REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HOYA GLASS DISK PHILIPPINES, INC., Petitioner,	CTA CASE NO. 8115
	Members:
-versus-	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	MAR 08 2016 2:00 p.m.

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DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review[1] filed on June 28, 2010, Hoya Glass Disk Philippines, Inc. (HGDPI) seeks the withdrawal and cancellation of the assessment issued by the Commissioner of Internal Revenue (CIR) for deficiency income tax (IT), value-added tax (VAT), and final withholding tax (FWT), plus interest and surcharge, for the fiscal year (FY) April 1, 2004 to March 31, 2005, in the total amount of P61,442,120.38.

Petitioner Hoya Glass Disk Philippines, Inc. is a domestic corporation with Securities and Exchange Commission (SEC) Registration No. A199609700. It is located at 111 East Main Avenue, Laguna Technopark, Special Export Processing Zone (SEPZ), Binan, Laguna.[2] It is into manufacturing, processing, wholesale selling and exporting of glass disk for hard disk drives and other memory devices and other activities incidental thereto.[3]

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[1] Docket, pp. 1-36.
[2] Exhibit "A", docket, pp. 1681-1682.
[3] Exhibit "B", docket, pp. 1683-1694.

Petitioner is a registered taxpayer with (BIR) Certificate of Registration No. IRC0000414340 dated February 19, 1997.[4] It is also a Philippine Economic Zone Authority (PEZA) registered entity with Certificate No. 97-010 dated May 7, 2004[5].

On the other hand, respondent is the head of the BIR, with authority to assess and collect all internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties and fines connected with such taxes, fees and charges. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner was previously known as NSG Phils., Inc. and was wholly owned by Japanese Corporation Nippon Sheet Glass Co., Ltd. (NSGC).

On January 1, 1998, petitioner and NSGC entered into a Know-How License Agreement[6], whereby petitioner would pay royalties to NSGC in exchange for the right "to manufacture and sell the Licensed Products in the Territory" using the Know-How, as defined in the agreement.[7]

On September 17, 2003, Hoya Corporation, a Japanese corporation, acquired the shares of NSGC.[8] Consequently, Hoya Corporation became petitioner's parent corporation.

Hoya Corporation restructured petitioner's operations in the Philippines resulting in the termination of the Know How License Agreement between NSGC and petitioner via a Termination Agreement dated March 1, 2004[9]. As a result, petitioner no longer made royalty payments to NSGC.

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[4] Exhibit "C", docket, p. 1696.
[5] Exhibit "D", docket, p. 1697.
[6] Exhibit "GG", docket, pp. 2057-2071.
[7] Under Article 1(3) of Exhibit "GG", Know-How means technical information, data, manufacturing techniques, and other information, whether patentable or not, including relevant technology patented in Japan, which are useful for manufacture and/or sale of the Licensed Products and commercially utilized by the Licensor, all as owned or controlled by the Licensor as of the date hereof and specified in the Technical Documents as hereinafter defined.
Such Know-How shall consist of:
(i) Operating and processing procedure and data;
(ii) Quality control and inspection procedure and data;
(iii) Specification of the Necessary Machinery and Equipment as hereinafter defined;
(iv) Other technical information requested by the Licensee and deemed by the Licensor to be useful for stable operation of the Licensee's plant.
[8] Exhibit "V", docket, pp. 1809-1857.
[9] Exhibit "W", docket, pp. 1858-1868.

Subsequently, petitioner and Hoya Corporation entered into a Technology Development Delegation Agreement (TDDA)[10], effective until March 31, 2005,[11] whereby Hoya Corporation would perform research and technology development for petitioner in exchange for delegation fees.[12] The TDDA expressly provided that it shall be "governed by and construed in accordance with the laws of Japan."[13]

On July 11, 2005, petitioner filed its Annual Income Tax Return[14] (ITR) for fiscal year ending March 31, 2005.

Subsequently, respondent issued Letter of Authority No. 00098729, for the audit and investigation of all internal revenue taxes of petitioner for fiscal year ending March 31, 2005.[15]

In relation to the audit, petitioner executed five (5) Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (NIRC), as amended, on the following dates:

	DATE EXECUTED	EXPIRY DATE
First Waiver[16]	September 26, 2007	March 1, 2008
Second Waiver[17]	October 9, 2007	September 30, 2008
Third Waiver[18]	March 28, 2008	March 31, 2009
Fourth Waiver[19]	February 12, 2009	December 31, 2009
Fifth Waiver[20]	September 18, 2009	June 30, 2010

On March 19, 2009, petitioner received a Preliminary Assessment Notice (PAN)[21] dated March 2, 2009, to which it filed a letter reply dated March 30, 2009[22].

[10] Exhibit "X", docket, pp. 1869-1885.
[11] Section 7 of the TDDA, Exhibit "X", docket, pp. 1871 and 1878.
[12] Section 3.1. of the TDDA, Exhibit "X", docket, pp. 1870.
[13] Section 8 of the TDDA, Exhibit "X", docket, p. 1871.
[14] Exhibit "N", docket, pp. 1776-1778.
[15] Par. 2, Statement of Facts, Memorandum (For Respondent), docket, p. 3022.
[16] Exhibit "Q", docket, pp. 1799-1800.
[17] Exhibit "R", docket, pp. 1801-1802.
[18] Exhibit "S", docket, pp. 1803-1804.
[19] Exhibit "T", docket, pp. 1805-1806.
[20] Exhibit "U", docket, pp. 1807-1808.
[21] Exhibit "E", docket, pp. 1698-1702.
[22] Exhibit "F", docket, pp. 1703-1716.

On April 20, 2009[23], petitioner received the Final Assessment Notice (FAN) and Formal Letter of Demand with Details of Discrepancies[24]. On May 19, 2009, petitioner protested the FAN and requested for a reinvestigation of the assessment.[25]

On September 1, 2009[26], petitioner received an undated Notice for Informal Conference, with attached Amended Deficiency Taxes[27] for deficiency IT, VAT, and FWT in the sum of P61,442,120.38 for the fiscal year April 1, 2004 to March 31, 2005, detailed as follows:

DEFICIENCY TAXES (AMENDED)		
INCOME TAX		
Taxable Gross Income per return		374,237,215.00
Add: disallowed deductions –COS		
Repairs & Maintenance- Jan. 2005 - March 2005	79,470,133.07	
Others - Jan. 2005 - March 2005	8,198,568.72	87,668,701.79
Adjusted Taxable Income		461,905,916.79
Rate of Tax		5%
Tax due		23,095,295.84
Less: 5% filed & paid		22,192,147.15
Deficiency IT		903,148.69
Interest (7/15/2005 to 9/15/2009)		753.696.14
Compromise		20,000.00
TOTAL		**1,676,844.83**
VALUE-ADDED TAX		
Sales per Vat Returns		7,428,675.20
Add: Other Income		2,734,561.00
Sales per audit		10,163,236.20
Rate of Tax		10%
Tax due		1,016,323.62
Add: disallowed Input Tax		64,130.99
VAT Due		1,080,454.61
Less: filed & paid		806,998.51
Deficiency VAT		273,456.10
Interest (4/25/2005 to 9/15/2009)		240,341.69
Compromise		16,000.00
TOTAL		**529,797.79**
FINAL WITHHOLDING TAX		

[23] Exhibit "G-1", docket, p. 1717.
[24] Exhibit "G", docket, pp. 1717-1726.
[25] Exhibit "H", docket, pp. 1727-1753.
[26] Exhibit "I-1", docket, p. 1754.
[27] Exhibit "I", docket, pp. 1754-1755.

Interest Expense (P10,708,536.00 X 15%)		1,606,280.40
Research & Devt. (Royalty P125,454,915.00 X 25%)		31,363,728.75
TOTAL FT DUE		32,970,009.15
Less: filed & paid		1,593,957.49
Deficiency IT		31,376,051.66
Interest (4/20/2005 - 9/15/2009)		27,834,426.10
Compromise		25,000.00
TOTAL		**59,235,477.76**
GRAND TOTAL DEFICIENCY TAXES (AMENDED)		**61,442,120.38**

On September 16, 2009, petitioner filed a supplemental protest letter[28] together with relevant supporting documents.

