Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

8199 CONVENIENCE CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8853
For: Assessment

Members:

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

Promulgated:
FEB 02 2018 : 2:50 pm

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on July 30, 2014 by 8199 Convenience Corporation, as petitioner, against the Commissioner of Internal Revenue, as respondent, pursuant to Section 7(a)(1)[1] of Republic Act (RA) No. 1125[2], as amended, as well as Section 3(a)(1)[3] of Rule 4 and Section 4(a)[4] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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

[2] Act Creating the Court of Tax Appeals.

[3] Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[4] 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

Petitioner prays for the cancellation and setting aside of the issued Assessment Notice Nos. 33-09-IT-4786 and 33-09-VT-4787 for alleged deficiency income tax and valued-added tax (VAT) for taxable year (TY) 2009 in the total amount of ₱10,275,013.05, including penalties.[5]

Petitioner 8199 Convenience Corporation is a domestic corporation organized and existing under the laws of the Philippines, with registered address at Nestor Building, 1578 Mabini corner Pedro Gil St., Ermita, Manila.[6] It is primarily engaged in the business of buying, selling, distributing, marketing at wholesale and retail insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description.[7]

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

Petitioner filed its Annual Income Tax Return (ITR) and Quarterly VAT Returns for TY 2009 on the following dates:

TAX TYPE		DATE OF FILING
Income Tax	Annual ITR[8] 2009	April 15, 2010
Value-added Tax	1st Quarter[9]	June 29, 2009
	2nd Quarter[10]	July 17, 2009
	3rd Quarter[11]	October 26, 2009
	4th Quarter[12]	January 25, 2010

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.

5 Par. I, Pre-Trial Order, Docket, vol. I, p. 752
6 Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. I, p. 718
7 Par. 2, JSFI, Docket, vol. I, p. 718
8 Exhibit "P-3", Docket, vol. II, pp. 1071 to 1073
9 BIR records, p. 91
10 Exhibit "P-5", Docket, vol. II, p. 1076
11 Exhibit "P-6", Docket, vol. II, p. 1077
12 Exhibit "P-7", Docket, vol. II, p. 1078

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On June 4, 2010, petitioner received Letter of Authority (LOA) No. 2009-00022985 issued by Alfredo V. Misajon, Regional Director of Revenue Region No. 6-Manila, authorizing revenue officers to examine petitioner's books of accounts and accounting records for all internal revenue taxes for the period covering January 1, 2009 to December 31, 2009.[13] In this connection, respondent issued the First, Second, and Final Requests for Presentation of Records to petitioner.[14] Respondent likewise issued a Subpoena *Duces Tecum*[15] against petitioner.

Pursuant to the said LOA, petitioner transmitted to respondent various tax returns and related documents for examination and reference on June 29, 2010.[16]

After respondent ascertained petitioner's alleged deficiency taxes amounting to ₱4,247,062.85 including increments, a Notice of Informal Conference, with schedules summary of findings, was issued on July 9, 2012 and received by petitioner on July 11, 2012.[17] The said Notice of Informal Conference as well as the schedules summary of findings were revised on July 26, 2012.[18]

Upon recommendation of the assigned revenue officer,[19] respondent issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies, and Assessment Notice Nos. 33-09-IT-4786 and 33-09-VT-4787 on January 8, 2013, assessing petitioner for deficiency income tax and VAT in the amount of ₱5,480,225.45 and ₱4,761,236.01, respectively.[20]

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[13] Par. 4, JSFI, Docket, vol. I, p. 719; Exhibit "P-1", Docket, vol. II, p. 1069; Exhibit "R-1", Docket, vol. III, p. 1610

[14] Exhibits "R-2", "R-3", and "R-4", Docket, vol. III, pp. 1611, 1612, and 1613, respectively

[15] Exhibit "R-6", Docket, vol. III, p. 1615

[16] Pars. 5 and 12, JSFI, Docket, vol. I, p. 719; Exhibits "P-2" and "P-2-1", Docket, vol. II, p. 1070

[17] Exhibits "P-11" and "P-11-1", Docket, vol. II, pp. 1161 and 1162, respectively; Exhibits "R-9" and "R-9-A", Docket, vol. III, pp. 1618 and 1619, respectively

[18] Exhibits "P-12" and "P-12-1", Docket, vol. II, pp. 1163 and 1164, respectively; Exhibits "R-10" and "R-10-A", Docket, vol. III, pp. 1620 and 1621, respectively

[19] Exhibit "R-11", Docket, vol. III, p. 1622

[20] Exhibits "R-17", "R-18", and "R-19", Docket, vol. III, pp. 1628 to 1629, 1630, and 1631, respectively

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Thereafter, respondent issued a Formal Letter of Demand (FLD)[21] dated January 24, 2013 with Details of Discrepancies[22], and Assessment Notice Nos. 33-09-VT-4787[23] and 33-09-IT-4786[24]; which petitioner received on January 25, 2013, assessing the latter for deficiency income tax and VAT in the amounts of ₱5,497,415.40 and ₱4,777,597.65, respectively.[25] In the Details of Discrepancies, respondent disallowed fifty percent (50%) of the purchases and operating expenses for being unsupported; and the said assessment was made based on the best evidence obtainable rule pursuant to Section 6(B) of the NIRC of 1997, as amended.[26]

Thus, petitioner filed its written protest against the aforesaid assessments on February 6, 2013.[27]

Respondent acknowledged petitioner's written protest through a Letter dated February 25, 2013, and informed the latter that its tax case Docket was returned to Revenue District Office (RDO) No. 33, Manila.[28] On March 8, 2013, petitioner was further informed that its tax case was reassigned to another revenue officer, and it was requested to submit the required supporting documents.[29]

Petitioner then transmitted its accounting records pertinent to the assessed deficiency taxes on May 7, 2013 and on June 17, 2013.[30]

After re-investigation, respondent found petitioner still liable for deficiency taxes; thus, a Notice of Informal Conference was issued on May 22, 2013 and it was received by petitioner on May 23, 2013.[31]

On February 3, 2014, petitioner received a Letter dated January 28, 2014, signed by OIC-Regional Director Simplicio A. Madulara, stating that petitioner is liable to pay deficiency income tax and VAT

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[21] Exhibits "P-13" and "P-13-1", Docket, vol. II, pp. 1165 to 1166, respectively; Exhibit "R-20", Docket, vol. III, pp. 1632 to 1633
[22] Exhibit "P-13-2", Docket, vol. II, p. 1167; Exhibit "R-20-A", Docket, vol. III, p. 1634
[23] Exhibit "P-13-3", Docket, vol. II, p. 1168
[24] Exhibit "P-13-4", Docket, vol. II, p. 1169
[25] Par. 6, JSFI, Docket, vol. I, p. 719
[26] Par. 11, JSFI, Docket, vol. I, pp. 719 to 720
[27] Par. 7, JSFI, Docket, vol. I, p. 719; Exhibits "P-14", "P-14-1", and "P-14-2", Docket, vol. II, pp. 1170 to 1175
[28] Exhibit "P-15", Docket, vol. II, p. 1179; Exhibit "R-21", Docket, vol. III, p. 1635
[29] Exhibit "P-16", Docket, vol. II, p. 1180; Exhibit "R-23", Docket, vol. III, p. 1637
[30] Exhibits "P-17", "P-17-1", "P-18", and "P-18-1", Docket, vol. II, pp. 1182 and 1196, respectively
[31] Exhibit "R-25", Docket, vol. III, p. 1639

for TY 2009 in the amount of ₱5,497,415.40 and ₱4,777,597.65, respectively; and categorically indicating that "This serves as our Final Decision on the Disputed Assessment."[32]

On February 28, 2014, petitioner filed simultaneously its motion for reconsideration of the Final Decision on Disputed Assessment (FDDA) dated January 28, 2014 with the Office of the Commissioner of Internal Revenue and with the Revenue Region No. 6-Manila.[33] Petitioner subsequently received a letter dated April 14, 2014 from Revenue Region No. 6, signed by Ma. Gracia B. Javier, stating that they cannot act favorably on petitioner's motion for reconsideration since it was submitted beyond the thirty (30)-day period to act on the said FDDA.[34]

On July 10, 2014, petitioner received a Preliminary Collection Letter (PCL) dated June 30, 2014, requesting payment of the alleged deficiency income tax and VAT.[35] Respondent subsequently issued a Final Notice Before Seizure on July 9, 2014.[36]

As a result, petitioner filed the instant Petition for Review[37] before this Court on July 30, 2014.

In the Answer[38] filed on September 11, 2014, respondent interposed the following special and affirmative defenses:

> "24. The Honorable Court has no jurisdiction to entertain the instant petition for review. Assessment Notice Nos. 33-09-IT-4786 and 33-09-VT-4787 issued on January 24, 2013 has become final and demandable for failure of the petitioner to submit all relevant supporting documents within sixty (60) days from filing of protest. Section 228 of the Tax Code of 1997 provides, thus:

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[32] Par. 16, JSFI, Docket, vol. I, p. 720; Exhibit "P-19", Docket, vol. II, p. 1197; Exhibit "R-29", Docket, vol. III, p. 1643
[33] Pars. 8 and 18, JSFI, Docket, vol. I, pp. 719 and 720, respectively; Exhibits "P-20" and "P-21", Docket, vol. II, pp. 1198 to 1205 and pp. 1546 to 1554, respectively
[34] Par. 9, JSFI, Docket, vol. I, p. 719; Exhibit "P-22", Docket, vol. II, p. 1555; Exhibit "R-30", Docket, vol. III, p. 1644
[35] Par. 10, JSFI, Docket, vol. I, p. 719; Exhibit "P-23", Docket, vol. II, p. 1556; Exhibit "R-33", Docket, vol. III, p. 1647
[36] Exhibit "R-34", Docket, vol. III, p. 1648
[37] Docket, vol. I, pp. 6 to 18
[38] Docket, vol. I, pp. 88 to 93

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> *SEC. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:*
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> *xxx xxx xxx*
>
> *Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.* ***Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.*** (emphasis supplied)
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> xxx xxx xxx

25. Moreover, herein petitioner engaged itself in forum-shopping when it filed two (2) separate motions for reconsideration to the Final Decision on Disputed Assessment, one with the Office of the Commissioner of Internal Revenue on February 28, 2014, and the other motion filed with the Office of the OIC-Regional Director, RR6 Manila through registered mail allegedly on February 28, 2014;

26. The assessment is valid and correct and the petitioner has the burden of proof to impugn its validity *(Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil. 647)*, Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise *(Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 671)*; and assessments duly made by the BIR examiner and approved by her superior officers will not be disturbed *(Gutierrez vs. Villegas, 8 SCRA 547)*.

27. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only

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that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right *(Tan Guan vs. Court of Tax Appeals, et Al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co. 107 Phil. 967 [1960]).*

28. Taxes are the life blood of the government and should be collected without unnecessary hindrance (Marcos II vs. Court of Appeals, 273 SCRA 47). Public policy dictates that collection of taxes should be accorded paramount importance for the sustenance of government. Thus, for the interest of the government, the subject assessment must be paid by the respondent without unnecessary delay."

Petitioner submitted its Pre-Trial Brief[39] on October 24, 2014; while the Respondent's Pre-Trial Brief[40] was filed on October 28, 2014.

The parties submitted their Joint Stipulation of Facts and Issues[41] on November 19, 2014. A Supplemental Joint Stipulation of Facts and Issues[42] was subsequently filed pursuant to the Court's Resolution[43] dated November 26, 2014. The Court issued a Pre-Trial Order[44] on February 6, 2015, declaring, among others, the termination of the pre-trial.

Upon motion[45] of petitioner, the Court appointed Ms. Schwendi S. Fajardo as an Independent Certified Public Accountant (ICPA) on December 4, 2014.[46]

During trial, petitioner presented Mr. Joseph Cedric Calica and Ms. Schwendi S. Fajardo as its witnesses. Thereafter, petitioner formally offered its documentary and testimonial evidence, consisting of Exhibits "P-1" to "P-25" and "P-27" to "P-45", inclusive of submarkings; which were all admitted by the Court, except for Exhibits "P-17-3", "P-17-4", "P-17-5", "P-17-6", "P-17-7", "P-17-8", "P-17-9", "P-17-10", "P-17-11", "P-17-12", "P-17-13", "P-17-14", and "P-37".[47]

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[39] Docket, vol. I, pp. 109 to 116
[40] Docket, vol. I, pp. 606 to 611
[41] Docket, vol. I, pp. 718 to 724
[42] Docket, vol. I, pp. 748 to 749
[43] Docket, vol. I, p. 726
[44] Docket, vol. I, pp. 752 to 760
[45] Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals, Docket, vol. I, pp. 710 to 712
[46] Resolution, Docket, vol. I, p. 744
[47] Resolution dated September 16, 2015, Docket, vol. III, pp. 1561 to 1562

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The documentary evidence formally offered by the petitioner and admitted by the Court are as follows:

Exhibit:	**Description:**
P-1	Letter of Authority (LOA) No. 2007-00022985 issued and signed by the Regional Director of Revenue Region No. 6 – Manila's Alfredo V. Misajon
P-2	Transmittal Letter of Petitioner, dated June 28, 2010 addressed to Revenue Officer Mr. Remigio N. Tiangco, Jr. submitted through its representative, AMC & Associates
P-2-1	Stamp of Receipt by BIR on June 29, 2010 of the Transmittal Letter
P-3	Petitioner's Annual Income Tax Return for Year 2009
P-4	Amended Quarterly VAT Return for the 1st Quarter of 2009
P-5	Quarterly VAT Return for the 2nd Quarter of 2009
P-6	Quarterly VAT Return for the 3rd Quarter of 2009
P-7	Quarterly VAT Return for the 4th Quarter of 2009
P-8	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of January 2009
P-8-1	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of February 2009
P-8-2	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of March 2009
P-8-3	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of April 2009
P-8-4	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of May 2009
P-8-5	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of June 2009
P-8-6	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of July 2009
P-8-7	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of August 2009
P-8-8	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of September 2009
P-8-9	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of October 2009
P-8-10	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of November 2009
P-8-11	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the month of December 2009
P-9	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of January 2009
P-9-1	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of February 2009

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P-9-2	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of March 2009
P-9-3	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of April 2009
P-9-4	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of May 2009
P-9-5	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of June 2009
P-9-6	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of July 2009
P-9-7	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of August 2009
P-9-8	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of September 2009
P-9-9	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of October 2009
P-9-10	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of November 2009
P-9-11	Monthly Remittance Return of Income Taxes Withheld on Compensation for the month of December 2009
P-10	Year 2009 Audited Financial Statements
P-11	BIR Notice of Informal Conference, addressed to Mr. Melvin S. Gervacio dated July 9, 2012 signed by Ms. Josephine S. Virtucio, Revenue District Officer, RDO 33
P-11-1	Page 2 of BIR Notice of Informal Conference, addressed to Petitioner dated July 9, 2012 signed by Ms. Josephine S. Virtucio, Revenue District Officer, RDO 33
P-12	Revised BIR Notice of Informal Conference, addressed to Petitioner dated July 26, 2012 signed by Ms. Josephine S. Virtucio, Revenue District Officer, RDO 33
P-12-1	Revised BIR Notice of Informal Conference, addressed to Petitioner dated July 26 2012 signed by Ms. Josephine S. Virtucio, Revenue District Officer, RDO 33
P-13 to P-13-2 inclusive	Formal Letter of Demand (FLD), addressed to Petitioner, dated January 24, 2013, signed by Mr. Simplicio A. Madulara, OIC-Regional Director, Revenue Region No. 6
P-13-3	Assessment Notice No. 33-09-VT-4787, addressed to Petitioner, dated January 24, 2013, signed by Mr. Simplicio A. Madulara, OIC-Regional Director, Revenue Region No. 6
P-13-4	Assessment Notice No. 33-09-IT-4786, addressed to Petitioner, dated January 24, 2013, signed by Mr. Simplicio A. Madulara, OIC-Regional Director, Revenue Region No. 6
P-14	Petitioner's Protest Letter, submitted through its representative, AMC & Associates dated February 5, 2013
P-14-1	Petitioner's Protest Letter dated February 5, 2013 was stamped Received by the BIR, R.R. No. 6 on February 6, 2013

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P-14-2	Signature of Petitioner's authorized representative, Joseph Cedric V. Calica in the Petitioner's Protest Letter dated February 5, 2013
P-15	Letter for BIR R.R. No. 6 addressed to Petitioner's authorized representative, Mr. Joseph V. Calica, dated February 25, 2013, signed by Mr.Simplicio A. Madulara, OIC-Regional Director, Revenue Region No. 6
P-16	Notice to Taxpayer addressed to Petitioner dated March 8, 2013, signed by Ms. Josephine S. Virtucio, Revenue District Officer, RDO 33
P-17	Petitioner's Transmittal Letter addressed to Ms. Josephine S. Virtucio, Revenue District Officer, RDO 33 dated May 6, 2013
P-17-1	Petitioner's Transmittal Letter addressed to Ms. Josephine S. Virtucio, Revenue District Officer, RDO 33 dated May 6, 2013 was stamped received by the BIR on May 7, 2013
P-17-2	Petitioner's Schedule of Purchases for the year 2009 as an attachment of Petitioner's Transmittal Letter dated May 6, 2013
P-18	Petitioner's transmittal letter addressed to Ms. Josephine S. Virtucio, Revenue District Officer, RDO 33 dated June 14, 2013 submitted through its authorized representative
P-18-1	Petitioner's transmittal letter addressed to Ms. Josephine S. Virtucio, Revenue District Officer, RDO 33 dated June 14, 2013 stamped Received by BIR on June 17, 2013 submitted through its authorized representative
P-19	BIR's Final Decision on Disputed Assessment (FDDA) dated January 28, 2014 addressed to Petitioner's authorized representative issued and signed by Mr. Simplicio A. Madulara, OIC-Regional Director, Revenue Region No. 6
P-20	Petitioner's Motion for Reconsideration to the FDDA addressed to the Commissioner of Internal Revenue, submitted through its authorized representative
P-20-1	STAMPED received by the BIR Office of the Commissioner, dated February 28, 2014
P-20-2	Signature of Petitioner's authorized representative, Mr. Joseph Cedric V. Calica
P-21	Petitioner's Motion for Reconsideration addressed to Mr. Simplicio A. Madulara, OIC-Regional Director, Revenue Region No. 6 dated February 24. 2014 submitted through its authorized representative
P-21-1	Registry Receipt No. 2598 dated February 28, 2014
P-21-2	Signature of Petitioner's authorized representative, Mr. Joseph Cedric V. Calica
P-22	Letter from BIR Revenue Region No. 6 signed by Ms. Ma. Gracia B. Javier, OIC, dated April 14, 2014

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P-23	Preliminary Collection Letter (PCL) from BIR Revenue Region No. 6 signed by Ms. Marivic G. Tulio, Chief Collection Division
P-24	Judicial Affidavit of proposed ICPA, Schwendi S. Fajardo dated November 28, 2014
P-24-a	Signature of Schwendi S. Fajardo
P-25	Schedule of the 2009 Cost of Sales of Petitioner
P-27	Schedule of the 2009 Security Services of Petitioner
P-28	Schedule of the 2009 Depreciation of Petitioner
P-29	Schedule of the 2009 Office Supplies Expense of Petitioner
P-30	Schedule of the 2009 Insurance Expense of Petitioner
P-31-1 to P-31-2	Schedule of the 2009 Other Operating Expenses of Petitioner
P-32-1 to P-32-12	Cash Invoices issued by Philippine Seven Corporation to Petitioner
P-33-1 to P-33-45	Supporting documents to substantiate the claim for Security Services Expenses
P-34	Depreciation Expense of Petitioner as stated in its 2009 Audited Financial Statements
P-35-1 to P-35-120	Supporting documents to substantiate the claim for Office Supplies Expenses
P-36-1 to P-36-17	Supporting documents to substantiate the claim for Other Operating Expenses
P-38-1 to P-38-6	Schedule of Expenses per Petitioner's Books of Accounts for the 1st Quarter of 2009
P-39-1 to P-39-6	Schedule of Expenses per Petitioner's Books of Accounts for the 2nd Quarter of 2009
P-40-1 to P-40-6	Schedule of Expenses per Petitioner's Books of Accounts for the 3rd Quarter of 2009
P-41-1 to P-41-6	Schedule of Expenses per Petitioner's Books of Accounts for the 4th Quarter of 2009
P-42-1 to P-42-7	Supporting documents to substantiate the claim for Rental Expenses
P-43	Independent Certified Public Accountant (ICPA) Report of Arrellano, Evangelista & Co., CPAs signed by its Partner, Schwendi S. Fajardo dated January 20, 2015
P-43-1	Signature of Scwendi S. Fajardo on the ICPA Report dated January 20, 2015
P-44	Judicial Affidavit of ICPA Schwendi S. Fajardo, dated February 26, 2015
P-44-1	Signature of Schwendi S. Fajardo
P-45	Judicial Affidavit of Joseph Cedric V. Calica, dated October 24, 2014
P-45-1	Signature of Joseph Cedric V. Calica

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On the other hand, respondent presented Mr. Marvin C. Sevilla and Mr. Allan C. Quizon as his witnesses. Then, respondent's documentary evidence as well as testimonial evidence were formally offered, which were all admitted by the Court.[48]

The following are respondent's documentary evidence:

Exhibit:	Description:
R-1	Letter of Authority No. LOA 2007 00022985 dated May 24, 2010
R-2	First Request for Presentation of Records dated May 31, 2010
R-3	Second Request for Presentation of Records
R-4	Final Request of Presentation of Records
R-5	Recommendation for Issuance of Subpoena Duces Tecum
R-6	Subpoena Duces Tecum (SDT No. RR6-2011-0854) dated November 10, 2011
R-7	Affidavit of Service of Subpoena Duces Tecum
R-8	2nd Indorsement dated May 30, 2012
R-9	Notice of Informal Conference dated July 09, 2012 with attached Computation of Deficiency Taxes
R-9-A	Attached Computation of Deficiency Taxes
R-10	Revised Notice of Informal Conference dated July 26, 2012 with attached Computation of Deficiency Taxes
R-10-A	Attached Computation of Deficiency Taxes
R-11	Report of Investigation
R-12	Revenue Officer's Audit Report on Income Tax (BIR Form 0500)
R-13	Revenue Officer's Audit Report on VAT (BIR Form 0507)
R-14	1st Indorsement
R-15	Assignment Slip
R-16	Revenue Officer's Audit Report on Income Tax (BIR Form 0500)
R-17	Preliminary Assessment Notice dated January 08, 2013 with Details of Discrepancies
R-18	Assessment Notice No. 33-09-IT-4786 dated January 24, 2013
R-19	Assessment Notice No. 33-09-VT-4787 dated January 24, 2013
R-20	Formal Letter of Demand dated January 24, 2013
R-20-A	Details of Discrepancies
R-21	BIR letter to petitioner dated February 25, 2013
R-22	Indorsement dated February 25, 2013
R-23	Notice to Taxpayer dated March 08, 2013
R-24	Memorandum of Assignment No. RR06-033-PRO-0213-8120 dated February 26, 2013

48 Resolution dated November 28, 2016, Docket, vol. III, pp. 1658 to 1659

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R-25	Notice of Informal Conference dated May 23, 2013
R-26	BIR letter to petitioner dated August 13, 2013
R-27	BIR letter to petitioner dated September 10, 2013
R-28	Memorandum dated September 25, 2013
R-29	BIR letter to petitioner dated January 28, 2014
R-30	BIR letter to petitioner dated April 14, 2014
R-31	Indorsement dated April 14, 2014
R-32	Memorandum of Assignment dated June 23, 2014
R-33	Preliminary Collection Letter dated June 30, 2014
R-34	Final Notice Before Seizure dated July 9, 2014
R-35	Judicial Affidavit of GS Marvin C. Sevilla
R-35-1	Signature atop the printed name "Marvin C. Sevilla"
R-36	Judicial Affidavit of RO Allan C. Quizon
R-36-1	Signature atop the printed name "Allan C. Quizon"

The Court declared the case deemed submitted for decision on February 8, 2017,[49] considering the filing of petitioner's Memorandum[50] on January 4, 2017 and of respondent's Memorandum[51] on January 23, 2017.

The parties submitted the following issues[52] for the Court's determination:

1. Whether this Court has jurisdiction to entertain the instant petition; and

2. Whether petitioner is liable for deficiency income tax and deficiency VAT in the amounts of ₱5,497,415.40 and ₱4,777,597.65, respectively.

Petitioner contends that this Court has jurisdiction over the present case. According to petitioner, taxpayer may dispute an assessment by filing a protest within thirty days from receipt of the assessment; and if the protest is denied, such denial may be appealed to the Court of Tax Appeals, otherwise, the assessment shall become final. Allegedly, if the denial was made by the Commissioner's duly authorized representative, the taxpayer has the option to either (a) elevate the case to the Court of Tax Appeals, or (b) file a motion for

[49] Resolution, Docket, vol. III, p. 1693
[50] Docket, vol. III, pp. 1660 to 1677
[51] Docket, vol. III, pp. 1686 to 1691
[52] Par. II, JSFI, Docket, vol. I, p. 721

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reconsideration with the Office of the Commissioner of Internal Revenue within 30 days from receipt of such denial to prevent it from being considered final, executory and demandable.

Petitioner avers that it received the FDDA issued by OIC-Regional Director Simplicio A. Madulara on February 3, 2013. Thus, it simultaneously filed the alleged motion for reconsideration with the Office of the Commissioner of Internal Revenue and with the Revenue Region No. 6-Manila on February 28, 2014, allegedly within thirty days from receipt of the FDDA. Petitioner points out that it was constrained to treat the PCL issued by Revenue Region No. 6 as denial of its protest in order to protect its interest.

Respondent counter-argues that this Court has no jurisdiction over this case on the ground that petitioner failed to submit all relevant supporting documents within sixty (60) days from filing of protest. Respondent asserts that he informed petitioner that the latter's entire 2009 tax case would be returned to RDO No. 33 for evaluation and appropriate action; and that respondent requested petitioner to submit its supporting documents. Allegedly, respondent again informed petitioner that its tax case was forwarded to the Assessment Division for appropriate action for failure of petitioner to submit complete documentary requirements within sixty days from the date of filing of written protest.

Section 228 of the National Internal Revenue Code of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> 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.

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

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

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

Relative thereto is Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, implementing the above-stated provision, to wit:

"3.1.4 *Disputed Assessment.* – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) *Request for reconsideration* – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) *Request for reinvestigation* – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the

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reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term '*relevant supporting documents*' refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term 'the assessment shall become final' shall mean the taxpayer is barred from disputing the correctness of

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the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner." (*Emphasis supplied*)

Petitioner received the FLD and Assessment Notices on January 25, 2013.[53] Petitioner protested the said assessment on February 6, 2013.[54]

A perusal of the protest letter shows that petitioner attached its 1st, 2nd, and 3rd Quarterly VAT Returns to the said protest letter.

It must be emphasized that respondent cannot demand from petitioner what type of supporting documents it should submit, as held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*[55], thus:

"The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the

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[53] Exhibits "P-13", "P-13-1", "P-13-3", and "P-13-4", Docket, vol. II, pp. 1165 to 1166, 1168, and 1169, respectively; Exhibit "R-20", Docket, vol. III, pp. 1632 to 1633

[54] Exhibits "P-14", "P-14-1", and "P-14-2", Docket, vol. II, pp. 1170 to 1175

[55] G.R. Nos. 172045-46, June 16, 2009

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> taxpayer. **The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted.** Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit." (*Emphasis supplied*)

However, respondent acknowledged petitioner's written protest through a Letter dated February 25, 2013; and respondent required petitioner through a Letter dated March 8, 2013 to submit the needed requirements and supporting documents for the protest, a copy of which petitioner received on March 15, 2013.[56] Accordingly, petitioner complied and transmitted its accounting records pertinent to the assessed deficiency taxes on May 7, 2013 and on June 17, 2013.[57]

Based on the foregoing, the assessment has not become final due to petitioner's purported failure to submit supporting documents. It is noteworthy that respondent requested the submission of supporting documents after the filing of the protest letter, and petitioner complied with the same.

Further, petitioner received the FDDA of respondent's duly authorized representative on February 3, 2014.[58]

Pursuant to the provision of RR No. 12-99, as amended by RR No. 18-2013, petitioner had thirty (30) days from February 3, 2014 within which to file a request for reconsideration.

Since petitioner filed a motion for reconsideration before respondent on February 28, 2014[59], the same was timely filed.

Petitioner likewise filed through registered mail on February 28, 2014[60], a motion for reconsideration before respondent's duly authorized representative. However, respondent's duly authorized representative issued a Letter dated April 14, 2014, stating that petitioner's motion for reconsideration cannot be acted upon favorably

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[56] Exhibits "P-15" and "P-16", Docket, vol. II, pp. 1179 and 1180, respectively; Exhibits "R-21" and "R-23", Docket, vol. III, pp. 1635 and 1637, respectively

[57] Exhibits "P-17", "P-17-1", "P-18", and "P-18-1", Docket, vol. II, pp. 1182 and 1196, respectively

[58] Par. 16, JSFI, Docket, vol. I, p. 720; Exhibit "P-19", Docket, vol. II, p. 1197; Exhibit "R-29", Docket, vol. III, p. 1643

[59] Exhibit "P-20-1", Docket, vol. II, p. 1198

[60] Exhibit "P-21-1", Docket, vol. II, p. 1546

since it was submitted beyond the thirty-day period.[61] As such, a Preliminary Collection Letter (PCL) was issued by respondent's duly authorized representative on June 30, 2014 and received by petitioner on July 10, 2014.

Thus, petitioner filed the instant Petition for Review on July 30, 2014.

Section 7(a)(1) of Republic Act (R.A.) No. 1125, as amended by R.A. Nos. 9282 and 9503, provides:

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

Likewise, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue**

[61] Par. 9, JSFI, Docket, vol. I, p. 719; Exhibit "P-22", Docket, vol. II, p. 1555; Exhibit "R-30", Docket, vol. III, p. 1644

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Code or other laws administered by the Bureau of Internal Revenue." (*Emphasis supplied*)

Further, Section 11 of RA No. 1125, as amended by RA Nos. 9282 and 9503, provides that any party adversely affected by a decision or ruling of the Commissioner of Internal Revenue may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling.

Apparently, the PCL dated June 30, 2014, which would enforce the collection of petitioner's taxes deficiency, is the one being appealed before this Court.

Considering that such PCL involves the interpretation and application of the provisions of the NIRC of 1997, as amended, it falls within the phrase "other matters arising under the NIRC", pursuant to Section 7(a)(1) of R.A. No. 1125, as amended by R.A. Nos. 9282 and 9503.

Moreover, inasmuch as the PCL was received by petitioner on July 10, 2014[62], petitioner had thirty days from the said date or until August 9, 2014 within which to appeal the same.

Since the Petition for Review was filed on July 30, 2014, which was within thirty days from receipt of the PCL, this Court has jurisdiction over this petition.

Nevertheless, the right of respondent to assess petitioner for deficiency VAT covering the 1st, 2nd, and 3rd quarters of TY 2009 has already prescribed.

Section 203 of the NIRC of 1997, as amended, provides for the period when assessment can be made, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no

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[62] Exhibit "P-23", Docket, vol. II, p. 1556; Exhibit "R-33", Docket, vol. III, p. 1647

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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."

In relation thereto, Section 114 of the NIRC of 1997, as amended, states:

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

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

Based on the foregoing provisions, respondent has three years within which to assess petitioner for deficiency VAT. The three-year period commences from the last day prescribed by law for filing of the return, which is twenty-five (25) days following the close of each taxable quarter. However, if the return was filed beyond the required period, the three-year period shall be counted from the day the return was filed.

Records indicate that petitioner filed its Quarterly VAT Returns on the following dates:

VAT RETURNS	DATE OF FILING	LAST DAY TO ASSESS
1st Quarter[63]	June 29, 2009	June 29, 2012
2nd Quarter[64]	July 17, 2009	July 25, 2012
3rd Quarter[65]	October 26, 2009	October 26, 2012
4th Quarter[66]	January 25, 2010	January 25, 2013

63 BIR records, p. 91
64 Exhibit "P-5", Docket, vol. II, p. 1076
65 Exhibit "P-6", Docket, vol. II, p. 1077
66 Exhibit "P-7", Docket, vol. II, p. 1078

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Therefore, the right of respondent to assess petitioner for deficiency VAT has already prescribed with respect to the 1st, 2nd, and 3rd quarters of TY 2009, considering that the Formal Letter of Demand and Assessment Notices were received by petitioner only on January 25, 2013. However, with respect to the 4th quarter, it has not yet lapsed so petitioner may still be assessed on the same.

The Court shall now proceed to determine whether petitioner is liable for deficiency income tax and VAT.

I. DEFICIENCY INCOME TAX (₱5,497,415.40)

In arriving at the deficiency income tax assessment of ₱5,497,415.40, respondent disallowed 50% of petitioner's claimed purchases and operating expenses amounting to ₱11,283,031.50 for being unsupported, 100% of petitioner's claimed depreciation expense amounting to ₱178,360.00 for failure to provide the required schedule, and petitioner's claimed security services amounting to ₱318,834.00 due to non-withholding of tax. Below is respondent's detailed computation of the alleged deficiency income tax:[67]

Taxable Net Income per ITR		₱ 25,741.00
Add: Adjustments		
50% Disallowed Purchases & Operating Exp. (Schedule 1)	₱11,283,031.50	
100% Disallowed Depreciation Expense[68]	178,360.00	
Disallowed Security Services - non-withholding	318,834.00	11,780,225.50
Adjusted Taxable Net Inome		₱ 11,805,966.50
Income Tax Due		₱ 3,541,789.95
Less: Payments		7,722.30
Deficiency Income Tax		₱ 3,534,067.65
Add: Surcharge (Sec. 248)		-
Interest p.a. from ___ to 01/25/2013 (Sec. 249)		1,963,347.75
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)		-
TOTAL AMOUNT DUE & COLLECTIBLE		**₱ 5,497,415.40**

A. 50% Disallowed Purchases and Operating Expenses (₱11,283,031.50)

[67] Exhibits "P-13" and "P-13-2", Docket, vol. II, pp. 1165 and 1167
[68] Erroneously indicated in the Formal Letter of Demand as 50% Disallowed Depreciation Expense

In the Details of Discrepancies attached to the Formal Letter of Demand, the disallowance of ₱11,283,031.50 is broken down as follows:[69]

Schedule 1 - 50% Disallowed Purchases & Oper. Exp.	**Amount**	**50% thereof**
Purchases	₱ 19,955,784.00	₱ 9,977,892.00
Operating Expenses		
Office Supplies	161,776.00	80,888.00
Insurance	13,011.00	6,505.50
Other Operating Expense	2,435,492.00	1,217,746.00
Total	**₱22,566,063.00**	**₱11,283,031.50**

Respondent based the 50% disallowed purchases and operating expenses on Section 6(B) of the NIRC of 1997, as amended, and as implemented by Revenue Memorandum Circular (RMC) No. 23-00, in relation to Section 34(A)(1)(b) of the same Code, pertinent portions of which are quoted hereunder for easy reference:

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

[69] Exhibit "P-13-2", Docket, vol. II, p. 1167

"REVENUE MEMORANDUM CIRCULAR NO. 23-00

SUBJECT: *Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the 'Best Evidence Obtainable'*

TO: *All Internal Revenue Officers and Others Concerned*

xxx xxx xxx

SECTION 2. *Prescribed Revenue Procedures.* –

xxx xxx xxx

2.3 *Assessment Based on Best Evidence Obtainable.* – **An assessment based on best evidence obtainable is justified when any of the grounds provided by law is clearly established,** viz:

1. **The report or records requested from the taxpayer are not forthcoming** i.e. the records are lost; refusal of the taxpayer to submit such records;

2. The reports submitted are false, incomplete or erroneous.

In every case where a taxpayer is ordered to be examined and he refuses or fails to submit his records giving rise to the issuance of a *subpoena duces tecum* pursuant to RMO No. 35-90, the assessment shall only be issued after a criminal case has been instituted for failure to obey summons.

After filing of the complaint against the taxpayer for violation of the *Subpoena Duces Tecum*, the Legal Division/Prosecution Division shall immediately return the Docket of the case to the concerned Revenue Officer. The Revenue Officer shall, upon receipt of the Docket, immediately

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proceed to determine the taxpayer's deficiency internal revenue tax liability in accordance with the 'Best Evidence Obtainable.'

2.4 *Existing Revenue Procedures and Jurisprudence Governing Assessment Based on the Best Evidence Obtainable.* – Provided hereunder are the existing revenue procedures and jurisprudence governing issuance of a deficiency tax assessment based on the best evidence obtainable:

xxx xxx xxx

(c) *Assessment Based on Estimate; 50% Rule, in the Absence of Receipts to Prove Actual Amount of Expense De*duction. – The Court held in the Mariano Zamora case that, if there is a showing that expenses have been incurred but the exact amount thereof cannot be ascertained due to absence of documentary evidence, it is the duty of the BIR to make an estimate of the deduction that may be allowable in computing the taxpayer's taxable income, bearing heavily against the taxpayer whose inexactitude is of his own making. That disallowance of 50% of the taxpayer's claimed deduction is valid."

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

xxx xxx xxx

(A) *Expenses.* –

(1) *Ordinary and Necessary Trade, Business or Professional Expenses.* –

xxx xxx xxx

(b) *Substantiation Requirements.* – No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the

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development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

On the other hand, petitioner contends that respondent's assessment is not accurate. The disallowed expenses per Schedule 1 are actually supported by official receipts (ORs), invoices or other adequate records in accordance with Section 34(A)(1)(b) of the NIRC of 1997, as amended.

Petitioner emphasizes that throughout the course of the tax investigation, petitioner has consistently made it known in its communication with the Revenue Officer that the documents supporting the expenses are voluminous, and therefore has requested that the examinations be conducted at the office of petitioner where said documents are kept.

As early as June 29, 2010, petitioner has allegedly submitted to Revenue Officer Remigio N. Tiangco, Jr. of Revenue District No. 33 various tax returns and related documents for examination and reference.

Furthermore, petitioner argued that it submitted the schedule of its purchases for 2009 with corresponding invoices for respondent's examination and verification.

Alleging that these expenses were incurred directly or related to the management and operation of the company and were supported with proper documentation, petitioner insists that these expenses should be allowed as valid deductions for income tax purposes.

Upon careful examination of petitioner's supporting documents, the Court has noted the following:

A.1. 50% Disallowed Purchases (₱9,977,892.00)

Petitioner's total purchases during the year 2009 amounted to ₱19,955,784.00 as reflected in the following computation of its claimed deduction for cost of sales of ₱19,803,692.00[70]:

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[70] 2009 Annual Income Tax Return, line 18C; Notes to Financial Statements, December 31, 2009, Note 10, BIR records, pp. 38 and 5, respectively

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Inventory at beginning of year	₱ 1,752,033.00
Purchases	19,955,784.00
Materials available for sale	₱ 21,707,817.00
Inventory at end of year	1,904,125.00
Cost of Sales	₱ 19,803,692.00

Based on the invoices[71] supporting the above purchases, petitioner was able to substantiate an amount of ₱20,298,378.82, detailed below, which is higher than the reported amount of ₱19,955,784.00:

Exhibit	Invoice		Purchases			12% VAT	Invoice Amount
	No.	Date	Exempt	Vatable	Total		
P32-1	1985	1/31/09	₱ 7,794.09	₱ 1,763,834.48	₱ 1,771,628.57	₱ 211,660.14	₱ 1,983,288.71
P32-2	2108	2/28/09	8,091.80	1,762,069.06	1,770,160.86	211,448.29	1,981,609.15
P32-3	2230	3/31/09	-	1,747,142.71	1,747,142.71	208,928.32	1,956,071.03
P32-4	2352	4/30/09	5,223.80	1,785,033.93	1,790,257.73	204.06	2,004,461.79
P32-5	2477	5/31/09	8,513.92	1,920,262.76	1,928,776.68	230,431.53	2,159,208.21
P32-6	0107	6/30/09	5,355.38	1,539,971.72	1,545,327.10	184,796.61	1,730,123.71
P32-7	0234	7/31/09	8,327.94	1,598,220.46	1,606,548.40	191,786.46	1,798,334.86
P32-8	0364	8/31/09	9,308.63	1,740,784.94	1,750,093.57	208,894.19	1,958,987.76
P32-9	0490	9/30/09	4,823.02	1,591,866.83	1,596,689.85	191,024.02	1,787,713.87
P32-10	0633	10/31/09	9,490.64	1,599,412.97	1,608,903.61	191,929.56	1,800,833.17
P32-11	0771	11/30/09	9,276.01	1,739,620.27	1,748,896.28	208,754.43	1,957,650.71
P32-12	0920	12/31/09	6,721.96	1,427,231.50	1,433,953.46	171,267.78	1,605,221.24
			₱82,927.19	**₱20,215,451.63**	**₱20,298,378.82**	**₱2,425,125.39**	**₱22,723,504.21**

Considering the foregoing, respondent's 50% disallowance on petitioner's claimed purchases must be cancelled for lack of factual basis.

A.2. 50% Disallowed Operating Expenses

A.2.a. Office Supplies (₱80,888.00)

Petitioner submitted the Schedule of its 2009 Office Supplies[72], as well as supporting documents composed of tape receipts, official receipts and cash invoices from vendors.[73]

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[71] Exhibits "P32-1 to P32-12", attached to the ICPA Report (Exhibit "P-43")
[72] Exhibit "P29", attached to the ICPA Report (Exhibit "P-43")
[73] Exhibits "P35-1" to "P35-120", attached to the ICPA Report (Exhibit "P-43")

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Based on our perusal of these documents, the Court finds that due to limitations in photocopying, some documents were unreadable. Moreover, the Court finds that the supporting documents provided by petitioner, as far as those which are readable, amounted only to ₱17,114.90, detailed as follows:

Exhibit	Vendor	OR / Invoice Date	OR / Invoice Amount	12% VAT	Net OR/Inv Amount
P35-1 to P35-19	Unreadable photocopy				
P35-20	Robinson's Supermarket Ermita	2/2/2009	₱ 408.00	₱ 43.68	₱ 364.32
P35-21	Unreadable photocopy				
P35-22	NBS – Ermita	9/23/2009	289.50	31.02	258.48
P35-23	Unreadable photocopy				
P35-24	Unreadable photocopy				
P35-25	NBS – Ermita	2/27/2009	67.50	7.23	60.27
P35-26	Unreadable photocopy				
P35-27	NBS – Ermita	3/9/2009	72.75	7.79	64.96
P35-28	Robinson's Department Store	3/10/2009	239.00	25.61	213.39
P35-29	Robinson's Supermarket Ermita	3/10/2009	129.00	13.82	115.18
P35-30	Unreadable photocopy				
P35-31	NBS – Ermita	3/22/2009	26.00	2.79	23.21
P35-32	Unreadable photocopy				
P35-33	7-Eleven	3/23/2009	10.00	1.07	8.93
P35-34	Unreadable photocopy				
P35-35	7-Eleven	3/25/2009	13.00	1.39	11.61
P35-36	7-Eleven	3/26/2009	12.00	1.29	10.71
P35-37	7-Eleven	3/26/2009	25.00	2.68	22.32
P35-38	7-Eleven	3/26/2009	275.00	29.47	245.53
P35-39	7-Eleven	3/27/2009	14.00	1.50	12.50
P35-40	7-Eleven	3/31/2009	25.00	2.68	22.32
P35-41	Robinson's Handyman Inc.	4/3/2009	69.75	7.47	62.28
P35-42	Robinson's Handyman Inc.	4/5/2009	84.75	9.08	75.67
P35-43	7-Eleven	4/7/2009	6.00	0.64	5.36
P35-44	7-Eleven	4/7/2009	55.00	5.89	49.11
P35-45	NBS - Ermita	4/7/2009	30.00	3.21	26.79
P35-46	7-Eleven	4/8/2009	33.00	3.54	29.46
P35-47	7-Eleven	4/8/2009	24.00	2.57	21.43
P35-48	ICMA Blue Convenient Store		66.00	7.07	58.93
P35-49	Unreadable photocopy				
P35-50	7-Eleven	4/13/2009	6.00	0.64	5.36
P35-51	Robinson's Supermarket Ermita	4/13/2009	199.25	21.35	177.90
P35-52	NBS - Ermita	4/13/2009	51.75	5.54	46.21
P35-53	NBS - Ermita	4/16/2009	21.75	2.33	19.42
P35-54	Meal Stop Kitchenette	4/16/2009	540.00	57.86	482.14

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P35-55	7-Eleven	4/19/2009	14.00	1.50	12.50
P35-56	7-Eleven	4/21/2009	261.00	27.96	233.04
P35-57	7-Eleven	4/22/2009	24.00	2.57	21.43
P35-58	NBS - Ermita	4/23/2009	22.00	2.36	19.64
P35-59	7-Eleven	4/25/2009	24.00	2.57	21.43
P35-60	Unreadable photocopy				
P35-61	Robinson's Supermarket Ermita	5/1/2009	173.00	18.53	154.47
P35-62	Robinson's Handyman Inc.	5/1/2009	84.75	9.08	75.67
P35-63	NBS - Ermita	5/1/2009	240.25	25.74	214.51
P35-64	Robinson's Handyman Inc.	5/1/2009	54.93	5.88	49.05
P35-65	7-Eleven	5/6/2009	24.00	2.57	21.43
P35-66	Equity Petron Service Center	5/6/2009	300.00	32.14	267.86
P35-67	Unreadable photocopy				
P35-68	Unreadable photocopy				
P35-69	NBS - Ermita	5/8/2009	29.00	3.10	25.90
P35-70	NBS - Ermita		13.75	1.47	12.28
P35-71	NBS - Ermita	5/13/2009	86.50	9.27	77.23
P35-72	Unreadable photocopy				
P35-73	Unreadable photocopy				
P35-74	Compex Ermita, inc.	5/16/2009	550.00	58.93	491.07
P35-75	NBS - Ermita	5/21/2009	99.25	10.63	88.62
P35-76	Compex Ermita, inc.	5/21/2009	370.00	39.64	330.36
P35-77	Robinson's Handyman Inc.	5/22/2009	229.75	24.61	205.14
P35-78	NBS - Ermita	5/26/2009	98.50	10.56	87.94
P35-79	Unreadable photocopy				
P35-80	7-Eleven	5/29/2009	8.00	0.86	7.14
P35-81	7-Eleven	5/29/2009	69.00	7.39	61.61
P35-82	Robinson's Handyman Inc.	5/31/2009	84.75	9.08	75.67
P35-83	Robinson's Handyman Inc.	6/1/2009	147.75	15.83	131.92
P35-84	7-Eleven	6/1/2009	57.00	6.11	50.89
P35-85	Robinson's Supermarket Ermita	6/5/2009	46.00	4.93	41.07
P35-86	Photoline Enterprises Corp	6/5/2009	60.00	6.43	53.57
P35-87	Robinson's Handyman Inc.	6/9/2009	167.80	17.98	149.82
P35-88	NBS - Ermita	6/10/2009	21.75	2.33	19.42
P35-89	NBS - Ermita	6/10/2009	34.50	3.70	30.80
P35-90	NBS - Ermita	6/15/2009	262.50	28.13	234.37
P35-91	NBS - Ermita	6/22/2009	18.00	1.92	16.08
P35-92	Robinson's Handyman Inc.	6/22/2009	115.00	12.32	102.68
P35-93	NBS - Ermita	6/24/2009	87.50	9.38	78.12
P35-94	Robinson's Supermarket Ermita	6/24/2009	103.00	11.03	91.97
P35-95	Robinson's Handyman Inc.	6/27/2009	84.75	9.08	75.67
P35-96	NBS - Ermita	6/28/2009	30.00	3.21	26.79
P35-97	NBS - Ermita	6/29/2009	368.75	39.51	329.24
P35-98	Workstation	7/13/2009	286.50	30.70	255.80
P35-99	Mayon Electrical Supply	7/10/2009	4,770.00	511.00	4,259.00

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P35-100	Mayon Electrical Supply	7/7/2009	3,800.00	408.00	3,392.00
P35-101	Cheson Controls Center Inc.	6/22/2009	1,300.00	139.29	1,160.71
P35-102	NBS - Ermita	7/20/2009	75.25	8.06	67.19
P35-103	Robinson's Supermarket Ermita	7/20/2009	194.50	20.83	173.67
P35-104	NBS - Ermita	7/27/2009	88.50	9.49	79.01
P35-105	7-Eleven	8/2/2009	72.00	7.71	64.29
P35-106	NBS - Ermita	8/2/2009	30.00	3.21	26.79
P35-107	7-Eleven	8/5/2009	72.00	7.71	64.29
P35-108	Unreadable photocopy				
P35-109	Unreadable photocopy				
P35-110	7-Eleven	8/21/2009	72.00	7.71	64.29
P35-111	Unreadable photocopy				
P35-112	7-Eleven	8/30/2009	57.00	6.11	50.89
P35-113	7-Eleven	8/31/2009	24.00	2.57	21.43
P35-114	7-Eleven	8/31/2009	90.00	9.65	80.35
P35-115	NBS – Ermita	9/3/2009	189.00	20.25	168.75
P35-116	Robinson's Handyman Inc.	9/20/2009	59.75	6.40	53.35
P35-117	NBS – Ermita	10/2/2009	512.00	54.86	457.14
P35-118	NBS – Ermita	10/9/2009	72.75	7.79	64.96
P35-119	NBS – Ermita	10/15/2009	88.75	9.51	79.24
P35-120	NBS – Ermita	10/27/2009	57.75	6.19	51.56
Total			**₱19,169.48**	**₱2,054.58**	**₱17,114.90**

Hence, respondent's 50% disallowance on office supplies in the amount of ₱80,888.00 shall remain.

A.2.b. Insurance Expense (₱6,505.50)

The only supporting document that petitioner presented to support its insurance expense for the year 2009 is its manual ledger[74]. Without supporting invoices/official receipts, respondent's 50% disallowance on petitioner's claimed insurance expense of ₱6,505.50 is upheld.

A.2.c. Other Operating Expenses (₱1,217,746.00)

Some of the supporting documents submitted by petitioner were check vouchers[75] pertaining to alleged payments to the Social Security System (SSS) and Philhealth. However, these check vouchers cannot

[74] Exhibit "P-30", attached to the ICPA Report (Exhibit "P-43")
[75] Exhibits "P-36-1" to "P-36-10", attached to the ICPA Report (Exhibit "P-43")

be given probative value without the corresponding payment receipts issued by the SSS and Philhealth. Moreover, petitioner must prove that these alleged remittances did not form part of its claimed deduction for salaries and wages and Social Security costs.[76]

Thus, only the following expenses totaling ₱1,185.10 are duly supported:

Exhibit	Vendor	OR/Inv No.	OR/Inv Date	OR/Inv Amount	12% VAT	Net OR/Inv. Amount
P36-11	7-Eleven	214390	8/26/2009	₱ 343.00	₱ 36.75	₱ 306.25
P36-12	7-Eleven	196634	8/26/2009	42.00	4.50	37.50
P36-13	7-Eleven	230911	9/24/2009	15.00	1.61	13.39
P36-14	7-Eleven	112350	9/25/2009	295.00	26.35	268.65
P36-15	7-Eleven	112773	9/26/2009	29.00	3.11	25.89
P36-16	Meal Stop Kitchenette	39353	10/16/2009	540.00	57.86	482.14
P36-17	Equity Petron Service Center	5092	10/31/2009	112.32	12.04	100.28
Total				**₱ 1,376.32**	**₱ 142.22**	**₱ 1,185.10**

Considering that petitioner's claimed deduction for Other Operating Expenses was not adequately supported, respondent's 50% disallowance thereof in the amount of ₱1,217,746.00 is retained.

B. Disallowed Depreciation – ₱178,360.00

Respondent disallowed petitioner's entire depreciation expense of ₱178,360.00 due to alleged non-submission of the required schedule.[77]

As correctly pointed out by petitioner, the disallowance is without basis. Petitioner was able to provide respondent a copy of its 2009 Audited Financial Statement (AFS)[78] attached to its 2009 Income Tax Return[79]. The details of petitioner's Property and Equipment such as the cost, depreciation expense for the year 2009, accumulated depreciation and the net carrying amount of each type of asset are presented in Note 7 of the AFS[80]. Accordingly, the depreciation

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[76] Notes to Financial Statements, December 31, 2009, Note 11, BIR records, p. 53
[77] Exhibit "P-13-2", Docket, vol. II, p. 1167
[78] BIR Records, pp. 51 to 84
[79] BIR Records, pp. 86 to 87
[80] BIR Records, p. 55

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expense in the amount of ₱178,360.00 is a valid deduction against petitioner's taxable gross income for the year 2009.

C. Disallowed Security Services – ₱318,834.00

Upon comparison of the security services reflected in petitioner's financial statements (FS)/ITR in the amount of ₱348,906.00 with that shown in its alphalist in the amount of ₱30,072.00, respondent found a difference of ₱318,834.00 which was allegedly not subjected to withholding tax and therefore disallowed as expense pursuant to Section 34(K) of the NIRC of 1997, as amended, which states:

> "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."

The ICPA has verified that out of the ₱348,906.00 security services claimed by petitioner, the amount of ₱276,363.51 pertains to salaries of security guards not subject to withholding tax and is supported by non-VAT acknowledgment receipts as summarized in Annex D of the ICPA Report[81].

The Court finds respondent's disallowance in order.

Sections IV and V of RMC No. 39-07 dated January 22, 2007 clarify the tax treatment of the salaries of security guards, to wit:

> "SUBJECT: *Clarifying the Income Tax and VAT Treatment of Agency Fees/Gross Receipts of Security Agencies Including the Withholding of Taxes Due thereon.*

[81] Exhibit "P-43", Docket, vol. II, pp. 779 and 785

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IV. MANNER OF ISSUING RECEIPT FOR THE ENTIRE CONTRACT PRICE. –

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With respect to the security guards' salaries which are mandated by law to be paid by the Client through the Security Agency, the amount so paid representing salaries **must be covered by a Non-VAT Acknowledgement Receipt. This document, coupled with the notarized certification of the expanded withholding taxes prescribed in Paragraph V hereunder, shall be a sufficient substantiation for the expense that will be claimed as a deduction from gross income by the Client**.

V. WITHHOLDING TAX COMPLIANCE. –

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Insofar as the Agency Fee is concerned, the Client is constituted as the withholding agent of the EWT following the rule above-mentioned. However, with respect to the portion of the Contract Price representing the amount segregated and earmarked as salaries of the security guards, the Security Agency shall be the one responsible for the withholding of the tax on compensation income. This is so because while it is the Client who claims the payment as an expense, it is the Security Agency who physically controls the payment to the salaries of the Security Guards. However, in order to comply with the requirement for deductibility under Section 34 (K), in relation to Section 58 and 81, all of the National Internal Revenue Code, as amended, the Security Agency must furnish its Client, on or before January 31 of the year following the year of withholding, a *Notarized Certification* (see Annex 'A') indicating the names of the guards employed by the Client, their respective TINs, the amount of their salaries and the amount of tax withheld from each. **This certification together with the covering Non-VAT Acknowledgment Receipt must be kept on file by the Client as substantiation for the claim of the expense**." (*Emphasis supplied*)

Pursuant to the foregoing provisions of RMC No. 39-07, petitioner is mandated to withhold and remit EWT only on the agency fee, not on the salaries paid to the security guards. However, in order that the salaries may be claimed as expense by petitioner, the same must be supported by a non-VAT acknowledgement receipt **and** a notarized certification issued by the security agency indicating the names of the guards employed by petitioner, their respective TINs, the amount of their salaries and the amount of tax withheld from each one.

While the amount of ₱276,363.51 representing salaries of security guards paid by petitioner to Monitor Security Services is supported by non-VAT acknowledgment receipts, the same shall be disallowed as petitioner's deductible expense because the latter failed to present the notarized certification required by RMC No. 39-07.

The Court likewise sustains the remaining disallowance of ₱42,470.49 (₱318,834.00 less ₱276,363.51) for petitioner's failure to present proof that the same is not subject to EWT.

In sum, petitioner is liable for basic deficiency income tax for taxable year 2009 in the amount of ₱487,192.05, computed as follows:

Taxable Net Income per ITR		₱ 25,741.00
Add: Adjustments		
50% Disallowed Operating Expenses		
Office Supplies	₱ 80,888.00	
Insurance	6,505.50	
Other Operating Expense	1,217,746.00	1,305,139.50
Disallowed Security Services		318,834.00
Adjusted Taxable Income		₱ 1,649,714.50
Income Tax Due		₱ 494,914.35
Less: Payments		7,722.30
Basic Deficiency Income Tax		**₱ 487,192.05**

II. DEFICIENCY VALUE-ADDED TAX (₱4,777,597.65)

Respondent disallowed the entire creditable input VAT of petitioner in the amount of ₱2,983,671.52[82] due to the alleged absence

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of supporting evidence pursuant to Sections 106 and 110 of the NIRC of 1997, as amended, resulting in a deficiency VAT amounting to ₱4,777,597.65, computed as follows:[83]

Gross Sales per VAT Returns	₱ 25,087,314.00
Output Tax	₱ 3,010,477.68
Less: Creditable Input Tax	-
VAT due	₱ 3,010,477.68
Less: VAT payments	24,479.15
Deficiency Value Added Tax	₱ 2,985,998.53
Add: Surcharge (Sec. 248)	-
Interest p.a. from _____ to 01/25/2013 (Sec. 249)	1,791,599.12
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)	-
TOTAL AMOUNT DUE & COLLECTIBLE	**₱4,777,597.65**

In its protest[84] to the FLD, petitioner asserted that respondent's right to assess deficiency VAT for the 1st, 2nd, and 3rd quarters had already lapsed pursuant to Section 203 of the NIRC of 1997, as amended.

Petitioner further argued that contrary to respondent's allegation, all of its input VAT credits amounting to ₱2,985,998.53 are duly supported by either VAT invoice or official receipt.

As earlier discussed, respondent's right to assess petitioner for deficiency VAT covering the 1st, 2nd, and 3rd quarters of TY 2009 has already prescribed.

Exhibit	Taxable Year 2009	Input VAT
"P-4"	1st Quarter	₱ 785,449.62
"P-5"	2nd Quarter	777,290.18
"P-6"	3rd Quarter	715,927.70
"P-7"	4th Quarter	705,004.02
	Total	**₱2,983,671.52**

83 Exhibits "P-13" and "P-13-2", Docket, vol. II, pp. 1165 and 1167, respectively

84 Exhibit "P-14", pp. 3 to 5, Docket, vol. II, pp. 1172 to 1174

On the issue of whether or not petitioner is liable for deficiency VAT covering the fourth quarter of 2009, petitioner reported the following in its Quarterly VAT Return[85] for the said period:

VATable Sales	₱ 5,935,385.87
Output VAT	₱ 712,246.30
Less: Input VAT on Domestic Purchases of Goods Other than Capital Goods	₱ 705,004.02
Monthly VAT Payments – previous two months	4,915.30
third month	2,326.98
Total Tax Credits/Payments	₱ 712,246.30
Tax Still Payable	₱ -

In the deficiency VAT assessment, respondent disallowed petitioner's claimed input VAT credits in the amount of ₱705,004.02 for being unsupported.

Section 110, in relation to Sections 113(A) and 238 of the NIRC of 1997, as amended, provides that any input tax shall be creditable against the output tax only if it is evidenced by a VAT invoice (in the case of purchase of goods or properties) or VAT official receipt (in the case of purchase of services and use or lease of properties), which must be duly registered with the BIR and contain all the required information. For easy reference, the relevant provisions are quoted herein below:

> "SEC. 110. *Tax Credits.* –
>
> (A) *Creditable Input Tax.* –
>
> (1) Any **input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113** hereof on the following transactions shall be **creditable against the output tax**:" (*Emphasis supplied*)
>
> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* –

[85] Exhibit "P-7", Docket, vol. II, p. 1078

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

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

(2) A **VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**

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

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

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

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term **'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt;

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

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the services; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client." (*Emphasis supplied*)

"SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* – All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Records show that petitioner's input taxes for the 4th quarter of 2009, which are duly substantiated, amounted only to ₱572,771.64, detailed as follows:

Exhibit	Vendor	OR / Invoice Date	OR / Invoice Amount	12% VAT	Net OR/Invoice Amount
Purchases					
P32-10	Philippine Seven Corp.	10/31/2009	₱ 1,800,833.17	₱ 191,929.56	₱ 1,608,903.61
P32-11	Philippine Seven Corp.	11/30/2009	1,957,650.71	208,754.43	1,748,896.28
P32-12	Philippine Seven Corp.	12/31/2009	1,605,221.24	171,267.78	1,433,953.46
Office Supplies					
P35-117	NBS – Ermita	10/2/2009	512.00	54.86	457.14
P35-118	NBS – Ermita	10/9/2009	72.75	7.79	64.96
P35-119	NBS – Ermita	10/15/2009	88.75	9.51	79.24
P35-120	NBS – Ermita	10/27/2009	57.75	6.19	51.56
Other Operating Expenses					
P36-16	Meal Stop Kitchenette	10/16/2009	540.00	57.86	482.14
P36-17	Equity Petron Service Center	10/31/2009	112.32	12.04	100.28
Security Services					
P-33-36	Monitor Security Services Co., Inc.	10/20/2009	1,378.40	150.37	1,228.03

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P-33-38	Monitor Security Services Co., Inc.	11/5/2009	1,378.40	150.37	1,228.03
P-33-40	Monitor Security Services Co., Inc.	11/20/2009	1,378.40	150.37	1,228.03
P-33-43	Monitor Security Services Co., Inc.	12/4/2009	1,378.40	150.37	1,228.03
P-33-45	Monitor Security Services Co., Inc.	12/21/2009	643.23	70.14	573.09
			₱5,371,245.52	**₱ 572,771.64**	**₱ 4,797,900.79**

Consequently, petitioner is still liable to pay basic deficiency VAT for the 4th quarter of 2009 in the amount of ₱132,232.38, computed as follows:

VATable Sales		₱ 5,935,385.87
Output VAT		₱ 712,246.30
Less:	Input VAT on Domestic Purchases of Goods Other than Capital Goods	₱ 572,771.64
	Monthly VAT Payments – previous two months	4,915.30
	third month	2,326.98
	Total Tax Credits/Payments	₱ 580,013.92
Tax Still Payable		**₱ 132,232.38**

In view of the effectivity of Republic Act (RA) No. 10963 or otherwise known as the "*Tax Reform for Acceleration and Inclusion*" on January 1, 2018, the Court shall apply the pertinent provisions thereof on the imposition of deficiency and delinquency interests in determining the amount to be ultimately paid by petitioner.

WHEREFORE, premises considered, the assessments issued by respondent against petitioner for taxable year 2009 covering deficiency income tax and deficiency VAT are **PARTIALLY UPHELD.** Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **SEVEN HUNDRED SEVENTY-FOUR THOUSAND TWO HUNDRED EIGHTY PESOS AND 54/100 (₱774,280.54)** representing the sum of the basic deficiency income tax and deficiency VAT and the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

TAX TYPE	BASIC TAX	25% SURCHARGE	TOTAL
Income Tax	₱ 487,192.05	₱ 121,798.01	₱ 608,990.06
Value-added Tax	132,232.38	33,058.10	165,290.48
Total	**₱ 619,424.43**	**₱ 154,856.11**	**₱ 774,280.54**

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

a) Deficiency interest at the rate of twelve percent (12%) per annum on the basic deficiency income tax and value added tax, computed from the date prescribed for payment as indicated below until January 25, 2013, the date of petitioner's receipt of the notice and demand, pursuant to Section 249 (B) of the NIRC of 1997, as amended by RA No. 10963:

TAX TYPE	BASIC TAX	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	₱ 487,192.05	April 15, 2010
Value-Added Tax	₱ 132,232.38	January 25, 2010

b) Delinquency interest at the rate of 12% per annum on the total amount of ₱774,280.54, and on the 12% deficiency interest which have accrued as aforestated in (a) above, computed from February 25, 2013, the due date appearing in the notice and demand, until the amount is fully paid, 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