), RR 2-98]	273,564.00
Taxable basis per audit	3,124,454.00
Expanded withholding tax - profession fee/brokerage fee	221,733.00
Expanded withholding tax - rent expense	11,820.00
Expanded withholding tax - security services	7,943.00
Expanded withholding tax - commissions	27,356.00
Expanded withholding tax due	268,852.00

[65] Par. 6, JSFI, Docket, p. 339; BIR Folder 2, p. 383.

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Less: Expanded withholding tax remittances	214,185.00
Deficiency expanded withholding tax per re-audit	54,667.00
Add: Interest[66]	39,178.02
Expanded withholding tax still due	**₱ 93,845.02**

Respondent subjected the income payments to expanded withholding taxes pursuant to the provisions of Revenue Regulations Nos. 2-98 and 17-2003 in relation to Section 57(B) of the National Internal Revenue Code.[67]

It is further asserted by respondent that the item protested by petitioner in its protest letter to the FLD/FAN dated December 28, 2010 on the EWT assessment was the imposition of EWT on Commissions only. Petitioner failed to rebut the other EWT assessments. Hence, the said assessments are deemed undisputed, which make them final and demandable in accordance with Revenue Regulations No. 12-99, which states:

> "3.1.5 *Disputed Assessment.* – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. **If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.** No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended." *(Emphasis supplied)*

Thus, the EWT assessment on professional fees, rent and security is deemed final and demandable.[68]

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[66] Interest per FDDA is ₱39,178.02, Exhibit "R-24", BIR Records, Folder 1, p. 642; while per FLD, Interest is ₱42,822.00, BIR Records, Folder 2, p. 389.
[67] Details of Discrepancy, FLD, Exhibit "R-17", BIR Records, Folder 2, p. 386.
[68] Pars. 30 to 31, Answer, Docket, p. 138.

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Petitioner, however, avers that the above computation is perhaps derived by comparing the expenses in petitioner's 2007 financial statements with the amounts in the withholding tax returns. Petitioner submits that such computation in erroneous.[69]

It is wrong to assume that all expenses are subject to a particular withholding tax rate and that the said expenses should be subjected to withholding tax. As previously stated, the subtraction and addition of expenses and subjecting the same to a particular tax rate is an assessment that is based on a mere assumption.[70]

Indeed, the method of comparing financial items of the financial statements with the BIR returns as well as the lack of specifics on the finding of deficiency taxes are inadequate bases to support the finding of deficiency taxes.[71]

Petitioner also wants to emphasize that there is factual error in the above computation of withholding tax since the amount actually remitted is ₱233,534.79, not ₱214,185.00, as evidenced by BIR Form No. 1604-E (Annual Information Return of Creditable Income Taxes Withheld (Expanded).[72]

The Court finds the assessment correct.

Based on records, the above accounts and amounts were in fact lifted by respondent from petitioner's 2007 Audited Financial Statements and Income Tax Return:

Income Payments	**As assessed by BIR**	**Amount Obtained From**
Professional fees	₱2,217,333.00	Financial Statement (FS)[73]
Rent expense	236,407.00	Income Tax Return (ITR)[74]
Security services	397,150.00	FS and ITR
Commission	₱ 273,564.00	FS and ITR

Thus, it cannot be said that the computation of the BIR was merely based on presumption, as it is founded on the discrepancy between petitioner's FS/ITR and EWT Returns. Likewise, in

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[69] Par. 31, Petitioner's Memorandum, Docket, p. 589.
[70] Par. 36, Petitioner's Memorandum, Docket, p. 591.
[71] Par. 37, Petitioner's Memorandum, Docket, pp. 591-592.
[72] Par. 40, Petition for Review, Docket, p. 29.
[73] BIR Folder 1, p. 528.
[74] BIR Folder 1, p. 516.

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determining petitioner's deficiency, the foregoing accounts were subjected by respondent to the appropriate withholding tax rates pursuant to the provisions of Revenue Regulations No. 2-98, as amended.

Anent the commission account, petitioner avers that the same is not commission paid to employees but commission from credit card companies, thus, should not be subject to expanded withholding tax.

However, petitioner failed to present documents proving that the commission of ₱273,564.00 was indeed made from credit card companies. Consequently, the assessment on the same shall be sustained.

Likewise, petitioner failed to prove that part of the professional fees, rent expense and security services was either not subject to withholding tax or already subjected to withholding tax. As a result, the Court is constrained to uphold respondent's findings subjecting the same to expanded withholding tax.

Moreover, the Court cannot give credence to petitioner's claim that the correct amount of remittance should be ₱233,534.79 as reflected in BIR Form No. 1604-E[75] and not ₱214,185.00 as found by respondent. A revisit of petitioner's BIR Form No. 1604-E shows that the discrepancy of ₱19,349.79[76] (₱233,534.79 less ₱214,185.00) pertains to the alleged remittance of EWT due for the month of March 2007. However, petitioner failed to present the corresponding withholding tax return for the said month. In fact, petitioner paid the compromise penalty of ₱1,000 for non-filing of BIR Form No. 1601-E for the month of March 2007. For petitioner's failure to prove that it remitted the full amount of ₱233,534.79 to the BIR as payment for EWT due for the year 2007, the findings of respondent shall be sustained.

In fine, respondent's assessment finding petitioner liable for basic expanded withholding tax amounting to ₱54,667.00, as shown below, shall be upheld, in line with the principle that tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment

[75] Exhibit "P-53", Docket, p. 497.
[76] Rounded off to ₱19,350.00.

unless proven otherwise.[77] Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[78]

Expanded withholding tax - profession fee/brokerage fee	₱ 221,733.00
Expanded withholding tax - rent expense	11,820.00
Expanded withholding tax - security services	7,943.00
Expanded withholding tax - commissions	27,356.00
Expanded withholding tax due	**₱268,852.00**
Less: Expanded withholding tax remittances	214,185.00
Basic Deficiency EWT	**₱ 54,667.00**

III. Compromise penalties – ₱2,000.00

In the FDDA, respondent imposed compromise penalties on the following items, but only assessed petitioner for the balance of ₱2,000.00:

For failure to file 1701Q 1st qtr., 1601 E for March, 1604CF	₱ 3,000.00
- Alphabetical list of employees, SAWT	4,000.00
- MAP attachment of 1601E(1,000/MAP)	12,000.00
- Inventory list	1,000.00
Total Compromise penalties	₱20,000.00
Less: Amount paid	18,000.00
Amount still due	**₱2,000.00**

However, based on records, the amount paid by petitioner actually amounts to ₱20,000.00, as detailed below:[79]

Nature of Voluntary Payment	Payment Date	Amount
Non-Filing of BIR Form No. 1604-CF for the Year 2007	7/12/2011	₱ 1,000.00
Non-Filing of Alphabetical List of Employees/Attachment to BIR 1604-CF	7/12/2011	1,000.00
Non-Filing of Inventory List	7/12/2011	1,000.00
Non-Filing of BIR Form No. 1702-Q First Quarter	7/12/2011	1,000.00
Non-Filing of BIR Form No. 1601-E for the Month of March 2007	7/12/2011	1,000.00
Non-Filing of MAP/Attachment to BIR Form No. 1601-E (12 months)	7/12/2011	12,000.00
Non-Filing of SAWT/ Attachment to BIR Form No. 1702-Q and 1702	7/12/2011	3,000.00
TOTAL		**₱20,000.00**

[77] *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzales, et al.,* G.R. No. 177279, October 13, 2010.
[78] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.
[79] BIR Folder 1, pp. 616-629.

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By virtue of petitioner's payment of the total amount of ₱20,000.00, herein assessment for compromise penalty shall be cancelled.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for taxable year 2007 covering compromise penalties is **CANCELLED**. On the other hand, the deficiency income tax and EWT assessments are **AFFIRMED but with modifications**. Accordingly, petitioner is **ORDERED TO PAY** the amount **ONE HUNDRED FORTY-FIVE THOUSAND FIVE HUNDRED FORTY-SIX PESOS (₱145,546.00)** representing basic deficiency taxes, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Surcharge	Total
Income Tax	₱ 61,769.80	₱ 15,442.45	₱ 77,212.25
Expanded Withholding Tax	54,667.00	13,666.75	68,333.75
TOTAL	**₱116,436.80**	**₱29,109.20**	**₱145,546.00**

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 in the amount of ₱61,769.80 computed from April 15, 2008 and January 15, 2008, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱145,546.00 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from April 25, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division