In a letter dated April 29, 2010[29] which petitioner received on June 10, 2010, BIR Revenue Region No. 9 affirmed the foregoing assessments against petitioner. A similar letter dated June 4, 2010[30] from the Revenue District Officer of RDO No. 57 bearing the same information was received by petitioner on June 10, 2010, to which it replied on June 25, 2010[31].

On June 28, 2010, petitioner filed the instant Petition for Review.[32]

In her Answer[33], respondent basically invoked the presumption of correctness of the assessments allegedly issued within the prescriptive period provided by law. By virtue of the five (5) Waivers of the Defense of Prescription executed by petitioner pursuant to Section 222 of the NIRC, as amended, the period to assess was extended until June 30, 2010. Consequently, the Amended FAN received by petitioner on September 1, 2009 was timely issued.

Having initiated the extensions of the period to assess without raising any objection or issue in relation thereto in the administrative level, petitioner had effectively recognized their validity, hence, already estopped from assailing the validity of such Waivers.

[28] Exhibit "J", docket, pp. 1756-1763.
[29] Exhibit "K", docket, pp. 1764-1766.
[30] Exhibit "L", docket, p. 1767.
[31] Exhibit "M", docket, pp. 1768-1775.
[32] Docket, pp. 1-36.
[33] Docket, pp. 286-310.

Respondent also insists that those who accepted the subject Waivers were her duly authorized representatives for they were not prohibited under Section 7 of the NIRC. RDAO No. 5-2001 dated August 2, 2001 also authorized them to accept Waivers for and in her behalf.

Further, petitioner could not deny the authority of its own Administrative General Manager Shinichi Fukuma, who signed the Waivers, since he was also its representative during the audit and the one who signed all its correspondences with the BIR pertaining to this case. He even executed a Special Power of Attorney (SPA) authorizing KPMG Manabat San Agustin & Company as its counsel and submitted the same to the investigating revenue officer during the audit.

In its Reply[34], petitioner again invoked prescription since the FAN was allegedly issued beyond the prescriptive period to assess due to the invalidity of the five (5) Waivers of the Statute of Limitations. Petitioner also denied liability to pay deficiency IT for the repairs and maintenance expense, and that the "other expense" were properly considered part of its cost of sales in connection with the computation of its gross income subject to the 5% preferential income tax rate. In addition, it already paid VAT on its scrap sales despite belief that the said transactions were not subject to VAT. Lastly, the imposition of deficiency FWT on interest expense, and delegation fees under the Technology Development Delegation Agreement is improper and without basis.

On January 24, 2011[35], the Pre-Trial Order was issued rendering the Pre-trial Conference terminated.

In the Resolution[36] dated March 10, 2011, trial was suspended for sixty days at the instance of petitioner to give the parties time to settle their conflict. However, petitioner's second request for a similar suspension was denied in the Resolution dated September 16, 2011.

In support of its case, petitioner presented five (5) witnesses, namely, its Finance and Accounting Manager, Ma.

[34] Docket, pp. 339-364.
[35] Docket, pp. 403-409.
[36] Docket, pp. 427-429.

Anita A. Policarpio; its Director, Tatsuji Kohama; the Independent Certified Public Accountant (ICPA), Jerome Antonio B. Constantino; an Associate of the Baker & McKenzie GJBJ Tokyo Aoyama Aoki Koma Law Office, Nobuhiko Kurata; and its Accounting - Assistant Supervisor, Marvin T. Sambilad.

Witness **Ma. Anita A. Policarpio**[37] testified that petitioner is into manufacturing, processing, selling, on wholesale basis, and exporting of glass disk for hard drives and other memory devices. It is registered with the BIR and is likewise a PEZA Ecozone Export Enterprise located at the Laguna Technopark-Special Economic Zone. Petitioner was formerly known as NSG Phils., Inc., and wholly owned by Nippon Sheet Glass Co., Ltd. (NSGC). It entered into a Know-How License Agreement with NSGC wherein it would pay the latter royalties in exchange for the right to manufacture and sell NSGC's licensed products in the Philippines.

Petitioner changed its name from NSG Phils., Inc. to Hoya Glass Disk Philippines, Inc., when NSGC's shares in petitioner were acquired by Hoya Corporation, a Japanese corporation which became its parent company. As a consequence of this acquisition, petitioner terminated the Know-How License Agreement with NSGC and thereafter executed a Technology Development Delegation Agreement (TDDA) whereby Hoya Corporation would perform technology development services for petitioner in exchange for "delegation fees."

The witness claimed that for lack of any Board Resolution or SPA, Shinichi Fukuma and Kazuhiko Suzuki were not authorized to sign the Waivers for and in behalf of petitioner.

On March 19, 2009, petitioner received the PAN to which it filed a protest. This was followed by a Formal Letter of Demand (FLD) received on April 20, 2009 to which petitioner also filed a protest. With the receipt of a Notice for Informal Conference with amended assessment on September 1, 2009, petitioner filed a supplemental protest

[37] Judicial Affidavit dated September 3, 2011, docket, pp. 468-481; In the Resolution dated July 27, 2012, docket, pp. 598-600, paragraphs IV and V of the said Judicial Affidavit were stricken off the record.

which respondent denied in a letter dated April 29, 2010. The said denial was received by petitioner on June 10, 2010. On the same day, petitioner also received a letter dated June 4, 2010 from respondent, requiring it to submit documents in support of its protests. Petitioner replied through a letter dated June 25, 2010.

The witness opined that petitioner was erroneously assessed deficiency IT of P1,676,884.83 on the finding that the repairs and maintenance expense in the amount of P79,740,133.07 was non-deductable. The item was not taxable as it pertains to expenses on parts and consumable for the up-keep and maintenance of its machinery and equipment used in its business.

The assessment pertaining to the "other expense" was also improper since petitioner erroneously added back P8,656,013.04 instead of only P8,198,568.72 thereby resulting in a higher tax base.

The assessment for deficiency VAT derived from "other income" item was likewise invalid since it pertained to petitioner's sale of production rejects and recovered waste/scrap generated, including packaging materials and supplies.

By virtue of the TDDA, petitioner paid Hoya Corporation delegation fees as compensation for research and development services rendered in its favor which respondent erroneously treated as royalty fees subject to FWT. The witness explained that delegation fees were not royalty fees since the proprietary rights on the result of the services rendered by Hoya Corporation belonged to petitioner. Moreover, delegation fees were not subject to FWT since Hoya Corporation performed the services in Japan or outside the Philippines.

Witness **Tatsuji Kohama**[38] testified that as one of petitioner's Directors, he oversees the financial condition of petitioner, including budgeting and planning to ensure the achievement of its business objectives. He also reports petitioner's financial condition to the head office.

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[38] Judicial Affidavit dated November 18, 2011, docket, pp. 498-502

When NSGC's shares of stock in petitioner were transferred to Hoya Corporation, petitioner terminated its Know-How License Agreement with NSGC. Thereafter, petitioner executed with Hoya Corporation, its new parent company, the TDDA, an outsourcing service agreement written in Japanese but later translated in English.

In the Know-How License Agreement, petitioner paid royalties to NSGC for the right to manufacture and sell glass substrates for computer hard disks. In the TDDA, petitioner paid delegation fees to Hoya Corporation for the 'technology development' services all performed in Japan and rendered to keep petitioner's product up-to-date. The ownership of the result of the 'technology development' services belonged to petitioner. Under the TDDA, no transfer of technology occurred since petitioner already had the required technology and manufacturing process to produce its products.

The delegation fees were recorded in the books of petitioner as expenses for services which were billed monthly plus a mark-up of 10% for the commission for the services rendered, as provided in the TDDA.

Per TDDA, Hoya Corporation was to submit a plan with the corresponding quotation of actual cost plus the stipulated 10% mark-up subject to negotiation for the determination of the delegation fees to be paid. The delegation fees were to be considered as income of Hoya Corporation in Japan. For this reason, these delegation fees should not be subject to FWT.

The witness further declared that the amount under the item 'repairs and maintenance expense,' should be allowed deduction from gross income since it pertained to costs related to the production of petitioner's products, as shown in its financial record. The parts and consumables in relation to this item were required to keep the machinery and equipment in good running condition for the operation of petitioner's business. They were neither capitalized nor recorded as expense as soon as used or consumed but were included in the periodic or annual maintenance.

The witness further claimed that the item 'Other income' generated from the sale of production rejects and recovered waste/scrap from the processing of raw materials, including packaging and other direct/indirect materials, per petitioner's financial record, should not be subject to deficiency VAT.

ICPA **Jerome Antonio B. Constantino,**[39] testified based on the ICPA Report that he prepared after examination of the relevant documents submitted to him by petitioner.

The ICPA Report indicated in detail his findings on (1) the assessments for deficiency income tax, VAT and FWT for fiscal year April 1, 2004 to March 31, 2005; (2) the alleged deficiency income tax premised on the alleged non-deductibility of Repairs and Maintenance Expense and Other Expense in computing petitioner's taxable income; (3) the alleged deficiency VAT based on petitioner's scrap sales; (4) the alleged deficiency FWT based on Interest Expense; and (5) the alleged Royalty Payments made by petitioner to Hoya Corporation pursuant to the TDDA.

The ICPA admitted that he was not competent to interpret the legal provisions of the TDDA, the original version of which appeared to have been translated from Japanese to English by a certain Howard Wiseman whom he did not know. He could not also vouch on the accuracy and correctness of the translation of the Japanese version.

Witness **Nobuhiko Kurata**,[40] a licensed law practitioner in Japan, and an Associate of the Baker & McKenzie GJBJ Tokyo Aoyama Aoki Koma Law Office, testified that upon petitioner's request, the law firm prepared a Memorandum about the nature of the TDDA executed by petitioner and Hoya Corporation under Japanese Law. According to him, the TDDA is a type of service agreement under Japanese law wherein a party entrusts to another the performance of an activity other than a legal procedure subject to compensation paid even before the entrusted activity has been completed. In the subject TDDA, petitioner entrusted to Hoya Corporation the "development of glass disk substrate technology" per an implementation plan in return for compensation. Petitioner shall pay the cost of implementing the "development of

[39] Judicial Affidavit dated May 3, 2012, docket, pp. 556-560
[40] Judicial Affidavit dated July 5, 2012, docket, pp. 623-627

glass disk substrate technology" on a monthly basis while Hoya Corporation will provide a report regarding the results of the entrusted activity, including the process thereof, after the conclusion of the contract or activity.

Under Japanese law, the TDDA is not an intellectual property license agreement wherein the licensee obtains the right to legally use the intellectual property right from the party holding the right to the intellectual property. In the subject TDDA, the title to the results of the technology development belongs to petitioner and not Hoya Corporation.

Finally, in Japan, a license agreement is generally denominated as License Agreement. Since the subject TDDA was not denominated as a License Agreement, Japanese lawyers will not consider it as a license agreement under Japanese law. Under that premise, the amounts paid by petitioner to Hoya Corporation for the development services rendered were service fees and not royalty payments.

Witness **Marvin T. Sambilad**,[41] petitioner's Accounting - Assistant Supervisor testified that his testimony would be based merely on record since he was hired after the subject incident specifically on August 3, 2010. From the records, petitioner filed its Income Tax Return for fiscal year April 1, 2004 to March 31, 2005 on July 11, 2005 and paid the corresponding tax thereon.

Petitioner also filed its VAT Returns for fiscal year April 1, 2004 to March 31, 2005 and paid the taxes due for the first, second, third, and fourth quarters on July 16, 2004, October 8, 2004, January 17, 2005, and April 25, 2005, respectively.

After petitioner rested, respondent presented Revenue Officers (ROs) Liza Lozada, Jocelyn Santos, and Michelle Andal.

RO II **Liza Lozada**[42] declared that she conducted the audit of petitioner for the fiscal year ending March 31, 2005,

[41] Judicial Affidavit dated September 27, 2012, docket, pp. 696-700
[42] Judicial Affidavit dated May 10, 2013, docket, pp. 2693-2696

pursuant to Letter of Authority No. 00098729 dated March 23, 2006.

Requests for Presentation of Records were sent to petitioner on March 27, 2006 and May 4, 2006. A Final Notice dated May 17, 2006 was likewise sent to petitioner followed by a Notice of Informal Conference dated May 15, 2007. After audit, she prepared a Memorandum Report dated November 26, 2008 containing the result of her investigation.

According to the witness, petitioner executed five (5) Waivers of the Defense of Prescription on September 26, 2007, October 9, 2007, March 28, 2008, February 12, 2009, and September 18, 2009. Within the extended period to assess, a Preliminary Assessment Notice (PAN) with Attachments dated March 2, 2009 was served upon petitioner. This was followed by a Formal Letter of Demand with Attachments dated April 3, 2009.

She was present during the audit and in all scheduled informal conferences and witnessed the representatives of petitioner sign the Waivers. However, in all the Waivers executed, petitioner's representatives failed to present authority to sign the said Waivers. In any event, the first Waiver was accepted by the BIR on September 27, 2007 but there was no date of receipt by petitioner.

The second Waiver was accepted by the BIR through an Assistant RDO in behalf of Revenue District Officer Myrna S. Leonida but without indicating the date.

The third Waiver which the BIR accepted on March 28, 2008 did not indicate receipt of copy thereof by petitioner. The same is true with the fourth Waiver which the BIR accepted on February 16, 2009.

The fifth Waiver was accepted by the BIR on September 23, 2009, copy of which was received by Ma. Anita Policarpio on September 18, 2009.

According to the witness the period to assess in this case prescribed on July 15, 2008.

Revenue Officer II **Jocelyn Santos**[43] testified that she conducted the re-investigation of petitioner for the fiscal year ending March 31, 2005 pursuant to Tax Verification Notice (TVN) No. 00110253 dated May 25, 2009 based on the same documents used by RO Liza Lozada in the first audit. Thereafter, she executed a Memorandum Report dated January 11, 2010 reducing the original assessment which the Legal Division of Revenue Region No. 9, San Pablo City, Laguna approved.

According to the witness her review of the subject TDDA showed that it was a royalty agreement since Hoya provided the know-how for which petitioner paid a fee deemed as royalty. Petitioner's 2004 financial statements also indicated that royalty payments were made which ceased after March 31, 2005. This finding prompted her to demand presentation of document on the termination of the royalty agreement, which petitioner failed to provide. She however surmised that the payments of royalties ceased due to the execution of the TDDA.

Revenue Officer I **Michele Andal**,[44] also conducted a reinvestigation of petitioner for fiscal year ending March 31, 2005 by virtue of Memorandum of Assignment (MOA) dated June 1, 2010. Since it was merely a reinvestigation, she had no participation in the execution of the subject Waivers. She submitted a Memorandum Report dated November 19, 2010 indicating her findings.

Respondent rested after filing a Tender of Excluded Evidence[45] for her denied Exhibits[46] which the Court noted in the Resolution[47] dated January 5, 2015.

ISSUE

Whether petitioner is liable for deficiency income tax, VAT, and FWT for fiscal year ending March 31, 2005 in the aggregate amount of ₱61,442,120.38.

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[43] Judicial Affidavit dated July 19, 2013, docket, pp. 2713-2717
[44] Judicial Affidavit dated September 19, 2013, docket, pp. 2730-2733
[45] Docket, pp. 2883-2889.
[46] Docket, pp. 2871-2881.
[47] Docket, pp. 2924-2926.

THE RULING OF THE COURT

First, the Court shall determine the timeliness of the filing of the instant Petition.

Petitioner received the letters[48] affirming the assessment for deficiency income tax, VAT, and FWT on June 10, 2010. Under Section 228 of the NIRC, as amended, petitioner had thirty (30) days from the said receipt, or until July 10, 2010, within which to appeal the same to the CTA. Hence, the instant Petition for Review[49] was seasonably filed on June 28, 2010.

On the issue of prescription, Section 203 of the same Code mandates that internal revenue taxes must be assessed within three years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later.[50] In relation thereto, Section 77 of the NIRC of 1997, as amended, provides that a corporate taxpayer must file its Annual Income Tax Return (AITR) on or before the fifteenth (15th) day of the fourth month following the close of the fiscal year. In this case, petitioner filed its AITR for FY ended March 31, 2005 on July 11, 2005. Applying Section 203 of the NIRC of 1997, as amended, respondent had until July 11, 2008, within which to assess petitioner for deficiency income tax for FY 2005.

With regard to VAT, Section 114(A) of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 07-95, as amended by RR No. 08-02, require that Quarterly VAT Returns must be filed within twenty-five (25) days following the close of each taxable quarter. Below is the

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[48] Exhibits "K" and "L", docket, pp. 1764-1767.
[49] Petition for Review, docket, pp. 1-36.
[50] "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in the 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."

summary of the dates of filing of petitioner's Quarterly VAT Returns and the corresponding dates within which respondent should assess petitioner for deficiency VAT for the four quarters of FY 2005, to wit:

Period Covered		Exhibits	Date Filed	Last Day to File Return	Last Day to Assess
1st Qtr	Apr. 1-June 30, 2004	"O-1", "P-1"	7/16/2004	07/26/04[51]	07/26/07
2nd Qtr	July 1-Sept. 30, 2004	"O-2", "P-2"	10/22/2005	10/25/04	10/27/08[52]
3rd Qtr	Oct. 1-Dec. 31, 2004	"O-3", "P-3"	1/17/2005	01/25/05	01/25/08
4th Qtr	Jan. 1, 2005-Mar. 31, 2005	"O-4", "P-4"	4/25/2005	04/25/05	04/25/08

Insofar as FWT is concerned, Sections 7 and 8.1 of RR No. 09-01, as last amended by RR No. 26-02, provide that the electronic filing of FWT returns of taxpayers engaged in manufacturing such as herein petitioner be made within fourteen (14) days following the end of the month. The dates of the filing of petitioner's Monthly FWT Returns as well as the last day for respondent to assess for deficiency FWT are summarized below:

Month Covered	Exhibit	Date Filed	Last Day to File Return	Last Day to Assess
April 2004	"BB"	5/11/2004	05/14/2004	5/14/2007
May 2004	"BB-1"	6/10/2004	06/14/04	6/14/2007
June 2004	"BB-2"	7/12/2004	07/14/04	7/16/2007[53]
July 2004	"BB-3"	8/10/2004	08/16/2004[54]	8/16/2007
August 2004	"BB-4"	9/9/2004	09/14/04	9/14/2007
September 2004	"BB-5"	10/08/2004	10/14/04	10/15/2007[55]
October 2004	"BB-6"	11/9/2004	11/15/2004[56]	11/15/2007
November 2004	"BB-7"	12/11/2004	12/14/04	12/14/2007
December 2004	"BB-8"	1/10/2005	01/14/05	1/14/2008
January 2005	"BB-9"	2/10/2005	02/14/05	2/14/2008
February 2005	"BB-10"	3/09/2005	03/14/05	3/14/2008
March 2005	"BB-11"	4/11/2005	04/14/05	4/14/2008

Therefore, the last day for respondent to issue an assessment for FY 2005 was on July 11, 2008 for income

[51] July 25, 2004 fell on a Sunday.
[52] October 25, 2008 fell on a Saturday.
[53] July 14, 2007 fell on a Saturday.
[54] August 14, 2004 fell on a Saturday.
[55] October 14, 2007 fell on a Sunday.
[56] November 14, 2004 fell on a Sunday.

tax, on April 25, 2008, at the latest for VAT, and on April 14, 2008, at the latest for FWT. However, the record shows that petitioner received the FLD and FANs (original) issued by respondent only on April 20, 2009[57], or beyond the three-year prescriptive period provided by law.

But since petitioner executed five (5) Waivers of the Defense of Prescription under the Statute of Limitations of the NIRC, there is need to inquire into the validity of the said Waivers.

Petitioner assails the validity of the five Waivers it executed through its representative due to the following defects:

	Date Executed	**Alleged Defects**
First Waiver [58]	September 26, 2007	• Shinichi Fukuma, petitioner's Administration General Manager, signed the Waiver without a notarized SPA for that purpose • Waiver was signed and accepted by Assistant RDO, Venus T. Gaticales • Date of acceptance of waiver by respondent was not indicated • Petitioner's receipt of its file copy was not indicated in the Waiver
Second Waiver [59]	October 9, 2007	• Shinichi Fukuma, signed the Waiver without a notarized special power of attorney for that purpose • Date of acceptance of waiver by respondent was not indicated • The acknowledgment portion of the notarized Waiver was defective as it did not indicate any competent document exhibited to the notary to verify Fukuma's identity • Petitioner's receipt of its file copy was not indicated in the Waiver
Third Waiver [60]	March 28, 2008	• Kazuhiko Suzuki, petitioner's President, signed the Waiver without a notarized SPA for that purpose • Date of acceptance of waiver by respondent was not indicated • Receipt by petitioner's file copy was not indicated in the Waiver

[57] Exhibits "G" and "G-1", docket, pp. 1717-1724.
[58] Exhibit "Q", docket, pp. 1799-1800.
[59] Exhibit "R", docket, pp. 1801-1802.
[60] Exhibit "S", docket, pp. 1803-1804.

Fourth waiver[61]	February 12, 2009	• Shinichi Fukuma, signed the Waiver without a notarized SPA for that purpose • Date of acceptance of waiver by respondent was not indicated
Fifth Waiver [62]	September 18, 2009	• Kunihiro Kato, petitioner's President, signed the Waiver without a notarized SPA for that purpose • Date of acceptance of waiver by respondent was not indicated

Under Section 222(b) of the NIRC, as amended, the period to assess and collect deficiency taxes may be extended upon a written agreement between respondent and petitioner prior to the expiration of the three-year prescriptive period.[63]

Relative to the foregoing, the Supreme Court outlined the procedure for the proper execution of a waiver, to wit:

> "1. **The waiver must be in the proper form prescribed by RMO 20-90.** The phrase 'but not after __ 19 _', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

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[61] Exhibit "T", docket, pp. 1805-1806.
[62] Exhibit "U", docket, pp. 1807-1808.
[63] "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -

xxx xxx xxx

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."

3. The waiver should be duly notarized.

4. **The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver.** The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. **Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.**

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.** (Emphasis supplied)"[64]

Further, Revenue Delegation Authority Order (RDAO) No. 05-01 dated August 2, 2001,[65] specifies who may sign and accept the Waivers for the BIR, thus:

"I. *Revenue Officials Authorized to Sign the Waiver*

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations

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[64] Commissioner of Internal Revenue vs. Standard Chartered Bank, G.R. No. 192173, July 29, 2015

[65] Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

(Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

xxx xxx xxx

C. *For Regional cases*

Designated Revenue Official

1. Revenue District Officer -	Cases pending investigation/verification/ reinvestigation in the Revenue District Offices
2. Regional Director –	Cases pending in the Divisions in the Regional Office, including cases pending approval by the Regional Director

In order to prevent undue delay in the execution and acceptance of the waiver, the assistant heads of the concerned offices are likewise authorized to sign the same under meritorious circumstances in the absence of the abovementioned officials.

The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The 'WAIVER' should not be accepted by the concerned BIR office and official unless duly notarized." *(Emphasis supplied)*

While the Supreme Court has consistently held that a waiver of the statute of limitations must faithfully comply with the requisites for a valid waiver, the same admits of exception as enunciated in the most recent case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[66], to wit:

> "The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.
>
> *First*, the parties in this case are *in pari delicto* or 'in equal fault.' *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.
>
> Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's (CIR) lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.
>
> *Second*, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the

[66] G.R. No. 212825, December 7, 2015.

foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

Third, **respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case**. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. **Respondent executed *five* Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it.** Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the **Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities**." *(Emphasis supplied)*

The factual milieu of the cited case is on all fours with the instant Petition for Review. Like the parties above, petitioner and respondent are equally at fault. But the obtaining circumstances call for a ruling sustaining the validity of the Waivers.

Note that petitioner voluntarily executed and submitted the subject Waivers, one after the other and never raised a single objection thereto, only to impugn their validity after the issuance of the assessment on the ground that its own representative had no authority to sign the Waivers. The sly approach was obviously intended to escape tax liability for it was highly incredible that petitioner was unaware of the requirements of a valid Waiver since it already secured the services of counsel from the start of the BIR audit. Significantly, the signatories in the said Waivers were not mere employees but responsible ranking officers of petitioner.

For obvious reason, petitioner should not be allowed to benefit from its own wrongdoing and should be deemed estopped from questioning the validity of the Waivers only after the assessment against it was issued.

Thus, respondent's right to assess is deemed validly extended through the Waivers executed until the FAN and FLD were issued and received by petitioner on April 20, 2009; *except* the assessment for the 1st Quarterly VAT Return[67] filed on July 16, 2004 (last day to assess was on July 26, 2007) and the following FWT returns, where the right to assess had already prescribed by the time the First Waiver was executed on September 26, 2007.

Month Covered	**Exhibit**	**Date Filed**	**Last Day to File Return**	**Last Day to Assess**
April 2004	"BB"	5/11/2004	05/14/2004	5/14/2007
May 2004	"BB-1"	6/10/2004	06/14/04	6/14/2007
June 2004	"BB-2"	7/12/2004	07/14/04	7/16/2007[68]
July 2004	"BB-3"	8/10/2004	08/16/2004[69]	8/16/2007
August 2004	"BB-4"	9/9/2004	09/14/04	9/14/2007

The Court shall now determine the merits of the assessments for deficiency IT, VAT and FWT.

[67] Exhibits "O-1" and "P-1", docket, pp. 1779-1780.
[68] July 14, 2007 fell on a Saturday.
[69] August 14, 2004 fell on a Saturday.

I. Deficiency Income Tax

In view of respondent's findings that some of petitioner's claimed deductions for cost of sales (COS), specifically, Repairs and Maintenance amounting to ₱79,470,133.07[70] and Others amounting to ₱8,198,568.72[71], both for the period of January 2005 to March 2005, are unallowable deductions from gross income pursuant to Republic Act (RA) No. 7916[72], she assessed petitioner deficiency IT of ₱1,676,844.83, inclusive of interest and compromise penalty, computed as follows:[73]

Taxable gross income per return		₱374,237,215.00
Add: Disallowed deductions - COS		
Repairs & Maintenance - Jan. 2005 - March 2005	₱79,470,133.07	
Others - Jan. 2005 - March 2005	8,198,568.72	87,668,701.79
Adjusted Taxable Income		₱461,905,916.79
Rate of Tax		5%
Tax due		₱ 23,095,295.84
Less: 5% filed & paid		22,192,147.15
Deficiency IT		**₱ 903,148.69**
Interest (7/15/2005 to 9/15/2009)		753,696.14
Compromise		20,000.00
TOTAL		**₱ 1,676,844.83**

A. Repairs and Maintenance (January 2005 to March 2005) – ₱79,470,133.07

To justify the deduction as direct costs, petitioner as a PEZA-registered manufacturing entity invokes BIR Ruling [DA-080-07] dated February 8, 2007 which states that "as long as the costs can be attributed in producing the product, they are allowed as deductions for purposes of computing the 5% final tax".

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70 Exhibit "G", Schedule of Disallowed Cost of Sales, docket, p. 1726 (sum of the Repairs and Maintenance for January, February, and March 2005 in the respective amounts of ₱22,744,131.67, ₱26,786,458.91, and ₱29,939,542.49).

71 Exhibit "G", Schedule of Disallowed Cost of Sales, docket, p. 1726 (sum of the costs classified under "Others" for January, February, and March 2005 in the respective amounts of ₱3,097,988.18, ₱2,826,951.85, and ₱2,273,628.69)

72 Exhibit "G", Details of Discrepancy, docket, p. 1725.

73 Exhibit "I", docket, p. 1755.

Also per BIR Ruling [DA-(C-164) 499-08] dated December 4, 2008, costs incurred in the repairs and maintenance of machinery and equipment directly used in the production, form part of manufacturing overhead, which along with raw materials and direct labor, forms part of the cost of goods manufactured, which eventually constitutes the cost of goods sold.

Moreover, the subject repairs and maintenance expenses pertain to costs related to the purchase of parts and consumables necessary to keep the machinery and equipment in good condition for the operation of the business for the purpose of producing its goods for export[74]. These included periodic or annual maintenance costs needed for the operation of petitioner's registered activity. These costs were not capitalized but expensed out as soon as these were used or consumed. For petitioner, these are costs that can be attributed in producing petitioner's products, hence, must be allowed as deductions for purposes of computing the 5% final tax.[75]

The disallowance is in order.

One of the incentives available to petitioner as an ECOZONE export enterprise,[76] is the preferential tax rate of five percent on gross income earned as provided under Section 24 of RA No. 7916, otherwise known as "The Special Economic Zone Act of 1995" ("PEZA Law" for brevity), as amended, which states:

> "SECTION 24. Exemption from National and Local Taxes. - Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

✓

[74] Exhibit "LL", docket, pp. 2100 to 2104.
[75] Petitioner's Memorandum, pars. 46, 47 and 48, docket, pp. 2951-2953.
[76] Exhibit "AA", docket, pp. 1918 to 1919 (Note 1 of petitioner's Audited Financial Statements as of and for the periods ended March 31, 2004 and 2005 shows that petitioner was registered on February 6, 1997 with the PEZA as an ecozone export enterprise engaged in the manufacture of magnetic glass disks for export and was granted an income tax holiday from January 3, 1998 to December 31, 2004. Thus, from January 1, 2005 to March 31, 2005, petitioner availed of the 5% preferential tax rate with regard to its magnetic glass disk manufacturing).

(a) Three percent (3%) to the National Government;

(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located."

Corollarily, "Gross Income" is defined in Section 2(nn) of Rule I of the Rules and Regulations to Implement RA No. 7916, as follows:

"nn. *'Gross Income'* for purposes of computing the special tax due under Section 24 of the Act refers to gross sales or gross revenues derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and minus costs of sales or direct costs but before any deduction is made for administrative expenses or incidental losses during a given taxable period. The allowable deductions from 'gross income' are specifically enumerated under Section 2, Rule XX of these Rules."

On the other hand, Section 4 of Rule XX of the same Rules enumerates the allowable deductions from gross income for specific type of ECOZONE Export Enterprise, to wit:

"SECTION 4. *Gross Income Earned; Allowable Deductions.* - For purposes of these Rules, Gross Income earned shall be defined in Section 2(nn), Rule I of these Rules, subject to the following allowable deductions for specific types of enterprises:

1. ECOZONE Export Enterprises, Free Trade Enterprises and Domestic Market Enterprises

— Direct salaries, wages or labor expenses
— Production supervision salaries
— Raw materials used in the manufacture of products

— Goods in Process (intermediate goods)
— Finished goods
— Supplies and fuels used in production
— Depreciation of machinery and equipment used in production and buildings owned or constructed by an ECOZONE Enterprise
— Rent and utility charges associated with building, equipment and warehouses, or handling of goods
— Financing charges associated with fixed assets"

To further implement Section 24 of RA No. 7916, the BIR issued RR No. 02-2005, as amended by RR No. 11-2005, the pertinent portion of which reads:

> "For purposes of computing the total five percent (5%) tax rate imposed, the following direct costs are included in the allowable deductions to arrive at gross income earned for specific types of enterprises:
>
> 1. ECOZONE Export Enterprises, Free Trade Enterprises and Domestic Market Enterprises:
>
> — Direct salaries, wages or labor expenses
> — Production supervision salaries
> — Raw materials used in the manufacture of products
> — Decrease in Goods in Process Account (Intermediate goods)
> — Decrease in Finished Goods Account
> — Supplies and fuels used in production
> — Depreciation of machinery and equipment used in production, and of that portion of the building owned or constructed that is used exclusively in the production of goods
> — Rent and utility charges associated with building, equipment and warehouses used in production
> — Financing charges associated with fixed assets used in production the amount of which were not previously capitalized"

The foregoing list is not an exclusive list of expenses that may be deducted by PEZA-registered enterprises from their gross sales for the purpose of computing the 5% gross income tax. The enumeration is intended merely as a guide in determining the items that may be considered direct costs or costs of sales.

Relevantly, Section 27(A) of the NIRC, as amended, defines "gross income" and "cost of goods sold" as follows:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations. –*
>
> xxx xxx xxx
>
> For purposes of this Section, the term **'gross income'** derived from business shall be equivalent to gross sales less sales returns, discounts and allowances and cost of goods sold. **'Cost of goods sold'** shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use.
>
> xxx xxx xxx
>
> For a manufacturing concern, **'cost of goods manufactured and sold' shall include all costs of production of finished goods, such as raw materials used, direct labor and manufacturing overhead, freight cost, insurance premiums, and other costs incurred to bring the raw materials to the factory or warehouse.**" *(Emphasis supplied)*

Thus, for purposes of computing the 5% preferential tax, gross sales/revenues may be reduced only by sales discounts, sales returns and allowances, cost of sales or direct costs or any of the enumerated allowable deductions under RR No. 11-2005. Hence, in determining whether a cost is part of cost of goods manufactured and sold, particularly factory overhead, said cost must be attributable in the manufacture of the PEZA-registered products or goods of petitioner.

The International Accounting Standard (IAS)2 on "Inventories" provides that the "cost of inventories shall comprise all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition".[77]

Corollary to this, "Costs of Conversion" is defined in IAS 2 as follows:

> "12. The costs of conversion of inventories include costs directly related to the units of production, such as direct labour. They also include a systematic allocation of fixed and variable production overheads that are incurred in converting materials into finished goods. Fixed production overheads are those indirect costs of production that remain relatively constant regardless of the volume of production, such as depreciation and maintenance of factory buildings and equipment, and the cost of factory management and administration. Variable production overheads are those indirect costs of production that vary directly, or nearly directly, with the volume of production, such as indirect materials and indirect labour."[78]

With the foregoing, it is incumbent upon petitioner to prove that the subject repairs and maintenance costs can be justifiably allocated as production overheads incurred in the manufacture of goods pursuant to its PEZA registered activities.

Petitioner, however, failed in this regard.

In his Report[79] dated April 25, 2012, the ICPA noted that the disallowed repairs and maintenance amounting to ₱79,470,133.07 incurred by petitioner from January to March 2005 formed part of the total repairs and maintenance amounting to ₱245,441,098.00[80] for the fiscal

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[77] Philippine Financial Reporting Standards (PFRS), Philippine Institute of Certified Public Accountants (PICPA), Part I of II, p. 434.
[78] Philippine Financial Reporting Standards (PFRSs), Philippine Institute of Certified Public Accountants (PICPA), Part I of II, p. 435.
[79] Exhibit "XX", docket, pp. 2538-2540.
[80] Exhibit "WW", docket, pp. 2140-2533.

year 2005 and was traced to the Schedule of Factory Overhead Control summarized per month[81] showing an aggregate amount of ₱2,824,960,847.64. The said aggregate amount of Factory Overhead was disclosed as part of Cost of Sales in Note 14 of the Audited Financial Statements (AFS)[82], which was also declared in the Annual Income Tax Return[83]. Although it was noted by the Court that the Cost of Sales per AITR amounted to ₱3,249,673,174.00[84], lower by ₱54,508,178.00 as compared with the total Cost of Sales per AFS amounting to ₱3,304,181,352.00[85], the said difference was neither noted by the ICPA nor accounted for by petitioner.

Moreover, the ICPA reported that it was not able to verify if such repairs and maintenance expenses were attributable to petitioner's PEZA registered activities since the supporting documents such as check vouchers, supplier's invoices and official receipts were not made available to him as of the date of examination. The said documents were also not presented to the Court. Hence, the Court must uphold the assessment.

B. Others (Jan. 2005 to March 2005) - ₱8,198,568.72

Petitioner argues that the disallowed "Others" expenses of ₱8,198,568.72 from January to March 2005 were not claimed as deduction from gross income for tax purposes, hence, it was improper for respondent to disallow it thereby increasing its deficiency IT. But petitioner failed to present proof that such amount was indeed not deducted for IT purposes. In other words, no reason exists to disturb respondent's disallowance.

Thus, the Court finds that the basic deficiency IT assessment amounting to ₱903,148.69 must be upheld in the light of the principle that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise.

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[81] Exhibit "SS", docket, pp. 2123-2125.
[82] Exhibit "AA", docket, p. 1935.
[83] Exhibit "N", docket, p. 1776.
[84] Exhibit "N", Lines 15A and 15B (₱2,438,173,142.00 + ₱811,500,032.00), docket, p. 1776.
[85] Exhibit "AA", docket, p. 1935.

Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[86]

II. Deficiency VAT

Per respondent, third party information divulged that petitioner had undeclared sales that gave rise to the assailed deficiency VAT assessment pursuant to Section 105 of the NIRC, as amended.[87]

Based on respondent's amended computation[88], petitioner was found liable for deficiency VAT amounting to ₱529,797.79, inclusive of interest and compromise penalty, computed as follows:

Sales per VAT returns	₱ 7,428,675.20
Add: Other income	2,734,561.00
Sales per audit	₱10,163,236.20
Rate of tax	10%
Tax due	₱ 1,016,323.62
Add: Disallowed input tax	64,130.99
VAT due	₱ 1,080,454.61
Less: filed & paid	806,998.51
Deficiency VAT	**₱ 273,456.10**
Interest (4/25/2005 to 9/15/2009)	240,341.69
Compromise	16,000.00
TOTAL	**₱ 529,797.79**

A. Scrap Sales

Petitioner avers that the revenues booked under "Other income" arose from the sale of scrap which was the direct result of its PEZA-registered production activity.[89] It points out that in accordance with PEZA Memorandum Circular No. 2005-032, sale of production "rejects" and "seconds" from the registered activity of an export enterprise, and recovered waste/scrap generated from processing of raw materials, including used packaging materials and other direct/indirect materials/supplies that have undergone processing, shall be considered covered by the registered

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[86] *Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez, et al.*, G.R. No. 177279, October 13, 2010, citing *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.
[87] Exhibit "G", Details of Discrepancy, docket, p. 1725.
[88] Exhibit "I", docket, p. 1755.
[89] Exhibit "H", docket, p. 1734.

activity of the export enterprise. Thus, any income derived therefrom shall be covered by the applicable IT incentive.[90]

The Court disagrees with petitioner.

In *Commissioner of Internal Revenue vs. Nidec Copal Philippines Corporation*[91], the Court *En Banc* affirmed the ruling of the Court in Division that even when the sale of scrap materials is incidental to the taxpayer's registered activities, the PEZA Rules implementing RA No. 7916 expressly provides that such sale shall be subject to regular IT, thus:

> "'*Scrap'* is a term used to describe manufactured articles or parts rejected or discarded and useful only as material for reprocessing: especially waste and discarded metal *(Webster's New Collegiate Dictionary, 1977 edition)*. In other words, these scrap materials are recoverable wastes, where the proceeds derived from the sale thereof shall be taxed in accordance with the applicable provisions of the *NIRC of 1997 referred to under Section 8, Rule VIII, Part V of the PEZA Rules*, to wit:
>
> 'PART V
> *Tax Treatment of Merchandise in the ECOZONES*
>
> RULE VIII
>
> *Tax Treatment of Merchandise in the Restricted Areas of the ECOZONES*
>
> **SEC. 8. Rejects, Seconds and Recoverable Wastes.** - Subject to the provisions of Section 3 of this Rule, rejects, seconds and recoverable wastes shall, when taken from the restricted areas of the ECOZONES to the customs territory, or to the non-restricted areas of the ECOZONE, be **taxed in accordance with the applicable provisions of the**

[90] Petitioner's Memorandum, par. 57, docket, pp. 2954-2955.
[91] CTA EB Nos. 250 and 255 (CTA Case No. 6577), October 1, 2007.

customs and internal revenue laws and regulations of the Philippines.'

While it is true that the income accruing from petitioner's sale of scrap materials is incidental to petitioner's registered activity, it is specifically provided under the afore-quoted PEZA Rules that the same shall be taxed under the normal circumstances.

Clearly, the scrap sales amounting to P4,069,919.36 qualify as gross income subject to normal corporate income tax rate (34% effective January 1, 1998 and 33% effective January 1, 1999) under *Section 27*, in relation to *Sections 31 and 32 of the NIRC of 1997, as amended* xxx."

Petitioner contends that scrap sales amounting to ₱2,734,561.00 was properly subjected to VAT as declared in its returns.

The ICPA's verification[92] shows that the ₱7,428,675.20[93] total sales subjected to output VAT for the four quarters of FY 2005 included scrap sales amounting to ₱2,734,561.00, presented as Other Income in the AFS.[94] Save for the amount of ₱5,300.30, the difference of ₱4,688,814.20 (₱7,428,675.20 less ₱2,734,561.00) was accounted for to be pertaining to sales of consumables.

A summary of comparison between the Schedule of Output VAT Payable and Quarterly VAT Returns shows the following:

	Total Sales per Schedule	**Sales per VAT Return**	**Difference**
	(Exhibit "TT")	*(Exhs "O-1" to "O-4")*	
1st Quarter (April-June 2004)	₱ 314,449.80	₱ 314,449.80	₱ -
2nd Quarter (July-Sept. 2004)	430,290.90	1,260,670.20	830,379.30

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92 Exhibit "XX", docket, pp. 2541-2544.
93 Exhibit "TT", docket, p. 2126.
94 Exhibit "AA", docket, p. 1915 (Other Income per AFS of ₱2,739,861.00 is higher by ₱5,300.00).

3rd Quarter (Oct.-Dec. 2004)	754,672.80	754,672.80	-
4th Quarter (Jan.-March 2005)	5,929,261.70	5,929,261.70	-
TOTAL	**₱7,428,675.20**	**₱8,259,054.50**	**₱830,379.30**

The difference amounting to ₱830,379.30 was not accounted for by both petitioner and the ICPA.

Without prejudice to our previous finding that the first Quarterly VAT Return can no longer be subjected to assessment, the Court nevertheless finds that petitioner satisfactorily proved that said scrap sales were accordingly subjected to VAT. Thus, respondent's assessment for scrap sales is cancelled.

B. Disallowed input tax

Respondent disallowed input tax amounting to ₱64,130.99 without providing legal and factual bases for the same. As such, said disallowance must not prosper for failure to comply with the requirements of Section 228 of the NIRC, as amended, that 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."

Further, the Court notes that said amount of disallowance came from the Quarterly VAT Return for the first quarter of FY 2005[95]. Since respondent's right to assess deficiency VAT for the said quarter already prescribed, the disallowance should not prosper.

In sum, the Court finds that petitioner is not liable for any deficiency VAT for FY 2005.

III. **Deficiency FWT**

Respondent's verification disclosed that there was a discrepancy on FWT remitted by petitioner. In view thereof, deficiency tax was assessed pursuant to RR No. 2-98, as amended.[96]

[95] Exhibit "O-1", Line 25B, docket, p. 1780.
[96] Exhibit "G", Details of Discrepancy, docket, p. 1725.

Per respondent's amended computation[97], petitioner is liable for deficiency FWT amounting to ₱59,235,477.76, inclusive of interest and compromise penalty, computed as follows:

Interest expense (₱10,708,536.00 x 15%)	₱ 1,606,280.40
Research and Development (Royalty ₱125,454,915.00 x 25%)	31,363,728.75
TOTAL FWT DUE	₱ 32,970,009.15
Less: filed & paid	1,593,957.49
Deficiency FWT	**₱31,376,051.66**
Interest (4/20/2005 - 9/15/2009)	27,834,426.10
Compromise	25,000.00
TOTAL	**₱59,235,477.76**

A. Interest Expense

Petitioner asserts that it already subjected to 15% FWT the amount of ₱10,708,536.00, representing interest expense arising from a finance lease agreement covering leased machines and motor vehicles. Its FWT Returns[98] and FWT Proof of Payment[99] show that FWT on the interest expense was properly withheld and remitted to the BIR.[100]

A revisit of the Final Tax Schedule[101] submitted by petitioner shows a total amount of interest expense of ₱10,708,535.49, which ties up with the amount of ₱10,708,536.00 (difference of ₱.51 due to rounding-off) disclosed in the AFS[102]. As aptly found by the ICPA, out of the ₱10,708,536.00 interest expense, only the amount of ₱10,626,329.90 was subjected to FWT in the amount of ₱1,593,949.49, broken down as follows:[103]

Exhibit	Month Covered	Interest Payment	FWT
"BB"	Apr-04	₱ 1,230,424.87	₱ 184,563.73
"BB-1"	May-04	784,416.10	117,662.42
"BB-2"	Jun-04	1,002,861.07	150,429.16
"BB-3"	Jul-04	874,132.07	131,119.81
"BB-4"	Aug-04	809,144.60	121,371.69

[97] Exhibit "I", docket, p. 1755.
[98] Exhibit "BB".
[99] Exhibit "CC".
[100] Petitioner's Memorandum, par. 61, docket, p. 2956.
[101] Exhibit "OO", docket, p. 2115.
[102] Exhibit "AA", docket, p. 1915.
[103] Exhibit "XX", docket, p. 2547.

"BB-5"	Sep-04	900,733.13	135,109.97
"BB-6"	Oct-04	862,010.00	129,301.50
"BB-7"	Nov-04	1,010,504.73	151,575.71
"BB-8"	Dec-04	1,066,063.93	159,909.59
"BB-9"	Jan-05	726,481.40	108,972.21
"BB-10"	Feb-05	711,579.20	106,736.88
"BB-11"	Mar-05	647,978.80	97,196.82
		₱10,626,329.90	**₱1,593,949.49**

As to the remaining interest expense of ₱82,205.10 (₱10,708,536.00 less ₱10,626,329.90), the Final Tax Schedule[104] shows the following breakdown but in the amount of ₱82,205.64:

DATE	FINANCE CHARGE ON LEASED VEHICLE (BOT MANILA)
4/30/2004	₱ 8,746.68
5/31/2004	8,416.08
6/30/2004	8,081.36
7/31/2004	7,742.44
8/31/2004	7,399.30
9/30/2004	**7,051.86**
10/31/2004	**6,700.08**
11/30/2004	**6,343.90**
12/31/2004	**5,983.27**
1/31/2005	**5,618.13**
2/28/2005	**5,248.43**
3/31/2005	**4,874.11**
TOTAL	₱ 82,205.64

Since respondent's right to assess deficiency FWT for the months of April to August 2004 already prescribed, the Court finds that of the total interest expense not subjected to FWT, only the amount of **₱41,819.78**, corresponding to the months of September to December 2004 and January to March 2005, can be rightfully assessed deficiency FWT.

B. Research and Development (Royalty)

Respondent contends that the Research and Development costs in petitioner's AFS[105] amounting to ₱125,454,915.00, alleged as "delegation fees" by petitioner,

[104] Exhibit "OO", docket, p. 2115.
[105] Exhibit "N", Note 15, AFS, docket, p. 1936.

were clearly neither for research nor development. The said amount represents payments for the transfer to petitioner of the following: (a) glass substrate manufacturing; (b) development of customer technology contact to the related products being produced by petitioner; and (c) the creation of Next Generation Products for GD 7S Material. Such payments for transfer of technical knowledge, skill, and expertise of Hoya Corporation to petitioner are royalties subject to twenty five percent (25%) FWT, which petitioner failed to pay.[106]

Saying the contrary, petitioner invokes the provisions under the RP-Japan Tax Treaty, to wit:[107]

1. There was no need for a technology transfer from Hoya Corporation since petitioner already had the technology and manufacturing process required to produce its products as a result of the previous Know-How License Agreement it entered into with NSGC;

2. While petitioner used to pay royalties to NSGC under the Know-How License Agreement, the subsequent Termination Agreement allowed petitioner to continue using the Know-How without need to pay any royalty to NSGC. Consequently, petitioner already had the technology and manufacturing process required to produce its products. Because the existing process remained available to petitioner, there was no need to look for an entirely new manufacturing process from another licensor; and

3. Proprietary rights to results of any technology development performed by Hoya Corporation pursuant to the Technology Development Delegation Agreement belong to petitioner, not to Hoya Corporation.

Petitioner maintains that it had no obligation to pay royalties to Hoya Corporation since per their arrangement it shall own the proprietary rights over results of any

[106] Respondent's Memorandum, pars. 35-39, docket, p. 3030.
[107] Petitioner's Memorandum, pars. 63-64.3, docket, pp. 2999-3000.

technology development which runs counter to the concept of royalty agreements.[108]

Petitioner submits that the delegation fees paid were in the nature of compensation for services performed entirely in Japan by Hoya Corporation. Such services were within the meaning of research and development as they involved the application of knowledge for the production of new or substantially improved manufacturing process and products. This, says petitioner, was apparent from the Technology Delegation Implementation Plan which included the (a) development of next generation products; b) ascertainment of suitability of lapless sheet material for mass production; and c) development of technology for low cost volume production and development of process material by Hoya Corporation for petitioner.[109]

Since there was no taxable income from sources within the Philippines in connection with the delegation fees paid by petitioner to Hoya Corporation, the said fees should not be subject to FWT.[110]

The assessment should be upheld.

It was established that petitioner was formerly known as Nippon Sheet Glass Philippines, Inc. (NSGPI) previously owned by Nippon Sheet Glass Co., Ltd., a Japanese Corporation. On January 1, 1998, petitioner and NSGC entered into a Know-How License Agreement whereby petitioner agreed to pay royalties to NSGC in exchange for the right to manufacture and sell the Licensed Products using the "Know-How" as defined in the Agreement.[111]

On September 17, 2003, Hoya Corporation, a Japanese Corporation, acquired the shares of NSGC making it the parent corporation of petitioner.[112]

Hoya Corporation then restructured petitioner's operations in the Philippines which included the termination

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[108] Petitioner's Memorandum, par. 65, docket, p. 3000.
[109] Petitioner's Memorandum, par. 74, docket, p. 3006.
[110] Petitioner's Memorandum, pars. 76-77, docket, pp. 3006-3007.
[111] Exhibit "XX", Findings and Observations (on assessed delegation fees of ₱125,454,915.00), par. 3, docket, p. 2550.
[112] Exhibit "XX", Findings and Observations (on assessed delegation fees of ₱125,454,915.00), par. 4, docket, p. 2550.

of the cited Know-How License Agreement on March 1, 2004.

On the same day, Hoya Corporation and petitioner entered into a "Technology Development Delegation Agreement" whereby petitioner will delegate technology development to Hoya Corporation in exchange for delegation fees.[113]

As to whether the delegation fees paid by petitioner to Hoya Corporation under the TDDA can be considered royalty payments, the Court *En Banc*, in the case of *Commissioner of Internal Revenue vs. Smart Communications, Inc.*[114], citing *Philippine Refining Co., Inc. vs. Commissioner of Internal Revenue*[115], made a distinction between compensation for services rendered and royalty payments, thus:

> "To distinguish between compensation for service and royalty payments, one must inquire on **whether the payee has proprietary interest in the property giving rise to the income. If the payee has none, then the payment is a compensation for personal services,** if the payee has proprietary interest then the payment is royalty." *(Emphasis supplied)*

Section 6.1 of the TDDA provides that "Any result of Technology Development shall belong to NSGP".[116] This clearly shows that Hoya Corporation can have no proprietary interest in the results of the Technology Development it undertook to furnish petitioner. Hence, any payments made by petitioner to Hoya Corporation are compensation for services rendered and not royalties.

According to Section 2.57.1(I)(1) of RR No. 2-98[117], income derived from all sources within the Philippines by a

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[113] Exhibit "XX", Findings and Observations (on assessed delegation fees of ₱125,454,915.00), par. 5, docket, p. 2551.
[114] CTA EB Nos. 206 and 207 (CTA Case No. 6782), June 28, 2007.
[115] CTA Case No. 2872, January 15, 1986.
[116] Exhibit "X", docket, p. 1871.
[117] SECTION 2.57.1. *Income Payments Subject to Final Withholding Tax*. - The following forms of income shall be subject to final withholding tax at the rates herein specified;
xxx
(I) *Income Derived From all Sources Within the Philippines by Non- Resident Foreign Corporation*. - The following shall be subject to final withholding tax based on the gross amount of income and at the rate of tax prescribed therefor:

non-resident foreign corporation shall be subject to 32% FWT. Hence, it is incumbent upon petitioner to prove that the source of Hoya Corporation's income was not derived in the Philippines for the former to be relieved from payment of deficiency FWT.

Again, petitioner failed in this regard.

The List of Technical Report[118] presented by petitioner, which summarizes the Research and Development activities performed by Hoya Corporation pursuant to the TDDA and Debit Notes[119] issued by Hoya Corporation as billing to petitioner for the delegation fees, was denied admission as evidence for failure to present the original for comparison. The Court examined the Debit Notes[120] issued by Hoya Corporation as billing to petitioner for the delegation fees. These documents however merely proved the existence of service transactions rendered by Hoya Corporation to petitioner and the subsequent billing thereof. Nothing therein showed the place where the services were performed to satisfactorily convince the Court that the services were performed in Japan and the income arising from such performance were derived from Japan. Consequently, the Court deems the said services as performed in the Philippines and the income was derived also in the Philippines. As such, petitioner must pay the corresponding FWT at 32%.

The ICPA summarized petitioner's monthly payment of delegation fees to Hoya Corporation as follows:[121]

Date	**Research and Development Fee (In Japanese Yen)**	**Research and Development Fee (In Philippine Peso)**
4/30/2004	¥23,734,154.00	₱ 12,795,082.42
5/31/2004	28,370,780.00	14,432,215.79

(1) In general — On gross income derived from all sources within the Philippines such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments, or other fixed or determinable annual, periodic or casual gains, profits and income and capital gains (except capital gains realized from sale, exchange, disposition of shares of stock in any domestic corporation which is subject to capital gains tax under Sec. 28(B)(5)(c) — at the following rates:
34% - beginning January 1, 1998
33% - beginning January 1, 1999 and
32% - beginning January 1, 2000 and thereafter.

118 Exhibit "FF", docket, p. 2056.
119 Exhibit "DD" with sub-markings, docket, pp. 2000-2030.
120 Exhibit "DD" with sub-markings, docket, pp. 2000-2030.
121 Exhibit "XX", docket, p. 2549.

6/30/2004	15,688,762.00	7,944,789.08
7/31/2004	18,904,595.00	9,815,265.72
8/31/2004	13,127,403.00	6,562,388.76
9/30/2004	9,043,449.00	**4,626,628.51**
10/31/2004	12,938,998.00	**6,620,885.28**
11/30/2004	13,536,266.00	**6,989,809.02**
12/31/2004	30,035,815.00	**16,420,580.06**
1/31/2005	27,496,217.00	**14,224,510.48**
2/28/2005	24,606,071.00	**13,297,120.77**
3/31/2005	22,437,120.00	**11,725,638.91**
TOTAL	¥239,919,630.00	₱ 125,454,914.80

Since respondent's right to assess petitioner for deficiency FWT covering the months of April to August 2004 already prescribed, petitioner can only be made liable for deficiency FWT on income payments that pertain to the months of September to December 2004 and January to March 2005 in the total amount of ₱73,905,173.03.

Based on the foregoing, petitioner is liable for basic deficiency FWT in the amount of ₱23,655,928.34, computed as follows:

Interest expense (₱41,819.78 x 15%)	₱ 6,272.97
Delegation fees (₱73,905,173.03.00 x 32%)	23,649,655.37
TOTAL BASIC FWT DUE	**₱23,655,928.34**

In summary, the Court finds petitioner liable only for deficiency IT and FWT in the reduced amount of ₱24,559,077.03:

INCOME TAX		
Taxable gross income per return		₱374,237,215.00
Add: Disallowed deductions – COS		
Repairs and maintenance - Jan. 2005 - March 2005	₱79,470,133.07	
Others - Jan. 2005 - March 2005	8,198,568.72	87,668,701.79
Adjusted taxable income		₱ 461,905,916.79
Rate of tax		5%
Tax due		₱ 23,095,295.84
Less: 5% filed & paid		22,192,147.15
Basic Deficiency Income Tax		**₱ 903,148.69**

FINAL WITHHOLDING TAX		
Interest expense (₱41,819.78 x 15%)		₱ 6,272.97
Delegation fees (₱73,905,173.03.00x 32%)		23,649,655.37
TOTAL BASIC FWT DUE		**₱23,655,928.34**
TOTAL BASIC DEFICIENCY TAXES		**₱24,559,077.03**

The compromise penalties imposed by respondent for the deficiency IT and FWT in the respective amounts of ₱20,000.00 and ₱25,000.00 shall be cancelled. Pursuant to RMO 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. Settled is the rule that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[122] Absent any showing that petitioner agreed to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[123]

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent's deficiency VAT assessment against petitioner for FY 2005 in the amount of ₱529,797.79 is hereby **CANCELLED AND WITHDRAWN**. However, respondent's deficiency IT and FWT assessments against petitioner for FY 2005 are hereby **AFFIRMED WITH MODIFICATIONS**. Petitioner is hereby **ORDERED TO PAY** respondent the amount of **THIRTY MILLION SIX HUNDRED NINETY-EIGHT THOUSAND EIGHT HUNDRED FORTY-SIX PESOS AND 29/100 (₱30,698,846.29)** representing basic deficiency IT and FWT and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

	BASIC	SURCHARGE	TOTAL
Income tax	₱ 903,148.69	₱ 225,787.17	₱ 1,128,935.86

[122] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[123] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

Final withholding tax	23,655,928.34	5,913,982.09	29,569,910.43
Total	**₱24,559,077.03**	**₱6,139,769.26**	**₱30,698,846.29**

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 and FWT computed from June 15, 2005 and April 14, 2005, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱30,698,846.29 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from June 10, 2010 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice