REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

ALE MART CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 8998

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

Promulgated:
FEB 14 2018
4:06 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This is a Petition for Review[1] filed on February 25, 2015 by Ale Mart Corporation against the Commissioner of Internal Revenue to nullify Assessment Notice Nos. IT-116-LOA-00000093-10-14-1054, VT-116-LOA-00000093-10-14-1055, WE-116-LOA-00000093-10-14-1056, and WC-116-LOA-00000093-10-14-1057 for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation (WTC) in the aggregate amount of Php481,137,433.13, inclusive of interest and surcharge, for calendar year (CY) 2010.

The Facts

Petitioner Ale Mart Corporation is a corporation duly registered under the laws of the Philippines, with address at Dona Natividad Building, 10 Quezon Avenue, Quezon City. It is also registered with the Bureau of Internal Revenue (BIR) as evidenced by its Taxpayer's Identification Number (TIN) 000-078-051-

[1] Docket, Vol. 1, pp. 6-39.

000 and Certificate of Registration No. OCN 8RC0000040350 issued on January 1, 1997.[2]

Petitioner is registered with the Securities and Exchange Commission (SEC) on August 5, 1991 with Company Registration No. AS091-194082.[3] Its primary purpose is to engage in, conduct, and carry on the business of buying, selling, distributing, marketing at wholesale and retail insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description; to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale or retail and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise or products whether natural or artificial.[4]

On the other hand, Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return, Quarterly VAT Returns, EWT Returns, and WTC Returns for CY 2010, on the following dates:

Annual Income Tax Return	**Filing Date**
CY 2010[5]	April 15, 2011

Quarterly VAT Return	**Filing Date**
First Quarter of CY 2010[6]	April 26, 2010
Second Quarter of CY 2010[7]	July 26, 2010
Third Quarter of CY 2010[8]	October 26, 2010
Fourth Quarter of CY 2010[9]	January 25, 2011

EWT	**Filing Date**

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[2] Exhibit "P-11", Docket, Vol. 6, p. 3408.
[3] Exhibit "P-9", Docket, Vol. 6, p. 3383
[4] Exhibit "P-10", Docket, Vol. 6, pp. 3384-3407.
[5] Exhibit "P-17", Docket, Vol. 6, pp. 3416-3418.
[6] Exhibit "P-51", Docket, Vol. 7, pp. 3544-3545.
[7] Exhibit "P-54", Docket, Vol. 7, pp. 3550-3551.
[8] Exhibit "P-57", Docket, Vol. 7, pp. 3556-3557.
[9] Exhibit "P-60", Docket, Vol. 7, pp. 3562-3563.

January 2010[10]	February 10, 2010
February 2010[11]	March 10, 2010
March 2010[12]	April 8, 2010
April 2010[13]	May 7, 2010
May 2010[14]	June 10, 2010
June 2010[15]	July 9, 2010
July 2010[16]	August 10, 2010
August 2010[17]	September 9, 2010
September 2010[18]	October 11, 2010
October 2010[19]	November 10, 2010
November 2010[20]	December 10, 2010
December 2010[21]	January 10, 2011

WTC	Filing Date
January 2010[22]	February 10, 2010
February 2010[23]	March 10, 2010
March 2010[24]	April 8, 2010
April 2010[25]	May 7, 2010
May 2010[26]	June 16, 2010
June 2010[27]	July 9, 2010
July 2010[28]	August 10, 2010
August 2010[29]	September 9, 2010
September 2010[30]	October 11, 2010
October 2010[31]	November 10, 2010
November 2010[32]	December 10, 2010
December 2010[33]	January 13, 2011

[10] Exhibit "P-35", Docket, Vol. 6, p. 3490.
[11] Exhibit "P-36", Docket, Vol. 6, p. 3493.
[12] Exhibit "P-37", Docket, Vol. 6, p. 3497.
[13] Exhibit "P-38", Docket, Vol. 7, p. 3501.
[14] Exhibit "P-39", Docket, Vol. 7, p. 3504.
[15] Exhibit "P-40", Docket, Vol. 7, p. 3508.
[16] Exhibit "P-41", Docket, Vol. 7, p. 3512.
[17] Exhibit "P-42", Docket, Vol. 7, p. 3516.
[18] Exhibit "P-43", Docket, Vol. 7, p. 3520.
[19] Exhibit "P-44", Docket, Vol. 7, p. 3524.
[20] Exhibit "P-45", Docket, Vol. 7, p. 3528.
[21] Exhibit "P-46", Docket, Vol. 7, p. 3532.
[22] Exhibit "P-21", Docket, Vol. 6, p. 3441.
[23] Exhibit "P-22", Docket, Vol. 6, p. 3443.
[24] Exhibit "P-23", Docket, Vol. 6, p. 3445.
[25] Exhibit "P-24", Docket, Vol. 6, p. 3447.
[26] Exhibit "P-25", Docket, Vol. 6, p. 3449.
[27] Exhibit "P-26", Docket, Vol. 6, p. 3451.
[28] Exhibit "P-27", Docket, Vol. 6, p. 3453.
[29] Exhibit "P-28", Docket, Vol. 6, p. 3455.
[30] Exhibit "P-29", Docket, Vol. 6, p. 3457.
[31] Exhibit "P-30", Docket, Vol. 6, p. 3459.
[32] Exhibit "P-31", Docket, Vol. 6, p. 3461.
[33] Exhibit "P-32", Docket, Vol. 6, p. 3463.

On September 23, 2011, Petitioner, through its duly authorized representative, received Letter of Authority (LOA) No. LOA-116-2011-00000093 with SN eLA201100003034[34], authorizing concerned revenue officers to conduct an examination on its books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2010 to December 31, 2010.[35]

On June 13, 2014, Petitioner, through its duly authorized representative, received from Respondent Preliminary Assessment Notice (PAN) together with the Details of Discrepancies.[36]

On June 30, 2014, Petitioner through its duly authorized representative, received Respondent's Formal Letter of Demand (FLD), Details of Discrepancy and Assessment Notice Nos. IT-116-LOA-00000093-10-14-1054, VT-116-LOA-00000093-10-14-1055, WE-116-LOA-00000093-10-14-1056 and WC-116-LOA-00000093-10-14-1057[37] for alleged deficiency income tax, VAT, EWT, and WTC in the total amount of Php481,137,433.13, inclusive of interest and surcharge, for CY 2010.[38]

On July 30, 2014, Petitioner filed an administrative protest in the form of a Request for Reconsideration[39], together with supporting documents[40], against the FLD.

There being no action taken by Respondent on Petitioner's administrative protest, Petitioner filed the present Petition for Review before the Court on February 25, 2015.

Respondent filed his Answer[41] on May 4, 2015, interposing the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

[34] Exhibit "P-12", Docket, Vol. 6, p. 3409.
[35] Par. 3, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. 4, p. 2158.
[36] Par. 4, JSFI, Docket, Vol. 4, p. 2158.
[37] Exhibits "P-2" to "P-7", Docket, Vol. 6, pp. 3350-3380; Exhibits "R-9" to "R-10", BIR Records, pp. 781-790.
[38] Par. 5, JSFI, Docket, Vol. 4, p. 2158.
[39] Exhibit "P-8", Docket, Vol. 1, pp. 82-116.
[40] Exhibit "P-8-a", Docket, Vol. 6, pp. 3381-3382.
[41] Docket, Vol. 4, pp. 2108-2118.

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

Petitioner is liable for deficiency Income Tax, Value Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation pursuant to a validly issued assessment.

A. Unsupported Sales Returns and Discounts.

5. Petitioner alleged that Respondent 'unjustly brushed aside the documents that it presented to prove the validity of the sales returns, allowances and discounts.'

6. This allegation is not only bereft of merit but unfairly imputes a wrongdoing allegedly committed by the Bureau of Internal Revenue without proof.

7. Public officers enjoy the presumption of regularity in the performance of their duties. While this presumption is disputable, proof to the contrary is indispensable to rebut it.

8. In the case at hand, Petitioner merely alleged, without proof, that Respondent allegedly 'brushed aside' the documents it presented.

9. This, however, is belied by the working papers, reconciliations and memorandum prepared by the revenue officer who conducted the audit and investigation.

10. Moreover, it must be stressed that Sales Discounts and Allowances partake the nature of exemptions which ultimately reduces the taxable net income of a taxpayer.

11. As such, proper substantiation is an essential requirement before it be allowed as a reduction from gross income.

12. Petitioner even invited this Honorable Court to look at its General Ledger that allegedly reflects the total Debits and Credits for taxable year 2010.

13. It bears emphasis that the General Ledger allegedly disputing Respondent's assessment was solely prepared by Petitioner and as such considered as self-serving evidence which cannot and will not prove the validity of the alleged Sales Returns and Discounts.

14. Notably, Petitioner, in its own Petition, admitted only submitted the documents enumerated below to the Bureau of Internal of Revenue and no mention was made of the General Ledger:

a. Copy of the Letter of Authority;
b. Articles of Incorporation and By Laws;
c. BIR Certificate of Registration;
d. Annual Registration Fee;
e. List of Inventories;
f. Quarterly Income Tax Returns;
g. Annual Income Tax Return with attached Audited Financial Statement;
h. Worksheet;
i. Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes with attached Alphabetical List;
j. Monthly Returns of Creditable Income Taxes Withheld with attached Official Receipts and Monthly Alphabetical List of Payees;
k. Monthly VAT Declaration and Quarterly VAT Returns with attached Official Receipts and Schedules of VAT;
l. Compact Discs containing (1) BIR Form 1604(F) and Alphabetical List on Compensation; (2) Inventory List; (3) SAWT; (4) Monthly and Annual MAP;
m. Softcopies and Hardcopies of Summary List of Sales;
n. Reconciliation with Third Party Verification with the following documents: (1) ABI Certification; (2) IPI Certification; (3) Reply Letter to BIR Letter Notice No. 116-RLF-10-00-00004; (4) Letter Reply from BIR dated 29 December 2010 classifying Petitioner as a Large Taxpayer;
o. Net Income per FS v. per ITR

p. Computation of EWT;
q. Possible Sources of Input Tax;
r. **Sample Sales Invoices issued by ABI and IPI;**
s. **Sample Sales Invoices issued to Customers**; and
t. Photocopy of BIR Form 1702 for taxable year 2009.

15. Respondent emphasizes that Petitioner merely submitted sample sales invoices which will not refute the findings of the Bureau of Internal Revenue entirely.

16. Hence, Respondent correctly disallowed Petitioner's Sales Returns and Discounts.

B. Gross Profit on Sales Deficiency

17. Petitioner contended that it has made proper accounting of its Cost of Sales, Purchases and Trade and Other Trade Payables.

18. Respondent disagrees.

19. Verification showed that there were Cost of Sales Discrepancy per Inventory Analysis, Purchases Discrepancy per Trade and Other Payables Analysis and Undeclared Sales per Third Party Matching Analysis made by Respondent computed as follows:

a. Cost of Sales Discrepancy per Inventory Analysis.

Beginning Balance per Audited Financial Statements	52,522,947.00
Add: Purchases per Books	1,601,121,242.00
Freight	-
Total Available for Sale/Use	1,653,644,189.00
Less: Ending Inventory	44,562,439.00
Cost of Inventory per Audit	1,609,081,750.00
Cost of Inventory per ITR	1,529,725,108.39
Discrepancy on Cost of Sales	**79,356,641.61**

b. Purchases Discrepancy per Trade and Other Payables Analysis.

Trade and Other Payables, Ending Balance per Books		199,002,473.00
Add: Payments for the Year		2,374,806,866.00
Sub-Total		2,573,809,339.00
Less: Trade and Other Payables, Beginning Balance per Books		230,530,686.00
Total Additions to Trade and Other Payables for the Year per Books		2,343,278,653.00
Add (Deduct): Increase (Decrease) in Other Payables per FS	32,496,615.00	
Other Payables, Beginning	(81,387,202.00)	(48,890,587.00)
Gross Purchases for the Year per Audit		2,294,388,066.00
Less Value Added Tax		245,827,292.79
Net Purchases for the Year per Audit		2,048,560,773.21
Total Purchases of Goods per ITR		1,520,493,208.57
Purchases Discrepancy of Trade and Other Payables Analysis		**528,067,564.64**

c. Undeclared Sales per Third Party Matching Analysis.

Per Third Party Data (BIR Relief)	34,395,494.59
Less: Summary List of Sales	108,852.68
Undeclared Sales from Matching of Third Party Data	**34,286,641.91**

20. Notably, Petitioner failed to substantiate it claim that there were alleged purchase returns and allowances and freight.

C. Disallowed Expenses due to Non-Withholding of Taxes.

21. Section 34 (K) of the Tax Code is clear. It states:

> **SEC. 34. Deductions from Gross Income.** –
>
> -xxx-
>
> **(K) Additional Requirements for Deductibility of Certain Payments. - Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income** or for which depreciation or amortization may be allowed under this Section, **shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid** to the Bureau of Internal Revenue in accordance with this Section 58 and 81 of this Code.

(Emphasis supplied)

22. It is noteworthy that expenses are deductions to income; which partake the nature of exemptions. Hence, it is incumbent upon Petitioner to prove that the taxes due on such expenses have been paid.

23. However, during the conduct of the audit and investigation made by the Bureau, it was found that Petitioner deducted several expenses that were not subjected to Withholding Tax.

24. Hence, these expenses were correctly disallowed by the Bureau of Internal Revenue.

D. Disallowed Creditable Withholding Tax.

25. Petitioner contended that it cannot be made accountable for the variance that Respondent noted because the reports used by the Bureau of Internal Revenue were not comparable.

26. Respondent disagrees.

27. The Summary Alphalist of Withholding Tax (SAWT) and Summary List of Sales (SLS) are reports of Petitioner that must contain all of its sales and corresponding taxes withheld.

28. Accordingly, if the SAWT is higher than that of SLS, as in the case here, then it clearly shows that there were creditable taxes that pertains to another period.

29. Thus, the Creditable Withholding Tax was properly disallowed.

E. Disallowance of Over-Claimed Input Taxes.

30. Analysis of possible sources of Input Tax per Audited Financial Statement of Petitioner revealed that there were excess Input Tax claimed, computed as follows:

Total Possible Sources of Input Tax per Financial Statement	1,608,573,359.05
VAT Rate	12%
Possible Input Tax per Financial Statement	193,028,803.09
Less: Input Taxes being claimed per VAT Return	203,723,039.86
Over Claimed Input Tax	**10,703,236.77**

31. Hence, these were correctly disallowed.

F. Discrepancy on Remittances of Withholding Tax on Compensation

32. Finally, Petitioner contended that it properly subjected the Salaries and Wages of its employees to taxable year 2010.

33. However, the audit and investigation revealed otherwise.

Discrepancy on Compensation per FS and Alpha List of Employees	1,202,286.58
Percentage of Compliance	11%
Deficiency on Withholding Tax on Compensation	**130,077.32**

Amount that should have been remitted per Alpha List of Employees	6,664,302.72
Less: Amount that should have been remitted per Compensation Returns	6,516,332.40
Deficiency on Remittances of Withholding Tax on Compensation	**147,970.32**

34. Accordingly, Petitioner was correctly assessed for deficiency Income Tax, Value Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation for taxable year 2010 in the aggregate amount of P481,137,433.13.

Petitioner, having filed a false and fraudulent return, was correctly assessed for deficiency taxes within the period prescribed by law.

35. Section 222 (A) of the Tax Code states:

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

(a) **In the case of a false or fraudulent return with intent to evade tax** or of failure to file a return, **the tax may be assessed**, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten (10) years after the discovery of the falsity, fraud or omission:** Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

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(Emphasis supplied).

36. In the case at hand, after the conduct of the audit and investigation, it was found that Petitioner substantially overstated its domestic purchases by 34.53%.

37. Such substantial overstatement of domestic purchases of Petitioner constituted as prima facie evidence of a false and fraudulent return. Section 248 is clear:

SEC. 248. Civil Penalties. –

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(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the

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> discovery of the falsity or fraud: Provided, **That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return**: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein. **(Emphasis supplied).**

38. Accordingly, the period to assess Petitioner has not prescribed and the assessment was conducted within the period prescribed by law."

The Pre-Trial Conference was set on July 7, 2015.[42] Thus, the Respondent's Pre-Trial Brief[43] was filed on June 26, 2015; while Petitioner's Pre-Trial Brief[44] was submitted on July 3, 2015.

The parties filed their Joint Stipulation of Facts and Issues[45] through registered mail on July 20, 2015 and received by the Court on July 23, 2015. Subsequently, the Court issued a Pre-Trial Order[46] on August 6, 2015, declaring, among others, the termination of the pre-trial.

Petitioner presented Clariza Tanhueco Ferrer[47] and Independent Certified Public Accountant (ICPA) Florida Peña Pascual-Unlayao[48] as its witnesses.

On June 3, 2016, the Formal Offer of Evidence For the Petitioner[49] was filed, offering Exhibits "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-8-a",

[42] Notice of Pre-Trial Conference dated May 7, 2015, Docket, Vol. 4, pp. 2119-2120.
[43] Docket, Vol. 4, pp. 2135-2139.
[44] Docket, Vol. 4, pp. 2144-2150.
[45] Docket, Vol. 4, pp. 2157-2163.
[46] Docket, Vol. 4, pp. 2179-2185.
[47] Minutes of the hearing dated October 13, 2015, Docket, Vol. 5, p. 2960.
[48] Minutes of the hearing dated January 19, 2016 and April 11, 2016, Docket, Vol. 6, pp. 3317 and 3328, respectively.
[49] Docket, Vol. 6, pp. 3334-3349.

"P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P15-A", "P-16", "P-16-A", "P-17", "P-17-A", "P-18", "P-20", "P-21", "P-21-A", "P-22", "P-22-A", "P-23", "P-23-A", "P-24", "P-24-A", "P-25", "P-25-A", "P-26", "P-26-A", "P-27", "P-27-A", "P-28", "P-28-A", "P-29", "P-29-A", "P-30", "P-30-A", "P-31", "P-31-A", "P-32", "P-33", "P-33-A", "P-34", "P-34-A", "P-34-B", P-34-C", "P-34-D", "P-34-E", "P-35", "P-35-a", "P-35-b", "P-36", "P-36-a", "P-36-b", "P-37", "P-37-a", "P-37-b", "P-38", "P-38-a", "P-38-b", "P-39", "P-39-a", "P-39-b", "P-40", "P-40-a", "P-40-b", "P-41", "P-41-a", "P-41-b", "P-42", "P-42-a", "P-42-b", "P-43", "P-43-a", "P-43-b", "P-44", "P-44-a", "P-44-b", "P-45", "P-45-a", "P-45-b", "P-46", "P-46-a", "P-46-b", "P-47", "P-49", "P-49-A", "P-50", "P-50-A", "P-51", "P-51-A", "P-52", "P-52-A", "P-53", "P-53-A", "P-54", "P-54-A", "P-55", "P-55-A", "P-56", "P-56-A", "P-57", "P-57-A", "P-58", "P-58-A", "P-59", "P-59-A", "P-60", "P-60-A", "P-63", "P-64", "P-65", "P-66", "P-69", "P-70", "P-71, "P-72", "P-72-a", "P-73-a", "P-73-a-1", "P-73-a-2", "P-73-b", "P-73-c", "P-73-d", "P-73-e", "P-73-f", "P-73-g", "P-73-h", "P-74", and "P-74-a" as its documentary evidence. Respondent filed his Comment (Re: Petitioner's Formal Offer of Evidence)[50] on June 7, 2016.

In the Resolution[51] dated June 22, 2016, the Court admitted all of the above-enumerated formally offered exhibits as Petitioner's evidence.

On the other hand, Respondent presented his witness Revenue Officer Jan Andre C. Abellera on October 3, 2016.[52]

Respondent's Formal Offer of Evidence[53] was filed on October 6, 2016, offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", and "R-11-a" as his documentary evidence. Petitioner filed its Comment [To Respondent's Formal Offer of Evidence][54] on October 20, 2016. In the Resolution[55] dated November 3, 2016, the Court admitted all the formally offered exhibits as Respondent's evidence.

The Court declared the case deemed submitted for decision on February 22, 2017,[56] considering Respondent's manifestation[57] that he is adopting his Answer to the Petition for Review dated April 30, 2015 as his Memorandum and the Memorandum for the Petitioner[58] filed on January 13, 2017.

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[50] Docket, Vol. 7, p. 3613-3615.
[51] Docket, Vol. 7, p. 3617-3618.
[52] Minutes of the hearing dated October 3, 2016, Docket, Vol. 7, p. 3623.
[53] Docket, Vol. 7, pp. 3626-3635.
[54] Docket, Vol. 7, pp. 3643-3648.
[55] Docket, Vol. 7, pp. 3650-3651.
[56] Resolution dated February 22, 2017, Docket, Vol. 7, p. 3716.
[57] Docket, Vol. 7, pp. 3656-3659.
[58] Docket, Vol. 7, pp. 3668-3709.

The Issue

The parties stipulated the following issue for this Court's resolution:[59]

> Whether Petitioner is liable for the deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation, inclusive of interest and surcharge in the aggregate amount of Four Hundred Eighty-One Million One Hundred Thirty-Seven Thousand Four Hundred Thirty-Three and 13/100 (Php481,137,433.13) for taxable year 2010.

Discussion/Ruling

On June 30, 2014, Petitioner received the FLD with Details of Discrepancy and Assessment Notices from Respondent, assessing it of the following deficiency taxes for taxable year 2010 in the total amount of Php481,137,433.13:[60]

	Income Tax	Value-Added Tax	Expanded Withholding Tax	Withholding Tax on Compensation	Total
Tax Due	Php132,565,610.97	Php85,226,642.18	Php2,819,178.04	Php426,017.96	Php221,037,449.15
Surcharge	66,282,805.49	42,613,321.09	1,409,589.02	213,008.98	110,518,724.58
Interest	87,384,345.21	59,915,496.94	1,981,920.78	299,496.46	149,581,259.39
Total Amount Due	**Php286,232,761.67**	**Php187,755,460.21**	**Php6,210,687.84**	**Php938,523.40**	**Php481,137,433.13**

On July 30, 2014, Petitioner filed an administrative protest by way of a Request for Reconsideration of the assessments.[61]

Section 228 of the NIRC of 1997, as amended, provides that if the protest is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the inaction may appeal to this Court within thirty (30) days from the lapse of said period. Since all supporting records, schedules and documents were submitted at the time of the filing of its protest,[62] the one hundred eighty (180)-day period for Respondent to act on the protest lapsed on January 26, 2015. Accordingly, Petitioner has thirty (30) days, or until February 25, 2015, to file its appeal to this Court.

[59] Docket, Vol. 4, p. 2158.

[60] Exhibits "P-2" to "P-7", Docket, Vol. 6, pp. 3350-3380; Exhibits "R-9" to "R-10", BIR Records, pp. 781-790.

[61] Exhibit "P-8", Docket, Vol. 1, pp. 82-116.

[62] Par. 7, Petition for Review, Docket, Vol. 1, pp. 7-8.

Records show that the Petition for Review was filed on February 25, 2015. Clearly, the Court has acquired jurisdiction over the instant case.

Section 203 of the NIRC of 1997, as amended, specifically provides that in general Respondent has three (3) years to assess and collect internal revenue taxes, to wit:

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

In determining the last day to assess Petitioner of deficiency income tax, VAT, EWT and WTC, the Court shall apply the relevant provisions of Sections 77(B) and 114(A) of the NIRC of 1997, as amended, and Section 2.58 of Revenue Regulations (RR) No. 2-98, as amended by RR No. 17-03, quoted hereunder for ready reference:

> "SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
>
> xxx xxx xxx
>
> (B) *Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed **on or before the fifteenth (15th) day of April**, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be." (*Emphasis supplied*)

"SEC. 114. *Return and Payment of Value-added Tax.* –

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(A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts **within twenty-five (25) days following the close of each taxable quarter** prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis." (*Emphasis supplied*)

"Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.

(A) Monthly return and payment of taxes withheld at source. –

xxx xxx xxx

(1) WHEN TO FILE –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, **within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; xxx." (*Emphasis supplied*)

To reiterate, Petitioner received the FLD on **June 30, 2014**. That being the case, Respondent's right to assess Petitioner of deficiency income tax, VAT, EWT, and WTC for taxable year 2010, using the three (3)-year period under Section 203 of the NIRC of 1997 falls on the following dates:

Tax Return for the Taxable Year 2010	Date of Filing	Last Day to File as Required by Law	Last Day to Assess (using the three (3)-year period)
Income Tax[63]	April 15, 2011	April 15, 2011	April 15, 2014
VAT			
1st Quarter[64]	April 26, 2010	April 26[65], 2010	April 26, 2013

[63] Exhibit "P-17", Docket, Vol. 6, pp. 3416-3418.
[64] Exhibit "P-51", Docket, Vol. 6, pp. 3544-3545.
[65] April 25, 2010 fell on a Sunday.

2nd Quarter[66]	July 26, 2010	July 26[67], 2010	July 26, 2013
3rd Quarter[68]	October 26, 2010	October 25, 2010	October 28, 2013[69]
4th Quarter[70]	January 25, 2011	January 25, 2011	January 27, 2014[71]
EWT[72]			
January	February 10, 2010	February 10, 2010	February 11, 2013[73]
February	March 10, 2010	March 10, 2010	March 10, 2013
March	April 8, 2010	April 10, 2010	April 10, 2013
April	May 7, 2010	May 10, 2010	May 10, 2013
May	June 10, 2010	June 10, 2010	June 10, 2013
June	July 9, 2010	July 10, 2010	July 10, 2013
July	August 10, 2010	August 10, 2010	August 12, 2013[74]
August	September 9, 2010	September 10, 2010	September 10, 2013
September	October 11, 2010	October 11, 2010[75]	October 11, 2013
October	November 10, 2010	November 10, 2010	November 11, 2013[76]
November	December 10, 2010	December 10, 2010	December 10, 2013
December	January 10, 2011	January 15, 2011	January 15, 2014
WTC[77]			
January	February 10, 2010	February 10, 2010	February 10, 2013
February	March 10, 2010	March 10, 2010	March 10, 2013
March	April 8, 2010	April 10, 2010	April 10, 2013
April	May 7, 2010	May 10, 2010	May 10, 2013
May	June 16, 2010	June 10, 2010	June 17, 2013[78]
June	July 9, 2010	July 10, 2010	July 10, 2013
July	August 10, 2010	August 10, 2010	August 10, 2013

[66] Exhibit "P-54", Docket, Vol. 6, pp. 3550-3551.
[67] July 25, 2010 fell on a Sunday
[68] Exhibit "P-57", Docket, Vol. 6, pp. 3556-3557.
[69] October 26, 2013 fell on a Saturday.
[70] Exhibit "P-60", Docket, Vol. 6, pp. 3562-3563.
[71] January 25, 2014 fell on a Saturday.
[72] Exhibits "P-35" to "P-46-b", Docket, Vols. 6-7, pp. 3490-3535.
[73] February 10, 2013 fell on a Sunday.
[74] August 10, 2013 fell on a Saturday.
[75] October 10, 2010 fell on a Sunday.
[76] November 10, 2013 fell on a Sunday.
[77] Exhibits "P-21" to "P-32", Docket, Vol. 6, pp. 3441-3463.
[78] June 16, 2013 fell on a Sunday.

August	September 9, 2010	September 10, 2010	September 10, 2013
September	October 11, 2010	October 10, 2010	October 11, 2013
October	November 10, 2010	November 10, 2010	November 10, 2013
November	December 10, 2010	December 10, 2010	December 10, 2013
December	January 13, 2011	January 15, 2011	January 15, 2014

However, Section 222 of the NIRC of 1997, as amended, provides that the period to assess and collect taxes may be extended to more than three (3) years (1) if there exists a waiver, or (2) in the case of a false or fraudulent return, to wit:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon."

In the instant case, Petitioner executed a Waiver of the Defense of Prescription under Statute of Limitations on September 17, 2013, which was accepted by Respondent on October 2, 2013.[79] Accordingly, if this Court applies the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, Petitioner's assessment for taxable year 2010 was validly made, except for (1) deficiency VAT for the first and second quarters and (2) deficiency EWT and

[79] Exhibit "R-5", BIR Records, p. 698; Petition for Review, Docket, Vol. I, p. 10.

WTC for the months of January to August, where the last day to assess had already lapsed as shown above.

Yet this Court emphasizes the fact that Petitioner, having filed false and fraudulent returns, the applicable prescriptive period is ten (10) years, pursuant to Section 222(a) of the NIRC of 1997, as amended.

In the case of *Aznar vs. Court of Tax Appeals, et al.*[80], the Supreme Court made a distinction between "false" and "fraudulent" returns as provided for by the law, to wit:

> "xxx We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission'. **That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.**" (*Emphasis supplied*)

A mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the ten (10)-year prescriptive period under Section 222 of the NIRC.[81] Thus, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, the filing of a false return can be intentional or due to honest mistake.[82]

As will be discussed together with the subject deficiency tax assessments, there was falsity in Petitioner's income tax, VAT, EWT and WTC returns warranting the extension of the prescriptive period to ten (10) years. Hence, all

[80] G.R. No. L-20569, August 23, 1974.
[81] *Commissioner of Internal Revenue vs. Asalus Corporation*, G.R. No. 221590, February 22, 2017.
[82] *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*, G.R. No. 213943, March 22, 2017.

the subject deficiency income tax, VAT, EWT, and WTC assessments were issued within the period prescribed by law.

I. DEFICIENCY INCOME TAX – Php286,232,761.67

Respondent assessed Petitioner of deficiency income tax for taxable year 2010 in the amount of Php286,232,761.67, as computed below:[83]

Taxable Income per Returns			Php5,706,011.55
Add: Adjustments / Findings per Investigation			
Purchases Discrepancy per Trade and Other Payables Analysis	Php528,067,564.64		
Divide by Cost Ratio	90%		
Grossed-up Value of Purchases Discrepancy	Php586,741,738.49		
Add: Undeclared Sales from Matching of Third Party Information	34,286,641.91		
Total Sales Adjustment per Audit	Php621,028,380.41		
Multiply by: Cost Ratio	10%		
Gross Profit on Sales Discrepancy		Php62,102,838.04	
Unsupported Sales Returns and Discounts		321,577,975.70	
Disallowed Expenses Due to Non-Withholding of Taxes		62,019,960.76	
Total Adjustments per Audit			445,700,774.50
Taxable Income per Audit			Php51,406,786.05
Income Tax Rate			30%
Tax Due per Audit Investigation			Php35,422,035.82
Less: Payments / Tax Credits			
Excess Payments from Previous Year		Php1,035,244.76	
Add: Tax Payments for the Year			
2nd Quarter	Php509,041.42		
3rd Quarter	647,354.37		
Annual Return	473,905.08		
Total Payments for the Year		1,630,300.87	
Creditable Tax for the Year	Php782,169.48		

[83] Exhibit "P-2", Docket, Vol. 6, p. 3350.

Less: Disallowed Creditable Withholding Tax from Matching of Third Party Information	591,290.27		
Allowable Tax Credits for the Year		190,879.21	
Total Payments and Allowable Tax Credits			2,856,424.84
Basic Income Tax Deficiency			132,565,610.97
Add: Increments			
Surcharge		Php66,282,805.49	
Interest (April 16, 2011 to July 31, 2014)		87,384,345.21	153,667,150.69
Total Income Tax Deficiency			**Php286,232,761.67**

1. Gross Profit on Sales Discrepancy – Php62,102,838.04

Based on the FLD and Details of Discrepancy, there are two (2) related issues to be resolved: (1) purchases discrepancy per Trade and Other Payables analysis amounting to Php528,067,564.64; and (2) undeclared sales from matching of third party information amounting to Php34,286,641.91.

1.1. Purchases Discrepancy per Trade and Other Payables Analysis – Php528,067,564.64

Respondent's analysis of the Trade and Other Payables account showed that there are unreported fund sources from undeclared purchases, computed as follows:[84]

Trade and Other Payables, Ending Balance per Books		Php199,002,473.00
Add: Payments for the Year		2,374,806,866.00
Sub-total		Php2,573,809,339.00
Less: Trade and Other Payables, Beginning Balance per Books		230,530,686.00
Total additions to Trade and Other Payables for the Year per Books		Php2,343,278,653.00
Add (Deduct): Increase (Decrease) in Other Payables per FS		
Other Payables, End	Php32,496,615.00	
Less: Other Payables, Beg	81,387,202.00	(48,890,587.00)
Gross Purchases for the Year per Audit		Php2,294,388,066.00
Less: Value-Added Tax		245,827,292.79
Net Purchases for the Year per Audit		Php2,048,560,773.21

[84] Exhibit "P-3", IT-1, Docket, Vol. 6, p. 3352.

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Less: Total Purchases of Goods per ITR		1,520,493,208.57
Purchases Discrepancy per Trade and Other Payables Analysis		**Php528,067,564.64**

In support of the finding, Respondent presented the following schedules:

	Inventory Cost	Supplies	Total
Beginning Balance per Audited Financial Statements	Php52,017,545.00	Php505,402.00	Php52,522,947.00
Add: Purchases per Books	1,599,849,850.61	1,271,391.39	1,601,121,242.00
Freight	-	-	-
Total Available for Sale/Use	Php1,651,867,395.61	Php1,776,793.39	Php1,653,644,189.00
Less: Ending Inventory	44,120,966.00	441,473.00	44,562,439.00
Cost of Inventory per Audit	Php1,607,746,429.61	Php1,335,320.39	Php1,609,081,750.00
Cost of Inventory per ITR	1,528,389,788.00	1,335,320.39	1,529,725,108.39
Discrepancy on Cost of Sales	**Php79,356,641.61**	**-**	**Php79,356,641.61**

Ending Inventory per Books	Php44,562,439.00
Add: Cost of Inventory Used per Books	1,609,081,751.00
Total Goods Available	Php1,653,644,190.00
Less: Beginning Inventory	52,522,947.00
Total Purchases	Php1,601,121,243.00
Less: Supplies Purchased	1,271,391.39
Purchases per Books	**Php1,599,849,851.61**

Net Purchases for the Year per Audit	Php2,048,560,773.21
Less: Purchases per Books	1,599,849,851.61
Sub-total	Php448,710,921.60
Add: Discrepancy in Cost of Sales per Inventory Analysis	79,356,641.61
Purchases Discrepancy per Trade and Other Payables Analysis	**Php528,067,563.21**

Petitioner alleges that Respondent erroneously analyzed the accounts. In arriving at the alleged discrepancies, Respondent failed to consider the following: (1) debit entries in the Other Payables account amounting to Php599,407,897.00; (2) deductions to Purchases such as Purchase Returns and Allowances and Complimentaries; and (3) Freight-In Charges.

At the outset, the Statement of Financial Position and the accompanying Notes thereto disclose the balances of the following accounts:[85]

	2010	2009
Trade Payables	Php166,505,858	Php149,143,484
Other Payables	32,496,615	81,387,202
Trade and Other Payables	**199,002,473**	**230,530,686**
Merchandise	44,120,966	52,017,545
Supplies	441,473	505,402
Inventories	**Php44,562,439**	**Php52,522,947**

Going into details, a perusal of the Worksheet of Monthly Balances of Financial Statements shows the debits and credits of the said accounts:[86]

	Trade and Other Payables		**Inventories**	
Month	**Debit**	**Credit**	**Debit**	**Credit**
Beginning Balance		Php230,530,686.00	Php52,522,947.00	
January	Php188,516,082.00	191,899,197.00	136,043,175.00	Php131,385,544.00
February	134,375,994.00	147,133,563.00	98,952,040.00	101,131,288.00
March	204,456,580.00	213,954,073.00	149,817,621.00	144,783,630.00
April	212,787,913.00	209,491,102.00	147,521,822.00	150,645,111.00
May	242,456,769.00	219,541,693.00	155,227,902.00	162,220,701.00
June	188,122,040.00	187,090,620.00	113,622,991.00	107,141,860.00
July	190,645,786.00	168,039,221.00	118,356,838.00	119,867,687.00
August	149,230,153.00	154,543,945.00	107,343,824.00	106,130,396.00
September	228,935,749.00	164,696,727.00	116,092,375.00	120,176,105.00
October	210,395,009.00	204,333,065.00	146,754,129.00	147,198,007.00
November	186,732,399.00	197,536,109.00	138,442,970.00	140,345,046.00
December	238,152,391.00	285,019,338.00	172,945,554.00	178,056,376.00
Total Debits/ Credits for the Year	*Php2,374,806,865.00*	*Php2,343,278,653.00*	*Php1,601,121,241.00*	*Php1,609,081,751.00*
Ending Balance		**Php199,002,474.00**	**Php44,562,438.00**	

N

[85] Exhibit "P-18", Docket, Vol. 6, pp. 3423, 3434, and 3435.
[86] BIR Records, Folder 1, pp. 662-663.

In its Petition, Petitioner reproduced the General Ledgers of the Trade and Other Payables and the Inventories, reflecting the following total recorded debits and credits for taxable year 2010:

	Trade and Other Payables	
Beginning Balance	Php 0.00	Php 230,530,686
Transactions for the Year	2,374,806,865	2,343,278,653
Total	Php 2,374,806,865	Php 2,573,809,339
Ending Balance		199,002,474
	Trade Payables	
Beginning Balance	Php 0.00	Php 149,143,484
Transactions for the Year	1,775,398,968	1,792,761,342
Total	Php 1,775,398,968	Php 1,941,904,826
Ending Balance		166,505,858
	Other Payables	
Beginning Balance	Php 0.00	Php 81,387,202
Transactions for the Year	599,407,897	550,517,311
Total	Php 599,407,897	Php 631,904,513
Ending Balance		32,496,616

	Inventories	
Beginning Balance	Php 52,522,947	Php 0.00
Transactions for the Year	1,601,121,243	1,609,081,751
Total	Php 1,653,644,190	Php 1,609,081,751
Ending Balance	44,562,439	
	Merchandise Inventory	
Beginning Balance	Php 52,017,545	Php 0.00
Transactions for the Year	1,600,679,770	1,608,576,349
Total	Php 1,652,697,315	Php 1,608,576,349
Ending Balance	44,120,966	
	Supplies	
Beginning Balance	Php 505,402	Php 0.00
Transactions for the Year	441,473	505,402
Total	Php 946,875	Php 505,402
Ending Balance	441,473	

However, relying on these figures alone, the Court cannot ascertain the veracity of Petitioner's allegations. Petitioner should have submitted the General Ledgers and other relevant documents that will corroborate the amounts presented in the table.

In civil cases, he who alleges a fact has the burden of proving it by a preponderance of evidence. It is incumbent upon the party claiming affirmative relief from the court to convincingly prove its claim. Bare allegations, unsubstantiated by evidence, are not equivalent to proof; in short, mere allegations are not evidence.[87] Absent documentary evidence, the assessment shall be upheld.

Following the computation of the assessment, Respondent deducted the decrease in Other Payables from the Total Additions to Trade and Other Payables in arriving at the Gross Purchases. Note, however, that a decrease in Other Payables means a decrease in Trade and Other Payables. In order to arrive at the total additions to Trade Payables account only – that is, the Gross Purchases for the year, Respondent should have added the decrease in Other Payables. Thus, the undeclared purchases of Petitioner for the year amounted to Php615,372,184.29, computed as follows:

Trade and Other Payables, Ending Balance		Php199,002,473.00
Add: Payments for the Year		2,374,806,866.00
Sub-total		2,573,809,339.00
Less: Trade and Other Payables, Beginning Balance per Books		230,530,686.00
Total additions to Trade and Other Payables for the Year per Books		2,343,278,653.00
Add: Decrease in Other Payables per FS		
Other Payables, End	Php32,496,615.00	
Less: Other Payables, Beg	81,387,202.00	48,890,587.00
Gross Purchases for the Year per Audit		2,392,169,240.00
Less: Value-Added Tax		256,303,847.14
Net Purchases for the Year per Audit		2,135,865,392.86
Total Purchases of Goods per ITR		1,520,493,208.57
Purchases Discrepancy per Court's Audit		**Php615,372,184.29**

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[87] *Ermelinda C. Manaloto, et al. vs. Ismael Veloso III*, G.R. No. 171365, October 6, 2010.

The discrepancy per audit is much higher than that per Respondent's assessment. In the consolidated cases of *Commissioner of Internal Revenue vs. Transnational Plans, Inc.* and *Transnational Plans, Inc. vs. Commissioner of Internal Revenue*[88], the Court of Tax Appeals *En Banc* held that **the Court cannot go beyond the contested assessment per FDDA**, to wit:

> "In as much as this Court's jurisdiction is appellate in nature, it is essential that matters taken up in the appeal should be included in the contested assessment. It must be realized that with respect to the deficiency VAT of TPI, the appealed amount before this Court's jurisdiction is only with respect to the Php67,446,873.00, as what is indicated in the FDDA. As stated in the case of *Commissioner of Internal Revenue vs. Guerrero, et al.*:[89]
>
> > 'Although these charges and taxes are not included in the original and revised assessments made in this case, Petitioner herein maintains that Guerrero may nevertheless be held liable therefor xxx
> >
> > Petitioner's contention is untenable. x x x In short, it refers to a point in issue. In the case at bar, the additional [amount] under consideration were not included in the contested assessments. Since the jurisdiction of the Court of Tax Appeals is purely appellate, said Court correctly declined to make an award thereon, for lack of jurisdiction over the same.'
>
> Section 228 of the Tax Code clearly states that 'the taxpayer shall be informed in writing of the facts and the law on which the assessment is made; otherwise, the assessment shall be void.' As thus worded, the Respondent has the bounden duty to inform the taxpayer not only of the law but more importantly, the surrounding circumstances supporting the assessment, for it is only through a detailed appraisal of its basis that the taxpayer may be able to dispute the imposition or agree with it. The underlying reason of the law is the basic constitutional requirement that 'no person shall be deprived of his property without due process of law.'

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[88] CTA EB Nos. 1337 and 1339 (CTA Case No. 8291), March 27, 2017.
[89] G.R. No. L-19074, January 31, 1967.

> Thus, the amount to be collected from TPI should not go beyond what is stated in the assessment. In excess of such stated therein, TPI was not informed in writing of the facts and law on which the amount is made, thus, the taxpayer has no opportunity to dispute the said amount, in violation of due process.
>
> Furthermore, as the said excess amount was not indicated in the FAN, it should be considered as not assessed by the CIR, hence, already beyond the prescriptive period for it to be included only at this time of judicial trial.
>
> Consequently, the findings of the BIR as that stated in the assessment should be the basis for the deficiency VAT, *i.e.*, only the amount of P67,446,873.00." (*Citations omitted*)

Thus, the Court is constrained to limit its findings based on Respondent's assessment. Accordingly, Petitioner is liable only to the extent of that assessed by Respondent in the amount of Php528,067,564.64.

1.2. Undeclared Sales from Matching of Third Party Information – Php34,286,641.91[90]

Respondent's matching of sales per Third Party Data and those per Summary List of Sales (SLS) disclosed that Petitioner has undeclared sales in the amount of Php34,286,641.91, as computed below; hence, Petitioner was assessed of income tax pursuant to Section 32(A) of NIRC of 1997, as amended:

Per Third Party Data (BIR – RELIEF)	Php 34,395,494.59
Less: Summary List of Sales	108,852.68
Undeclared Sales	**Php34,286,641.91**

Petitioner contends that the procedure performed by Respondent is improper. The latter merely compared the different data reported under the Reconciliation Listing for Enforcement (RELIEF) System by third parties and those contained in Petitioner's SLS. The discrepancies do not prove that Petitioner failed to declare its income. The reason for which may be due to timing difference.

[90] Exhibit "P-3", IT-2, Docket, Vol. 6, p. 3353.

As testified to by Revenue Officer Jan Andre Abellera, the Third Party Data were not verified with externally sourced data to check its correctness, to wit:[91]

"ATTY. YUMANG

Q Another item which, just right after the alleged purchase discrepancy, another item which you consider as an adjustment to the taxable income credit return is the alleged undeclared sales from matching of third party movement which amounts to 34,286,641.00, that is correct?

MR. ABELLERA

A Yes, sir.

ATTY. YUMANG

Q Now considering that this results from third party matching, did you ever consider gathering confirmation from the party which whom the Petitioner transacted?

MR. ABELLERA

A No, your Honors."

Without the confirmation from third parties, the finding casts doubts as to the reliability and correctness of the assessment on the alleged undeclared sales.

While it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be.[92] This principle was thoroughly discussed by the High Court in the case of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*[93], the pertinent portions of which are quoted as follows:

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[91] TSN dated October 3, 2016, pp. 12-13.

[92] *Commissioner of Internal Revenue vs. Fax N Parcel, Incorporated,* CTA EB No. 883, February 14, 2013.

[93] G.R. No. 136975, March 31, 2005.

> "We agree with the contention of the Petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the Petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a 'naked assessment,' *i.e.,* without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.*" (*Citations omitted*)

Accordingly, the assessment cannot be sustained since it was based merely on unverified amounts extracted from Respondent's own database.

Note that Revenue Memorandum Order (RMO) No. 04-03 requires the verification of the amounts reflected in the quarterly report with other externally sourced data in ascertaining the taxpayer's underdeclaration of revenues or overstatement of costs and expenses, if any. The pertinent portions of RMO No. 04-03 are quoted as follows:

> "The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration

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through the development of the Reconciliation of Listings for Enforcement (RELIEF) System.

The RELIEF System was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.

The RELIEF System shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. The consolidation and matching of information **with other externally sourced data** will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus resulting to greater tax potential." (*Emphasis supplied*)

Considering the foregoing, the assessment on undeclared sales is cancelled.

2. Unsupported Sales Returns and Discounts – Php321,577,975.70

Respondent disallowed the Sales Returns and Discounts for failure of Petitioner to substantiate the same, pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended.[94]

Petitioner argues that Respondent erred in applying Section 34(A)(1)(b) of the NIRC of 1997 in disallowing the Sales Returns and Discounts. Not being ordinary and necessary expenses, the same cannot be said to be covered by the said Section. Therefore, the assessment is void.

Surely, Section 34(A)(1)(b) of the NIRC of 1997 provides for the disallowance of the **ordinary and necessary expenses** as deduction from gross income upon failure of the taxpayer to substantiate with sufficient evidence. By the nature of returns and discounts, the same are indeed not ordinary and necessary expenses contemplated under the said Section. Be that as it may, the Court has the power to determine the question of law – that is, the correct application of law or jurisprudence to a certain set of facts.

[94] Exhibit "P-3", IT-3, Docket, Vol. 6, p. 3353.

In the case of *Imperial, et al. vs. Armes, et al.*[95], the Supreme Court held that:

> "xxx Courts of law are the instruments for the adjudication of legal disputes. In a system of government where courts of law exist alongside quasi-judicial bodies, the need to harmonize apparent conflicts in jurisdiction require a determination of whether the matter to be resolved pertains to a general question of law which belongs to ordinary courts or whether it refers to a highly specialized question that can be better resolved by a quasi-judicial body in accordance with its power vested by law."

Section 27(A) of the NIRC of 1997 defines the term "gross income" as that equivalent to gross sales less sales returns, discounts and allowances and cost of goods sold. In the case of *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*[96], the High Court discussed the nature of sales discounts as follows:

> "Based on this discussion, we find that the nature of a *sales discount* is peculiar. Applying generally accepted accounting principles (GAAP) in the country, this type of discount is reflected in the *income statement* as a line item deducted -- along with returns, allowances, rebates and other similar expenses -- from *gross sales* to arrive at *net sales*. This type of presentation is resorted to, because the *accounts receivable* and *sales* figures that arise from *sales discounts*, -- as well as from *quantity*, *volume* or *bulk discounts* -- are recorded in the manual and computerized *books of accounts* and reflected in the financial statements at the gross amounts of the invoices. This manner of recording credit sales -- known as the *gross method* -- is most widely used, because it is simple, more convenient to apply than the *net method*, and produces no material errors over time.
>
> However, under the *net method* used in recording *trade*, *chain* or *functional discounts*, only the net amounts of the invoices -- after the discounts have been deducted -- are recorded in the *books of accounts* and reflected in the financial statements. A separate line item cannot be shown, because the transactions themselves involving both *accounts receivable* and *sales* have already been entered into, net of the said discounts.
>
> The term *sales discounts* is not expressly defined in the Tax Code, but one provision adverts to amounts whose sum -- along

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[95] G.R. Nos. 178842 and 195509, January 30, 2017.
[96] G.R. No. 159647, April 15, 2005.

with *sales returns*, *allowances* and *cost of goods sold* -- is deducted from *gross sales* to come up with the *gross income*, *profit* or *margin* derived from business. In another provision therein, *sales discounts* that are granted and indicated in the invoices at the time of sale -- and that do not depend upon the happening of any future event -- may be excluded from the *gross sales* within the same quarter they were given. While determinative only of the VAT, the latter provision also appears as a suitable reference point for income tax purposes already embraced in the former. After all, these two provisions affirm that *sales discounts* are amounts that are always deductible from *gross sales*."

Essentially, the sales returns and discounts partake of the nature of exemptions which ultimately reduce the taxable net income of a taxpayer. Exemption from taxation is not favored, and exemptions in tax statutes are never presumed. Exemptions from taxation are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[97] As such, proper substantiation is an essential requirement before it be allowed as a reduction from gross income.

Petitioner contends that it submitted the sales invoices issued to its customers showing all the requisites on sales adjustments.

A perusal of the Worksheet of Monthly Financial Statement Balances – Per Books confirms Petitioner's monthly Sales Returns and Discounts in the total amount of Php321,577,976.00, to wit:[98]

	Sales	
Month	**Debit**	**Credit**
January	Php 19,698,437.00	Php 164,643,521.00
February	21,976,903.00	127,899,637.00
March	25,411,694.00	183,515,791.00
April	36,947,691.00	191,070,419.00
May	44,143,526.00	205,014,237.00
June	11,706,206.00	134,964,055.00
July	22,637,969.00	150,649,096.00
August	16,658,050.00	133,448,923.00
September	24,243,083.00	150,036,707.00
October	27,378,702.00	184,515,386.00
November	26,898,930.00	175,425,851.00
December	43,876,785.00	221,169,896.00

[97] *Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs*, G.R. No. L-21841, October 28, 1966.
[98] BIR Records, Folder 1, p. 661.

Total	**Php321,577,976.00**	**Php2,022,353,519.00**

Of the total Sales Returns and Discounts, only those of Php284,834,302.15 (Php284,819,768.57 + Php14,533.58 [99]), as summarized below, are properly supported by invoices, thus, are deductible from gross sales:

Exhibit	Batch	Gross Sales	Sales Discounts	Sales Returns	Net Sales
"P-73-f'	1	Php236,839,409.69	Php32,437,355.16	Php12,261.58	Php204,389,792.96
"P-73-g"	2	983,088,898.82	210,640,785.57	2,272.00	772,445,841.26
"P-73-h"	3	257,401,434.67	41,741,627.84	-	215,659,806.83
		Php1,477,329,743.18	Php284,819,768.57	Php14,533.58	Php1,192,495,441.05

Hence, the remaining Sales Returns and Discounts in the amount of Php36,743,673.85 (Php321,577,976.00 less Php284,834,302.15), absent documentary evidence, shall be disallowed.

3. Disallowed Expenses due to Non-Withholding of Taxes – Php62,019,960.76

Pursuant to Section 34(K) of NIRC of 1997, as amended, Respondent disallowed the total expenses of Php62,019,960.76, as computed below, for failure of Petitioner to withhold the corresponding taxes:[100]

Expenses per Audited Financial Statements subject to Expanded Withholding Tax	Php144,542,876.28
Less: Tax Base of Income Payments subjected by taxpayer to EWT per Returns	83,815,115.40
Disallowed Expenses Due to Non-Withholding of Expanded Withholding Tax per FS Analysis	Php 60,727,760.88
Add: Disallowed Expenses due to Non-Withholding – Line by Line Matching of Suppliers	89,913.30
Disallowed Compensation – Non Withholding of Taxes	1,202,286.58
Total Expenses Disallowed Due to Non-Withholding of Taxes	**Php 62,019,960.76**

3.1. Disallowed Expenses Due to Non-Withholding of EWT per FS Analysis – Php60,727,760.88

[99] Exhibit "P-73-a", p. 11, Docket, Vol. 6, p. 3006.
[100] Exhibit "P-3", IT-4, Docket, Vol. 6, p. 3353.

It can be gleaned from the table below that the disallowance of Php60,727,770.47 pertains to income payments made to contractors:[101]

FS/ITR Items	Amount	Contractors	Rental	Professionals	Not Subject to EWT
		2%	5%	15%	
Purchases	Php1,520,493,208.57	Php74,857,356.00			Php1,445,635,852.57
Add: Operating Expenses					
Salaries and Allowances	71,042,217.06				71,042,217.06
Fringe Benefits	1,636,495.63				1,636,495.63
Rental	3,759,757.68		Php3,759,757.68		
Professional Fees	49,000.00			Php49,000.00	
Security Services	2,154,790.62	2,154,790.62			
Other Outside Services	20,854,466.01	20,854,466.01			
Advertising	29,279,305.32	29,279,305.32			
Repairs and Maintenance – Labor	10,203,059.24	10,203,059.24			
Research and Development	660,704.99	660,704.99			
Office Supplies	1,335,320.39				1,335,320.39
SSS, GSIS, PhilHealth, HDMF and Other Contributions	4,693,054.30				4,693,054.30
Insurance	173,297.98	173,297.98			
Representation and Entertainment	1,014,658.44				1,014,658.44
Transportation and Travel	3,108,386.51				3,108,386.51
Fuel and Oil	12,765,818.36				12,765,818.36
Communication, Light and Water	2,551,138.44	2,551,138.44			
Taxes and Licenses	765,326.68				765,326.68
Losses	440,574.83				440,574.83
Depreciation	156,606.84				156,606.84
Miscellaneous	35,764.50				35,764.50
Tax Base of Income Payments subject to EWT	Php1,687,172,952.39	Php140,734,118.60	Php3,759,757.68	Php49,000.00	Php1,542,630,076.11
Less: Income Payments not subject to EWT	1,542,630,076.11				1,542,630,076.11
Balance	Php 144,542,876.28	Php140,734,118.60	Php3,759,757.68	Php49,000.00	Php -
Income Payments per Returns		80,006,348.13	3,759,757.68	49,000.00	

[101] BIR Records, pp. 725-726.

Disallowed Expenses due to Non-Withholding of EWT		Php 60,727,770.47	Php -	Php -	

In relation thereto, a scrutiny of the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded), as supported by Monthly Alphalist of Payees,[102] discloses the following income payments subjected by Petitioner to EWT:

Exhibit	Month	Contractors	Rentals	Professional
"P-35"	January	Php5,717,413.70	Php273,292.58	Php -
"P-36"'	February	6,481,248.52	169,379.94	
"P-37"	March	7,234,088.34	259,915.16	
"P-38"	April	4,574,503.98	525,528.09	
"P-39"	May	4,698,837.62	78,852.52	49,000.00
"P-40"	June	8,858,130.24	152,383.78	
"P-41"	July	8,131,957.19	324,002.85	
"P-42"	August	9,268,978.56	290,889.11	
"P-43"	September	7,266,179.20	356,348.59	
"P-44"	October	6,731,584.75	924,958.33	
"P-45"	November	7,740,712.56	200,999.01	
"P-46"	December	3,302,713.47	203,207.72	
	Total	**Php80,006,348.13**	**Php3,759,757.68**	**Php49,000.00**

To refute the assessment, Petitioner presented a reconciliation schedule, as illustrated in the table below:[103]

			Expanded Withholding Tax			
	Per FS	Per ITR	2%	5%	15%	Total
Cost of Sales						
Freight	Php74,857,356.15	Php74,857,356.15	Php74,857,356.15			Php74,857,356.15
Deductions						
Rental	3,759,757.68	3,759,757.68		Php3,759,757.68		3,759,757.68
Professional Fee	49,000.00	49,000.00			Php49,000.00	49,000.00
Security Services	2,154,790.62	2,154,790.62	2,154,790.62			2,154,790.62
Other Outside Services	20,854,466.01	20,854,466.01	20,854,466.01			20,854,466.01
Advertising						
Complimentaries	14,195,148.27	14,195,148.27				-
Promotions	15,084,157.05	15,084,157.05	9,138,611.10			9,138,611.10
Repairs and	10,203,059.24	10,203,059.24	6,695,500.71			6,695,500.71

[102] Exhibits "P-35" to "P-46-b", Docket, Vols. 6-7, pp. 3490-3535.
[103] Petitioner's Memorandum, pp. 28-29, Docket, Vol. 7, pp. 3695-3696.

Maintenance						
Research and Development	660,704.99	660,704.99	495,549.79			495,549.79
Insurance	173,297.98	173,297.98	173,297.98			173,297.98
Communication, Light & Water	2,551,138.44	2,551,138.44	2,551,138.44			2,551,138.44
Totals per Assessment			Php116,920,710.80	Php3,759,757.68	Php49,000.00	Php120,729,468.48
Totals per Returns			80,006,348.13	3,759,757.68	49,000.00	83,815,105.81
Discrepancy			**Php36,914,362.67**	**Php -**	**Php -**	**Php36,914,362.67**

A close examination of Respondent's analysis and Petitioner's reconciliation, *with regard to income payments to contractors*, reveals that the two differs in Advertising, Repairs and Maintenance, and Research and Development. For easy reference, a comparison of the two is illustrated below:

FS/ITR Items	**Amount per Respondent's Analysis**	**Amount per Petitioner's Reconciliation**	**Difference**
Purchases	Php74,857,356.00	Php74,857,356.15	Php -
Security Services	2,154,790.62	2,154,790.62	-
Other Outside Services	20,854,466.01	20,854,466.01	-
Advertising	29,279,305.32	9,138,611.10	20,140,694.22
Repairs and Maintenance	10,203,059.24	6,695,500.71	3,507,558.53
Research and Development	660,704.99	495,549.79	165,155.20
Insurance	173,297.98	173,297.98	-
Communication, Light & Water	2,551,138.44	2,551,138.44	-
Total Income Payments to Contractors Subject to EWT	Php140,734,118.60	Php116,920,710.80	Php23,813,407.95
Per Tax Returns	80,006,348.13	80,006,348.13	-
Discrepancy	**Php60,727,770.47**	**Php36,914,362.67**	**Php23,813,407.95**

Petitioner failed to establish that the Advertising of Php20,140,694.22, Repairs and Maintenance of Php3,507,558.53, and Research and Development of Php165,155.20 are not subject to withholding tax. Petitioner merely accounted for the said income payments at an amount lower than that per assessment without even explaining why those payments should not be assessed in the first place.

As regards the remaining discrepancy of Php36,914,362.67, Petitioner explains that the same pertains to income payments not subject to EWT such as, but not limited to: (1) casual purchases or from a person who is not considered as a regular supplier; (2) petty cash disbursements incurred by salesmen and sales offices such as, but not limited to, meals, representation and entertainment, gasoline, out-of-town fieldwork expenses and supplies; and/or (3) expenses that were paid in cash such as, but not limited to, prepaid cellphone loads, registered mail transmitted to customers, and the like.

Pursuant to RR No. 2-98, as amended by RR No. 14-2008, the casual purchases amounting to less than Php10,000.00 are not subject to EWT, to wit:

> "Sec. 2.57.2. *Income payment 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 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 twenty thousand (20,000) 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.* – xxx
>
> xxx xxx xxx
>
> The term '*local/ resident suppliers of goods*' pertains to a supplier from whom any of the *top twenty thousand (20,000) private corporations*, as determined by the Commissioner, regularly makes its purchases of goods. **As a general rule, this term does not include a casual purchase of goods, that is, purchase made from a non-regular supplier and oftentimes involving a single purchase.** However, a single purchase which involves Ten thousand pesos (P10,000.00) or more shall be subject to a withholding tax. The term '*regular suppliers*' refers to suppliers who are engaged in business or exercise of profession/calling with whom the taxpayer-buyer has transacted at least six (6) transactions, regardless of amount per transaction, either in the previous year or current year. The same rules apply to local/resident supplier of services other than those covered by separate rates of withholding tax." (*Emphasis supplied*)

Furthermore, in the case of *First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue*[104], the Supreme Court ruled that the expenses would not be subject to withholding tax if the same were reimbursement for actual expenses of the company. In a number of rulings, even the BIR held the same.[105] In order for the expenses to be not subject to withholding tax, it must first be established that they are reimbursements of actual expenses.

Be that as it may, Petitioner fell short of establishing that the income payments are actually casual purchases, reimbursements or those cash expenses, as it alleges.

Moreover, it can be inferred from the Report that the ICPA supported Respondent's finding – that the income payments were not subjected to EWT. The ICPA sustained the deficiency EWT assessment, but not the disallowance of the related expenses solely citing RR No. 14-2002, to wit:[106]

> "*After a diligent review, study and examination of the Petitioner's records and documents, I have observed the following:*
>
> 1. *The Respondent in forming its assessment compared the tax base of the Petitioner's expenses subjected to withholding tax versus the expenses claimed by Petitioner.*
> 2. *The Respondent's assessment showed that a total of **P140,734,118.60** is subject to 2% Contractors Tax.*
> 3. *A total of **P80,006,359.00** was properly subjected to 2% Contractors Tax, Rental of **P3,759,757.68** was properly subjected to 5%, and Professional fees of **P49,000.00** was properly subjected to 15% by the Petitioner.*
> 4. *As a result, the Respondent assessed a basic deficiency on EWT in the amount of **P1,214,555.19** (2% Contractors Tax) which in my opinion is correct.*
> 5. *However, the Respondent erroneously taken-up the whole basic tax due in the amount of **P2,814,682.37** (2% Contractors Tax) as part of its assessment of EWT (WE1) without considering the payments made by the Petitioner.*
>
> ***Therefore, in my opinion, the Respondent's assessment on deficiency on EWT in the amount of P1,214,555.19 is hereby***

[104] G.R. No. 197117, April 10, 2013.
[105] BIR Ruling Nos. 28-80, undated, 156-84 dated September 12, 1984, and 129-92 dated April 20, 1992.
[106] Exhibit "P-73-a", Docket, Vol. 6, pp. 3007-3008.

> ***<u>sustained, while the related expenses therefore amounting to P60,727,760.88 should be allowed as an allowable deductions based on RR 14-2002.</u>***"

Section 2.58.5 of RR No. 2-98, as amended by RR No. 14-2002, lays down three instances where a deduction will be allowed even without withholding of tax is made, to wit:

> "Sec. 2.58.5. *Requirements for Deductibility.* – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.
>
> **A deduction will also be allowed in the following cases where no withholding of tax was made:**
>
> (A) The payee reported the income and pays the tax due thereon and the withholding agent pays the tax including the interest incident to the failure to withhold the tax, and surcharges, if applicable, at the time of the audit investigation or reinvestigation/reconsideration.
>
> (B) The recipient/payee failed to report the income on the due date thereof, but the withholding agent/taxpayer pays the tax, including the interest incident to the failure to withhold the tax, and surcharges, if applicable, at the time of the audit/investigation or reinvestigation/reconsideration.
>
> (C) The withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, at the time of the audit/investigation or reinvestigation/reconsideration." (*Emphasis supplied*)

Note that the allowance of deduction under the second paragraph of the foregoing Section is not absolute. Such allowance is limited only to instances enumerated above. None of which is present in the instant case. No settlement was made at the time of the audit investigation. Hence, the disallowance is proper.

3.2. Disallowed Expenses due to Non-Withholding – Line by Line Matching of Suppliers – Php89,913.30

Respondent disallowed certain purchases in the amount of Php89,913.30, based on the line by line analysis, due to non-withholding of taxes thereon:

Total Amount of Purchases from Suppliers in Summary List of Purchases (SLP) with discrepancy against Monthly Alphalist of Payees (MAP) subjected to EWT	Php379,649.88
Less: Amount of Purchases declared per MAP from the same suppliers	289,736.58
Tax Base of EWT Discrepancy	**Php 89,913.30**

The assessment is unwarranted.

The disallowance above (in Item No. 3.1) of certain income payments due to non-withholding of taxes thereon was based on Respondent's analysis of Petitioner's Financial Statements. Note that the Purchases formed part of the said analysis. Considering it is comprehensive in scope, it can be inferred that the first analysis already covered the income payments subject of this line by line matching of suppliers. Hence, the disallowance of Php89,913.30 shall be cancelled.

3.3. Disallowed Compensation – Non-Withholding of Taxes – Php1,202,286.58

Respondent likewise disallowed the salaries and compensation in the amount of Php1,202,286.58, as computed below, due to non-withholding:

Salaries, Wages and Other Forms of Compensation	
Per Audited Financial Statements	Php75,735,271.36
Per Alphalist of Employees	69,839,930.48
Discrepancy	Php 5,895,340.88
Less: SSS, Medicare and Other Contributions	4,693,054.30
Balance	**Php 1,202,286.58**

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An examination of the Alphalists of Employees[107] discloses the total compensation of Php71,042,217.06, as also verified by the ICPA[108], summarized as follows:

	Exh. "P-34"	Exh. "P-34-A"	Exh. "P-34-B"	Exh. "P-34-C"	Exh. "P-34-D"	
	Schedule 7.1	Schedule 7.2	Schedule 7.3	Schedule 7.4	Schedule 7.5	
	Terminated	Exempt	No Previous Employer	With Previous Employer	Minimum Wage Earners	Total
Taxable Compensation						
Basic Salary	Php 2,436,053.86	Php 2,373,555.02	Php 55,845,793.52	Php367,997.78	Php638,661.27	Php61,662,061.45
13th Month Pay & Other Benefits	-	-	72,520.08	-	-	72,520.08
Salaries and Other Forms of Compensation	44,058.70	48,215.23	1,225,847.78	-	-	1,318,121.71
Sub-total	*Php2,480,112.56*	*Php2,421,770.25*	*Php57,144,161.38*	*Php367,997.78*	*Php 638,661.27*	*Php63,052,703.24*
Non-Taxable Compensation						
13th Month Pay & Other Benefits	Php93,271.89	Php 173,705.60	Php3,916,189.17	Php13,905.83	Php46,744.73	Php 4,243,817.22
SSS, PHIC & Pag-Ibig Contribution	90,077.42	147,326.47	2,704,374.57	8,950.00	42,282.67	2,993,011.13
Salaries and Other Forms of Compensation	37,245.91	21,784.50	690,734.96	-	2,920.10	752,685.47
Sub-total	*Php220,595.22*	*Php342,816.57*	*Php7,311,298.70*	*Php22,855.83*	*Php91,947.50*	*Php7,989,513.82*
Total	**Php2,700,707.78**	**Php2,764,586.82**	**Php64,455,460.08**	**Php390,853.61**	**Php730,608.77**	**Php71,042,217.06**

Clearly, Petitioner properly subjected the Salaries and Wages to withholding tax, to wit:

Total Compensation per Financial Statements/ITR		
Salaries and Wages	Php75,735,271.36	
Less: Employer's Share – SSS, GSIS, Philhealth, HDMF and Other Contributions	4,693,054.30	Php71,042,217.06
Total Compensation per Alphalist		71,042,217.06
Difference		**Php -**

4. Disallowed Creditable Withholding Tax from Matching of Third Party Information – Php591,290.27[109]

[107] Docket, Vol. 6, pp. 3466-3489.
[108] Exhibit "P-73-a", Docket, Vol. 6, p. 3010.
[109] Exhibit "P-3", IT-5, Docket, Vol. 6, p. 3353.

Respondent found that Petitioner declared higher amount of sales per Summary Alphalist of Withholding Tax (SAWT) as that per Summary List of Sales (SLS) by Php59,129,026.78, which allegedly pertains to previous periods. Correspondingly, the creditable withholding tax (CWT) of which, in the amount of Php591,290.27, was disallowed, as computed below:[110]

Sales per Summary Alphalist of Withholding Tax (SAWT)	Php 67,073,226.99
Less: Sales per Summary List of Sales (SLS)	7,944,200.21
Sales pertaining to previous periods	Php 59,129,026.78
Withholding tax rate	1%
Disallowed Creditable Withholding Tax	**Php 591,290.27**

Petitioner argues that it cannot be made accountable for the variance because the SAWT and the SLS are not comparative reports. The former is a report relating to income payments to Petitioner subjected to tax by the withholding agents, while the latter is a report of gross receipts or gross sales for VAT purposes, to wit:[111]

> "SECTION 2. MANDATORY SUBMISSION OF SUMMARY ALPHALIST OF WITHHOLDING AGENTS OF INCOME PAYMENTS SUBJECTED TO CREDITABLE WITHHOLDING TAXES (SAWT) BY THE PAYEE/INCOME RECIPIENT AND OF MONTHLY ALPHALIST OF PAYEES (MAP) SUBJECTED TO WITHHOLDING TAX BY THE WITHHOLDING AGENT/INCOME PAYOR AS ATTACHMENT TO THEIR FILED RETURNS.
>
> A. Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT) and Monthly Alphalist of Payees (MAP) defined
>
> Summary Alphalist of Withholding Agents/Payors of Income Payments subjected to Creditable Withholding Tax at Source (SAWT) Annex 'A' is a consolidated alphalist of withholding agents from whom income was earned or received and subjected to withholding tax to be submitted by the payee-recipient of income as attachment to its duly filed return for a given period which Summary List contains a summary of information showing,

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[110] Exhibit "P-3", IT-5, Docket, Vol. 6, p. 3353.
[111] Section 2, RR No. 2-2006; Section 4.114-3(c), RR No. 16-2005.

among others, total amounts of income/gross sales/gross receipts and claimed tax credits taken from all Certificates of Creditable Withholding Tax at Source (BIR Form No. 2307) issued by the payors of income payment."

"SEC. 4.114-3. *Submission of Quarterly Summary List of Sales and Purchases.* –

xxx xxx xxx

c. Information that Must be Contained in the Quarterly Summary List of Sales to be Submitted. – The quarterly summary list of sales must contain the monthly total sales generated from regular buyers/customers, regardless of the amount of sale per buyer/customer, as well as from casual buyers/customers with individual sales amounting to Php100,000.00 or more. xxx"

It should be noted that Petitioner is primarily engaged in the trading business.[112] That being the case, the reporting of sales for income tax and VAT purposes is the same. Accordingly, the total sales per ITR must be equal to that per VAT returns for a given taxable period. Thus, the discrepancy noted may pertain to previous periods' sales.

However, Petitioner failed to reconcile the discrepancy. In the report[113], the ICPA merely verified the proper substantiation of the CWT claimed by Petitioner. Absent the reconciliation, the Court cannot ascertain whether Petitioner has properly reported the sales related to the CWT. Hence, the disallowance shall be upheld.

In fine, Petitioner is liable for deficiency income tax in the total amount of Php45,699,064.08, as computed below:

Taxable Income per Returns			Php5,706,011.55
Add: Adjustments / Findings per Investigation			
Purchases Discrepancy per Trade and Other Payables Analysis	Php528,067,564.64		
Divide by Cost Ratio	90%		

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[112] Exhibit "P-10", Docket, Vol. 6, p. 3384.
[113] Exhibit "P-73-a", p. 16, Docket, Vol. 6, p. 3011.

Grossed-up Value of Purchases Discrepancy	Php586,741,738.49		
Multiply by: Sales Ratio	10%		
Gross Profit on Sales Discrepancy		Php58,674,173.85	
Unsupported Sales Returns and Discounts		36,743,673.85	
Disallowed Expenses Due to Non-Withholding of Taxes		60,727,770.47	156,145,618.17
Taxable Income per Audit			***Php161,851,629.72***
Income Tax Rate			30%
Tax Due per Audit			Php48,555,488.92
Less: Payments / Tax Credits			
Prior Year's Excess Credits other than MCIT	Php1,035,244.76		
Tax Payments for the First Three Quarters	1,156,395.79		
Tax Payment for the Fourth Quarter	473,905.08		
Creditable Tax Withheld for the First Three Quarters	242,533.64		
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	539,635.84	Php3,447,715.11	
Less: Disallowed Creditable Withholding Tax from Matching of Third Party Information		591,290.27	2,856,424.84
Basic Deficiency Income Tax			**Php45,699,064.08**

II. DEFICIENCY VALUE-ADDED TAX – Php187,755,460.22

Respondent assessed Petitioner of deficiency VAT in the amount of Php113,075,438.11, as computed below:[114]

Taxable Income per Returns		Php1,700,775,543.01
Add: VAT on Sales Discrepancy and Unreported Fund Sources		621,028,380.41

[114] Exhibit "P-2", Docket, Vol. 6, p. 3350.

Taxable Sales per Audit		2,321,803,923.42
Multiply by VAT Rate		12%
Output Tax per Audit		278,616,470.81
Less: Allowable Input Tax Claimed per Audit		
Creditable Input Tax Claimed per Returns	Php203,732,039.86	
Less: Over-claimed Input Taxes	10,703,236.77	193,028,803.09
Value-Added Tax Payable per Audit		85,587,667.72
Less: Tax Credits / Payments		361,025.54
Basic Value-Added Tax Deficiency		85,226,642.18
Add: Increments		
Surcharge	42,613,321.09	
Interest (January 26, 2011 to July 31, 2014)	59,915,496.94	102,528,818.04
Total Value-Added Tax Deficiency		**Php187,755,460.22**

1. Sales Discrepancy and Unreported Fund Sources – Php621,028,380.41

Pursuant to Sections 105 and 106 of NIRC of 1997, in relation to RR No. 16-05, Respondent assessed Petitioner of deficiency VAT on the following items:[115]

Undeclared Sales from Matching of Third Party Information		Php34,286,641.91
Add: Undeclared Purchases	Php528,067,564.64	
Divide by Cost Ratio (Php1,528,389,787.70 / Php1,700,775,543.07)	90%	586,741,738.49
Total Discrepancy on Taxable Income to be Subjected to VAT		**Php621,028,380.41**

As discussed earlier, Respondent failed to verify the amounts extracted from Respondent's own database; thus, the assessment on undeclared sales shall

[115] Exhibit "P-3", VT-1, Docket, Vol. 6, pp. 3353.

be cancelled. On the other hand, Petitioner failed to refute Respondent's finding on purchases discrepancy; hence, the assessment thereon is sustained.

2. Disallowed VAT from Sources of Input Tax per Financial Statement Analysis – Php10,703,236.77

Respondent's analysis of the possible sources of input tax per Audited Financial Statements revealed excess input taxes claimed by Petitioner, as computed below; thus, the same were disallowed pursuant to Sections 110 and 113(A) and (B) of NIRC of 1997, as amended:[116]

Items per FS	Amount per FS	With Input Tax	Without Input Tax
Purchases	Php1,520,493,208.57	Php1,520,493,208.57	
Add: Operating Expenses			
Salaries and Allowances	71,042,217.06		Php71,042,217.06
Fringe Benefits	1,636,495.63		1,636,495.63
Rental	3,759,757.68	3,759,757.68	
Professional Fees	49,000.00	49,000.00	
Security Services	2,154,790.62	2,154,790.62	
Other Outside Services	20,854,466.01	20,854,466.01	
Advertising	29,279,305.32	29,279,305.32	
Repairs and Maintenance – Labor	10,203,059.24	10,203,059.24	
Research and Development	660,704.99	660,704.99	
Office Supplies	1,335,320.39	1,335,320.39	
SSS, GSIS, PhilHealth, HDMF, and Other Contributions	4,693,054.30		4,693,054.30
Insurance	173,297.98	173,297.98	
Representation and Entertainment	1,014,658.44	1,014,658.44	
Transportation and Travel	3,108,386.51	3,108,386.51	
Fuel and Oil	12,765,818.36	12,765,818.36	

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[116] BIR Records, p. 727.

Communication, Light and Water	2,551,138.44	2,551,138.44	
Taxes and Licenses	765,326.68		765,326.68
Losses	440,574.83		440,574.83
Depreciation	156,606.84		156,606.84
Miscellaneous	35,764.50	35,764.50	
Total Purchases and Operating Expenses	*1,687,172,952.39*	*1,608,438,677.05*	*78,734,275.34*
Add: Additions to Property Plant and Equipment			
Office Furniture and Equipment	108,415.00	108,415.00	
Others	26,267.00	26,267.00	
Additions to Property Plant and Equipment	134,682.00	134,682.00	
Total Possible Sources of Input Tax	***Php1,687,307,634.39***	***Php1,608,573,359.05***	***Php78,734,275.34***
Multiply by VAT Rate		12%	
Possible Input Taxes per FS		193,028,803.09	
Less: Input Tax Claimed per FS		203,732,039.86	
Unclaimed (Over-claimed) Input Taxes per FS		Php(10,703,236.77)	

Petitioner posits that the disallowance has no factual and legal bases.

The Court finds the disallowance devoid of merit.

Under Section 110 of the NIRC of 1997, as amended, a creditable input tax should be evidenced by a VAT invoice or official receipt. In relation thereto, Section 113 provides that a *VAT invoice* is necessary for every sale, barter or exchange of goods or properties; while a *VAT official receipt* properly pertains to every lease of goods or properties and sale, barter or exchange of services. The

Supreme Court has distinguished an invoice from a receipt in the case of *Commissioner of Internal Revenue vs. Manila Mining Corporation*[117], to wit:

> "A 'sales or commercial invoice' is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.
>
> A 'receipt' on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.
>
> These sales invoices or receipts issued by the supplier are necessary to substantiate the actual amount or quantity of goods sold and their selling price, and taken collectively are the best means to prove the input VAT payments." (*Citations omitted*)

In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer; while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (proof of transaction), and the best means to prove the input VAT payments (proof of payment). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.[118]

Accordingly, the input tax relating to goods is creditable in the period when the purchase is made; while the input tax relating to services is creditable in the period when the payment is made. On the other hand, an expense is deductible in the period when such is incurred. That being the case, the reporting of operating expenses per FS will not conform to that of input tax per VAT Returns.

Note that the operating expenses of Petitioner relate to both goods and services. Necessarily, there is a timing difference in the reporting of the expenses

[117] G.R. No. 153204, August 31, 2005.

[118] *KEPCO Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.

and the corresponding input VAT. Therefore, Respondent's disallowance is improper.

In fine, Petitioner is liable for deficiency VAT in the total amount of Php70,409,008.38, computed as follows:

Taxable Income per Returns		Php1,700,775,543.01
Add: Unreported Fund Sources		586,741,738.49
Taxable Sales per Audit		**Php2,287,517,281.50**
Output Tax per Audit		Php274,502,073.78
Less: Creditable Input Tax Claimed per Returns		
1st Quarter	Php49,011,400.50	
2nd Quarter	52,492,654.99	
3rd Quarter	44,400,730.53	
4th Quarter	57,827,253.64	203,732,039.86
Value-Added Tax Payable per Audit		70,770,033.92
Less: Tax Credits / Payments		
1st Quarter	65,229.25	
2nd Quarter	97,499.61	
3rd Quarter	70,744.54	
4th Quarter	127,552.14	361,025.54
Basic Deficiency Value-Added Tax		**Php 70,409,008.38**

III. DEFICIENCY EXPANDED WITHHOLDING TAX – Php6,210,687.83

Respondent assessed Petitioner of deficiency EWT pursuant to Section 57 of the NIRC of 1997, in relation to Section 2.57.2 of RR No. 2-98, in the amount of Php6,210,687.83, as computed below:[119]

Expanded Withholding Tax Due per Returns		Php1,795,465.00
Add: Adjustments / Findings per Investigation		
Expanded Withholding Tax on Financial Statement Analysis	Php2,814,682.37	
Expanded Withholding Tax on Line by Line Analysis of Suppliers	4,495.67	2,819,178.04

[119] Exhibit "P-2", Docket, Vol. 6, p. 3351.

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Total Expanded Withholding Tax per Audit		Php4,614,643.04
Less: Expanded Withholding Tax Remitted per Returns		1,795,465.00
Basic Expanded Withholding Tax Deficiency		Php2,819,178.04
Add: Increments		
Surcharge	Php1,409,589.02	
Interest (January 11, 2011 to July 31, 2014)	1,981,920.78	3,391,509.80
Total Expanded Withholding Tax Deficiency		**Php6,210,687.83**

1. EWT on Financial Statements Analysis – Php2,814,682.37

As discussed earlier, Petitioner failed to withhold tax on certain portion of income payments made to contractors in the amount of Php60,727,770.47. Accordingly, Petitioner is liable for the corresponding deficiency 2% EWT of Php1,214,555.41, as computed below:

Total Income Payments to Contractors	Php140,734,118.60
Less: Income Payments per Returns	80,006,348.13
Income Payments to Contractors Not Subjected to EWT	Php60,727,770.47
Multiply by Tax Rate	2%
EWT Deficiency	**Php 1,214,555.41**

2. EWT on Line by Line Analysis of Suppliers – Php4,495.67

As held earlier, Respondent's assessment on purchases based on line by line matching of suppliers has no factual basis. Hence, the same is cancelled.

IV. DEFICIENCY WITHHOLDING TAX ON COMPENSATION – Php938,523.41

Respondent assessed Petitioner of deficiency WTC in the amount of Php938,523.41, as computed below:[120]

[120] Exhibit "P-3", WTC-2, Docket, Vol. 6, p. 3354.

Withholding Tax on Compensation Due per Returns		Php6,664,302.72
Add: Adjustments / Findings per Investigation		
Withholding Tax on Compensation from Financial Statements Analysis	Php130,077.32	
Withholding Tax on Compensation from Line by Line Analysis of Suppliers	147,970.32	278,047.64
Total Withholding Tax on Compensation per Audit		6,942,350.36
Less: Withholding Tax on Compensation Remitted per Returns		6,516,332.40
Basic Deficiency on Withholding Tax on Compensation		426,017.96
Add: Increments		
Surcharge	213,008.98	
Interest (January 11, 2011 to July 31, 2014)	299,496.46	512,505.44
Total Deficiency on Withholding Tax on Compensation		**Php938,523.41**

1. Withholding Tax on Compensation from Financial Statements Analysis – Php130,077.32

In relation to the disallowance of Salaries and Wages, Respondent assessed Petitioner of the withholding tax thereon. As held earlier, Petitioner properly subjected the Salaries and Wages to withholding tax. Thus, the assessment of WTC is cancelled.

2. Discrepancy on Remittances of Withholding Taxes on Compensation – Php147,970.32

Respondent's comparison of the amount of withholding taxes that should have been remitted and that remitted per returns showed discrepancy, as shown below:

Amount that should have been remitted per Alphalist of Employees	Php6,664,302.72
Less: Amount Remitted per Compensation Returns	6,516,332.40
Deficiency in Remittances of Withholding Tax on Compensation	**Php 147,970.32**

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An examination of the Alphalists reveals that the tax due amounted to Php6,712,971.28, as summarized below:

Exhibit	Schedule	Tax Due
"P-34"	7.1 Terminated	Php193,526.24
"P-34-B"	7.3 No Previous Employer	6,335,423.98
"P-34-C"	7.4 With Previous Employer	184,021.06
	Total	**Php6,712,971.28**

On the other hand, Petitioner remitted the amount of Php6,516,332.40 only, to wit:

Exhibit	Month	Taxable Compensation	Non-Taxable Compensation	Amount Remitted
"P-21"	January	Php5,495,012.40	Php257,128.63	Php353,477.94
"P-22"	February	6,907,737.58	258,920.09	652,976.62
"P-23"	March	4,764,837.28	242,204.40	523,382.70
"P-24"	April	5,263,066.24	249,343.72	651,433.45
"P-25"	May	5,565,719.68	254,032.67	730,239.81
"P-26"	June	5,234,060.15	245,783.78	673,043.18
"P-27"	July	5,168,865.02	250,030.98	619,996.20
"P-28"	August	4,705,373.60	246,641.71	533,115.76
"P-29"	September	5,012,228.19	263,355.38	560,660.81
"P-30"	October	4,797,415.45	257,662.37	549,159.60
"P-31"	November	5,264,235.51	262,262.21	668,846.33
"P-32"	December	4,235,490.87	5,840,809.15	-
	Total	**Php62,414,041.97**	**Php8,628,175.09**	**Php6,516,332.40**

Accordingly, Petitioner is liable for deficiency WTC in the amount of Php196,638.88, as determined below:

Tax Due per Alphalists	Php 6,712,971.28
Less: Tax Remitted per Returns	6,516,332.40
Deficiency Withholding Tax on Compensation	**Php 196,638.88**

To reiterate, the Court cannot go beyond the contested assessment. As the excess amount is considered as not assessed by Respondent, Petitioner is liable only to the extent of that assessed by Respondent.

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, Petitioner is **ORDERED TO PAY** the amount of **ONE HUNDRED FORTY-SIX MILLION EIGHT**

HUNDRED THIRTY-EIGHT THOUSAND TWO HUNDRED FORTY-SEVEN AND 74/100 (Php146,838,247.74), representing deficiency income tax, value-added tax, expanded withholding tax, and withholding tax on compensation for calendar year 2010, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	25% Surcharge	Total
Income Tax	Php45,699,064.08	Php11,424,766.02	Php57,123,830.10
Value-added Tax	70,409,008.38	17,602,252.10	88,011,260.48
Expanded Withholding Tax	1,214,555.41	303,638.85	1,518,194.26
Withholding Tax on Compensation	147,970.32	36,992.58	184,962.90
Total	**Php117,470,598.19**	**Php29,367,649.55**	**Php146,838,247.74**

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, value-added tax, expanded withholding tax, and withholding tax on compensation computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

Tax Type	Basic Tax	Deficiency Interest Computed From
Income Tax	Php45,699,064.08	April 15, 2011
Value-added Tax	70,409,008.38	January 25, 2011
Expanded Withholding Tax	1,214,555.41	January 15, 2011
Withholding Tax on Compensation	Php147,970.32	January 15, 2011

(b) Delinquency interest at the rate of 20% per annum on the total amount of Php146,838,247.74 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from June 30, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Ma. Belen M. R. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice