REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PORT BARTON DEVELOPMENT CORPORATION, Petitioner,	CTA CASE NO. 8490
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 20 2017 1:20 P.M.

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DECISION

FABON-VICTORINO, J.:

In this Petition for Review filed on May 11, 2012, petitioner Port Barton Development Corporation prays for the cancellation of the Final Decision on Disputed Assessment (FDDA) dated April 10, 2010, issued against it by respondent Commissioner of Internal Revenue (CIR), for alleged deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT) and Withholding Tax on Compensation (WTC) for taxable year 2007 in the total amount of ₱13,348,339.64.

THE FACTS

Petitioner is a domestic corporation with principal office at 3/F Karrivin Plaza Building, 2316 Pasong Tamo Extension, Makati City.[1]

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[1] Joint Stipulation of Facts and Issues (JSFI), volume 4 docket, p. 1669.

It is registered with the Securities and Exchange Commission (SEC) with Company Registration No. ASO9-00009309 and authorized to engage in "the general business of maritime and pearl culture and fishing in any form with the use of any equipment, instrument, machinery, vehicle and appliance, whether deep sea, fresh water or pearl culture or inland fishing in the culture of fish in fishponds or otherwise; to acquire by purchase or lease or otherwise pearl rights, fishery rights, fishpens, fishponds and salt beds; to own, hold, improve, develop and operate any marine and pearl rights, fishery right, fishponds, fishpens, salt beds and any other form of ponds or banks for any other form of fish fry and all kinds of marine life; to acquire, operate and/or lease, own and use fishing equipment for pearly culture and for catching fish and to purchase, lease, own, and use motor boats, fish nets, trucks, vans or other equipment, materials, supplies, or other parts as may be necessary for the catching, culturing of pearls or breeding of fish and other fish products; to engage in the general marine and pearl culturing, fish culturing and salt production business and in the marketing of all products thus produced; to catch, gather, store, handle, purchase and sell pearls, fish and other fish products and export the production thereof; to acquire, own, build, operate and maintain marine and pearl plants, fish meal plants, shipways, drydocks, machine and repair shops; to enter into any contract in relation thereto; maintain, alter, repair and restore works of all descriptions including warehouses, factories, engines, machineries, barges, fishing equipment and vessels necessary for the business of the corporation."[2]

On the other hand, respondent is the Commissioner of the Bureau Internal Revenue (BIR), with the power to authorize the examination and assessment of the correct amount of tax of any taxpayer. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

On October 15, 2010, petitioner received from the BIR a Preliminary Assessment Notice (PAN) dated October 13,

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[2] JSFI, vol. 4 docket, pp. 1669-1670.
[3] *Ibid,* p. 1670.

2010 with Details of Discrepancy[4], assessing it for deficiency IT, VAT, EWT, and WTC for taxable year 2007.

At its instance[5], petitioner was granted an extension of until November 14, 2010 to file its formal protest against the PAN but was required to submit on or before November 15, 2010 a duly executed Waiver of the Statute of Limitations under Sections 203 and 222 of the NIRC of 1997, as amended.

On November 15, 2010, petitioner executed its first Waiver of the Defense of Prescription[6] and filed its Protest[7] to the PAN.

On May 9, 2011, petitioner executed its Second Waiver[8].

On August 17, 2011, petitioner received from respondent a Formal Assessment Notice (FAN) with Details of Discrepancies[9], finding it liable to pay deficiency IT, VAT, EWT, and WTC for taxable year 2007.

On September 16, 2011, petitioner filed its Protest[10] to the FAN dated September 15, 2011.

On April 13, 2012, petitioner received the assailed FDDA[11] dated April 10, 2012, directing it to either pay the assessments or elevate the matter to the Court within thirty (30) days from notice. [12]

Hence, the instant Petition for Review filed on May 11, 2012.

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[4] Exhibit "R-5".
[5] BIR Records, p. 208.
[6] Exhibit "R-6".
[7] BIR Records, pp. 253 to 256.
[8] Exhibit "R-7".
[9] Exhibit "R-9".
[10] JSFI, vol. 4 docket, p. 1671; BIR Records, pp. 339 to 343.
[11] Exhibit "R-12".
[12] JSFI, vol. 4 docket, pp. 1670-1671.

In his Answer (with Motion to Dismiss)[13] posted on July 4, 2012, respondent argues that the Petition for Review fails to state a cause of action. Allegedly, petitioner failed to show that the subject assessments lack legal or factual basis. Petitioner also failed to substantiate its self-serving allegations. And with its failure to present evidence in support of its protest in the administrative level, petitioner should no longer be heard by the Court on the matter. Moreover, the questioned assessments are legally presumed correct. On the foregoing grounds, the Petition for Review should be dismissed pursuant to Section 1(g), Rule 16 of the Rules of Court, says respondent.

On November 7, 2012, the Court denied[14] respondent's Motion to Dismiss for lack of merit.

On September 18, 2013, the Court dismissed the case without prejudice[15] as petitioner failed to submit the judicial affidavits of its witnesses at least five (5) days before the scheduled pre-trial conference as ordered by the Court.

On December 4, 2013, the Court granted[16] petitioner's Motion for Reconsideration[17] and accordingly reinstated the case.

After the pre-trial[18] petitioner presented its witnesses, namely: 1) Roberto B. Bidana, 2) Lourdes B. Pantola and 3) Emmanuel Mendoza.

Petitioner's General Manager, **ROBERTO B. BIDANA**[19] testified that as part of his duties to supervise petitioner's operational and financial matters, he regularly meets with its personnel-in-charge of finance and tax matters.

He further testified[20] that upon receipt of the PAN dated October 13, 2010, petitioner immediately engaged the

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[13] Vol. 1 docket, pp. 52-62.
[14] *Ibid.*, pp. 70-74.
[15] *Ibid.*, pp. 186-187.
[16] Vol. 3 docket, pp. 1653 to 1656.
[17] *Ibid.*, pp. 207-221.
[18] Vol. 4 docket, pp. 1684 to 1695.
[19] See Sworn Statement of Mr. Roberto B. Bidana, vol. 1 docket, pp. 222-232.
[20] Exhibit "P-8".

services of counsel for the preparation of its formal protest to the PAN. Within the extended period granted, or on November 15, 2010, petitioner filed its protest to the PAN, which the BIR Revenue Region No. 8 received on the same day.

The PAN was followed by the FAN dated August 17, 2011, to which petitioner filed a protest on September 16, 2011. Thereafter, it received the assailed FDDA dated April 10, 2012. Hence, the present action filed on May 11, 2012.

The witness further declared that petitioner is engaged in the business of farming, harvesting, sales and exportation of pearls produced from its farm located at the Municipality of San Vicente, Province of Palawan. Petitioner exports 100% of its pearls directly to buyers in Hongkong and Japan, hence, the sales are subject to zero percent (0%) VAT. To prove such 0% VAT export sales, petitioner submitted to the BIR its sales invoices issued to its buyers, airway bills, export declarations and the BPAD of the Bureau of Fisheries and Aquatic Resources.[21] He stressed that although the pearls farmed and harvested by petitioner are 100% exported, he could not present any document showing the actual number of pearls produced from the farm. But he is certain that petitioner does not sell its pearls locally. In any event, petitioner has an inventory of the pearls and only those determined to be valuable are recorded and sold while those not valuable are thrown away.

Witness **LOURDES B. PANTOLA** declared[22] that as an Accountant of Valley Sports Corporation and Naglayan Incorporated, which basically have the same stockholders as petitioner, she is assigned to supervise petitioner's bookkeeping and accounting, and tax compliance. Petitioner is registered with the BIR. It timely files its tax returns and pays the corresponding taxes.

In this case, petitioner seeks the cancellation and/or withdrawal of respondent's FDDA dated April 10, 2010 in the amount of ₱13,348,339.64.

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[21] Transcript of Stenographic Notes (TSN) dated May 19, 2014, pp. 9-12.
[22] See Supplemental Sworn Statement and Second Supplemental Sworn Statement of Ms. Lourdes B. Pantola, vol. 1 docket, pp. 355-369 and pp. 309-313, respectively.

She believes that petitioner is not liable to pay any deficiency taxes as the BIR examiners neither conducted any field investigation nor validated their report against the source documents, *i.e.*, official receipts, invoices, books of accounts, withholding tax certificates and adjusting entries. Therefore, the subject assessments are void as they have no factual basis.

For the income tax assessment, the BIR, in violation of petitioner's right to due process, did not explain the legal basis of the 50% sharing or disallowance of the selected expenses even with her presentation of the Schedules with receipts and invoices to account for the corresponding expenses. On the other hand, the Rental Expense is supported by the official receipts issued by the Office of the Municipal Treasurer and is not subject to withholding tax under Section 2.57.5 of Revenue Regulation No. 02-98. Petitioner is also not liable to pay the alleged undeclared sales of ₱158,186.56 as the said amount corresponds to freight charges for the account of the foreign buyers.

Anent the deficiency assessment for EWT, the witness refuted the BIR's contention that petitioner is on the BIR list of Top 10,000 corporations for it did not receive any notice to that effect. Nonetheless, she prepared a Schedule of EWT enumerating the transactions which were subjected to EWT. Moreover, petitioner voluntarily paid the deficiency tax assessment on Professional and Brokerage Fees of ₱4,474.60, as evidenced by Payment Form 0605 received by BIR Revenue Region No. 8 on October 14, 2011, which amount is still included in the questioned assessments.

Further, the witness believed that petitioner is not liable to pay the alleged deficiency VAT assessment since it is a 100% exporter and therefore its sales are zero-rated. On this regard, she prepared the Schedule of Export Sales summarizing petitioner's export sales for 2007, and presented it together with Certificates of Inward Remittances[23], Certification from BPI, and a Certification from the Philippine Exporters Confederation, Inc. dated July 23, 2013, to the effect that the Export Declarations were

[23] Exhibits "P-341" to "P-342".

processed at the One-Stop Export Documentation Center (OSEDC)-Manila for 2007.

Petitioner is likewise not liable for deficiency WTC on the following grounds: 1) it hires local itinerant workers; 2) it has employees with income not exceeding ₱60,000.00 per annum, hence, are not subject to withholding tax; 3) the salaries of employees terminated before December 31 were already subjected to withholding tax; 4) it has employees with no previous employer during the year whose compensation income was still subjected to personal exemption; 5) its employees with previous employers during the year and were already subjected to withholding tax by their previous employers, were proportionately subjected to withholding tax. In any event, petitioner submitted all the relevant documents together with its protest letter to the BIR.

Finally, the witness admitted that petitioner did not secure any BIR ruling that its pearl exports and sales are subject to 0% VAT based on Section 106 of the NIRC of 1997, as amended. Aside from the fact that petitioner exports all its pearls, as evidenced by the corresponding export documents, petitioner does not have any proof that 100% of the pearls produced are actually exported, to justify the claim that it is 100% VAT free.

Court-commissioned Independent Certified Public Accountant (ICPA) **EMMANUEL V. MENDOZA** testified[24] that he examined and verified the documents in relation to petitioner's prayer for cancellation of the deficiency IT, VAT, EWT and WTC assessments for 2007 in the total amount of ₱13,348,339.64.

In his ICPA Report dated November 19, 2014[25], he indicated that out of ₱19,374,885.72, representing 50% of petitioner's total cost of sales disallowed by respondent, only ₱9,993,868.38 total cost of sales is unsupported, hence, should be paid by petitioner. With respect to petitioner's alleged total undeclared sales in the total amount of

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[24] See Sworn Statement of Emmanuel Y. Mendoza, vol. 4 docket, pp. 1802-1806.
[25] Exhibits "P" and "P-a".

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₱158,186.56, ₱59,833.92 is supported by invoices while P98,352.64 is unaccounted.

On the assessed deficiency VAT, the sales not subjected to VAT amounting to ₱50,452,491.96 is composed of export sales of pearls in the amount of ₱49,731,295.80, other income representing sales of dead shells amounting to ₱711,217.89, both of which are properly supported by invoices and certificates of inward remittances, and the unsupported interest income of ₱9,978.26.

On the other hand, the deficiency EWT assessment arose from petitioner's income payments in the aggregate amount of ₱5,748,065.91. However, only ₱4,261,550.71 is subject to EWT and petitioner is liable only for the unsupported amount of ₱3,824,834.33 since the amount of ₱1,486,515.20 is properly supported by documents.

Finally, on petitioner's deficiency WTC assessment, the ICPA explained that the difference of ₱763,022.35 between the withholding tax due on compensation and the remitted withholding tax on compensation as found by respondent is attributable to the non-inclusion of personal and additional exemptions claimed by the employees brought about by petitioner's failure to include their respective TINs in the alphalist.

For his part, respondent presented Revenue Officers (ROs) Maezy Claire T. Laggui and Nonito A. Divino, as witnesses.

RO **MAEZY CLAIRE T. LAGGUI** declared in her Judicial Affidavit[26] that she has been assigned at the BIR Revenue District Office (RDO) No. 48-West Makati since April 16, 2008. As RO, she conducts tax verification and post-audit examination of books of accounts and other accounting records of a particular taxpayer as authorized under a valid Letter of Authority (LOA), Audit Notice or Tax Verification Notice issued for such purpose, to determine the tax liability of the subject taxpayer, if any, for a particular period and

[26] Exhibits "R-13" and "R-13-a".

submits a written report on her findings with the corresponding recommendation.

By virtue of LOA No. 00043432 dated June 23, 2008[27] issued by respondent, she conducted an investigation relative to petitioner's internal revenue tax liabilities for taxable year 2007. She served the said LOA to petitioner and requested for its presentation of accounting records for verification and examination. She also prepared a Post Reporting Notice[28], an Amended Post Reporting Notice[29] and Memorandum Report[30], all containing her findings on the deficiency taxes assessed against petitioner.

On October 15, 2010, she served a copy of the PAN dated October 13, 2010[31] with Details of Discrepancies to petitioner informing it of its deficiency IT of ₱290,011.06, deficiency VAT of ₱9,418,167.10, deficiency EWT of ₱222,176.24 and deficiency WTC of ₱1,426,555.67.

In its Reply-letter dated November 15,2010, petitioner asked and was granted a reinvestigation of its case after it executed a Waiver of the Defense of Prescription on November 25, 2010[32] and May 9, 2011[33]. Thereafter, she prepared a Memorandum Report dated June 24, 2011[34] finding petitioner liable for deficiency IT in the amount of ₱320,125.87, VAT in the amount of ₱10,237,700.03, EWT in the amount of ₱240,658.44 and WTC in the amount of ₱1,365,518.75 for taxable year 2007.

The witness further testified that on August 17, 2011, she served to petitioner a copy of the FAN with Details of Discrepancies[35], informing it that it is liable for deficiency IT in the amount of ₱329,209.56, VAT in the amount of ₱10,519,256.20, EWT in the amount of ₱247,287.07 and WTC in the amount of ₱1,325,777.46 for taxable year 2007.

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[27] Exhibit "R-1".
[28] Exhibit "R-2".
[29] Exhibit "R-3".
[30] Exhibit "R-4".
[31] Exhibit "R-5".
[32] Exhibit "R-6".
[33] Exhibit "R-7".
[34] Exhibit "R-8".
[35] Exhibit "R-9".

RO **NONITO A. DIVINO** testified[36] that he has been with RDO No 48-West Makati since May 2008. On the strength of a Memorandum of Assignment dated October 26, 2011[37] issued by respondent pursuant to LOA No. 00043432 dated June 23, 2008, he conducted petitioner's requested reinvestigation of its internal revenue taxes for taxable year 2007. Thereafter, he prepared a Memorandum Report[38].

On April 13, 2013, he served to petitioner a copy of the FDDA dated April 10, 2010 with Details of Discrepancies[39], informing it of its liability for deficiency IT in the amount of ₱354,541.59, VAT in the amount of ₱11,307,950.83, EWT in the amount of ₱260,981.37 and WTC in the amount of ₱1,424,865.85 for taxable year 2007.

RO Divino further testified that the case was assigned to him after petitioner protested the FAN. He affirmed the findings of the first reviewing RO since petitioner failed to submit supporting documents pertaining to the 50% disallowance of expenses indicated in its protest, despite his clear request.

After the parties filed their respective memoranda, the case was submitted for decision on July 21, 2016.[40]

THE ISSUES

The parties submit the following issues[41] for the Court's determination, to wit:

a. Whether Petitioner is liable to pay the assessed deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation for calendar year 2007 in the amount of ₱13,348,339.64; and

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36 Judicial Affidavit of Nonito A. Divino, Exhibits "R-14" and "R-14-a".
37 Exhibit "R-10".
38 Exhibit "R-11".
39 Exhibit "R-12".
40 Vol. 4 docket, p. 2296.
41 Issues, JSFI, vol. 1 docket, p. 92.

b. Whether the deficiency assessment for Income Tax, Value-Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation for calendar year 2007 should be cancelled.

THE COURT'S RULING

Primordial in cases such as the present, is the determination of the timeliness in seeking this Court's intervention. Section 228 of the NIRC of 1997, as amended[42], relevantly provides that a taxpayer has thirty (30) days from receipt of the FAN within which to file its administrative protest requesting for a reconsideration or reinvestigation, and has sixty (60) days from filing of such protest to submit supporting documents. If the protest is denied or not acted upon after the lapse of one hundred eighty (180)-day period from the taxpayer's submission of relevant supporting documents, the taxpayer has 30 days from receipt of the adverse ruling, or from the lapse of the 180-day period, within which to file its Petition for Review with the Court.

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[42] 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:

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The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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

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

In this case, petitioner received the FAN with Details of Discrepancies[43] for deficiency IT, VAT, EWT, and WTC for taxable year 2007 on August 17, 2011. Counting 30 days from August 17, 2011, petitioner had until September 16, 2011 within which to file its administrative protest with respondent. Thus, petitioner timely filed its administrative protest/request for reinvestigation on September 15, 2011.

On April 13, 2012, petitioner received the FDDA with Details of Discrepancies dated April 10, 2012, issued by respondent, finding petitioner liable for deficiency IT, VAT, EWT, and WTC in the aggregate amount of ₱13,348,339.64. From April 13, 2012, petitioner had until May 14, 2012[44], within which to file its Petition for Review with this Court. In other words, petitioner seasonably filed its Petition for Review with the Court on May 11, 2012.

On the merits of the case, per FDDA, petitioner is assessed of deficiency IT, VAT, EWT, and WTC in the aggregate amount of ₱13,348,339.64, detailed as follows:

	Basic	**Interest**	**Total**
Income Tax (MCIT)	₱ 195,067.35	₱ 159,474.24	₱ 354,541.59
Value Added Tax	6,073,281.42	5,234,669.41	11,307,950.83
Expanded Withholding Tax	139,756.75	121,224.62	260,981.37
Withholding Tax on Compensation	763,022.35	661,843.50	1,424,865.85
Total	**₱7,171,127.87**	**₱6,177,211.77**	**₱13,348,339.64**

I. DEFICIENCY INCOME TAX

Respondent assessed petitioner of deficiency IT in the amount of ₱354,541.59, computed as follows:[45]

Gross income per Income Tax Return (ITR)		₱ (92,261.84)
Add: Disallowed cost of sales (Sched. 1)	₱ 9,687,442.86	
Undeclared sales (Sched. 2)	158,186.56	9,845,629.42
Gross income		₱9,753,367.58
MCIT due		₱ 195,067.35

[43] Exhibit "R-9".
[44] Per Rule 22 of the Rules of Court since May 13, 2012 fell on a Sunday.
[45] Exhibit "R-12".

Less: Tax paid		-
Basic deficiency tax		₱ 195,067.35
Add: Interest (04.16.08 to 05.17.12)		159,474.24
Total amount due		**₱354,541.59**

Of items in the foregoing table, petitioner disputes the following:

A. Disallowed cost of sales	₱ 9,687,442.86
B. Undeclared sales	₱ 58,186.56
C. MCIT due	₱ 15,067.35

A. For Disallowed cost of sales of ₱9,687,442.86

Respondent's verification disclosed that petitioner had an undue claim of cost of sales in the amount of ₱9,687,442.86, in contravention with Revenue Memorandum Circular (RMC) No. 4-2003[46], as shown below. The said disallowed cost of sales was reclassified under operating cost/expense.[47]

Schedule 1	
Shared cost:	
Cost of sales	₱ 2,875,384.18
Repairs and maintenance	862,774.93
Operating supplies	831,924.11
Transportation/travel freight	778,705.93
Office supplies	51,921.41
Communication expense	19,020.00
Depreciation	3,255,261.45
Fuel and oil	6,000,264.29
Rental	1,128,539.67
Others	3,571,089.75
Total	₱ 19,374,885.72
Multiplied by: 50% sharing	50%
Total	₱ 9,687,442.86

On this point, petitioner argues that pearl farming is not among the industries enumerated in RMC No. 4-2003.

[46] Clarifying Items That Would Constitute Gross Receipts and Costs in Determining "Gross Income" on Services for the Purpose of Computing the Minimum Corporate Income Tax (MCIT) Pursuant to Sections 27(E) and 28(A)(2) of the National Internal Revenue Code of 1997.
[47] Details of Discrepancies, FDDA, Exhibit "R-12".

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Thus, there is no legal basis or ground for respondent to apply it to its case since only the following industries are included therein:

(i) Banks and non-bank financial intermediaries performing quasi-banking activities pursuant to Section 22(V), (W), and (X) of the NIRC of 1997.

(ii) Insurance and pension funding companies refer to those engaged in life and non-life insurance business as defined under the Insurance Code and pre-need companies, including health maintenance organizations.

(iii) Finance companies and other financial intermediaries not performing quasi-banking activities refer to those engaged in the business of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, including lending investors.

(iv) Brokers of securities (excluding banks).

(v) Customs, insurance, real estate, immigration and commercial brokers.

(vi) General engineering and/or building contractors refer to those engaged in contracting business in connection with fixed works requiring specialized engineering knowledge and skill, or with any structure built, for the support, shelter and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereto.

(vii) Common carriers or transportation contractors.

(viii) Hotel, motel, rest/pension/lodging house and resort operators.

(ix) Food service establishments.

(x) Lessors of property.

(xi) Telephone and telegraph, electric, gas, and water utilities.

(xii) Radio and/or television broadcasting.

This according to petitioner justifies its prayer for withdrawal and cancellation of this particular item in the questioned assessments.

Respondent, on the other hand, argues that the said RMC was cited in the questioned assessments only for the purpose of clarifying which items constitute cost for purposes of determining gross income which is necessary in computing the Minimum Corporate Income Tax (MCIT). In any event, the legal bases of the assailed disallowance were Sections 27(E) and 28(A)(2) of the NIRC of 1997, as amended.[48] Respondent's intention was actually to impose MCIT on petitioner's gross income pursuant to Section 27(E)[49] of the NIRC of 1997, as amended.

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[48] BIR Records, p. 265.

[49] "SEC. 27. Rates of Income Tax on Domestic Corporations. –

(E) Minimum Corporate Income Tax on Domestic Corporations. –

(1) Imposition of Tax. – A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.

xxx xxx xxx

(4) Gross Income Defined. – For purposes of applying the minimum corporate income tax provided under Subsection (E) hereof, the term 'gross income' shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. 'Cost of goods sold' shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use.

For a trading or merchandising concern, 'cost of goods sold' shall include the invoice cost of the goods sold, plus import duties, freight in transporting the goods to the place where the goods are actually sold including insurance while the goods are in transit.

For a manufacturing concern, 'cost of goods manufactured and sold' shall include all costs of production of finished goods, such as raw materials used, direct labor and manufacturing overhead, freight cost, insurance premiums and other costs incurred to bring the raw materials to the factory or warehouse.

The Court agrees with respondent.

RMC No. 4-2003 was issued "to clarify what items should comprise gross receipts and corresponding cost of services for purposes of computing the gross income on sale of services which shall be the basis of the 2% Minimum Corporate Income Tax (MCIT) pursuant to Sections 27(E) and 28(A)(2) of the National Internal Revenue Code of 1997" that should be imposed upon the taxpayers engaged in the industries specifically included therein.

In relation to the foregoing, it appears from petitioner's ITR that it neither subjected its receipts/income to the Normal Income Tax Rate of 35% nor MCIT of 2%.

Upon scrutiny of petitioner's claimed cost of sales, respondent discovered the following items:[50]

	Per ITR	**Per Sched**
Cost of sales		₱2,875,384.18
Mops		3,600,250.00
Import - mats & parts		4,159,797.10
Import - taxes & duties		189,559.00
Import – charges		133,083.06
Repairs & maintenance		862,774.93
Operating supplies		831,924.11
Repairs & maint - mats/supplies	₱12,652,772.38	
Direct labor		8,842,142.08
Indirect labor		3,406,035.49
Allowances		327,344.00
13th month pay		908,724.70
Social charges		101,930.68
SSS Medicare HDMF		386,085.33
Salaries & allowances	13,972,262.28	
Transportation & travel		243,933.93
Freight & delivery charges		534,772.00

In the case of taxpayers engaged in the sale of service, 'gross income' means gross receipts less sales returns, allowances, discounts and cost of services. 'Cost of services' shall mean all direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (A) salaries and employee benefits of personnel, consultants and specialists directly rendering the service and (B) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies; Provided, however, That in the case of banks, 'cost of services' shall include interest expense."

[50] BIR Records, p. 155.

Transpo & travel	778,705.93	
Office supplies	51,592.41	51,592.41
Communication exp	19,020.00	19,020.00
Depreciation	12,370,128.08	12,370,128.08
Fuel and oil	6,000,264.29	6,000,264.29
Rental	1,128,539.67	1,128,539.67
Financial assistance		42,548.82
Meal allowance		320,374.79
Service and bank charges		26,989.84
Others		3,179,979.31
Insurance		1,247.00
Others	3,571,139.76	
Total cost of sales	**₱50,544,424.80**	**₱50,544,424.80**

The depreciation expense amounting to ₱12,370,128.08 was further broken down as follows:[51]

Water & sea going		₱ 3,567,450.27
Rafts & culturing		4,179,221.06
Machineries		1,368,195.30
Total direct cost		9,114,866.63
Add: Shared depreciation exp.		
Bldg. & structures	₱1,330,609.07	
Furniture/fixtures	2,400.00	
Commu. Equipment	11,583.33	
Other equipment	1,910,669.05	3,255,261.45
		₱12,370,128.08

From the total costs of sales in the amount of ₱50,544,424.80, respondent found that a total of ₱19,374,885.72 as detailed in Schedule 1 above were not directly attributable to cost of sales *per se*, hence, the said amount was allocated between cost of sales and operating expense using 50/50 ratio.[52]

Since petitioner failed to prove that the remaining costs amounting to ₱19,374,885.72 were directly attributable to its pearl farming operations, the Court finds the assessment in order and must be sustained.

B. Undeclared sales of ₱158,186.56:

[51] BIR Records, p. 155.
[52] BIR Records, p. 170.

Respondent also uncovered a discrepancy after comparing petitioner's sales per protest against its sales per ITR. This is presumptive of the existence of sales which were not recorded, hence, the taxable income of ₱158,186.56, as herein computed, was added to gross income pursuant to Section 32 of the NIRC of 1997, as amended:[53]

Schedule 2		
Sales per protest		
Export sales	₱49,896,202.37	
Other income	704,497.89	
Interest income	9,978.26	₱50,610,678.52
Less: Sales per ITR		50,452,491.96
Undeclared revenue		**₱ 158,186.56**

Petitioner explains that the gross export sales paid to it in US dollars is inclusive of freight charges in the amount of ₱158,186.56 for the account of the foreign buyers, which was reimbursed to petitioner. Being in the form of reimbursement, the same is not subject to tax.[54]

The Court does not agree.

Based on the examination of the ICPA, Emmanuel Y. Mendoza, the reimbursements of freight charges were separately billed as shown in the invoices issued to petitioner's customers. Upon collection, the reimbursed freight was credited against receivables from customer's accounts.[55]

However, petitioner did not show any proof that its collection of freight charges did not redound to its benefit to be exempted from income tax. No documentary evidence was presented to prove that the alleged freight charges were indeed reimbursed and credited against the receivable from customer's accounts. As such, respondent's assessment finding the amount of ₱158,186.56 subject to income tax must be sustained.

[53] Details of Discrepancies, FDDA, Exhibit "R-12".
[54] Letter of Protest to the FAN, BIR Records, p. 342.
[55] ICPA Report, Exhibit "P".

In sum, the Court finds that the assessment issued by respondent against petitioner for deficiency IT is correct. Petitioner is liable to pay basic deficiency IT in the amount of ₱195,067.35, as computed below:

Gross Income per ITR		(₱92,261.84)
Add: Disallowed Cost of Sales	₱9,687,442.86	
Undeclared Sales	158,186.56	9,845,629.42
Gross Income		**₱9,753,367.58**
MCIT		₱ 195,067.35
Less: Tax Paid		-
Basic Deficiency Income Tax		**₱ 195,067.35**

II. DEFICIENCY VALUE-ADDED TAX

Respondent's assessment on petitioner's deficiency VAT is as follows:[56]

Sales subjected to VAT		₱ -
Add/(deduct) adjustments:		
Sales not subjected to VAT(Sched.3)	₱50,452,491.96	
Undeclared sales (Sched. 2)	158,186.56	50,610,678.52
Total sales subject to VAT		₱ 50,610,678.52
Output tax		₱ 6,073,281.42
Less: Input tax carry over	₱ 1,951,552.96	
Input tax claimed	126,551.00	
Total	₱ 2,078,103.96	
Less: Excess input tax carried over to the next quarter	2,078,103.96	-
Basic tax due		₱ 6,073,281.42
Add: Interest (01.26.08 to 05.17.12)		5,234,669.41
Total amount due		**₱11,307,950.83**

Of the foregoing computation, petitioner disputes the following assessment items:

A. Sales not subjected to VAT	₱50,452,491.96
B. Undeclared sales	158,186.56
C. Disallowed excess input tax carried over to the next quarter	₱ 2,078,103.96

[56] FDDA, Exhibit "R-12".

A. Sales not subjected to VAT in the amount of ₱50,452,491.96:

Respondent's verification disclosed that petitioner failed to submit proof of claimed export sales in the amount of ₱50,452,491.96, as shown below. Hence, the same was subjected to VAT pursuant to Section 106(A) of the NIRC of 1997, as amended. In addition, sale of non-food marine products was removed from the VAT exemption list effective November 1, 2005 under Revenue Regulation (RR) No. 16-2005.[57]

Schedule 3	
Sales per FS/ITR	₱ 50,452,491.96
Less: Sales per VAT returns	-
Sales not subject to VAT	**₱50,452,491.96**

Petitioner posits that the amount of ₱50,452,491.96 represents export sales paid for in foreign currency inwardly remitted to the Philippines, thus, qualifies as zero-rated sales.

The record shows that the sales per FS/ITR[58] actually consist of the following:

Export Sales	₱ 49,738,015.81
Other Income	704,497.89
Interest Income	9,978.26
Total	**₱50,452,491.96**

A.1. Export sales - ₱49,738,015.81:

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, provides:

> SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* –

[57] Details of Discrepancies, FDDA, Exhibit "R-12".
[58] BIR Records, p. 141.

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* – The term *'export sales'* means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

Thus, in order for an export sale to qualify as zero-rated, the following conditions must concur:

1. there must be sale and actual shipment of goods from the Philippines to a foreign country;

2. such sale was made by a VAT-registered person;

3. it was paid for in acceptable foreign currency or its equivalent in goods or services; and

4. such payment was accounted for in accordance with the rules and regulations of the BSP.

Corollary to the first requisite, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and as implemented by Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-05, as amended, provide that a VAT taxpayer, such as petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice containing following information:

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

(A) *Invoicing Requirements.* – A VAT-registered person shall issue:

(1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

"SEC. 4.113-1. ***Invoicing Requirements***. –

(A) **A VAT-registered person shall issue:** –

(1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice** or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the

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duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

Pursuant to the cited provisions and of RR No. 16-2005, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: (1) sales invoice as proof of sale of goods; (2) export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (3) bank credit advice, certificate of bank remittance or any other document evidencing payment for the exported goods in acceptable foreign currency or its equivalent in goods and services.

In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Further, the sales invoices supporting the export sales must be registered with the BIR and must contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

In support of its claimed export sales of ₱49,738,015.81, petitioner offered in evidence its sales invoices, export declarations issued by the Department of Trade and Industry (DTI), clearance certificates from Bureau of Fisheries and Aquatic Resources (BFAR), airway bills, and certificates of inward remittances, to wit:

Sales Invoice	Export Declaration	Commodity Clearance	Air Waybill	Certificate of Inward Remittance	Sales (US$)	Exchange Rate	Peso Value
P-305	P-314	P-323	P-332	P-341	195,000.00	48.18	9,395,100.00
P-306	P-315	P-324	P-333	P-341	106,075.58	48.15	5,107,539.18
P-307	P-316	P-325	P-334	P-341	53,869.00	45.93	2,474,203.17
P-308	P-317	P-326	P-335	P-341	54,438.31	44.80	2,438,836.29
P-309	P-318	P-327	P-336	P-342	230,000.00	45.31	10,421,300.00
P-310	P-319	P-328	P-337	P-341	27,794.70	46.20	1,284,115.14
P-311	P-320	P-329	P-338		136,030.27	43.13	5,866,985.55
P-312	P-321	P-330	P-339	P-342	161,195.25	43.90	7,076,471.48
P-313	P-322	P-331	P-340	P-342	136,710.00	41.50	5,673,465.00
TOTAL					**1,101,113.11**		**49,738,015.81**

A close scrutiny of the above documents reveals that petitioner's cultured pearls were indeed sold and shipped abroad, except for the purported sales amounting to US$195,000.00 with peso equivalent of ₱9,395,100.00, since the sales invoice supporting the said sale was not imprinted with the word "zero-rated sales", and the sale in the amount of US$136,030.27 with peso equivalent of ₱5,866,985.55, as there was no document presented showing that petitioner was indeed paid in foreign currency which was duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas.*

As such, only the amount of US$770,082.84 with peso equivalent of ₱34,475,930.26 [₱49,738,015.81 - (₱9,395,100.00 + ₱5,866,985.55)] properly falls within the export sales transactions subject to zero percent VAT referred to under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, while the amount of ₱15,262,085.55 remains subject to 12% VAT.

A.2. Other income of ₱704,497.89:

The ICPA found that the amount of ₱704,497.89 pertains to the sale of dead shells, supported by Sales

Invoice No. 0013[59]. The same was not subjected to VAT by petitioner because the transaction represents agricultural and marine products in its original state, thus, VAT exempt.

On the other hand, respondent points out that sales on nonfood agricultural products, marine and forest products in their original state by the primary producer were removed from the VAT exemption list under NIRC of 1997, as amended by Republic Act (RA) No. 9337.

The type of agricultural and marine products which the law exempts from VAT are "food products" as clearly stated in Section 109(1)(A) of the NIRC of 1997, as amended, to wit:

> SEC. 109. *Exempt Transactions.* – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> (A) **Sale or importation of agricultural and marine <u>food products</u> in their original state**, livestock and poultry of a kind generally used as, or yielding or producing foods **for human consumption**; and breeding stock and genetic materials therefor.
>
> Products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping. Polished and/or husked rice, corn grits, raw cane sugar and molasses, ordinary salt, and copra shall be considered in their original state;" (*Underscoring supplied*)

Further, as clarified under Section 4.109-1(B)(1)(a) of RR No. 16-2005, marine food products shall include fish and crustaceans, such as, but not limited to, eels, trout, lobster, shrimps, prawns, oysters, mussels and clams.

Clearly, dead shells cannot be considered marine food products exempted from the imposition of VAT. As such, the assessment on this item shall be sustained.

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[59] Exhibit "P-344".

A.3. Interest income in the amount of ₱9,978.26:

For failure of petitioner to provide documents in support of its protest relative to the interest income assessed against it, the said assessment must be upheld.

In sum, the total sales of petitioner which is subject to VAT amounts to ₱15,976,561.70, as shown below:

Disallowed Export Sales	₱ 15,262,085.55
Other Income	704,497.89
Interest Income	9,978.26
Total	**₱15,976,561.70**

B. Undeclared sales in the amount of ₱158,186.56:

As previously discussed under the deficiency IT, respondent uncovered a discrepancy of ₱158,186.56 after comparing sales per protest against sales per ITR, which was considered as undeclared sales subject to VAT.

For failure of petitioner to discharge its burden of proof to overturn the IT assessment, respondent's VAT assessment must also be sustained.

C. Disallowed Excess Input Tax to be Carried Over to the Next Period in the amount of ₱2,078,103.96:

Respondent deducted petitioner's excess input tax which it carried over to succeeding quarters from its total creditable input tax explaining that the said amount has been credited against the estimated quarterly tax liabilities for the taxable quarters of the succeeding taxable years as provided under Section 110(B) of 1997 NIRC, as amended.[60]

It must be stressed that it is improper for respondent to disallow the said excess input tax given that any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2008. Since the

[60] Details of Discrepancies, FDDA, Exhibit "R-12".

tax benefit would be in the succeeding year, assessment should be made in the succeeding year.

In view of the foregoing, petitioner has no deficiency VAT liability for taxable year 2007 considering that it has sufficient tax credits to cover its output VAT liability for the same year, computed as follows:

Sales subjected to VAT		₱ -
Add/(Deduct) adjustments		
Sales not Subjected to VAT	₱15,976,561.70	
Undeclared Sales	158,186.56	16,134,748.26
Total Sales subject to VAT		**₱16,134,748.26**
Output tax		₱ 1,936,169.79
Less: Input Tax Carry Over	₱1,951,552.96	
Input Tax Claimed	126,551.00	2,078,103.96
Excess Input Tax		**₱(141,934.17)**

Accordingly, respondent's deficiency VAT assessment should be cancelled.

III. DEFICIENCY EXPANDED WITHHOLDING TAX

Respondent's assessment on petitioner's deficiency EWT is as follows:[61]

Basic tax due (Sched. 4)	₱139,756.75
Add: Interest (01.16.08 to 05.17.12)	121,224.62
Total amount due	**₱260,981.37**

Respondent's verification disclosed that petitioner failed to withhold and remit the corresponding EWT due amounting to ₱139,756.75 as shown below, in violation of Section 2.57.2(E) of RR No. 2-98, as amended.[62]

Nature of Income Payment	Per ITR/FS	Per Alphalist	Difference	Rate	Tax Due
Expanded Withholding					
Purchase of services by Top 10,000 Corp					

[61] FDDA, Exhibit "R-12".
[62] Details of Discrepancies, FDDA, Exhibit "R-12".

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Repairs and maintenance	₱ 862,774.93				
Freight and delivery charges	534,772.00				
Janitorial and security	42,000.00				
Others	3,179,979.31				
Subtotal	₱ 4,619,526.24	₱ 453,037.87	₱ 4,166,488.37	2%	₱ 83,329.77
Rental	1,128,539.67	-	1,128,539.67	5%	6,426.98
					₱139,756.75

From the foregoing, petitioner disputes the following assessment items:

A. Purchase of services by Top 10,000 Corp	₱83,329.77
A.1 Repairs and maintenance	
A.2 Freight and delivery charges	
A.3 Janitorial and security	
A.4 Others	
B. Rental	₱56,426.98

A. Purchase of services by Top 10,000 Corp in the amount of ₱83,329.77:

Respondent assessed petitioner of deficiency EWT on Repairs and Maintenance, Freight and Delivery Charges, Janitorial and Security, and Others on the ground that petitioner belongs to the Top 10,000 taxpayers.

Petitioner however denies such contention. Per its verification with BIR RDO No. 048, there is no record indicating that petitioner was sent a written notice to that effect.[63] That being the case, it is not required to withhold 1% and 2% EWT on local purchases of goods and services, respectively, as provided by Section 2.57.2(M) of RR No. 2-98, as amended by RR No. 17-2003.

On this regard, Section 2.57.2(M) of RR No. 02-98, as amended by RR No. 17-03, provides:

> SECTION 2.57.2. *Income Payments Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein

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[63] Letter of Protest to the FAN, BIR Records, p. 341.

specified for each class of payee from the following items of income payments to persons residing in the Philippines:

xxx xxx xxx

(M) *Income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax.* - Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines

Supplier of goods — One percent (1%)
Supplier of services — Two percent (2%)

Top ten thousand (10,000) private corporations shall include a corporate taxpayer who has been determined and notified by the Bureau of Internal Revenue (BIR) as having satisfied any of the following criteria:

xxx xxx xxx

A corporation shall not be considered a withholding agent for purposes of this Section, unless such corporation <u>has been determined and duly notified, in writing</u>, by the Commissioner that it has been selected as one of the top ten thousand (10,000) private corporations." *(Emphasis and underscoring supplied)*

Thus, in order for a corporate taxpayer to be considered as a withholding agent, it must be notified that it belongs to the Top 10,000 private corporations.

In the present case, there is no showing that petitioner received such notification from respondent. Worse, respondent did not present any evidence showing that it has selected and notified petitioner that it is one of the Top 10,000 private corporations. Thus, petitioner is not required to withhold 2% on its purchase of services and 1% on its purchases of goods. Consequently, the deficiency EWT assessment issued by respondent against it on this item shall be cancelled.

B. Rental in the amount of ₱54,426.98:

Petitioner avers that its rental expense of ₱1,128,539.67 was paid to the Municipal Government of San Vicente, Palawan for the lease of maritime waters where the pearl farm is located[64]. Pursuant to Section 2.57.5 of RR No. 2-98, payments to a local government unit are not subject to withholding tax.

Section 2.57.5(A) of RR No. 2-98, as amended by RR No. 14-2002, provides that the withholding of creditable withholding tax prescribed therein shall not apply to income payments made to the national government and its instrumentalities, including provincial, city or municipal governments and barangays except government-owned and controlled corporations.

Per record, petitioner presented the following official receipts (ORs) issued by the Province of Palawan to prove its rental payment to the local government:

OR No.	Date	Nature of Collection	Amount	Exh. No.
PP-0323402	6/23/2006	Full payment of municipal water rental from July 2006 to June 2007	₱500,000.00	P-239
PP-0687425	8/13/2007	LGU - San Vicente water rental from July 2007 to June 2008 (Full payment)	500,000.00	P-240

However, it is shown above that petitioner's payments cover two taxable periods, *i.e,* from July 2006 to June 2007 and July 2007 to June 2008. Since the present case involves only taxable year 2007, the Court will only consider the period covering July 2006 to June 2007 in the amount of ₱500,000.00, as computed below:

Payment Date	Applicable Period	Monthly Rental (P500,000/12mos)	No. of Months Corresponding to 2007	Rent Expense for 2007

[64] Letter of Protest to the FAN, BIR Records, p. 341.

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6/23/2006	July 2006 to June 2007	41,666.67	6	₱ 250,000.00
8/13/2007	July 2007 to June 2008	41,666.67	6	250,000.00
			Total	**₱500,000.00**

The remaining ₱628,539.67[65] was, however, unaccounted by petitioner, thus shall be subjected to 5% EWT as assessed by respondent.

In sum, petitioner is liable to pay basic deficiency EWT amounting to ₱31,426.98, as computed below:

Nature of Income Payment	Income Payments	Rate	Basic EWT Due
Purchase of services by Top 10,000 Corp	₱4,166,488.37	N/A	₱ -
Rental	628,539.67	5%	31,426.98
Total			**₱31,426.98**

IV. DEFICIENCY WITHHOLDING TAX ON COMPENSATION

Respondent's assessment on petitioner's deficiency WTC is as follows:[66]

Basic tax due (Sched. 5)	₱ -
Add: Salaries and wages of employees without TIN (Sched. 6)	763,022.35
Total basic tax due	763,022.35
Add: Interest (01.16.08 to 05.17.12)	661,843.50
Total amount due	**₱1,424,865.85**

Respondent claims that petitioner failed to withhold and remit the withholding tax on compensation of employees without Tax Identification Number per Alphalist pursuant to Section 2.79.2 of Revenue Regulations No. 2-98, as amended[67], as follows:

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[65] ₱1,128,539.67 – 500,000.00.
[66] FDDA, Exhibit "R-12".
[67] Section 2.79.2 of Revenue Regulations No. 2-98, as amended, provides that "Where an employee, in violation of these regulations either fails or refuses to file an Application for Registration (1902) together with the required attachments, the employer shall withhold the taxes prescribed under the Schedule of Zero Exemption of the Revised Withholding Tax Table effective January 1, 1998... Any refund or underwithholding that shall arise due to the violations shall be covered by the penalties prescribed in Section 80 of the NIRC, as amended."

Schedule 6:				
	Taxable Income	**Tax Due per Audit***	**Tax Due per Alphalist**	**Tax Still Due**
Exempt from withholding	₱ 5,653,629.39	₱ 429,805.38	₱ -	₱ 429,805.38
No previous employer	4,271,972.56	635,811.97	329,872.50	305,939.47
With previous employer	483,885.20	78,729.27	51,451.77	27,277.50
Terminated 12/31	79,338.75	10,907.60	10,907.60	-
Total	**₱10,488,825.90**	**₱1,155,254.22**	**₱392,231.87**	**₱763,022.35**

**Note: Tax due per audit was computed without the benefit of personal and additional exemption.*

On the other hand, petitioner refutes the WTC assessment, as follows:

a.) Salaries exempt from withholding tax in the amount of ₱5,653,629.39:

According to petitioner it is exempted from withholding tax from employees whose annual income does not exceed ₱60,000.00. Employees who are receiving monthly income of at most ₱5,000.00, or do not exceed ₱60,000.00 per annum are also exempt from withholding tax.

b.) Employees with no previous employer during the year in the amount of ₱4,271,972.56:

Per petitioner, the Alphalist shows that the amount of ₱4,271,972.56 is still subject to deductible personal exemptions of ₱1,862,000.00; plus there are salaries below ₱60,000.00 that are exempt from withholding tax. Nevertheless, the resulting adjusted withholding tax of ₱329,872.60 were paid during the year.

c.) Employees with previous employers during the year in the amount of ₱483,885.20:

Petitioner argues that with respect to its employees with previous employer during taxable year 2007, the Alphalist shows that out of

> ₱483,885.20, P188,730.00 was already paid by the previous employer of their employees, with the corresponding total withholding tax of ₱19,163.26. On the other hand, petitioner paid such employees the total amount of ₱295,155.20, which was subjected to withholding tax of ₱51,451.77. Thus, there was no under-withholding of tax in this instance.[68]

The ICPA explained that the difference of ₱763,022.35 found by respondent between the withholding tax due on compensation and the remitted withholding tax on compensation is attributable to the non-inclusion of personal and additional exemptions claimed by the employees due to petitioner's failure to include the respective TINs of its employees in the alphalist filed to the BIR.[69]

However, perusal of the record reveals that petitioner only presented BTR-BIR Deposit Slips[70] as proof of its monthly payment of WTC to support its claim, which the Court finds insufficient to overturn respondent's assessment. Said documents merely proved the fact of remittance, but did not substantiate or account for any of the difference noted by respondent.

Petitioner failed to provide the proof of Application for Registration together with the required attachments of its employees in compliance with the provision of Section 2.79.2 of RR No. 2-98, as amended, to warrant cancellation of the assessment. As such, the Court is constrained to uphold respondent's assessment on deficiency WTC.

WHEREFORE, the Petition for Review filed by petitioner Port Barton Development Corporation on May 11, 2012, is hereby **PARTIALLY GRANTED**. Accordingly, the deficiency Value-Added Tax assessment issued by respondent against petitioner for taxable year 2007 is **CANCELLED**. On the other hand, the deficiency Income Tax, Expanded Withholding Tax and Withholding Tax on

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[68] Letter of Protest to the FAN, BIR Records, p. 340.
[69] ICPA Report, Exhibit "P".
[70] Exhibits "P-346" to "P-356".

Compensation assessments, are **AFFIRMED with MODIFICATIONS.**

Petitioner is **ORDERED TO PAY** respondent the amount of **₱1,236,895.86** representing basic deficiency Income Tax, Expanded Withholding Tax, and Withholding Tax on Compensation, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	Basic	**Surcharge**	**Total**
Income Tax (MCIT)	₱ 195,067.35	₱ 48,766.84	₱ 243,834.19
Expanded Withholding Tax	31,426.98	7,856.75	39,283.73
Withholding Tax on Compensation	763,022.35	190,755.59	953,777.94
Total	**₱989,516.68**	**₱247,379.18**	**₱1,236,895.86**

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

a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, expanded withholding tax and withholding tax on compensation computed from the following dates until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	Basic	**Deficiency Interest computed from**
Income Tax (MCIT)	₱195,067.35	15-Apr-08
Expanded Withholding Tax	₱ 31,426.98	15-Jan-08
Withholding Tax on Compensation	₱763,022.35	15-Jan-08

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱1,236,895.86 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from May 10, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice