Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PHILIPPINE TOBACCO FLUE-CURING AND REDRYING CORPORATION, Petitioner,	**CTA Case No. 7991** For: Assessment
-versus-	Members: DEL ROSARIO, PJ, *Chairperson* UY, and MINDARO-GRULLA, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 2 6 2014 ; 3:00 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

This a Petition for Review filed on November 6, 2009 by Philippine Tobacco Flue-Curing and Redrying Corporation as petitioner against the Commissioner of Internal Revenue (CIR) as respondent, with the Court in Division, pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2].

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1 Sec. 7. *Jurisdiction*. – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
x x x x x x

2 Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner seeks the cancellation and withdrawal of the Final Decision on Disputed Assessment (FDDA)[3] of the CIR finding petitioner liable for alleged deficiency income tax, value-added tax (VAT), withholding tax on compensation, expanded withholding tax (EWT), documentary stamp tax (DST) and inspection fees, inclusive of interest and penalties, in the aggregate amount of ₱10,842,528.74 covering fiscal year (FY) ending August 31, 2005.

Petitioner is a corporation duly organized and existing under Philippine laws, with principal office address at 802 A. Bonifacio Street, Balintawak, Quezon City. It is primarily engaged in the leasing of real property.[4]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR) vested with authority to exercise the functions of said office, including, *inter alia*, the power to abate or cancel tax liability. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code of other laws administered by the Bureau of Internal Revenue;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Exhibit "A", Docket, pp. 14 to 16.
[4] Pars. 1 and 2, Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 306.

On November 7, 2008, petitioner received an undated Preliminary Assessment Notice (PAN) from the Large Taxpayers Audit and Investigation Division II (LTAID II) of the BIR regarding its income tax return for the fiscal year ending August 31, 2005. Petitioner was initially assessed its deficiency tax amounting to ₱27,221,724.14.[5]

On November 21, 2008, petitioner filed its protest letter to the PAN and the supporting documents to the BIR-LTAID II.[6]

On December 3, 2008, petitioner received from the BIR-LTAID II a Formal Letter of Demand (FLD) dated November 26, 2008 with attached Audit Results/Assessment Notices all dated December 2, 2008, which alleged that petitioner had deficiency taxes for FY ending August 31, 2005, in the total amount of ₱26,124,490.16, broken down as follows:[7]

Income Tax	₱ 24,612,198.05
Value-added Tax	789,632.65
Withholding Tax on Compensation	426,497.44
Expanded Withholding Tax	122,926.53
Final Withholding Tax	89,098.49
Documentary Stamp Tax	58,632.36
Inspection Fees	25,504.64
TOTAL	**₱26,124,490.16**

On December 23, 2008, petitioner filed a protest letter to the FLD with all its supporting documents addressed to respondent, through Olivia O. Lao, OIC–Head Revenue Executive Assistant, Large Taxpayers Service-Excise of the BIR National Office.[8] ℓ

[5] Par. 5, Facts, JSFI, Docket, pp. 306 to 307; Exhibit "K", Docket, pp. 42 to 44.
[6] Par. 6, Facts, JSFI, Docket, p. 307; Exhibit "L", Docket, pp. 45 to 46.
[7] Par. 7, Facts, JSFI, Docket, p. 307; Exhibit "M", Docket, pp. 81 to 83.
[8] Par. 8, Facts, JSFI, Docket, p. 307; Exhibit "N", Docket, pp. 93 to 234.

On February 4, 2009, petitioner received a Tax Verification Notice (TVN) dated January 14, 2009, indicating that the BIR-LTAID II would reinvestigate the matter.[9]

On June 29, 2009, petitioner, through counsel, filed its Supplement to the Protest Letter.[10]

On October 7, 2009, petitioner received the Final Decision on Disputed Assessment dated September 11, 2009, together with Details of Discrepancies, Audit Result/Assessment Notices, and Computation of Deficiency Taxes issued by respondent.[11] In the said FDDA and Assessment Notice, respondent found petitioner liable for deficiency taxes for FY ending August 31, 2005, in the aggregate amount of ₱10,842,528.74, inclusive of interest and compromise penalties, computed as follows:

TAX TYPE	BASIC	INTEREST	COMPROMISE	TOTAL
Income Tax	P 5,788,354.84	P4,389,309.48	P 50,000.00	P10,227,664.32
VAT	1,675.00	1,344.69	700.00	3,719.69
Withholding Tax-Compensation	248,364.86	201,448.74	16,000.00	465,813.60
Withholding Tax-Expanded	23,324.87	18,918.80	12,000.00	54,243.67
Documentary Stamp Tax	30,280.48	24,645.28	8,500.00	63,425.76
Inspection Fees	13,575.00	11,086.70	3,000.00	27,661.70
TOTAL	**P6,105,575.05**	**P4,646,753.69**	**P90,200.00**	**P10,842,528.74**

Hence, on November 6, 2009, petitioner filed the instant Petition for Review.[12]

On January 11, 2010, respondent filed her Answer[13] alleging the following defenses:

"11. The assessment for fiscal year 2005 deficiency Income Tax, Value Added Tax, Withholding Tax, Documentary Stamp Tax and Inspection Fees in the

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[9] Par. 9, Facts, JSFI, Docket, p. 307; Exhibit "O", Docket, p. 235.
[10] Par. 10, Facts, JSFI, Docket, p. 307; Exhibit "P", Docket, pp. 236 to 239.
[11] Par. 11, Facts, JSFI, Docket, p. 307; Exhibits "A" to "I", Docket, pp. 14 to 26.
[12] Docket, pp. 1 to 11.
[13] Docket, pp. 264 to 271.

aggregate amount of ₱10,842,528.74 was issued in accordance with law and jurisprudence.

12. As far as the assessment for deficiency Income Tax, the same was derived from petitioner's own documents such as its Income Tax Return, Financial Statements, Monthly Remittance Return of Income Taxes Withheld on Compensation and Official Registry Book. The Details of Discrepancies of the Assessment reveal the following:

'INCOME TAX

1. **Income payments not subjected to expanded withholding tax-P1,157,005.72**

Verification of income payments per FS/ITR showed that there were income payments amounting to P1,157,005.72 which were not subjected to expanded withholding tax as prescribed under Section 57(B) of the Tax Code, as amended, and implemented by Revenue Regulations No. 2-98; hence, disallowed as deductible expense and assessed pursuant to Section 34(K) of the NIRC as amended.

2. **Salaries not subjected to withholding tax P776,140.20**

Comparison of the Summary of Salaries & Wages claimed per Monthly Remittance Return of Income Taxes Withheld on Compensation (P5,458,879.07) against taxable Salaries & Wages per ITR/FS (P6,235,019.27) disclosed that the compensation amounting to P776,140.20 was not subjected to withholding tax, hence, disallowed as deductible expense and assessed pursuant to Section 34(K) of the Tax Code, as amended, and Section 2.78.1 of Revenue Regulations No. 2-98.

3. **Undeclared Gross Profit on Undeclared Sale of Leaf Tobacco-P16,102,024.50**

Verification from the taxpayer's Official Registry Book (ORB) disclosed that it processed leaf tobacco in which the total stocks handled was 1,412,500 kilos. Bases (sic) on the submitted export documents, taxpayer has undeclared its export sales of leaf tobacco in the amount of P40,781,137.92. Using the maximum industry gross profit rate (GPR) of 39.484%, the corresponding undeclared income of P16,102,024.50 is assessed pursuant to Section 32 of the Tax Code, as amended.

4. Unsupported Tax Credits-P17,100.31

Verification of creditable withholding taxes claimed revealed that the amount of P17,100.31 was unsupported; hence, disallowed pursuant to Section 58(B) of the Tax Code as amended.'

13. As far as the assessment for deficiency Value Added Tax verification from the BIR's Integrated Tax Systems disclosed that some of the petitioner's suppliers were registered as non-vat taxpayers while others have invalid TINs which were not found in the data base. Thus, the input taxes claimed by the taxpayer from these suppliers amounting to P1,675.00 were disallowed pursuant to Sections 110 and 113 of the Tax Code, as amended.

14. As far as the assessment for deficiency Withholding Tax, the same was derived from petitioner's own documents such as its Income Tax Return, Financial Statements and Monthly Remittance Return of Income Taxes Withheld on Compensation. The Details of Discrepancies of the Assessment reveal the following:

'WITHHOLDING TAX ON COMPENSATION

1. Salaries not subjected to withholding tax – P776,140.00

Comparison of the Summary of Salaries & Wages claimed per Monthly Remittance Return of Income Taxes Withheld on Compensation (P5,458,879.07) against Taxable Salaries & Wages per ITR/FS

(P6,235,019.27) disclosed that the compensation amounting to P776,140.20 was not subjected to withholding tax; hence assessed pursuant to Section 80 (A) of the Tax Code as amended, and Section 2.80 (A)(1) of Revenue Regulations No. 2-98.

WITHHOLDING TAX - EXPANDED

1. **Income payments not subjected to withholding tax - P1,157,005.72**

Comparison of income payments per FS/ITR as against the annual information of taxes withheld at source disclosed amounts not yet subjected to withholding tax aggregating to P1,157,005.72; hence, assessed pursuant to Section 57(B) of the Tax Code, as amended, and Sec. 2.57.2 of Revenue Regulations No. 2-98.'

15. As far as the assessment for deficiency Documentary Stamp Tax verification of petitioner's lease contracts with its lessees showed that petitioner underpaid the tax due in the amount of P30,280.48. Thus, petitioner was assessed the same pursuant to Section 194 of the Tax Code as amended.

16. As far as the assessment for deficiency Inspection Fees, the same was derived from petitioner's own documents such as its Official Registry Book and its returns. The Details of Discrepancies of the Assessment reveal the following:

'INSPECTION FEES - P13,575.00

Under-payment of inspection fees-P13,575.00

Verification from the taxpayer's official registry book (ORB) disclosed that it processes leaf tobacco in which the total stocks handled was 1,412,500 kilos. Based on returns submitted it was disclosed that it paid inspection fees of P28,800.00 only; hence, the assessed unpaid amount of P13,575.00 pursuant to Section 146 of the Tax Code, as amended.'

17. For reasons more than obvious, there is no denying the validity and correctness of the assessments. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment *(Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995)*."

During trial, petitioner presented as its witness Ignacio Luis Tan, its Vice-President.[14] Thereafter, petitioner filed its Formal Offer of Evidence[15] on February 23, 2012, submitting Exhibits "A" to "Y", inclusive of sub-markings; which this Court admitted with the exception of Exhibits "Q", "R", "S", "X", and "Y", in the Resolutions dated May 8, 2012[16] and July 16, 2012.[17]

The documentary evidence formally offered and admitted are as follows:

Exhibit	Description
A	Final Decision on Disputed Assessment and attachments dated September 11, 2009
B	Details of Discrepancies
C	Audit Result/Assessment Notice
D	Audit Result/Assessment Notice
E	Audit Result/Assessment Notice
F	Audit Result/Assessment Notice
G	Audit Result/Assessment Notice
H	Audit Result/Assessment Notice

[14] Minutes of Hearing dated January 11, 2011 and April 5, 2011, Docket, pp. 412 and 427.
[15] Docket, pp. 606 to 613.
[16] Docket, pp. 646 to 647.
[17] Docket, pp. 684 to 686.

I	Computation of Deficiency Taxes-August 31, 2005
J	Annual Income Tax Return (BIR Form No. 1702)
K	Preliminary Assessment Notice dated November 2008
L	Protest Letter with attachments dated November 21, 2008
M	Formal Letter of Demand dated November 26, 2008
N	Protest Letter with attachments dated December 23, 2008
O	Tax Verification Notice (TVN) dated February 04, 2009
P	Supplement to the Protest Letter dated June 29, 2009
T	Reply-Letter of Mr. George Vinluan, former Assistant Head, Excise Tax, Regions 1, 2 and 3 with attachments
U	Judicial Affidavit of Mr. Ignacio Luis Tan
V	Petition for Review filed on November 06, 2009
W	Manifestation and Motion to Suspend/Defer Time to File Formal Offer of Evidence.

On the other hand, during the July 11, 2013 hearing, counsel for respondent manifested that she would not be presenting evidence on the ground that only legal issues are involved in this case. Upon motion of the parties, both parties were granted a period of thirty (30) days from July 11, 2013 to file their memoranda.[18]

[18] Minutes of Hearing dated July 11, 2013, Docket, p. 756.

On October 2, 2013, this case was submitted for decision, considering petitioner's Memorandum filed on August 15, 2013 and respondent's Memorandum filed on September 9, 2013.[19]

The following are the parties' jointly stipulated issues[20] submitted for this Court's consideration:

> "1. Whether or not Petitioner is liable for Deficiency Taxes amounting to PhP10,842,528.74.
>
> 2. Whether or not the Petition was timely filed as provided in Section 228 of the NIRC of 1997."

The above-enumerated issues can be summarized as follows:

> "Whether or not petitioner is liable to pay the aggregate amount of P10,842,528.74, representing deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, documentary stamp tax, and inspection fees, inclusive of interest and penalties, covering fiscal year ending August 31, 2005."

In the Formal Letter of Demand (FLD) dated November 26, 2008 with attached Assessment Notices, respondent assessed petitioner for deficiency taxes for FY ending August 31, 2005, in the total amount of P26,124,490.16, broken down as follows:[21]

Tax Type	Basic	Interest	Compromise	Total
Income Tax	P15,351,373.78	P9,210,824.27	P50,000.00	P24,612,198.05
Value-added Tax	470,465.00	303,167.65	16,000.00	789,632.65
Withholding Tax - Compensation	248,364.86	162,132.58	16,000.00	426,497.44
Withholding Tax –	67,114.31	43,812.22	12,000.00	122,926.53

[19] Resolution dated October 2, 2013, Docket, p. 851.
[20] Docket, p. 307.
[21] Par. 7, Facts, JSFI, Docket, p. 307; Exhibit "M", Docket, pp. 81-83.

Expanded				
Final Withholding Tax	45,697.45	34,401.04	9,000.00	89,098.49
Documentary Stamp Tax	30,280.48	19,851.88	8,500.00	58,632.36
Inspection Fees	13,575.00	8,929.64	3,000.00	25,504.64
Total	**P16,226,870.88**	**P9,783,119.28**	**P114,500.00**	**P26,124,490.16**

After evaluation of the documents and records submitted by petitioner in support of its protest to the aforesaid assessments, respondent issued a Final Decision on Disputed Assessment dated September 11, 2009, canceling the assessment for deficiency final withholding tax but still assessing petitioner for deficiency income tax, VAT, withholding tax on compensation, EWT, DST, and inspection fees for FY ending August 31, 2005, in the following reduced amounts totaling ₱10,842,528.74:

Tax Type	Basic	Interest	Compromise	Total
Income Tax	P 5,788,354.84	P4,389,309.48	P 50,000.00	P10,227,664.32
Value-added Tax	1,675.00	1,344.69	700.00	3,719.69
Withholding Tax - Compensation	248,364.86	201,448.74	16,000.00	465,813.60
Withholding Tax – Expanded	23,324.87	18,918.80	12,000.00	54,243.67
Documentary Stamp Tax	30,280.48	24,645.28	8,500.00	63,425.76
Inspection Fees	13,575.00	11,086.70	3,000.00	27,661.70
TOTAL	**P6,105,575.05**	**P4,646,753.69**	**P90,200.00**	**P10,842,528.74**

The total assessment of ₱10,842,528.74 per respondent's FDDA is the subject of the instant Petition for Review.

Petitioner argues that the assessment made by respondent is void for failure to clearly inform it as to the basis of the assessment, citing Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, Revenue Regulations (RR) No. 12-99, and Supreme Court decision in *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*.[22]

Petitioner avers that the witholding tax on income payments amounting to ₱1,157,005.72, the bulk of which

[22] G.R. No. 166387, January 19, 2009.

includes payments for services made by Meralco, Soliman Security, and Servicio Filipino, among others, were properly withheld and remitted to the BIR; and the income payments included those paid to lawyers (Villaraza and Angangco Law Office, Puyat Jacinto Law Office, and Roco Bunag Kapunan Law Office) consultants (Stock Transfer Service, Inc. and D.A. Tejero & Amoranto) and accountants/auditors (CGM & Co., R.S. Bernaldo & Associates), all of which are exempt from withholding tax, citing Section 26 of the NIRC of 1997, as amended, Revenue Memorandum Circular (RMC) No. 3-2012, and BIR Ruling No. 90-98.

Likewise, petitioner points out that the income tax on the Compensation/Salaries which allegedly were not subjected to withholding tax in the amount of ₱776,140.20, included those salaries which were charged to it by its affiliates with the income taxes properly withheld and remitted by said affiliates; and that petitioner does not have the obligation to withhold the taxes because it is not the payor-corporation as contemplated under Section 57(B) of the NIRC of 1997, as amended.

Petitioner further posits that expenses include the accrual of the employee benefits for the year 2005 that were paid in fiscal year 2006, particularly, the employee bonuses and the conversion of sick and vacation leaves. Petitioner also claims that it submitted sufficient proof to support the tax credits but it was not considered by respondent with respect to respondent's finding that creditable withholding taxes worth ₱17,100.31 were unsupported.

As to the undeclared gross profits on undeclared sales of leaf tobacco, petitioner asserts that it only acted as a lessor of the facilities in Candon and that petitioner's revenue pertains only to the lease of its tobacco processing facilities to Victoria Trading Center (VTC) in the year 2005, not to the tobacco processed by VTC. Petitioner admits that it is a recipient of an L6 Permit, but it explains that it was not unusual for a tobacco company to use an L6 permit of another processing plant as this has been a regular business practice or custom between tobacco companies like VTC and processing plants like that of petitioner's in the Ilocos Region.

As to the inspection fee and documentary stamp tax liabilities, petitioner contends that the same should be charged to VTC as a consequence of it not owning the tobacco processed by VTC. As alleged by petitioner, in all of VTC 's business papers, petitioner stated therein that the transactions were "on behalf of Victoria Trading Center", *i.e.,* petitioner was acting as an "agent" and that following the basic principle of an implied agency, the principal and not the agent is liable.

As to the VAT assessment, petitioner alleges that contrary to respondent's finding that Mapfre Asia Insurance (Mapfre) was a non-VAT taxpayer with invalid Taxpayer Identification Number (TIN), disallowing the input tax claimed, Mapfre is indeed VAT-registered with TIN 000-491-771-000, which copy of the Certificate was furnished by the Large Taxpayers Division of the BIR.

Respondent, in her Answer and Memorandum, argues that the assessments for deficiency income tax, VAT, withholding tax, DST, and inspection fees in the aggregate amount of ₱10,842,528.74 covering fiscal year ending August 31, 2005 were issued in accordance with law and jurisprudence. The assessment for deficiency income tax was derived from petitioner's own documents such as its Income Tax Return, Financial Statements, Monthly Remittance Return of Income Taxes Withheld on Compensation, and Official Registry Book.

Respondent likewise avers that:

(1) comparison of the Summary of Salaries and Wages claimed per Monthly Remittance Return of Income Taxes Withheld on Compensation (₱5,458,879.07) against Taxable Salaries and Wages per ITR/FS (₱6,235,019.27) disclosed that the compensation amounting to ₱776,140.20 was not subjected to withholding tax; hence, disallowed as

deductible expense and assessed pursuant to Section 34(K) of the NIRC of 1997, as amended, and Section 2.78.1 of RR No. 2-98;

(2) comparison of income payments per FS/ITR as against the annual information of taxes withheld at source disclosed amounts not yet subjected to withholding tax aggregating to ₱1,157,005.72; thus, assessed pursuant to Sections 39(K) and 57(B) of the NIRC of 1997, as amended, and Section 2.57.2 of RR No. 2-98;

(3) verification of petitioner's lease contracts with its lessees showed that petitioner underpaid the tax due in the amount of ₱30,280.48; thus, petitioner was assessed documentary stamp tax pursuant to Section 194 of the NIRC of 1997, as amended; and

(4) verification of the taxpayer's Official Registry Book disclosed that it processed leaf tobacco in which the total stocks handled was 1,412,500 kilos. Based on returns submitted, it paid inspection fees of ₱28,800.00 only; hence, petitioner was assessed deficiency inspection fees of ₱13,575.00 pursuant to Section 146 of the NIRC of 1997, as amended.

Finally, respondent argues that petitioner failed to present evidence and to establish the inaccuracy of the assessment; therefore, the disputed assessments are presumed valid and binding for failure of petitioner to controvert the same; that she faithfully observed the procedure prescribed under Revenue Regulation No. 12-99; and that from all the testimonial and documentary evidence, the only fact that petitioner was able to prove is that it was assessed by respondent.

Before going to the merits of the case, this Court shall resolve first petitioner's contention that the assessment is void because it does not inform petitioner of its factual and legal bases in violation of Section 228 of the NIRC of 1997, as amended. Section 228 of the NIRC of 1997 reads:

"SEC. 228. *Protesting of Assessment.* –

xxx xxx xxx

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

Based on the FDDA and the Details of Discrepancies, respondent used the following as basis of the assessment:

	FACTUAL BASIS	**LEGAL BASIS**
Income Tax	• Income payments not subjected to EWT • Salaries not subjected to WTC • Undeclared Gross Profits on undeclared sales of leaf tobacco	• Sections 32, 34, and 58 of the NIRC of 1997, as amended
VAT	• Undeclared local sales of leaf tobacco	• Sections 106, 110, and 113 of the NIRC of 1997, as amended
Withholding Tax - Compensation	• Compensation not subjected to withholding tax	• Section 2.80(A)(1) of RR No. 2-98
Expanded Withholding Tax	• Income payments not subjected to EWT	• Section 2.57.2 of RR No. 2-98
DST	• Underpayment of DST involving lease contracts/rental income	• Section 194 of the NIRC of 1997, as amended
Inspection Fees	• Underpayment of inspection fees involving processed leaf tobacco	• Section 146 of the NIRC of 1997, as amended

Based on the FLD dated November 26, 2008[23], Audit Result/Assessment Notices all dated December 2, 2008[24] and the annex[25] attached thereto, the FDDA[26] dated

[23] Exhibit "M", Docket, pp. 81 to 83.
[24] Docket, pp. 84 to90.
[25] Analysis of Income Payments/Expenses subject to W/T & Possible Sources of Input Tax, Docket, pp. 91-92.
[26] Exhibit "A", Docket, pp. 14 to 16.

September 11, 2009, the Details of Discrepancies[27], the Audit Result/Assessment Notices[28], and the Computation of Deficiency Taxes[29], including the annexes[30] which contained tables of computation, the receipt of which petitioner did not dispute, clearly informed petitioner of the factual and legal bases of the assessment pursuant to Section 228 of the NIRC of 1997, as amended.

The Court will now address each deficiency tax covered by the assessments.

I. INCOME TAX

Respondent computed the deficiency income tax assessment of ₱10,227,664.32 as follows[31]:

Net Income/(Loss) per ITR			P 20,978,337.87
Add: Adjustments			
Income Payments not subjected to EWT		P 1,157,005.72	
Salaries not subjected to w/tax on Compensation		776,140.20	
Undeclared Gross Profit on Undeclared Sale of Leaf Tobacco		16,102,024.50	18,035,170.42
Net Income per Audit			P 39,013,508.29
Tax Due			P 12,484,322.65
Less: Tax Already Paid			
Prior Year's Excess credits		P8,247,960.24	
Add: CWT claimed per ITR	P 2,463,605.17		
Less: Disallowances	(17,100.31)	2,446,504.86	
Less: Excess Credits carried over next year		(3,998,497.29)	6,695,967.81
Deficiency Income Tax			P 5,788,354.84
Add: Penalties			
Interest from Dec. 15, 2005 to Sept. 30, 2009	0.7583	P4,389,309.48	
Compromise		50,000.00	4,439,309.48
Total Amount Due			**P10,227,664.32**

[27] Exhibit "B", Docket, pp. 17 to 18.
[28] Exhibit "C" to "H", Docket, pp. 19 to 24.
[29] Exhibit "I", Docket, pp. 25 to 26.
[30] Annexes "A-2" to "A-11", Docket, pp. 29 to 39.
[31] Exhibit "I", Docket, p. 25.

As indicated above, the deficiency income tax assessment arose from the adjustments made by respondent on petitioner's taxable income, as well as the disallowances by respondent of petitioner's claimed tax credits, to wit:

Income payments not subjected to EWT	P 1,157,005.72
Salaries not subjected to withholding tax on compensation	776,140.20
Undeclared gross profit on undeclared sale of leaf tobacco	16,102,024.50
Disallowed CWT	17,100.31
Disallowed excess credits carried over next year	3,998,497.29

1. Income payments not subjected to EWT - ₱1,157,005.72

Based on the finding that there were income payments per petitioner's financial statements/income tax return (FS/ITR) in the amounts of ₱1,154,696.50 and ₱2,309.42 that were not subjected to 2% and 10% EWT, respectively, as prescribed under Section 57(B) of the NIRC of 1997, as amended, and implemented by Revenue Regulations No. 2-98, respondent disallowed the sum of ₱1,157,005.72 as petitioner's deductible cost/expense pursuant to Section 34(K) of the NIRC of 1997, as amended.[32] Below is the breakdown of the amount of ₱1,157,005.72[33]:

Claimed Per Annual Income Tax Return	Income Payments Made by Top 10,000 Corporations on Purchases of Services	Professional Fees
Cost of Services		
Facilities	P1,659,606.05	
Outside Services	4,189,647.33	
Others	3,412,338.85	

c

[32] Exhibit "A", Docket, p. 14.
[33] Docket, pp. 29 to 30.

Deductions		
Professional Fees		P517,565.02
Security Services	1,553,663.63	
Other Outside Services	674,560.85	
Insurance	1,568,477.00	
Representation & Entertainment	144,297.63	
Transportation & Travel	88,159.19	
Communication, Light & Water	953,746.56	
Miscellaneous	602,192.91	
Total	14,846,690.00	517,565.02
Per alphalist	13,691,993.50	515,255.60
Difference	1,154,696.50	2,309.42
Tax Rate	0.02	0.10
Basic EWT Due	23,093.93	230.94

Petitioner, on the other hand, contends that the witholding tax on income payments of ₱1,157,005.72, the bulk of which included payments for services made by MERALCO, Soliman Security and Servicio Filipino, among others, were properly withheld and remitted to the BIR. Moreover, the income payments allegedly included those which were paid to lawyers (Villaraza and Angangco Law Office, Puyat Jacinto Law Office, and Roco Bunag Kapunan Law Office), consultants (Stock Transfer Service, Inc. and D. A. Tejero & Amoranto) and accountants/auditors (CGM & Co., R.S. Bernaldo & Associates), all of which are allegedly exempt from any withholding tax pursuant to Section 26 of the NIRC of 1997. Likewise, petitioner alleges that the Stock Transfer Service, Inc. is not subject to the expanded withholding tax system considering that payments to a stock transfer agent in the form of retainer fees and additional processing fees are not among those specified under Revenue Regulations No. 6-85 and Section 57(B) of the NIRC of 1997, as opined by the BIR Commissioner in BIR Ruling No. 90-98 dated June 15, 1998.

Based on Section 34(K) of the NIRC of 1997, as amended, an expense/cost shall be allowed as deduction from gross income only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the BIR. For easy reference, Section 34(K) is quoted hereunder:

"SEC. 34. *Deductions from Gross Income.* – xxx

xxx xxx 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, Sections 58 and 81 of this Code."

Relative thereto, Section 2.57.2(A) and (M) of RR No. 2-98, as amended by RR No. 17-03, requires the withholding of 2% and 10% creditable income tax on purchases of services by top 10,000 corporations and professional fees paid to certain individuals, respectively, to wit:

"SECTION. 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:

(A) *Professional fees, talent fees, etc., for services rendered by individuals* - On the gross professional, promotional and talent fees or any other form of remuneration for the services of the following individuals - Ten percent (10%);

(1) Those individually engaged in the practice of professions or callings: lawyers; certified public accountants; doctors of medicine; architects; civil, electrical, chemical, mechanical, structural, industrial, mining, sanitary, metallurgical and geodetic engineers; marine surveyors; doctors of veterinary

science; dentist; professional appraisers; connoisseurs of tobacco; actuaries; and interior decorators;

(2) Professional entertainers such as but not limited to actors and actresses, singers and emcees;

(3) Professional athletes including basketball players, pelotaris and jockeys;

(4) All directors involved in movies, stage, radio, television and musical productions;

(5) Insurance agents and insurance adjusters;

(6) Management and technical consultants;

(7) Bookkeeping agents and agencies;

(8) Other recipients of talent fees;

(9) Fees of directors who are not employees of the company paying such fees, whose duties are confined to attendance at and participation in the meetings of the board of directors.

The amounts subject to withholding under this paragraph shall include not only fees, but also per diems, allowances and any other form of income payments. In the case of professional entertainers, athletes, and all recipient of talent fees, the amount subject to withholding tax shall also include amounts paid to them in consideration for the use of their names or pictures in print, broadcast, or other media or for public appearances, for purposes of advertisements or sales promotion.

xxx xxx xxx

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

Supplier of goods - One percent (1%)

Supplier of services - Two percent (2%)"

Petitioner proffered before this Court the documents it submitted in support of the protest letter[34] it filed with the BIR on December 23, 2008. The said documents included schedules[35] showing a breakdown of income payments amounting to ₱1,594,900.07 originally found by respondent's examiner to have not been subjected to EWT per the FLD dated November 26, 2008. Based on the schedules, the amount of ₱1,594,900.07 allegedly comprised of income payments on services in the amount of ₱1,154,696.30 not subjected to EWT and professional fees in the amount of ₱440,203.77 not subjected to EWT, detailed as follows:

INCOME PAYMENTS ON SERVICES NOT SUBJECTED TO EWT	
Cost of services	
Accrual of expense for August 2005 (Servicio Filipino), paid Sept. 2005	P 32,484.98
Security allowance of officer (GBK)	36,000.00
Accrual of expense for August 2005 (Soliman Security), paid Sept. 2005	178,267.76
Cash purchase of Christmas give-aways to tenants	10,050.00
Administrative expenses	
Light & water (accrual of expense paid the following month Sept 2005)	40,748.99
Representation (meal reimbursements of officers/facilitation fee)	144,297.63
Security expense	
Accrual of expense for August, (Soliman Security) was paid Sept 2005	70,962.93
Contract services	
Accrual of expense for August, paid Sept and Dec 2005	61,740.46
PSE's annual listing maintenance fee	200,000.00
Seminar fees	16,636.37
Various membership dues like Map, Rotary club, Philjec	92,105.00
Transportation & travel (transpo reimbursements/parking fee of drivers/messengers)	88,159.19
Petty cash reimbursements (cellcards, official calls by officers)	107,267.50
Miscellaneous	
Cash payments to Dominion Bus Line (freight charges)	11,612.25
OPE's of Stock Transfer, D. A Tejero, CG & Co, Villaraza, not subject to w/tax	30,459.40
Bank charges not subject to wtax	30,008.30
Flowers for employees (died)	3,300.00
Unlocated difference	595.54
Subtotal	**P 1,154,696.30**
Professional Fees Not Subject to EWT	
Partnership:	

[34] Exhibit "N", Docket, pp. 93 to 94.
[35] Exhibit "N", Annexes A and B, Docket, pp. 95 to 96.

CGM & Co	P 214,000.00
RS Bernaldo & Associates	95,318.18
Stock transfer	130,891.67
Unlocated difference	(6.08)
Subtotal	**P 440,203.77**
Total	**P 1,594,900.07**

Other than the schedules, petitioner did not submit any document in support of the income payments amounting to ₱1,154,696.30. Without the related invoices and/or official receipts, the actual nature of the income payments of ₱1,154,696.30 cannot be ascertained. Consequently, the income payments of ₱1,154,696.30 shall be considered as subject to 2% EWT as prescribed under Section 2.57.2(M) of RR No. 2-98, as amended by RR No. 17-03, in line with the rule that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[36] Therefore, respondent's disallowance of the amount of ₱1,154,696.30 as deduction from petitioner's FY 2005 taxable gross income should be upheld.

As to the income payments of ₱440,203.77, petitioner presented various check vouchers and official receipts reflecting payments to Constantino Guadalquiver & Co., R.S. Bernaldo & Associates, and Stock Transfer Service, Inc., detailed as follows:

Docket Page #	In Payment of	CV #	Date	OR #	Date	Amount	Total
Paid to Constantino Guadalquiver & Co. (CG & Co.)							
97	Professional fee for the month of August & other charges	05-00067	09/17/04	1276	09/30/04	P 20,174.00	
98	Billing in connection with the preparation of audit schedules	05-00166	10/20/04	1318	10/29/04	2,200.00	
99	Professional fee for the month of September and other charges	05-00167	10/20/04	1317	10/29/04	19,938.00	
100	Professional fee for the month of October 2004	05-00250	11/23/04	1502	12/07/04	20,027.70	

[36] Marcos II vs. Court of Appeals, et. al., G.R. No. 120880, June 5, 1997.

	and other charges						
101	Professional fee for financial record keeping for Nov 2004	05-402	01/17/05	1587	01/27/05	20,018.50	
102	Services rendered for the month of December 2004	05-537	03/02/05	1653	03/08/05	19,895.15	
103	Services rendered for the month of January 2005	05-538	03/02/05	1654	03/01/05	19,474.00	
104	Professional fee & other charges for the month of Feb 2005	05-607	04/01/05	1735	04/06/05	19,452.00	
105	Professional fee for the month of March 2005	05-642	04/22/05	1807	04/27/05	19,268.15	
106	Professional fee for the month of April 2005	05-766	06/14/05	1915	06/17/05	19,040.00	
107	Professional fee for the month of May 2005 & other charges	05-774	06/20/05	1953	07/01/05	19,052.00	
108	Professional fee for June 2005	05-839	07/15/05	1998	07/22/05	19,030.50	
109	Professional fee for the month of July 2005	05-914	08/23/05	2064	08/29/05	19,184.00	
110	Professional fee for the month of August 2005	05-976	09/19/05	2125	no date	19,360.00	256,114.00
Paid to R.S. Bernaldo & Associates							
111	Final billing for the fiscal year end audit as of August 31, 2005	05-1414	02/21/06	1451	03/02/06	P 120,000.00	
	out of pocket expenses					13,776.00	133,776.00
Paid to Stock Transfer Service, Inc.							
115	Retainers fee for the month of August & other charges	05-00029	09/06/04	126380	no date	P 11,356.01	
116	Retainers fee for the month of September & other charges	05-00161	10/18/04	127112	10/28/04	11,330.00	
117	Retainers fee for the month of October & other charges	05-00217	11/08/04	127608	12/02/04	12,034.02	
118	Retainers fee for the month of November & other charges	05-00280	12/08/04	127936	no date	11,356.01	
119	Retainers fee for the month of December 2004 & other charges	05-00335	12/21/04	128300	no date	11,356.01	
120	Retainer fee for the month of Jan 2005, computer charge for the month of December 2004 & share in whse rental for the month of Jan 2005	05-474	02/08/05	129050	02/18/05	11,356.01	
121	Retainer fee for Feb 2005 and other charges	05-533	03/02/05	129544	no date	12,072.51	
122	Retainer fee for the month of Mar 2005 & other charges	05-606	04/01/05	130502	04/28/05	12,316.55	
123	Retainer fee for Apr 2005 & other charges	05-653	04/28/05	130692	05/11/05	11,881.01	
124	Retainer fee for the month of May 2005	05-737	06/01/05	131085	06/09/05	11,356.01	
125	Retainer fee for the month of June 2005 and other charges	05-793	06/30/05	131522	07/08/05	11,356.01	
126	Retainer fee as August	05-933	08/29/05	132323	no date	11,356.01	

	2005 & warehouse rental						
127	Retainer fee as Transfer Agent for the month of July 2005	05-851	07/22/05	131932	08/12/05	11,856.01	150,982.17
							₱527,096.17

Likewise, petitioner submitted a Certification[37] from the Stock Transfer Service, Inc. stating that as transfer agent, Stock Transfer Service, Inc. is not subject to EWT per BIR Ruling No. 90-98 dated June 15, 1998. Attached to the Certification is an excerpt of BIR Ruling No. 90-98.[38]

Since the afore-mentioned documents reflected professional fees paid to general professional partnerships, which are exempt from income tax and consequently from EWT pursuant to Section 26 of the NIRC of 1997 in relation to Section 2.57.5(B) of RR No. 2-98, as amended, as well as retainer fees paid to Stock Transfer Service, Inc., which are not subject to EWT per BIR Ruling No. 90-98, respondent, in her FDDA, aptly reduced the disallowed payments for professional fees from ₱440,203.77 to ₱2,309.42.

Clearly, the documents submitted by petitioner before this Court were already considered by respondent in her FDDA and no other document was presented by petitioner to disprove respondent's finding that it failed to withhold EWT on the income payments on services in the amount of ₱1,154,696.30 and on professional fees in the amount of ₱2,309.42, totaling ₱1,157,005.72. Thus, the amount of ₱1,157,005.72 cannot be validly deducted from petitioner's taxable gross income pursuant to Section 34(K) of the NIRC of 1997, as amended.

2. Salaries not subjected to withholding tax on compensation - ₱776,140.20

[37] Docket, p. 130.
[38] Docket, p. 131.

Invoking Section 34(K) of the NIRC of 1997, as amended, and Section 2.78.1 of RR No. 2-98, respondent disallowed as deduction from petitioner's gross income, the amount of ₱776,140.20 representing the difference between the Salaries and Wages of ₱6,235,019.27 reflected per petitioner's FS/ITR *vis-à-vis* the amount of ₱5,458,879.07 shown per petitioner's Monthly Remittance Returns of Income Taxes Withheld on Compensation.

Petitioner claims that the amount of ₱776,140.20 included salaries which were charged to petitioner by its affiliates for which the corresponding income taxes were properly withheld and remitted by its affiliates. Petitioner purportedly does not have the obligation to withhold the taxes because it is not the payor-corporation as contemplated under Section 57(B) of the NIRC of 1997. Petitioner further avers that the amount of ₱776,140.20 included the accrual of the employee benefits for the year 2005 that were paid in FY 2006, particularly, the employee bonuses and the conversion of sick and vacation leaves.

Petitioner presented the following schedule[39] reconciling the Salaries and Wages as reflected on its books in the amount of ₱6,235,019.27 and as shown on its returns in the amount of ₱5,446,791.57:

	Per Book	**Per Return**
Unreconciled balances	P 6,235,019.27	P 5,446,791.57
Add/(deduct):		
Salaries charged by affiliates to PTFC, included in 1601C of affiliates	(426,190.33)	
Non-taxable 13th month/SL/VL	(282,646.91)	
Included in alpha list but charged to Victoria, deducted from expense	173,897.00	
Accrual of bonus and SL/VL for FY 2005 to be paid Sept. 2005	(366,194.77)	
Bonus paid this FY but recorded as exp. in prior year, incl. in 1601C	156,690.41	
Meal expense erroneously recorded as payroll	(45.00)	
Non-taxable separation pay	(11,214.40)	
Under-declared salaries in 1601C but corresponding tax was remitted	(174,685.04)	
Non-taxable salaries of newly hired employee, exemption is higher than income	(24,164.90)	

[39] Exhibit "N", Annex C, Docket, p. 143.

Salaries included in 1601C but charged to affiliates, not recorded as expense	166,326.24	
Reconciled balances	**P5,446,791.57**	**P5,446,791.57**

Per petitioner's Monthly Remittance Returns of Creditable Income Taxes Withheld for FY 2005[40], the amount of ₱5,446,791.57 indicated by petitioner in the above schedule as Salaries and Wages per return is the correct figure and not ₱5,458,879.07 as found by respondent. Thus, the discrepancy between the Salaries and Wages per books and per return is ₱788,227.70 instead of ₱776,140.20.

As to the alleged salaries in the amount of ₱426,190.33 which were charged to petitioner by its affiliates, petitioner submitted the supposed billing statements[41]. However, these documents do not even show the issuer. Petitioner should have presented documents proving actual payment of the salaries to its affiliates. To establish that the corresponding tax was withheld and remitted, petitioner should have submitted the Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601C) and Annual Information Return of Income Tax Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604CF) filed by its affiliates for the subject period.

Regarding the amounts of ₱173,897.00 and ₱166,326.24 representing salaries included in petitioner's alphalist but not recorded as expenses because these were allegedly charged to its affiliates, including Victoria Trading Center, petitioner presented invoices[42] and statements of account[43] issued by petitioner to Victoria Trading Center and L'Hirondelle Holdings, Inc. However, these documents merely prove that certain amounts of salaries were billed/charged by petitioner to its affiliates and do not establish that the said salaries were not claimed by petitioner as deductible expenses.

[40] BIR Records, pp. 77 to 88.
[41] Docket, pp. 144 to 154.
[42] Attached to Exhibit "N", Docket, pp. 155 to 156.
[43] Attached to Exhibit "N", Docket, pp. 157 to 168.

With reference to the alleged accrual of bonus, sick leave (SL) and vacation leave (VL) for FY 2005 to be paid in September 2005 in the amount of ₱366,194.77, while Section 2.79(A) of RR No. 2-98, as amended, requires withholding of tax upon payment of compensation, petitioner failed to present documents proving actual payment of the amount of ₱366,194.77 in FY 2006.

The same holds true with the remaining reconciling items. Petitioner failed to provide documents by which this Court can ascertain the veracity of the amounts indicated in the schedule. Thus, the Salaries and Wages in the amount of ₱776,140.20 cannot be deducted from petitioner's taxable gross income for FY 2005. Consequently, petitioner should be held liable for deficiency income tax thereon.

3. Undeclared gross profit on undeclared sale of leaf tobacco - ₱16,102,024.50

Respondent imputed against petitioner an undeclared gross profit on undeclared sale of leaf tobacco in the amount of ₱16,102,024.50 based on the following findings:

> "Verification from the taxpayer's official registry book (ORB) disclosed that it processed leaf tobacco in which the total stocks handled were 1,412,500 kilos. Based on the submitted export documents, taxpayer has undeclared its export sales of leaf tobacco in the amount of ₱40,781,137.92. Using the maximum industry gross profit rate (GPR) of 39.474%, the corresponding undeclared income of ₱16,102,024.50 is assessed pursuant to Section 32 of the Tax Code, as amended."

On the other hand, petitioner contends that it never earned any revenue from the sale of leaf tobacco as it acted only as a lessor of its tobacco processing facilities in Candon pursuant to the Contract of Lease it had with Victoria Trading Center which actually processed and sold the tobacco leaves.

In order to support its claim, petitioner presented its Contract of Lease with VTC[44], export sales invoices[45] with the indication "AND ON BEHALF OF VICTORIA TRADING CENTER", Phytosanitary Certificate[46], Certificate of Fumigation[47], Export Declaration[48] with the indication "AND ON BEHALF OF VICTORIA TRADING CENTER", Certificates of Origin[49], Bills of Lading[50] with the indication "AND ON BEHALF OF VICTORIA TRADING CENTER", Container List[51], Weight List[52], reply-letter[53] of Mr. George Vinluan, Head-Excise Tax for Regions 1, 2 and 3 with attachments, and Judicial Affidavit[54] of Mr. Ignacio Luis Tan.

While it was indicated in the export sales invoices, export declarations and bills of lading that petitioner exported the leaf tobacco on behalf of Victoria Trading Center, petitioner failed to prove that the export proceeds were remitted to VTC. Inasmuch as petitioner failed to establish that the exported leaf tobacco belongs to VTC and it did not benefit from the exportation thereof, respondent's deficiency income tax assessment on petitioner's undeclared gross profit on undeclared sale of leaf tobacco in the amount of ₱16,102,024.50 should be upheld.

4. Disallowed CWT - P17,100.31

Pursuant to Section 58(B) of the NIRC of 1997, as amended, respondent disallowed petitioner's claimed CWT in

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[44] Exhibit "N", Annex D, Docket, pp. 169 to 172.
[45] Exhibit "N", Annexes D.1 and D.2, Docket, pp. 173 to 174.
[46] Exhibit "N", Annexes D.6 and D.14, Docket, pp. 178 and 208.
[47] Exhibit "N", Annexes D.5 and D.13, Docket, pp. 179 and 207.
[48] Exhibit "N", Annex D.7, Docket, p. 180.
[49] Exhibit "N", Annexes D.8-D.9 and D.15-D.16, Docket, pp. 181 to 182 and 209 to 210.
[50] Exhibit "N", Annexes D.10 and D.17, Docket, pp. 183 and 211.
[51] Exhibit "N", Annexes D.11 and D.18, Docket, pp. 187 and 214.
[52] Exhibit "N", Annexes D.12 and D.19, pp. 188 to 206; pp. 215 to 227.
[53] Exhibit "T", Docket, p. 656.
[54] Exhibit "U", Docket, pp. 657 to 659.

the amount of ₱17,100.31 for being unsupported. For petitioner's failure to refute respondent's findings, the disallowance of the CWT of ₱17,100.31 should be sustained.

5. Disallowed Excess Credits Carried over Next Year - P3,998,497.29

Respondent disallowed petitioner's tax credits in the amount of ₱3,998,497.29, which were carried over to FY 2006. The Court finds the disallowance improper because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding FY 2006. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In sum, save for the compromise penalties of ₱50,000.00 and respondent's disallowance of the excess credits carried over the following year in the amount of ₱3,998,497.29, the deficiency income tax assessment should be upheld. Petitioner is liable to pay basic deficiency income tax in the reduced amount of ₱1,789,857.55, computed as follows:

Net Income/(Loss) per ITR			P 20,978,337.87
Adjustments			
Income Payments not subjected to EWT		P 1,157,005.72	
Salaries not subjected to w/tax on Compensation		776,140.20	
Undeclared Gross Profit on Undeclared Sale of Leaf Tobacco		16,102,024.50	18,035,170.42
Net Income per Audit			P 39,013,508.29
Tax Due			P 12,484,322.65
Tax Already Paid			
Prior Year's Excess credits		P8,247,960.24	
Add: CWT claimed per ITR	P2,463,605.17		
Less: Disallowances	(17,100.31)	2,446,504.86	10,694,465.10
Deficiency Income Tax			**P 1,789,857.55**

II. VALUE-ADDED TAX

The deficiency VAT assessment resulted from respondent's disallowance of petitioner's claimed input tax credits on local purchases in the amount of ₱1,675.00. Respondent stated in her FDDA that:

> "Verification from the BIR's Integrated Tax Systems disclosed that some of the taxpayer's suppliers were registered as non-vat taxpayers while others have invalid TINs which were not found in the data base; hence, the input taxes claimed by the taxpayer from these suppliers amounting to P1,675.00 were disallowed pursuant to Sections 110 and 113 of the Tax Code, as amended."

Petitioner argues that respondent's finding that the input tax from Mapfre Asia Insurance was disallowed for the reason that Mapfre was a non-VAT taxpayer or was found to be holding an invalid Taxpayer Identification Number (TIN) does not hold water because Mapfre is indeed VAT-registered with TIN 000-491-771-000.

While petitioner submitted Mapfre's BIR Certificate of Registration dated January 27, 2006 marked as Exhibit "R" showing that Mapfre is VAT-registered with TIN 000-491-771-000, the said exhibit however was denied admission by this Court for petitioner's failure to have the same identified during trial.[55]

For petitioner's failure to prove that the input tax of ₱1,675.00 is duly supported by an invoice (for purchase of goods) or official receipt (for purchase of services) duly issued by a VAT-registered entity pursuant to Section 110(A) in relation to Section 113(A) and (B) of the NIRC of 1997, as amended, the same should be disallowed. Therefore, the assessment for basic deficiency VAT in the amount of ₱1,675.00 should be upheld.

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[55] Resolutions dated May 8, 2012 and July 16, 2012, Docket, pp. 646 to 647 and 684 to 686.

III. WITHHOLDING TAX ON COMPENSATION

This assessment was based on the same finding under the deficiency income tax assessment that petitioner failed to withhold the corresponding tax on Salaries and Wages in the amount of ₱776,140.20 pursuant to Section 80(A) of the NIRC of 1997, as amended and Section 2.80(A)(1) of Revenue Regulations No. 2-98.

As discussed earlier, petitioner failed to establish that the Salaries and Wages of ₱776,140.20 is not subject to withholding tax on compensation; thus, it should be held liable to pay basic deficiency withholding tax on compensation in the amount of ₱248,364.86.

IV. EXPANDED WITHHOLDING TAX

This assessment was based on the same finding under the deficiency income tax assessment that petitioner's purchases of services in the amount ₱1,154,696.50 and professional fees paid in the amount of ₱2,309.42 were not subjected to 2% and 10% EWT, respectively, pursuant to Section 57(B) of the NIRC of 1997, as amended, and Section 2.57.2 of RR No. 2-98.

As previously determined, petitioner failed to establish that its income payments for purchases of services in the amount of ₱1,154,696.50 and professional fees in the amount of ₱2,309.42, totalling ₱1,157,005.72, are not subject to EWT or that the required tax thereon has been properly withheld; hence, petitioner shall be held liable to pay basic deficiency EWT in the respective amounts of ₱23,093.93 and ₱230.94, totalling ₱23,324.87.

V. DOCUMENTARY STAMP TAX

Upon comparison of the ₱54,531.48 documentary stamp tax due on petitioner's rental income of

₱54,530,484.00 as reflected in its audited financial statements for FY 2005 *vis-à-vis* the amount of ₱24,251.00 DST paid by petitioner for the same year, respondent assessed petitioner for basic deficiency DST in the amount of ₱30,280.48 pursuant to Section 194 of the NIRC of 1997, as amended. Below is the computation of the amount of ₱30,280.48[56]:

Taxable Base per Return	-
Add: Adjustment per Audit	
Rental Income for the year	P54,530,483.97
Taxable Base per Audit	P54,530,483.97
Documentary Stamp Tax due on Lease Contracts	P 54,531.48
Less: Payments (Annex A-9)	24,251.00
Deficiency Documentary Stamp Tax	**P 30,280.48**

Petitioner did not contest the basic deficiency DST of ₱30,280.48 in its protest letter[57] dated December 23, 2008 and in the Petition for Review filed before this Court. Consequently, respondent's assessment for basic deficiency DST of ₱30,280.48 is deemed admitted by petitioner.

VI. INSPECTION FEES

Respondent's examination of petitioner's Official Registry Book disclosed that petitioner processed leaf tobacco in which the total quantity of stocks handled was 1,412,500 kilos with the corresponding inspection fee of ₱42,375.00 which is higher than the inspection fee of ₱28,800.00 paid by petitioner. As a result, respondent assessed petitioner for deficiency inspection fees in the amount of ₱13,575.00, as computed below, pursuant to Section 146 of the NIRC of 1997, as amended:

Total Kilograms of Leaf Tobacco Handled (Annex A-10)	P1,412,500.00
Rate of Inspection Fees	0.03
Inspection Fees due per Audit	P 42,375.00

[56] Exhibit "I", Docket, p. 26; BIR Records, p. 369.
[57] Exhibit "N", Docket, p. 94.

Less: Payments (Annex A-11)	28,800.00
Deficiency Inspection Fees	**P 13,575.00**

Petitioner alleges that the said inspection fees should be charged to VTC as a natural consequence of petitioner not owning the tobacco processed by VTC. As earlier stated, petitioner failed to establish that the leaf tobacco it exported actually belongs to VTC. Hence, petitioner should be held liable for deficiency inspection fees of ₱13,575.00.

Respondent imposed compromise penalties on the subject deficiency taxes in the total amount of ₱90,200.00. The following compromise penalties will be cancelled there being no compromise agreement between the parties:

TAX TYPE	COMPROMISE PENALTY
Income Tax	P 50,000.00
Value-added Tax	700.00
Withholding Tax on Compensation	16,000.00
Expanded Withholding Tax	12,000.00
Documentary Stamp Tax	8,500.00
Inspection Fees	3,000.00
TOTAL	**P90,200.00**

Under Revenue Memorandum Order No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. Compromise penalties imply mutual agreement between the taxpayer, on one hand, and the Commissioner of Internal Revenue, on the other. Absent any showing that petitioner consented to the compromise penalties, the same should not be imposed. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[58]

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The compromise penalties of ₱90,200.00 are cancelled there

[58] *Commissioner of Internal Revenue vs .Lianga Bay Logging Co., Inc., et. al.,* G.R. No. 35266, January 21, 1999.

being no mutual agreement between the parties. However, the assessments for deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, documentary stamp tax, and inspection fees issued by respondent against petitioner for fiscal year ending August 31, 2005 are hereby **AFFIRMED** with some **MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent in the reduced amount of ₱2,633,847.20, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, broken down as follows:

TAX TYPE	BASIC DEFICIENCY TAX	25% SURCHARGE	TOTAL
Income Tax	₱ 1,789,857.55	₱447,464.39	₱2,237,321.94
Value-added Tax	1,675.00	418.75	2,093.75
Withholding Tax on Compensation	248,364.86	62,091.22	310,456.08
Expanded Withholding Tax	23,324.87	5,831.22	29,156.09
Documentary Stamp Tax	30,280.48	7,570.12	37,850.60
Inspection Fees	13,575.00	3,393.75	16,968.75
Total	**₱2,107,077.76**	**₱526,769.44**	**₱2,633,847.20**

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

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

TAX TYPE	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	December 15, 2005
Value-added Tax	September 25, 2005
Withholding Tax on Compensation	September 14, 2005
Expanded Withholding Tax	September 14, 2005
Documentary Stamp Tax	August 31, 2005
Inspection Fees	August 31, 2005

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱2,633,847.20 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 6, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

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

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