REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

TUTUBAN PROPERTIES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6570

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Tutuban Properties, Inc. (hereafter "petitioner") praying for the cancellation of deficiency income tax, expanded withholding tax and value-added tax in the amounts of P368,413,118.23, P5,146,610.62 and P111,963,078.85, respectively, or in the aggregate amount of P485,522,807.69 for the fiscal year ended June 30, 1998.

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THE FACTS

The facts of the case, as culled from the records, are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines. It is registered with the Bureau of Internal Revenue (BIR) with taxpayer's identification number 029-001-178-585 and principal office address at Tutuban Center, Claro M. Recto Avenue, cor. Dagupan St., Tondo, Manila *(Joint Stipulation of Facts and Issues, par. 1).*

Respondent is the duly appointed Commissioner of Internal Revenue mandated by law to enforce and implement the provisions of the National Internal Revenue Code (Tax Code), as well as related tax statutes, and their implementing rules and regulations, including the power to issue deficiency tax assessments and evaluate and decide on the merits of the protest against deficiency tax assessments, with office address at the BIR National Office Building, Diliman, Quezon City, where he may be served summons and other court processes *(Joint Stipulation of Facts and Issues, par. 2).*

Respondent issued a Preliminary Assessment Notice dated January 10, 2002 to petitioner *(Joint Stipulation of Facts and Issues, par. 3).*

On March 25, 2002, petitioner received from respondent a Formal Letter of Demand dated February 11, 2002, assessing it for alleged

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deficiency income tax, expanded withholding tax ("EWT") and value-added tax ("VAT") and their increments for fiscal year ended June 30, 1998 in the following amounts *(Joint Stipulation of Facts and Issues, par. 4, and Formal Letter of Demand and Assessment Notices, BIR Records, pp. 1098-1103)*:

A. Income Tax	
Basic	P179,276,456.56
Add: Surcharge	89,638,228.28
Interest	99,498,433.39
Total	**P368,413,118.23**
B. Expanded Withholding Tax	
Basic	P 2,940,920.35
Add: Surcharge	735,230.09
Interest	1,470,460.18
Total	**P 5,146,610.62**
C. Value-Added Tax	
Basic	P 55,981,539.43
Add: Surcharge	27,990,769.71
Interest	27,990,769.71
Total	**P111,963,078.85**

The following are respondent's detailed computation of the said assessment *(BIR Records, pp. 1094 to 1096)*:

INCOME TAX

Income Before Income Tax Per F/S		P 6,256,531.0
Add: Undeclared Income:		
1 Creditable Withholding Tax During the year (P16,203,275.00/5%)	P324,065,500.00	
Less: Rent Income per ITR	194,220,340.00	129,845,160.0
2 Sale of Leaseright (Prime block)	P135,093,080.23	
Less: Sale of Leaseright per ITR	113,347,208.00	21,745,872.2
3 Construction in progress as of June 30, 1997	P254,452,013.00	
Less: Construction in progress as of June 30, 1998	-	
Construction in progress completed during 1998 & charge to Buildings	254,452,013.00	

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Less: Buildings & Improvements balance:			
as of June 30, 1998	P889,778,989.00		
as of June 30, 1997	737,938,987.00	151,840,002.00	102,612,011.00
Add: Unexplained Expense Variance per ITR & per FS			
Share in CUSA Expenses per FS		P 43,370,331.00	
Less: Share in CUSA Expenses per ITR		-	43,370,331.00
Add: Disallowed Expenses (no EWT):			
1Rental PNR (P76,865,250.00 x 6 mo.) per F/S		P 38,432,625.00	
Less: Rental PNR per EWT		-	38,432,625.00
2 Professional Fees per F/S		P 958,160.00	
Less: Professional Fees per EWT		51,550.00	906,610.00
3 Commission per F/S		P 10,592,786.00	
Less: Commission to Real Estate Broker (Corp) per EWT	P 1,179,557.60		
Commission to Real Estate Broker (Ind) per EWT	5,437,433.00	6,616,990.60	3,975,795.40
4 Interest Expense per F/S		P 64,947,446.00	
Less: Interest Expense per Schedule		60,995,524.50	3,951,921.50
Add: Unexplained Source of Cash:			
1 Income Payment to top 5,000 Corp. per EWT		P 23,259,915.11	
Less: Office Supplies per F/S	P 511,731.00		
Miscellaneous	4,934.00		
Medical Supplies	15,432.00	532,097.00	22,727,818.11
2 Talent Fees per EWT		P 288,396.50	
Less: Talent Fees per F/S		-	288,396.50
3 Professional Fees paid to Juridical Persons per EWT		P 10,976,655.20	
Less: Management fees per F/S		6,736,612.00	4,240,043.20
4 Payment to Contractor & Subcontractor (Corp) per EWT		P189,848,150.00	
Payment to Contractor & Subcontractor (Ind) per EWT		60,378.00	
Total		189,908,528.00	
Less: Contracted Services per F/S	P 8,771,302.00		
Janitorial per F/S	5,420.00		
Repairs & Maintenance	570,122.00		
Share in CUSA	43,370,331.00	52,717,175.00	137,191,353.00
5 Awards Prizes exceeding P3,000.00 per EWT		P 180,194.35	
Less: Awards Prizes exceeding P3,000.00 per F/S		.	180,194.35
6 Other Payment (Corp) 5% per EWT		P 10,173,771.20	
Less: Other Payments (Corp) 5% per F/S		-	10,173,771.20
TAXABLE INCOME PER AUDIT			P525,898,433.49
TAX DUE 1997 P262,949,216.75@35%		92,032,225.86	
1998 P262,949,216.75@34%		89,402,733.70	P181,434,959.56
Less: Tax paid per ITR			2,158,503.00
AMOUNT STILL DUE			P179,276,456.56
50% Surcharge Fraud Penalty			89,638,228.28
Interest (10/15/98 to 7/25/01)			99,498,433.39

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TOTAL AMOUNT STILL DUE			**P368,413,118.23**
WITHHOLDING TAX			
No EWT (5%) Rent:			
Rental PNR (P76,865,250.00 x 6 mo.) per F/S		P 38,432,625.00	
Less: Rental PNR per EWT		-	
Difference		P 38,432,625.00	
Multiply by Tax Rate		5%	P 1,921,631.25
No EWT (10%) Professional & Technical Fees:		P 958,160.00	
Professional Fees per F/S		51,550.00	
Less: Professional Fees per EWT		P 906,610.00	
Difference		10%	90,661.00
Multiply by Tax Rate			
No EWT (5%) Commission to Real Estate Broker:			
Commission per F/S		P 10,592,786.00	
Less: Commission to Real Estate Broker (Corp) per EWT	P 1,179,557.60		
Commission to Real Estate Broker (Ind) per EWT	5,437,433.00	6,616,990.60	
Difference		3,975,795.40	
Multiply by Tax Rate		5%	198,789.80
No EWT (5%) Advertising Expense:			
Expenses per F/S		P 3,703,500.00	
Less: Expenses per (1601) W/holding Tax Return		-	
Difference		3,703,500.00	
Multiply by Tax Rate		5%	185,175.00
No EWT (10%) Management Fees:			
Management Fees per Alpha List		P 12,609,657.74	
Less: Management Fees per (1601) W/holding Tax Return		4,055,148.20	
Difference		8,554,509.54	
Multiply by Tax Rate		5%	427,725.48
No EWT (10%) Professional Entertainers:			
Professional Entertainers per Alpha List		P 443,274.91	
Less: Professional Entertainers per (1601) W/holding Tax Return		105,572.20	
Difference		337,702.71	
Multiply by Tax Rate		10%	33,770.27
No EWT (1%) Income Payments made by top 5,000 Corp. to local suppliers:			
Income Payment per Alpha List		P 31,172,709.31	
Less: Income Payment per (1601) W/holding Tax Return		22,855,954.00	
Difference		8,316,755.31	
Multiply by Tax Rate		1%	83,167.55
TOTAL WITHHOLDING TAX STILL DUE			P 2,940,920.35
25% Surcharge			735,230.09
Interest (1/25/99 to 7/25/01)			1,470,460.18
TOTAL AMOUNT STILL DUE			**P 5,146,611.61**

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VALUE ADDED TAX

Gross Sales/Receipts per books		P450,739,576.44
Add: Undeclared Income per CWT	P129,845,160.00	
Undeclared Income Sale of Leaseright	21,745,872.23	
Unaccounted variance per Construction in progress schedule	102,612,011.00	254,203,043.23
TOTAL		P704,942,619.67
Output Tax @ 10%		P 70,494,261.97
Less: Allowable Input Tax per F/S @ 10%		
Advertising & Promotion	P 3,703,500.00	
Dues & Subscription	45,636.00	
Insurance Expense	9,436,852.00	
Management Fee	6,736,612.00	
Medical Supplies	15,432.00	
Office Supplies	511,731.00	
Photo Reproduction	22,372.00	
Professional Fees	958,160.00	
Rental	56,271,292.00	
Training Seminars	298,188.00	
Total	P 77,999,775.00	7,799,977.50
VAT Still Due		P 62,694,284.47
Less: VAT Paid per Return		6,712,745.04
TOTAL VALUE ADDED TAX STILL DUE		P 55,981,539.43
50 Surcharge Fraud Penalty		27,990,769.71
Interest (1/25/99 to 7/25/01)		27,990,769.71
TOTAL AMOUNT STILL DUE		**P111,963,078.85**

On April 22, 2002, petitioner filed with respondent a letter protesting the alleged deficiency income tax, EWT and VAT assessments for the fiscal year ended June 30, 1998 and requesting that they be withdrawn and/or cancelled for reasons stated in the letter *(Joint Stipulation of Facts and Issues, par. 7).*

On November 18, 2002, petitioner elevated the disputed assessment to this Court by way of a Petition for Review *(Original Docket, p. 1).*

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In his Answer, respondent, by way of special and affirmative defenses, alleged that the assessments were issued within the prescriptive period; petitioner filed fraudulent returns arising from under-declaration of income equivalent to more than 30% of the gross rental income reported per return, accordingly, the prescriptive period to assess is ten years from the discovery of the fraud; prior to the issuance of the Formal Letter of Demand, respondent issued Preliminary Assessment Notice to petitioner with complete details regarding the contested assessment; the Audit Results/Assessment Notices stated the provisions of law on which the assessments were based.

As regards the deficiency income tax in the aggregate amount of P368,413,118.23, verification and comparison of the total creditable withholding taxes claimed for the year with the gross income reported in the Income Tax Return disclosed that there was an under declaration of rental income amounting to P129,845,160.00 for fiscal year ending June 30, 1998 and petitioner failed to submit documentary evidence to show that part of those creditable withholding tax certification were for prior years; verification disclosed that the total consideration for the sale of lease rights amounted to P136,093,080.23, however, for the year under audit, petitioner declared the amount of P113,347,208.00 only, resulting to an understatement of income by P21,745,872.23; verification

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disclosed that there was an unaccounted variance of the construction in progress account in the amount of P102,612,011.00; verification disclosed that there was an unexplained expense variance per Income Tax Return and Financial Statement on the Common Usage Service Area ("CUSA") Expense account in the amount of P43,370,331.00; rent expense paid to Philippine National Railways ("PNR") amounting to P38,432,625.00 was disallowed for failure to withhold the proper tax due, considering that under *Section 27(c) of the NIRC of 1997, as amended*, only the following corporations are exempted from withholding tax: GSIS, SSS, PHIC, PCSI and PAGCOR; and PNR is not one them; professional fees amounting to P906,610.00 and commission expense amounting to P3,975,795.40 were disallowed for failure to withhold the proper tax due; interest expense amounting to P3,951,921.50 was disallowed for lack of supporting documents; income payments to top 5,000 corporations amounting to P22,727,818.11, talent fees amounting to P288,396.50, professional fees paid to juridical persons amounting to P4,240,043.20, payments made to contractors and subcontractors amounting to P137,191,353.00, awards prizes and winnings exceeding P3,000.00 amounting to P180,194.35, and other payments to corporations amounting to P10,173,771.20 were all added back to the gross income for petitioner's failure to account for the variance between the amount of expense appearing in the Financial Statements and amount per expanded withholding tax return.

As to deficiency value added tax in the aggregate amount of P111,963,078.85, the undeclared rent income per Creditable Withholding Tax ("CWT") amounting to P129,845,160.00, undeclared income from sale of lease rights amounting to P21,745,872.23 and unaccounted variance per construction in progress amounting to P102,612,011.00 were added back as part of gross income for VAT purposes; and upon verification, only the total amount of P7,799,977.50 can be allowed as input tax.

As to deficiency withholding tax in the aggregate amount of P5,146,610.62, the EWT on rent income amounting to P1,921,631.25 was based on the annual rental of PNR to petitioner since the *NIRC of 1997, as amended*, has repealed all other laws granting tax exemption to government owned and controlled corporations, including PNR; the deficiency EWT on professional and technical fees amounting to P90,881.00, the deficiency expanded withholding tax on commission to real estate broker amounting to P198,79.80, and the deficiency expanded withholding tax on advertising expense amounting to P185,175.00 were all assessed due to the difference in the professional and technical fees expense, commission expense on real estate broker and advertising

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expense, as shown in the financial statements, respectively, vis-à-vis the amounts appearing in the EWT return; the deficiency EWT on management fees amounting to P427,725.48, the deficiency EWT on professional entertainers amounting to P33,770.27, and the deficiency income payments made to top 5,000 corporations amounting to P83,167.55 were all assessed due to the difference in the management fees per alpha list, professional entertainers per alpha list and income payments made to top 5,000 corporations per alpha list vis-à-vis the management fees per EWT return, professional entertainers per EWT return and income payments made to top 5,000 corporations per EWT return, respectively.

Petitioner presented Cecille Aringo, its Accounting Manager, Ruben Rubio, the Court-commissioned Independent Certified Public Accountant, and Myrna Revilla, its Assistant Manager for Accounting, as witnesses, and documentary evidence, marked as Exhibits *"A"* to *"ZZZZZZ"*, inclusive of their submarkings, which were all admitted by the Court.

On the other hand, for the repeated failure of counsel for respondent to appear despite notice, upon motion of counsel for petitioner, respondent was deemed to have waived his right to present evidence and to have rested his case. Thereafter, both parties were

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granted fifteen days from notice within which to file their simultaneous memoranda, afterwhich the case shall be deemed submitted for decision.

Petitioner having filed its Memorandum on July 5, 2006, and respondent on December 4, 2006, the case was deemed submitted for decision.

Hence, this decision.

ISSUES

As stipulated upon by the parties, the issues for this Court's consideration are:

I

WHETHER OR NOT THE ASSESSMENTS WERE ISSUED WITHIN THE PRESCRIPTIVE PERIOD.

II

WHETHER OR NOT PETITIONER WAS INFORMED OF THE LAW AND THE FACTS ON WHICH THE ASSESSMENTS WERE MADE.

III

WHETHER OR NOT PETITIONER FILED FRAUDULENT OR FALSE RETURNS ARISING FROM UNDER-DECLARATION OF INCOME EQUIVALENT TO MORE THAN 30% OF THE GROSS RENTAL INCOME REPORTED PER RETURNS.

IV

WHETHER OR NOT PETITIONER IS LIABLE FOR THE PAYMENT OF DEFICIENCY INCOME, EXPANDED

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WITHHOLDING AND VALUE-ADDED TAXES FOR THE FISCAL YEAR ENDED JUNE 30, 1998.

THE COURT'S RULING

The petition is partly meritorious.

First and Third Issues

Being interrelated, the first and third issues will be discussed jointly.

Petitioner's Arguments

Petitioner contends that pursuant to *Section 203 of the NIRC of 1997, as amended*, respondent's right to issue an assessment had already prescribed. Respondent's right to assess petitioner for income tax and EWT expired on October 15, 2001, while for VAT, the same expired on October 26, 2000, February 25, 2001, April 27, 2001 and July 27, 2001, respectively. Inasmuch as petitioner received the Formal Letter of Demand on March 25, 2002 only, the subject deficiency tax assessments for fiscal year ended June 30, 1998 were unquestionably issued beyond the prescriptive period to assess.

Respondent's Counter-Argument

Respondent counter-argues that the assessments were issued within the prescriptive period since petitioner filed returns that substantially understated income amounting to more than 30% of the gross rental

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income reported per return. Accordingly, the prescriptive period to assess is ten years from the discovery of the substantial under-declaration.

We rule for the respondent.

Section 222 of the NIRC of 1997, as amended, provides exceptions as to the period of limitation of assessment and collection of taxes, to wit:

> "SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
>
> (a) In case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> xxx xxx."

Section 223 (now Section 222) of the NIRC of 1997, as amended, specifies three instances when the running of the three-year prescriptive period does not apply. These are: (1) filing a false return, (2) filing a fraudulent return with intent to evade tax or (3) failure to file a return. The period within which to assess tax is ten years from discovery of the fraud, falsification or omission *(Commissioner of Internal Revenue vs. Tulio, 474 SCRA 151).*

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In *Aznar vs. Court of Tax Appeals, 58 SCRA 532*, the Supreme Court made a distinction between a false and a fraudulent return, as follows:

> "To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within the ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely – 'falsity', 'fraud' and 'omission'. That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.
>
> The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a) NIRC, from the time of

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> the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.
>
> There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent Court of Tax Appeals that Sec 332 (a) of the NIRC should apply and that the period of ten years within which to assess petitioner's tax liability had not expired at the time said assessment was made."

Pursuant to the above ruling of the Supreme Court, a return is considered fraudulent when there is intentional or deceitful entry with intent to evade the taxes due, while a return is false when there is deviation from the truth, whether intentional or not.

The instant case falls within the purview of *Section 222 of the NIRC of 1997, as amended.*

<u>Prescription as to Income Tax</u>

A perusal of the records reveals that petitioner filed its Annual Income Tax Return for the fiscal year ended June 30, 1998 *(Exhibit "A")*. Section E of the ITR reflected a creditable tax withheld for the fiscal year ended June 30, 1998, in the amount of P16,203,275.00. However, further verification discloses that the rent income corresponding to said creditable withholding taxes amounts to P324,065,500.00, arrived at by dividing the creditable withholding tax during the year amounting to P16,203,275.00 by the withholding tax rate of 5%. A comparison of the

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rental income amount of P324,065,500.00 with the declared rental income for the fiscal year ended June 30, 1998 amounting to P194,220,340.00, results to an under-declaration of rent income in the amount of P129,845,160.00.

It bears stressing that failure to report sales, receipts or income in an amount exceeding thirty percent of that declared per return shall render the taxpayer liable for substantial under-declaration of sales, receipts or income. A substantial under-declaration of taxable sales, receipts or income shall constitute *prima facie* evidence of a false or fraudulent return *(Section 248, NIRC of 1997, as amended)*. In the instant case, the under-declared rent income in the amount of P129,845,160.00 constitutes 66.85% of the gross rental income *(BIR Records, p. 1123)*. Clearly, 66.85% is more than 30%, thus, there is substantial under-declaration of rent income in the instant case.

Petitioner's contention that said under-declared rent income had been properly reported in prior years cannot be sustained. Petitioner failed to submit documentary evidence to prove that said under-declared rent income had been properly reported in prior years. For petitioner's failure to rebut the assessment made by the respondent, We sustain and uphold the respondent's findings.

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Furthermore, the amount of P16,203,275.00 constitutes petitioner's creditable tax withheld for the current fiscal year. If indeed part of said income had been previously reported in prior years, as claimed by petitioner, the corresponding creditable tax withheld therein should have been included in petitioner's income tax return under the caption: declared prior year's excess credit, which shows the amount of P17,972,135.00. Pursuant to *Section 6 of the NIRC of 1997, as amended,* petitioner should have amended its return within 3 years from the date it was filed to correct the amount of its declared creditable tax withheld for prior years and for the current year. But petitioner failed to do so.

Consequently, petitioner's income tax return for fiscal year ended June 30, 1998 constitutes not only false, but fraudulent return, there being deliberate intent to properly disclose its rental income. Thus, the ten-year prescriptive period applies. Considering that petitioner received the Formal Letter of Demand dated February 11, 2002 on March 25, 2002, almost 4 years and 7 months from the time its annual income tax return was filed on October 15, 1998, clearly the assessment for deficiency income tax was filed within the ten year prescriptive period.

<u>Prescription as to Value Added Tax</u>

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The ten-year prescriptive period shall likewise apply to the subject deficiency VAT assessment considering that the under-declared rental income of P129,845,160.00 is one of petitioner's gross receipts subject to VAT. Since petitioner's declared gross receipt does not reflect the undeclared rental income of P129,845,160.00, petitioner's VAT returns also constitute false, if not fraudulent returns, within the purview of *Section 222(a) of the NIRC of 1997, as amended.*

Considering that petitioner received the Formal Letter of Demand dated February 11, 2002 on March 25, 2002, and the quarterly VAT returns were filed on the following dates:

Quarterly VAT Returns	Date Filed	Exhibit
3rd Quarter of 1997	October 20, 1997	*Exhibit "O"*
4th Quarter of 1997	January 20, 1998	*Exhibit "P"*
1st Quarter of 1998	April 27, 1998	*Exhibit "Q"*
2nd Quarter of 1998	July 27, 1998	*Exhibit "R"*

the assessment for deficiency VAT for the fiscal year ended June 30, 1998 was made within the ten-year prescriptive period.

<u>Prescription as to Expanded Withholding Tax</u>

The examination of the Court-commissioned independent CPA reveals that the following income payments by petitioner were not subjected to EWT:

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a. Payments to advertising agency representing amount charged by media (e.g., newspaper, radio)	P1,265,032.30
b. Payments for advertisement in souvenir program	28,645.45
c. Payments to PLDT for telephone charges and directory advertisement	201,855.44
d. Represents replenishment of petty cash fund	69,743.30
e. Liquidation of cash advances	244,284.20
f. Payments of membership dues	3,500.00
g. Represents offsetting of expense	7,418.18
h. Represents advances which were previously subjected to EWT	202,272.73
i. Adjustment/reversals to advertising and promotion expense account	(350,574.10)
Total	P1,672,177.50

(Exhibit "GGGGGG", Original Docket, pp. 277-278)

Upon a careful examination of the records of this case, this Court agrees with the findings of the Court-commissioned independent CPA that petitioner failed to withhold the EWT due on the aforesaid amount of P1,672,177.50. It cannot be argued by petitioner that it believes that the foregoing items are not subject to withholding tax, since if petitioner really believes in good faith that said items are not subject to withholding tax, it should have reported the same in the annual information return/alpha list of income payments not subjected to withholding tax. However, a perusal of the documents attached to the ITR and EWT returns shows that only the following items were included in the alpha list of income payments not subject to and/or exempt from withholding tax

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for the year ended December 31, 1997 and for the year 1998, respectively *(Attachments to Exhibit "S")*:

> Cayanga, Zuniga, Angel & Associates
> Sycip Gorres Velayo & Co. (SGV & Co.), and
> Romulo Law Offices

The Court, therefore, not only finds the returns to have deviated from the truth, making the same false returns within the purview of *Section 222(a) of the NIRC of 1997, as amended,* but also finds petitioner to have intentionally neglected to disclose the items amounting to P1,672,177.50, not subject to expanded withholding tax, required by BIR Form 1701-B1.

Furthermore, upon verification and examination of the evidence on record, the Court finds that the commission expense accrued in fiscal year 1998, but which remained unpaid as of fiscal year end amounting to P5,129,877.18, was not subjected to EWT. *Section 2.57.4 of Revenue Regulations 2-98* provides for the obligation of the payor to deduct and withhold the tax:

> "***SEC. 2.57.4. Time of withholding.*** — The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, whichever comes first, the term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable."

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Specifically, *BIR Ruling DA-016-97* clarified the obligation of the payor to withhold and pay the income tax withheld at source to be at the time of accrual of the payment:

> "In reply, please be informed that:
>
> (1) The appropriate time to withhold taxes arises at the time the amount is paid or payable, whichever is earlier. Hence, for Philippine internal revenue tax purposes, the liability to withhold and pay the income tax withheld at source from certain payments attaches at the time of the accrual of said payments and not at the time of actual remittance of payment thereof (BIR Ruling No. 71-003). Upon withholding the required tax, the withholding agent shall be required to remit the same within ten (10) days after the end of each calendar month."

The foregoing BIR regulation and ruling explicitly require petitioner to withhold the tax on the accrued commission expense of P5,129,877.18. However, petitioner failed to do so. Despite the express mandate of the law, petitioner's non-withholding indicates its deliberate intent to evade the payment of taxes due thereon, thus, making petitioner's EWT returns for the fiscal year 1998 not only fraudulent, but also false for being not reflective of the truth, within the purview of *Section 222(a) of the NIRC of 1997, as amended.* Therefore, the deficiency EWT assessment is also subject to the ten-year prescriptive period.

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Considering that petitioner filed its annual income tax return on October 15, 1998 and petitioner having received the Formal Letter of Demand dated February 11, 2002 on March 25, 2002, the deficiency assessment for EWT was made within the ten-year prescriptive period.

Lastly, it bears stressing that when an examination/audit was conducted by the respondent, petitioner did not submit the necessary accounting records and documents to respondent until after a subpoena *duces tecum* was served to petitioner *(BIR Records, p. 703)*. Petitioner cannot claim, therefore, that the assessment had already prescribed, when petitioner itself failed to comply with its obligation on time and contributed to the delay of the assessment.

Second Issue

Going now to the second issue, petitioner contends that the subject assessments have no factual and legal bases considering that the Preliminary Assessment Notice was not accompanied with the details of the assessment and the Formal Letter of Demand failed to provide a schedule of how the revenue officers arrived at the subject deficiency assessments and how petitioner violated the existing internal revenue laws, making it difficult for petitioner to verify the computation of the taxes due.

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<u>The Formal Letter of Demand and Assessment Notices have Factual and Legal Bases</u>

Petitioner's contention is devoid of merit.

Section 228 of the NIRC of 1997, as amended, provides:

"SEC. 228. Protesting of Assessment. – xxx

xxx xxx

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

xxx xxx."

Corollary thereto, *paragraph 3.1.4 of Section 3, Revenue Regulations No. 12-99* provides:

"SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

xxx xxx

3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the laws, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). xxx

xxx xxx."

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Pursuant to *Section 228 of the NIRC of 1997, as amended,* and *Revenue Regulations 2-99*, the formal letter of demand and assessment notices should state the facts, the laws, rules and regulations, or jurisprudence on which the assessment is based. This is in consonance with the basic constitutional requirement that "no person shall be deprived of his property without due process of law". The taxpayer shall be accorded the opportunity to present his side and prove his defenses.

In the case at bench, petitioner was duly informed of the factual and legal bases of the subject assessment.

A careful perusal of the Formal Letter of Demand dated February 11, 2002 *(BIR Records, pp. 1,037-1,039)* and Assessment Notices for deficiency Income Tax *(BIR Records, p. 1,032)*, VAT *(BIR Records, p. 1,034)* and EWT *(BIR Records, p. 1,028)* shows that the same sufficiently complied with the above prescribed requirements. The deficiency income tax was assessed on the bases of *Sections 34(1)(b), 57, 58, 59 and 248(B) of the NIRC of 1997, as amended,* resulting from under-declared income, unexplained expense variance, disallowed expenses for failure to withhold the corresponding tax and unexplained source of cash. While the deficiency VAT was assessed on the basis of *Section 106 (A) of the NIRC of 1997, as amended,* due to under-declared income, and the deficiency EWT was assessed on the basis of *Section 57 of the same*

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Code due to non-withholding of the mandatory EWT on certain expenses claimed.

The detailed breakdown of the deficiency income tax, VAT and EWT assessments received by petitioner on April 10, 2002 *(BIR Records, pp. 1,094-1,097)* clearly explains to petitioner the composition and computation of each deficiency assessment.

Also, by reason of said formal letter of demand and assessment notices, petitioner was able to prepare a comprehensive Protest Letter *(Original Docket, pp. 42-53)*, controverting each item in the deficiency income tax, VAT and EWT assessments. If petitioner was not sufficiently informed of the facts and the laws on which the assessment was based, it could not have protested in full.

While the mere filing of a protest letter does not automatically mean that the requirement of *Section 228* has not been violated, however, if the taxpayer is able to intelligently argue its case and elucidate the reasons for the assessment, as in this case, then it cannot contradict itself by asserting that it was not informed of the law and facts on which the assessment was made.

For all the foregoing, We hold that the Formal Letter of Demand and Assessment Notices have factual and legal bases.

Fourth Issue

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Anent the fourth issue whether petitioner is liable for the payment of deficiency income tax, VAT and EWT for the fiscal year ended June 30, 1998, We will discuss each deficiency assessment in *seriatim*.

Deficiency Income Tax Assessment

Petitioner was assessed by respondent of deficiency income tax in the aggregate amount of P368,413,118.23, which arose from the following:

a)	Undeclared rental income amounting to	P129,845,160.00
b)	Undeclared income from sale of lease rights amounting to	21,745,872.23
c)	Undeclared income due to the variance between the Construction in Progress completed in 1998 and the Building & Improvement account amounting to	102,612,011.00
d)	CUSA Expenses (unexplained variance per ITR and per FS)	43,370,331.00
e)	Disallowed Rent Expense amounting to	38,432,625.00
f)	Disallowed Professional Fees amounting to	906,610.00
g)	Disallowed Commission amounting to	3,975,795.40
h)	Disallowed Interest Expense amounting to	3,951,921.50
i)	Income payments to corporations (unexplained source of cash) amounting to	22,727,818.11
j)	Talent Fees (unexplained source of cash) amounting to	288,396.50
k)	Professional Fees paid to juridical persons (unexplained source of cash) amounting to	4,240,043.20
l)	Payment to contractors & subcontractors (unexplained source of cash) amounting to	137,191,353.00
m)	Awards prizes exceeding P3,000.00 (unexplained source of cash) amounting to	180,194.35
n)	Other payments to corporations (unexplained source of cash) amounting to	10,173,771.20

a) As to undeclared rental income amounting to P129,845,160.00

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As earlier stated, respondent imputed against petitioner an undeclared rent income of P129,845,160.00 upon comparing the rent income of P324,065,500.00 related to the creditable taxes withheld during the fiscal year 1998 in the amount of P16,203,275.00 vis-à-vis the rent income of P194,220,340.00 declared by petitioner in its income tax return for the same fiscal year.

Petitioner counters that it has no undeclared rental income and its rental income for the fiscal year ended June 30, 1998 amounts only to P194,220,340.00, and not P324,065,500.00, as computed by respondent's examiner. Petitioner further argues that the alleged deficiency represents rental income, which has already been reported in the income tax returns of prior years.

We find for the respondent.

Respondent assessed petitioner of deficiency income because of an undeclared rent income in the amount of P129,845,160.00. Petitioner has the burden, therefore, to account for the said deficiency assessment.

While petitioner attempted to explain the deficiency assessment as prior years rental income reported in the income tax returns of prior years, it failed to present documentary evidence to prove that indeed the deficiency assessment of P129,845,160.00 has been reported in the income tax returns of prior years.

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Although petitioner submitted various Certificates of Creditable Tax Withheld at Source for fiscal year 1998 and prior years *(Exhibits "AAAAA-1" to "AAAAA-2714")*, said certificates do not prove that the amount of P129,845,160.00 had been reported in prior years.

In fact, an evaluation of the certificates of creditable tax withheld at source presented by petitioner reveals that the sum of P 1,062,776.21 relating to P21,255,524.20 sales cannot be traced to any fiscal year. Furthermore, the Court finds that some of the certificates pertain to fiscal year 1999. For this reason, petitioner's contention that the amount of P21,255,524.20 pertains to rent income for prior years cannot be sustained. Petitioner failed to rebut respondent's assessment.

In *Commissioner of Internal Revenue vs. Court of Appeals, 242 SCRA 313-314*, the Supreme Court held that failure to present proof of error in the assessment will justify judicial affirmance of said assessment:

> "Assessments are prima facie presumed correct and made in good faith. Contrary to the theory of ACMDC, it is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Verily, failure to present proof of error in the assessment will justify judicial affirmance of said assessment."

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Hence, absent any material evidence, the amount of P129,845,160.00 shall be considered as petitioner's undeclared rental income for fiscal year 1998.

b. Undeclared income from sale of lease rights amounting to P21,745,872.23

Respondent claims that the total consideration for the sale of lease right amounted to P135,093,080.23 and that petitioner only declared the amount of P113,347,208.00 resulting to an understatement of income by P21,745,872.23 *(BIR Records, p. 1138)*.

Contrary to respondent's computation, petitioner avers that the sales of lease rights as reported in its annual income tax return amounted to P121,519,024.31, which reflected the gross sales of P135,093,080.23 less adjustments in the amount of P13,574,055.92; that said adjustments amounting to P13,574,055.92 represent deductions from petitioner's sales of lease rights resulting from rescission of contracts, changes in the area of leased premises, and other similar changes affecting the amount of sales of lease rights for the fiscal year.

Upon close examination of petitioner's ITR, We find that petitioner actually declared the amount of P121,519,024.00 *(Exhibit "A-2")*, and not merely the amount of P113,347,208.00. However, as to the difference in the amount of P13,574,056.23 between the total consideration for the sale

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of lease rights, as found by the respondent amounting to P135,093,080.23 and the gross sales reflected in petitioner's ITR amounting to P121,519,024.00, this Court cannot agree with petitioner that the difference of P13,574,056.23 represents adjustments in petitioner's sales of lease rights resulting from rescission of contracts, changes in the area of leased premises, and other similar changes affecting the amount of sales of lease rights for the fiscal year. Petitioner merely presented a Summary of Sale of Lease Rights, but failed to present any concrete documentary evidence that would prove the veracity of its claim. Absent any material evidence, such as the detailed general ledger and source documents, corroborating said Summary of Sale of Lease Rights, this Court holds that petitioner's Summary of Sale of Lease Right is a mere self serving evidence. Hence, We partially agree with the respondent's findings imputing to petitioner an undeclared rent income from sale of lease rights for fiscal year 1998, but in the reduced amount of P13,574,056.23.

c. Undeclared income due to the variance between the Construction in Progress completed in 1998 and the Buildings & Improvements account amounting to P102,612,011.00.

Respondent contends that as of June 30, 1997 Balance Sheet, the Construction in Progress account reflected a balance of P254,452,013.00, which if completed will form part of the Buildings and Improvements

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account to be reflected in the succeeding year (1998); however, when the Construction in Progress account was closed in 1998, the expected increase in the Buildings and Improvements account which should have come from the Construction in Progress account was not reflected; respondent, thus concluded that the missing amount of construction in progress will be construed as disposal of fixed assets, in accordance with the provisions of *Section 34(A)(2) and (3), NIRC, as amended (BIR Records, pp. 1137-1138).*

The difference between the amounts of the Construction in Progress account of P254,452,013.00 and the net increase/change of P151,840,002.00 in the Buildings and Improvements account, which resulted to the assessed amount of P102,612,011.00, was accounted for by the Court-commissioned Independent CPA, as follows:

			Reference
1)	Cost of units already sold during the FY ended June 30, 1998 (hence, did not form part of the 'Building Improvement' account)	54,750,564.00	Exhibit WW-1-a
2)	Upward adjustments effected in the 'Building Improvement' account due to some adjustments in costs	(2,053,289.00)	Exhibit YY-1-a
3)	Downward adjustments made in the 'Building Improvement' account due to excess estimated liability of completed projects	35,312,936.00	Exhibit YY-1-b
4)	Cost of units completed and transferred to units for sale account (hence, did not form part of the 'Building Improvements' account	14,601,754.00	

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5)	Unaccounted difference	47.00
	Total	**102,612,012.00**

(Exhibit "GGGGGG", Original Docket, p. 263)

The Court finds that the amount of P54,750,564.00 represents the cost of units sold during the fiscal year ended June 30, 1998 *(Exhibit "B-5")*; and the amount of P14,601,754.00 represents the cost of units completed and transferred to units for sale account *(Exhibits "B-3-a" and "B-3-b"),* as such, the same does not form part of the Buildings and Improvements account.

The Court also agrees with the findings of the Court-commissioned independent CPA that there were downward adjustments made in the Buildings and Improvements account due to excess estimated liability of completed projects amounting to P35,312,936.00 and the upward adjustments in the said account due to some adjustments in costs amounting to P2,053,289.00, as reflected in the general ledger *(Exhibit "YY").* Thus, the assessment for undeclared income due to the variance between the Construction in Progress completed in 1998 and the Buildings & Improvements account amounting to P102,612,011.00 should, therefore, be cancelled for lack of factual and legal basis.

d. CUSA Expenses (unexplained variance per ITR and per FS) amounting to P43,370,331.00.

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Respondent contends that there was an unexplained expense variance per Income Tax Return and Financial Statements, particularly on the CUSA Expenses amounting to P43,370,331.00; and contrary to petitioner's accountant averment that the CUSA Expenses pertains to petitioner's share in the electricity, light, water, security, maintenance and other expenses of leased property, such CUSA Expenses is being shouldered by the lessee, pursuant to the lease contract *(BIR Records, p. 1137)*.

Petitioner counter-argues that the CUSA Expenses refer to the maintenance and operating costs of the common areas or the areas and facilities provided by petitioner as lessor for the general use and convenience of all its lessees, employees, customers and guests; and that the CUSA Expenses for the fiscal year ended June 30, 1998 was included in the annual income tax return for the same year particularly in the security and janitorial expenses, rent and utilities, and repair and maintenance.

Respondent's contention is devoid of merit.

As aptly found by the Court-commissioned independent CPA, the subject CUSA Expenses account in the amount of P43,370,331.00 reflected in the audited Financial Statements were classified into specific

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account in petitioner's income tax return for the fiscal year 1998 *(Exhibits "A" and "DD")*, detailed as follows:

Nature of Specific Expense	Amount Reported in Audited FS	Amount of CUSA Reclassified	Amount of Expense Reported in The Annual ITR for FY 1998	Reference
CUSA Expenses	P43,370,331.00			
Security and Janitorial Expense	5,420.00	29,422,132.00	29,427,552.00	Exhibit A-2-a
Rent and Utilities	56,271,292.00	6,831,436.00	60,690,751.00	Exhibit A-2-b
Repairs and Maintenance	570,122.00	7,116,763.00	7,686,885.00	Exhibit A-2-c
Total		**P43,370,331.00**		

(Exhibit "GGGGGG" Original Docket, p. 265)

Thus, We find the assessment for unexplained variance of the CUSA Expense per ITR vis-à-vis the FS in the amount of P43,370,331.00 without legal and factual basis. The assessment should, therefore, be cancelled.

e. Disallowed Rent Expense amounting to P38,432,625.00

Respondent's disallowance of the rent expense paid by petitioner to PNR amounting to P38,432,625.00 was due to petitioner's failure to withhold the corresponding withholding tax thereon; and that the income payments made by petitioner to PNR are not exempt from the EWT since only the following corporations: GSIS, SSS, PHIC, PCSI and PAGCOR are exempt from withholding tax, pursuant to *Section 27(C) of RA 8424* *(BIR Records, p. 1137)*.

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On the other hand, petitioner argues that PNR is a public utility corporation owned and controlled by the Government of the Philippines; that pursuant to *Section 32 (B)(7)(b) of the NIRC of 1997, as amended*, the income derived by the Government from any public utility or from the exercise of any essential governmental function accruing to the Government of the Philippines or to a political subdivision thereof shall not be included in gross income and shall be exempt from taxation; that BIR Ruling No. 018-00 dated January 20, 2000, adopting the above-mentioned view applied to NPC should be applied by analogy to this case.

While We agree with the respondent that the *NIRC of 1997, as amended,* has removed the tax exemptions granted to GOCC's by their own charters and has limited the tax exemptions to the enumerated GOCCs in *Section 27(C) of the NIRC of 1997, as amended*, said provision, however, should be read in conjunction with *Section 32(B)(7)(b) of the same Code*, which provides as follows:

> "SEC. 32. Gross Income. –
>
> xxx xxx
>
> (B) Exclusions from Gross Income. – The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> xxx xxx

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(7) Miscellaneous Items. –

xxx xxx

(b) Income Derived by the Government or its Political Subdivisions. – Income derived from any public utility or from the exercise of any essential governmental function accruing to the Government of the Philippines or to any political subdivision thereof."

Pursuant to the above provision, income derived from any public utility should not be included in the gross income and should be exempted from taxation.

Public service or public utility is defined as "every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way, motor vehicle, either for freight or passenger or both with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries, and water craft, engaged in the transportation of passengers **or** freight **or both**, shipyard, marine railway, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas electric light, heat and power, water supply and power, petroleum, sewerage system, wire or wireless **communications** system, **wire or wireless** broadcasting stations **and other similar public services**: xxx" *(Section 13(b), Chapter II, CA No. 146, otherwise know as the "Public Service Act").*

Section 1 of RA 4156 ("An Act Creating The Philippine National Railways, Prescribing Its Powers, Functions And Duties, And Providing For The Necessary Funds For Its Operation"), provides:

> **"SEC. 1.** *Name, Duration and Domicile.* A corporation to serve as the instrumentality of the Government of the Philippines in providing a nation-wide railroad and transportation system, is hereby created, to be known as the Philippine National Railways, which shall exist for a term of fifty years from the date of approval of this Act. It shall have its main office in the City of Manila, and shall have such branches and agencies within or outside the Philippines as may be necessary for the proper conduct of its business. The Corporation shall be under the Office of Economics Coordination."

Pursuant to the above provisions, it is clear that PNR is a public utility under the purview of the Public Service Act. Being a public utility, the income derived by PNR from petitioner is therefore exempt from income taxation.

Accordingly, petitioner's rental payments to PNR amounting to P38,432,625.00 fall within those transactions not subject to withholding

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tax, under *Section 2.57.5(B) of Revenue Regulations No. 2-98*, which provides, as follows:

> "***SEC. 2.57.5. Exemption from withholding***. – The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> (A) National government and its instrumentalities, including provincial, city or municipal governments;
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> xxx xxx."

Prescinding from the foregoing, the disallowance of petitioner's claimed rental expense in the amount of P38,432,625.00 due to non-withholding of the tax thereon is erroneous.

f. Disallowed Professional Fees amounting to P906,610.00

Invoking *Section 34(A)(1)(b), in relation to Section 57(B) of the NIRC of 1997, as amended*, respondent disallowed petitioner's claimed deduction for professional fees amounting to P906,610.00 for lack of proper withholding tax *(BIR Records, p. 1142)*.

However, petitioner argues that pursuant to *Section 23,* in relation to *Section 22(b) of the Tax Code*, these professional fees being payments

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for legal and audit services to general professional partnerships are not subject to EWT.

The Court partially finds the disallowance erroneous.

As correctly verified by the Court-commissioned independent CPA, petitioner's claimed professional fees amounting to P906,610.00 is comprised of the following:

			Reference
1.	Professional fees paid to general professional Partnerships	P 816,035.00	Exhibit X-1
2.	Adjustments to account	18,900.00	Exhibit X-2
3.	Amounts subjected to withholding tax but not Classified as "Professional Individuals" in tax returns:		
	a. Payments to "Other Recipients of Talent Fees-Individual"	15,350.00	Exhibit X-3
	b. Payments for "Rentals"	17,052.63	Exhibit X-4
	c. "Other Payments to Corporations"	39,272.73	Exhibit X-5
		P 906,610.36	

(Exhibit "GGGGGG", Original Docket, p. 266)

Based on the above schedule, payments to general professional partnerships in the amount P816,035.00 are not subject to withholding tax, pursuant to *Section 22(B) of the NIRC of 1997, as amended,* in relation to *Section 26 of the same Code.* This doctrine was enunciated by the Supreme Court in *Tan vs. Del Rosario, Jr., 237 SCRA 333-334*:

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"The Court, first of all, should like to correct the apparent misconception that general professional partnerships are subject to the payment of income tax or that there is a difference in the tax treatment between individuals engaged in business or in the practice of their respective professions and partners in general professional partnerships. The fact of the matter is that a general professional partnership, unlike an ordinary business partnership (which is treated as a corporation for income tax purposes and so subject to the corporate income tax), is not itself an income taxpayer. The income tax is imposed not on the professional partnership, which is tax exempt, but on the partners themselves in their individual capacity computed on their distributive shares of partnership profits. Section 23 of the Tax Code, which has not been amended at all by Republic Act 7496, is explicit:"

Section 23 referred to above is now embodied in *Section 26 of the NIRC of 1997, as amended*, quoted hereunder as follows:

"SEC. 26. *Tax Liability of Members of General Professional Partnerships.* — A general professional partnership as such shall not be subject to the income tax imposed under this Chapter. Persons engaging in business as partners in a general professional partnership shall be liable for income tax only in their separate and individual capacities.

For purposes of computing the distributive share of the partners, the net income of the partnership shall be computed in the same manner as a corporation.

Each partner shall report as gross income his distributive share, actually or constructively received, in the net income of the partnership."

Likewise, We find the following amounts enumerated under no. 3 of the schedule for professional fees valid deductions from petitioner's

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gross income for FY 1998 considering that the related withholding taxes were withheld and remitted by petitioner:

Amounts subjected to withholding tax but not classified as "Professional Individuals" in tax returns:	
a. Payments to "Other Recipients of Talent Fees-Individual"	15,350.00
b. Payments for "Rentals"	17,052.63
c. "Other Payments to Corporations"	39,272.73

Nevertheless, We uphold respondent's disallowance of the amount of P18,900.00 representing adjustments to the Professional Fees account because We cannot ascertain the nature thereof for lack of supporting documentary evidence.

Consequently, out of the total professional fees of P906,610.00 subject of the assessment, the amount of P887,710.00 represents petitioner's valid deduction from gross income, while the remaining amount of P18,900.00 should be denied.

g. Disallowed Commission amounting to P3,975,795.40

Relying on *Section 34(A)(1)(b),* in relation to *Section 57(B) of the NIRC, as amended*, respondent disallowed the commission expense of petitioner amounting to P3,975,795.40 for want of proper withholding tax *(BIR Records, p. 1137)*.

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Petitioner, however, claims that respondent arrived at this amount by adding the amount of commissions paid in fiscal year ended June 30, 1998, as reflected in the annual income tax return amounting to P5,018,988.00, and the provision for commission in the Reconciliation of Net Income and Analysis of Changes in Retained Earnings/Computation of Tax Due amounting to P5,573,798.00, thereafter, the commissions paid to real estate brokers amounting to P6,616,990.00 were deducted from the sum. According to petitioner, the amount of P5,573,798.00 is a mere reconciling item in its income tax computation.

This Court finds the disallowance in order.

The Court-commissioned independent CPA accounted the amount of commission expense of P3,975,795.40, as follows:

				Reference
1.	Commission expense accrued and paid in FY 1998 but subjected to EWT as payment of professional fees to juridical person		(285,609.18)	Exhibit FFFF-2-a
2.	Commission expense accrued and paid in FY 1998 but not subjected to EWT. The amount pertains to PNR payment representing two percent (2%) Commission, which is based on the Company's gross revenue, net of discount. Commission payments to PNR from July 1997 to June 1998 is as follows:			
	July to December 1997	2,652,269.74		
	January to June 1998	733,911.17	(3,386,180.91)	Exhibit FFFF-2-b
3.	Commission expense accrued in FY 1998 but not yet paid as of FY end, hence, not subjected to EWT		(5,129,877.18)	Exhibit FFFF-2-c
4.	Commission expense accrued in FY 1997 but paid			

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	in FY 1998, hence, subjected to EWT in FY 1998	4,669,676.14	Exhibit FFFF-2-d
5.	Import charges accrued in FY 1997 but paid in FY 1998 and subjected to EWT as payment of Commission in FY 1998	154,616.02	Exhibit FFFF-2-e
6.	Rental expense accrued in FY 1997 but paid in FY 1998 and subjected to EWT as payment of Commission in FY 1998	1,579.00	Exhibit FFFF-2-f
7.	Unreconciled difference	0.71	
Total		**3,975,795.40**	

(Exhibit "GGGGGG", Original Docket, pp. 267-268)

With regard to the tabulated findings, this Court rules as follows:

(1) As to the amount of P285,609.18 representing commission expense accrued and paid in FY 1998, but subjected to EWT as payment of professional fees to juridical persons, We allow said amount as deduction to petitioner's gross income considering that the corresponding tax thereon was withheld by petitioner.

(2) As regards the commission expense of P3,386,180.91 accrued and paid in fiscal year 1998, but not subjected to EWT, the same represents petitioner's valid deduction from gross income. As previously ruled, petitioner is not mandated to withhold the tax thereon considering that PNR is a public utility, and as such, is exempt from income taxation.

(3) With respect to the amount of P5,129,877.18 representing commission expense accrued in fiscal year 1998, but remains unpaid as of the end of the fiscal year and not subjected to EWT, We disallow the same as deduction from petitioner's gross income. As heretofore

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discussed, petitioner is duty-bound to withhold taxes at the time the amount is paid or payable, whichever is earlier in order to be considered as a deductible expense *(Section 2.57.4 of Revenue Regulations 2-98)*. Since the commission expense of P5,129,877.18 was not subjected to withholding tax in the year it was accrued and claimed as an expense, the same shall be disallowed, pursuant to *Section 34(K) of the NIRC of 1997, as amended*, which provides:

> "*(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."

(4) As to the last three items, namely; commission expense amounting to P4,669,676.14, import charges amounting to P154,616.02, and rental expense amounting to P1,579.00, totalling to P4,825,871.16, We allow the deduction thereof from petitioner's gross income for having been subjected to withholding tax.

In sum, petitioner's claimed commission expense amounting to P5,129,877.18 cannot be validly deducted from its gross income. However, We shall limit the amount of disallowance to P3,975,795.40, as assessed by the respondent.

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h. Disallowed Interest Expense amounting to P3,951,921.50

Invoking *Section 34(A)(1)(b) of the NIRC of 1997, as amended*, respondent disallowed the interest expense of petitioner amounting to P3,951,921.50 for lack of supporting documents.

Petitioner posits that there is no factual basis for such allegation.

This Court agrees with petitioner.

The evidence adduced by the petitioner shows that out of the claimed interest expense amounting to P64,947,446.00, the amount of P3,951,921.50 represents bank charges paid by petitioner *(Exhibits "DDD-3" to "DDD-5")*, duly supported by accounts payable vouchers, check vouchers and official receipts *(Exhibit "CC")*. Hence, this item of assessment is hereby cancelled.

i. Income Payments to corporations (unexplained source of cash) amounting to P22,727,818.11

Invoking *Section 32(A),* in relation to *Section 59 of the Tax Code, as amended,* respondent added back to petitioner's gross income the amount of P22,727,818.11 representing income payments made to top 5,000 corporations, per EWT for petitioner's failure to account for the variance between the amount of expense per financial statements and the amount per EWT return.

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Petitioner claims that it withheld 1% EWT on its local purchases and that not all of its income payments to its suppliers belonging to the top 5,000 corporations were reported as expenses because some were capitalized, thus it is erroneous on the part of respondent to trace the entire amount to the expenses reported in the financial statements.

We rule in favor of petitioner.

As traced by the Court-commissioned independent CPA, the total amount of income payments made by petitioner to local suppliers of goods, which were subjected to 1% EWT and reported in the EWT returns amounting to P23,259,915.11, were actually recorded in petitioner's books, under the following accounts:

			Reference
1.	Other Accrued Expenses	P 866,947.28	Exhibit GGGG-10-a
2.	Photo and Representation	436.36	Exhibit GGGG-10-b
3.	Spare Parts and Supplies	40,000.00	Exhibit GGGG-10-c
4.	Advances to Suppliers	188,141.18	Exhibit GGGG-10-d
5.	Office Supplies	476,442.80	Exhibit GGGG-10-e
6.	Advances to Tenants	3,322,085.32	Exhibit GGGG-10-f
7.	Due from GPDI	5,941.61	Exhibit GGGG-10-g
8.	Repairs and Maintenance	419,516.79	Exhibit GGGG-10-h
9.	Advertising and Promotion	1,010,723.36	Exhibit GGGG-10-i
10.	Commission	174,320.91	Exhibit GGGG-10-j
11.	Donations	4,090.91	Exhibit GGGG-10-k
12.	Fastfood Supplies	2,500.00	Exhibit GGGG-10-l
13.	Employee Benefits	2,850.00	Exhibit GGGG-10-m
14.	Advances to PNR	847,050.14	Exhibit GGGG-10-n
15.	Advances-Others	110,706.36	Exhibit GGGG-10-o
16.	Merchandise Inventory	5,220,990.22	Exhibit GGGG-10-p
17.	Construction in Progress	9,367,737.00	Exhibit GGGG-10-q
18.	Land Development Cost (LDC)	225,675.30	Exhibit GGGG-10-r
19.	Dues and Subscription	15,000.00	Exhibit GGGG-10-s
20.	Furniture and Fixtures	6,363.64	Exhibit GGGG-10-t
21.	Office Equipment	166,309.10	Exhibit GGGG-10-u
22.	Other Assets	804,655.46	Exhibit GGGG-10-v
23.	Other Equipment	14,127.27	Exhibit GGGG-10-w

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Total	**P 23,292,611.01**

(Exhibit "GGGGGG", Original Docket, p. 269)

Upon examination of the supporting schedules, vouchers, and ledgers [showing the amount paid and the posting thereof to the specific accounts] *(Exhibits "GGGG", "OOOO", "MM", "BBBBB", "CCCCC", "DDDDD", "EEEEE", "FFFFF", "GGGGG", "HHHHH", "IIIII", "JJJJJ", "KKKKK", "LLLLL", "MMMMM", "NNNNN", "OOOOO", "PPPPP", "QQQQQ", "RRRRR", "SSSSS", "TTTTT", "UUUUU" and "FFFFFF"),* the Court agrees with the findings of the Court-commissioned independent CPA that the income payments made by petitioner to local suppliers which were subjected to EWT of 1% were not only recorded in the expense accounts, namely: "Office Supplies", "Miscellaneous", and "Medical Supplies", as erroneously determined by respondent; but rather, to other Asset/Liability/Expense accounts, enumerated above. Hence, this Court cancels the assessment corresponding to the income payments made by petitioner to top 5,000 corporations in the amount of P22,727,818.11.

j. Talent Fees (unexplained source of cash) amounting to P288,396.50

Upon comparison of the EWT return and the financial statements, respondent found that there was no talent fees expense amounting to P288,396.50 (paid to professional entertainers) reflected in the financial

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statements. Respondent concluded that there was an unexplained source of cash amounting to P288,396.50. Thus, pursuant to *Section 32(A),* in relation to *Section 59 of the Tax Code, as amended,* respondent added back the amount of P288,396.50 to petitioner's gross income due to its alleged failure to account for the variance between the amount of expense per financial statements and the amount per EWT return.

Petitioner disagrees, claiming that it paid EWT on talent fees amounting to P345,462.20 and that the expenses for talent fees are part of the Advertising and Promotions account, as reported in the Financial Statements.

The Court finds that respondent erroneously treated the amount of P288,396.50, as part of petitioner's gross income. Records show that the amount of P288,396.50 which was subjected to EWT and reported in petitioner's EWT returns as paid to "Other Recipients of Talent Fees" under Alpha-Numeric Tax Code (ATC) W1080, was recorded under the following expense and liability accounts in the aggregate amount of P345,462.13 and, consequently, claimed as deduction for income tax purposes, to wit:

				Reference
1.	Professional Fee	P	15,350.00	Exhibit FF-1
2.	Advertising and Promotion expense		158,827.78	Exhibit FF-2
3.	Advances-others		118,950.00	Exhibit FF-3
4.	Training and Seminar		9,788.89	Exhibit FF-4
5.	Cancelled vouchers		42,545.46	Exhibit FF-5

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Total	**P**	**345,462.13**	Exhibit FF-6
Per BIR Assessment		288,396.50	Exhibit V-5
Difference	P	57,065.63	Exhibit F-2-a

(Exhibit "GGGGGG", Original Docket, p. 270)

The difference between P345,462.13 and P288,396.50 in the amount of P57,065.63, as indicated above, represents the talent fees paid and subjected by petitioner to EWT for the month of October 1997 *(Exhibit F-2-a)*, which respondent failed to consider in its assessment.

k. Professional Fees paid to Juridical Persons (unexplained source of cash) amounting to P4,240,043.20

Invoking *Section 32(A)*, in relation to *Section 59 of the Tax Code, as amended,* respondent compared the Professional Fees paid to Juridical Persons per EWT Return amounting to P10,976,655.20 with that reflected in the financial statements under the account of Management Fees amounting to P6,736,612.00 and the variance amounting to P4,240,043.20 was assessed as an addition to petitioner's gross income allegedly due to petitioner's failure to account for the variance between the amount of expense per Financial Statement and the amount per EWT return.

Petitioner contends that it withheld the proper amount of withholding tax for professional fees paid to juridical persons for the fiscal year ended June 30, 1998.

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The Court finds that the amount of P10,976,655.20, subjected to EWT and reported in petitioner's EWT returns as payment of professional fees to juridical persons, were recorded under the following accounts, as shown in the vouchers and schedules submitted by petitioner *(Exhibits "HHHH", "QQQQ", "MM", "PP", "TTTT", "HHHHH", "NNNNN", "PPPPP", "YYYYY", "VVVVV", and "EEEEEE")*:

			Reference
1.	Accrued Commission	P 285,609.18	Exhibit HHHH-1
2.	Advances to Contractor	37,500.00	Exhibit HHHH-2
3.	Construction in Progress	2,245,606.11	Exhibit HHHH-3
4.	Advertising and Promotions	372,180.60	Exhibit HHHH-4
5.	Training and Seminar	101,481.66	Exhibit HHHH-5
6.	Due from DGPI	29,552.63	Exhibit HHHH-6
7.	Advances to PNR	127,779.20	Exhibit HHHH-7
8.	Prepaid Import Charges	165,089.57	Exhibit HHHH-8
9.	Land Development Cost	22,727.27	Exhibit HHHH-9
10.	Management Fee Accrued in FY ended June 30, 1997	7,589,088.20	Exhibit HHHH-10
11.	Unverified	40.78	
	Total	**P 10,976,655.20**	

(Exhibit "GGGGGG", Original Docket, p. 270)

Therefore, respondent erroneously concluded that the professional fees paid to juridical persons were recorded only under the "Management Fees" expense account. Hence, the amount of P4,240,043.20 should not be added as part of petitioner's gross income for the fiscal year 1998.

l. Payment to Contractors & Subcontractors (unexplained source of cash) amounting to P137,191,353.00

Payments made to Contractors & Subcontractors for Corporations and Individuals per EWT were compared with the financial statements and the variance amounting to P137,191,353.00 was added by respondent

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as part of petitioner's gross income for the latter's failure to account for the variance between the amount of expense per fiscal year and amount per EWT, citing as basis *Section 32(A),* in relation to *Section 59 of the Tax Code, as amended.*

Petitioner asserts that it was erroneous for respondent to trace the amount of P137,191,353.00 in the expense account of the Financial Statements since not all of the payments to individual and corporate contractors and subcontractors were taken up as expense because some were capitalized to form part of Construction In Progress and Building and Improvements accounts of the petitioner. Petitioner further argues that it has already paid the EWT on payments to individual and corporate contractors and subcontractors that were reported as expenses.

The Court-commissioned independent CPA reported that out of the total amount of income payments to contractors and subcontractors, subjected to 1% EWT and reported in petitioner's EWT returns amounting to P189,908,528.00, he was able to verify that the amount of P195,396,736.57 was actually recorded in petitioner's books under the following accounts:

			Reference
1.	Other Accrued Expenses	P 39,690,588.66	Exhibit IIII-19-a
2.	Other Assets	95,907.27	Exhibit IIII-19-b
3.	Advances to Tenants	2,756,001.84	Exhibit IIII-19-c
4.	Advances to Suppliers	176,780.83	Exhibit IIII-19-d
5.	Advances to Contractors	217,727.27	Exhibit IIII-19-e

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6.	Land Development Cost	225,675.27	Exhibit IIII-19-f
7.	Spare Parts and Supplies	115,754.55	Exhibit IIII-19-g
8.	Janitorial	75,549.93	Exhibit IIII-19-h
9.	Security	188,639.90	Exhibit IIII-19-i
10.	Construction Bond	178,800.00	Exhibit IIII-19-j
11.	Contracted Services	11,091,626.89	Exhibit IIII-19-k
12.	Repairs	187,210.92	Exhibit IIII-19-l
13.	Machinery and Equipment	810,784.09	Exhibit IIII-19-m
14.	Office Equipment	700,982.62	Exhibit IIII-19-n
15.	Furniture and Fixtures	39,545.46	Exhibit IIII-19-o
16.	Construction in Progress	129,938,863.66	Exhibit IIII-19-p
17.	Advances to PNR	7,412,189.86	Exhibit IIII-19-q
18.	Advances – Others	198,100.93	Exhibit IIII-19-r
19.	Merchandise Inventory	818,970.13	Exhibit IIII-19-s
20.	Communication	6,600.00	Exhibit IIII-19-t
21.	Office Supplies	68,856.86	Exhibit IIII-19-u
22.	Training	2,324.10	Exhibit IIII-19-v
23.	Employee Benefits	69,206.00	Exhibit IIII-19-w
24.	Advertising and Promotion	330,049.53	Exhibit IIII-19-x
	Total	**P 195,396,736.57**	

(Exhibit "GGGGGG", Original Docket, p. 271)

After a careful examination of the supporting schedules, vouchers and ledgers showing the amount paid and the posting thereof to the specific accounts *(Exhibits "IIII", "PPPP", "MM", "PP", "BBBBB", "DDDDD", "EEEEE", "FFFFF", "GGGGG", "IIIII", "MMMMM", "NNNNN", "OOOOO", "PPPPP", "QQQQQ", "SSSSS", "TTTTT", "WWWWW", "YYYYY", "ZZZZZ", "AAAAAA", "BBBBBB", "CCCCCC", "DDDDDD", "EEEEEE" and "FFFFFF")*, the Court agrees with the findings of the Court-commissioned independent CPA that payments to contractors and subcontractors subjected to EWT were recorded not only in "Janitorial", "Repairs and Maintenance" and "Share in CUSA" expense accounts determined by the respondent, but were also recorded in other Assets/Liabilities/Expense accounts. Hence, respondent erred in adding

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back to petitioner's gross income the amount P137,191,353.00. Accordingly, said assessment is hereby cancelled.

m. Awards Prizes exceeding P3,000.00 (unexplained source of cash) amounting to P180,194.35

Respondent compared the awards, prizes and winnings paid per EWT with the financial statements and the alleged variance amounting to P180,194.35 was added as part of gross income for petitioner's failure to account for the variance between the amount of expense per financial statements and amount per EWT, invoking *Section 32(A),* in relation to *Section 59, NIRC, as amended.*

Petitioner avers that its expenses for awards and prizes exceeding P3,000.00 are part of its Advertising and Promotions account, an expense account reported in the financial statements and it remitted the EWT on these awards and prizes.

After a careful perusal of the supporting vouchers and schedules showing the amount paid and the posting thereof to the specific accounts *(Exhibits "II", "MM", and "NN")*, the Court finds that the amount of P180,194.35 was subjected to EWT and reported in petitioner's EWT returns, as paid for "Awards, Prizes exceeding P3000 and Other Winnings Paid" under ATC W1260, and was recorded under the following expense and liability accounts:

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			Reference
1.	Advertising and Promotion expense	P 158,319.33	Exhibit HH-1
2.	Advances-Others	21,875.00	Exhibit HH-2
Total		**P 180,194.35**	

On the basis of the foregoing, respondent erroneously treated the amount of P180,194.35 as part of petitioner's gross income for fiscal year 1998. Hence, this item of assessment is also cancelled.

n. Other Payments to Corporations (unexplained source of cash) amounting to P10,173,771.20

Respondent compared the amount of Other payments to Corporations per EWT with the other payments reflected in the financial statements and the alleged variance amounting to P10,173,771.20 was added as part of petitioner's gross income for failure to account for the said variance, invoking *Section 32(A),* in relation to *Section 59, NIRC, as amended.*

Petitioner contends that the Other Payments account consists of management fees paid to Guoco Holding Philippines, Inc. ("GHPI"), as well as its share on executive salaries for fiscal year ended June 30, 1998, which was subjected to 5% EWT.

Upon verification of the supporting vouchers and schedules showing the amount paid and the posting thereof to the specific accounts *(Exhibits "KK", "LL", "QQ" and "RR"),* the Court finds the amount of P10,173,771.20 subjected to EWT and reported in petitioner's EWT

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returns as "Other Payments to Corporations" under ATC WC150 and was recorded under the following expense and liability accounts:

				Reference
1.	Professional Fee	P	39,272.73	Exhibit JJ-1
2.	Management Fee		5,355,810.31	Exhibit JJ-2
3.	Salaries and Wages		4,778,688.00	Exhibit JJ-3
4.	Unlocated Difference		0.16	
Total			**P 10,173,771.20**	

(Exhibit "GGGGGG", Original Docket, p. 272)

Therefore, the respondent erred in considering the amount of P10,173,771.20, as petitioner's additional source of income for fiscal year 1998. Accordingly, petitioner is not liable to pay deficiency tax thereon.

To recapitulate, petitioner is liable to pay deficiency income tax for fiscal year 1998 in the amount of P104,571,996.38, computed as follows:

Income Before Income Tax Per F/S			P 6,256,531.00
Add: 1. Undeclared Rent Income:			
Creditable Withholding Tax During the year (P16,203,275.00/5%)		P 324,065,500.00	
Less: Rent Income per ITR		194,220,340.00	129,845,160.00
2. Undeclared income from sale of lease right:			
Sale of Leaseright (Prime block)		P 135,093,080.23	
Less: Sale of Leaseright per ITR		121,519,024.00	13,574,056.23
3. Disallowed Professional Fees			18,900.00
4. Disallowed Commission Expense			3,975,795.40
TAXABLE INCOME			P 153,670,442.63
Income Tax Due July 1 – Dec. 31, 1997	P76,835,221..32 @ 35%	P 26,892,327.46	
Jan. 1 – June 30, 1998	P76,835,221..31 @ 34%	26,123,975.25	P 53,016,302.71
Less: Tax paid per ITR			2,158,503.00
INCOME TAX STILL DUE			P 50,857,799.71
Add: 50% Surcharge			25,428,899.85
20% Interest (10/15/98 to 7/25/01)			28,285,296.82
TOTAL AMOUNT STILL DUE			**P 104,571,996.38**

Deficiency VAT Assessment

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We now proceed to the deficiency VAT assessment in the aggregate amount of P111,963,078.85. Record shows that the assessment arose from the results of the investigation conducted by the respondent, to wit:

> a. The total gross sales or receipts of petitioner as basis of the 10% output tax amounted to P704,942,619.67, and not the amount of P450,739,576.44, as reported in petitioner's books, due to undeclared rent income in the amount of P129,845,160.00, undeclared income from sale of lease right in the amount of P21,745,872.23, and unaccounted variance per construction in progress in the amount of P102,612,011.00; and
>
> b. The allowable input tax amounted only to P7,799,977.50, and not the amount of P25,255,762.43, as petitioner's claimed input taxes reflected in its VAT returns.

a. Total Gross Sales/Receipts of P704,942,619.67 as basis of output tax

Respondent added back to the amount of P450,739,576.44, petitioner's gross sales/receipts per books, the undeclared rental income per CWT amounting to P129,845,160.00, undeclared income from sale of lease rights amounting to P21,745,872.23 and unaccounted variance per construction in progress amounting to P102,612,011.00, as part of gross income for VAT purposes *(BIR Records, p. 1136)*, arriving at a total gross income of P704,942,619.67, which was the basis for the computation of the 10% output tax *(BIR Records, p. 1094)*.

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Petitioner, however, contends that (1) it has no undeclared rental income of P129,845,160.00 for the fiscal year ended June 30, 1998 since said amount represents rental income for prior years which had already been subjected to the 10% VAT; (2) it has no undeclared sale of lease rights of P21,745,872.23 for the fiscal year ended June 30, 1998 since its sales of lease rights for the subject year amounted to P121,519,024.31 (P135,093,080.23 gross sales less P13,574,055.92 adjustments); and (3) the unaccounted variance per Construction In Progress schedule amounting to P102,612,011.00 is without factual basis because the amount of Construction In Progress expended in fiscal year 1997 formed part of the cost of lease rights sold in fiscal year 1998, and as such the questioned amount did not form part of the buildings and improvements for fiscal year ended June 30, 1998, and it is nowhere alleged that it did not pay VAT on its sales of lease rights for the fiscal year ended June 30, 1998.

The Court-commissioned independent CPA finds that (1) the identified gross sales/receipts per books amounting to P450,739,576.44 was based on petitioner's VAT and Non-VAT cash receipts books and sales books from January to December of 1998, but he was not able to trace the abovementioned amount, and (2) based on the review performed on the petitioner's VAT returns for the quarters ending September 30,

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1997, December 31, 1997, March 31, 1998 and June 30, 1998, he was able to determine and check that petitioner's gross receipts amounted to P318,516,175.80 *(Exhibits "O"," P", "Q" and "R")*.

After a careful review of the evidence on record, the Court agrees with the findings of the Court-commissioned independent CPA that petitioner's gross receipts amounted to P318,516,175.80, and not the amount of P450,739,576.00.

(1) Undeclared rent income of P129,845,160.00

As heretofore discussed in the assessment for deficiency income tax, the Court finds that there was an undeclared rent income in the amount of P129,845,160.00 for petitioner's failure to present documentary evidence showing that said amount has been previously reported in prior years. Because it was not recorded as part of petitioner's gross receipts, the same was not subjected to output VAT. Accordingly, the undeclared rent income of P129,845,160.00 should, therefore, be added to petitioner's gross receipts amounting to P318,516,175.80 in order that it can be properly subjected to output VAT.

(2) Undeclared sales of lease rights of P21,745,872.23

It must be noted that in the related income tax assessment discussed above, the Court finds that petitioner actually declared the amount of P121,519,024.31 as its sale of lease rights for fiscal year 1998

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(Exhibit "A-2"). However, as regards the difference of P13,574,055.92 between the declared sales of lease rights, per ITR amounting to P121,519,024.00 and the sale of lease rights, as found by the respondent amounting to P135,093,080.23, the Court does not agree with the respondent that the difference of P13,574,056.23 represents adjustments in petitioner's sales of lease rights for petitioner's failure to present any documentary evidence that will support its contention. Thus, only the amount of P13,574,056.23 should be added to petitioner's gross receipts amounting to P318,516,175.80 in order that the same shall form part of the basis of petitioner's output tax.

(3) Undeclared income due to unaccounted variance in the Construction in Progress and Buildings and Improvements accounts amounting to P102,612,011.00

The Court has heretofore ruled that respondent's assessment for unaccounted variance in petitioner's Construction in Progress account amounting to P102,612,011.00 is without factual and legal basis since said amount was properly accounted for by the Court-commissioned independent CPA, as confirmed by the Court upon examination and verification of the evidence on record.

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In sum, only the amounts of P129,845,160.00 and P13,574,056.23 should be added to petitioner's gross receipts of P318,516,175.80 to form part of petitioner's gross receipts, subject to output VAT.

b. An alleged allowable input tax of P7,799,977.50

Since respondent noted that there was no substantial increase in petitioner's capital assets, respondent allowed only the total amount of P7,799,977.50, as petitioner's source of input tax, broken down as follow:

a) Advertising and promotion	P 3,703,500.00
b) Dues & Subscription	45,636.00
c) Insurance Expense	9,436,852.00
d) Management Fee	6,736,612.00
e) Medical Supplies	15,432.00
f) Office Supplies	511,731.00
g) Photo reproduction	22,372.00
h) Professional Fees	958,160.00
i) Rental	56,271,292.00
j) Training Seminars	298,188.00
TOTAL	P 77,999,775.00
Allowable Input Tax	P 7,799,977.47

However, the Court-commissioned independent CPA finds that based on VAT returns, petitioner claimed the amount of P25,255,762.43 as input VAT which was credited against its output VAT liabilities for the period; that the P25,255,762.43 input VAT was claimed by petitioner from its VATable purchases of goods and services amounting to P252,557,624.30 and that P253,912,077.70 was actually recorded in petitioner's books, under the following accounts:

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			Reference
1.	Other Accrued Expenses	39,336,316.48	Exhibit JJJJ-50-a
2.	Janitorial	37,380.40	Exhibit JJJJ-50-b
3.	Security	7,607.90	Exhibit JJJJ-50-c
4.	Contracted Services	8,396,610.10	Exhibit JJJJ-50-d
5.	Advances to Tenants	5,504,427.23	Exhibit JJJJ-50-e
6.	Transportation	12,500.38	Exhibit JJJJ-50-f
7.	Repairs	373,202.60	Exhibit JJJJ-50-g
8.	Machinery and Equipment	937,704.60	Exhibit JJJJ-50-h
9.	Office Equipment	1,667,787.10	Exhibit JJJJ-50-i
10.	Other Assets	1,846,800.60	Exhibit JJJJ-50-j
11.	Furniture and Fixtures	45,909.00	Exhibit JJJJ-50-k
12.	Accounts Payable-Non trade	168,636.40	Exhibit JJJJ-50-l
13.	Retention Fee Payable	26,602,935.59	Exhibit JJJJ-50-m
14.	Construction in Progress	139,333,369.03	Exhibit JJJJ-50-n
15.	Advances to PNR	4,864,669.50	Exhibit JJJJ-50-o
16.	Advances-Others	54,054.00	Exhibit JJJJ-50-p
17.	Merchandise Inventory	5,629,483.30	Exhibit JJJJ-50-q
18.	Insurance	2,518,621.74	Exhibit JJJJ-50-r
19.	Miscellaneous	412.60	Exhibit JJJJ-50-s
20.	Communication	2,396,074.57	Exhibit JJJJ-50-t
21.	Office Supplies	517,222.78	Exhibit JJJJ-50-u
22.	Representation	278,949.65	Exhibit JJJJ-50-v
23.	Training and Seminar	37,286.40	Exhibit JJJJ-50-w
24.	Employee Benefits	15,694.94	Exhibit JJJJ-50-x
25.	Dues and Subscription	15,000.00	Exhibit JJJJ-50-y
26.	Advertising and Promotion	2,857,791.79	Exhibit JJJJ-50-z
27.	Due to PICOP	(274,376.90)	Exhibit JJJJ-50-aa
28.	Land Development Cost	594,491.26	Exhibit JJJJ-50-bb
29.	Advances to Contractors	170,711.75	Exhibit JJJJ-50-cc
30.	Accrued Commission	1,182,779.90	Exhibit JJJJ-50-dd
31.	Prepaid Import Charges	76,736.30	Exhibit JJJJ-50-ee
32.	Advances from Tenants	3,907.90	Exhibit JJJJ-50-ff
33.	Medical Supplies	15,431.70	Exhibit JJJJ-50-gg
34.	Spare Parts and Supplies	155,754.50	Exhibit JJJJ-50-hh
35.	Advances to Suppliers	233,840.79	Exhibit JJJJ-50-ii
36.	Prepaid Insurance	8,078,292.98	Exhibit JJJJ-50-jj
37.	Professional Fee	74,727.20	Exhibit JJJJ-50-kk
38.	Due to COOP	(144,998.10)	Exhibit JJJJ-50-ll
39.	Due from DGPI	6,899.00	Exhibit JJJJ-50-mm
40.	Donations	4,090.90	Exhibit JJJJ-50-nn
41.	Commissions	255,098.20	Exhibit JJJJ-50-oo
42.	Other Equipment	14,127.30	Exhibit JJJJ-50-pp
43.	Photocopy and Reproduction	8,114.34	Exhibit JJJJ-50-qq
	Total	253,912,077.70	

After a perusal of the supporting schedules, vouchers and ledgers showing the amount paid and the posting thereof to the specific accounts

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(Exhibits "JJJJ", "ZZZZ", "LL", "MM", "NN", "BBBB", "CCCCC", "DDDDD", "EEEEE", "FFFFF", "GGGGG", "HHHHH", "IIIII", "JJJJJ", "KKKKK", "MMMMM", "NNNNN", "OOOOO", "PPPPP", "QQQQQ", "RRRRR", "SSSSS", "TTTTT", "UUUUU", "VVVVV", "WWWWW", "XXXXX", "YYYYY", "ZZZZZ", "BBBBBB", "CCCCCC", "DDDDDD", "EEEEEE", "FFFFFF", "HHHHHH", "IIIIII", "JJJJJJ", "KKKKKK", "LLLLLL", "MMMMMM", "NNNNNN", "OOOOOO", "PPPPPP", "QQQQQQ" and "RRRRRR"), the Court agrees with the findings of the Court-commissioned independent CPA that petitioner's input taxes claimed on said payments were recorded not only in "Advertising and Promotion", "Dues and Subscription", "Insurance", "Management Fee", "Medical Supplies", "Office Supplies", "Photo and Reproduction", "Professional Fee", "Rental", and "Training and Seminar" expense accounts, as determined by the respondent, but they were also recorded in other Assets/Liabilities/Expense accounts enumerated above.

Accordingly, We hold that respondent's assessment limiting only to P7,799,977.50 petitioner's allowable input tax is erroneous. Instead, petitioner is entitled to deduct the claimed input VAT of P25,255,762.43 from its total output tax due.

In sum, petitioner is liable to pay deficiency VAT for the fiscal year 1998 in the amount of P28,453,960.74, computed as follows:

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Gross Sales/Receipts		P 318,516,175.80
Add: Undeclared Rental Income per CWT		129,845,160.00
Undeclared Income from Sale of Lease rights		13,574,056.23
Total Gross Sales/Receipts		P 461,935, 392.03
Output VAT Due @ 10%		P 46,193,539.20
Less: Allowable Input Tax	P 25,255,762.43	
VAT Paid Per Return	6,712,745.04	31,968,507.47
OUTPUT VAT STILL DUE		P 14,225,031.73
Add: 50% Surcharge		7,112,515.87
20% Interest (01/25/99 to 07/25/01)		7,116,413.14
TOTAL AMOUNT STILL DUE		**P 28,453,960.74**

<u>Deficiency Withholding Tax Assessment</u>

Going now to the last assessment of Deficiency Withholding Tax in the aggregate amount of P5,146,610.62, the assessment arose from the following findings of the respondent:

a. EWT on rent income amounting to P1,921,631.25;

b. EWT on professional and technical fees amounting to P90,661.00;

c. EWT on commission to real estate broker amounting to P198,789.80;

d. EWT on advertising expense amounting to P185,175.00;

e. EWT on management fees amounting to P427,725.48;

f) EWT on professional entertainers amounting to P33,770.27; and

g) Income payments made to top 5,000 corporations (local suppliers) amounting to P83,167.55.

a. Expanded withholding tax on rent income amounting to P1,921,631.25

With regard to EWT on rent income, respondent maintains that petitioner is liable to pay 5% EWT on rental payments made to PNR amounting to P38,432,625.00. The EWT on rent income was based on the annual rental of P76,865,250.00 divided by 2 or 6 months period, from January to June 1998. Respondent argues that under *Section 27(C) of the Tax Code,* only the following corporations are exempt from withholding tax: GSIS, SSS, PCSI, and PAGCOR, and that the PNR is not among the enumerated exempt corporations.

To reiterate, petitioner maintains that PNR is a public utility corporation, owned and controlled by the Government of the Philippines, and pursuant to *Section 32 (B)(7)(b) of the Tax Code*, its income shall not be included in gross income and shall be exempt from taxation.

As extensively discussed in the related income tax assessment, this Court ruled that PNR, being a public utility, its income derived from petitioner is exempt from taxation. Under *Section 2.57.5(B) of Revenue Regulations 2-98*, the withholding of creditable tax shall not apply to persons enjoying exemption from payment of income taxes, pursuant to the provisions of any law. Therefore, the assessment for deficiency

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withholding tax in the amount of P1,921,631.25 against petitioner is without legal and factual basis. Said assessment is hereby cancelled.

b. EWT on Professional & Technical Fees amounting to P90,661.00

Respondent contends that petitioner did not pay 10% EWT on the amount of P906,610.00 representing professional and technical fees paid to its independent auditor and legal counsel *(Joint Stipulation of Facts and Issues)*. Respondent allegedly compared the Professional & Technical Fees expense per Financial Statements with the Professional & Technical Fees per EWT and the difference was assessed as additional EWT *(BIR Records, p. 1135)*.

On the other hand, petitioner maintains that expenses for legal and audit services are not subject to EWT because they are payments made to general professional partnership.

As previously discussed in the related income tax assessment, We find petitioner's arguments partly meritorious, pursuant to the well settled rule that income of general professional partnerships is not subject to income tax. Being not subject to income tax, there is no obligation on the part of petitioner to withhold any tax due thereon.

Likewise, We also ruled that the related withholding taxes were withheld and remitted in the following accounts: payments to "other

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recipients of talent fees-individual", payments for "rentals", and "other payments to corporations".

However, as regards the amount of P18,900.00 representing adjustments to the Professional Fees account, We disallowed the same as deduction from petitioner's gross income, since We cannot ascertain its nature for lack of supporting documentary evidence. Likewise, We cannot determine whether the corresponding withholding tax has been withheld and properly remitted. Thus, for petitioner's failure to rebut respondent's assessment of deficiency withholding tax with regard to the amount of P18,900.00, We uphold respondent's assessment only to the corresponding withholding tax thereon, in the amount of P1,890.00.

c. EWT on Commission to Real Estate Broker amounting to P198,789.80

Respondent claims that petitioner failed to pay 5% EWT on commissions paid to real estate brokers in the amount of P3,975,796.00 *(Joint Stipulation of Facts and Issues)*. Respondent made a comparison of the Commission Expense on Real Estate Broker per Financial Statements with a Commission Expense on Real Estate Broker per EWT and the difference was assessed for an additional expanded withholding tax.

In relation with the income tax assessment, We sustain this item of assessment considering that petitioner failed to withhold the expanded

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withholding tax on P5,129,877.18 (pertaining to the commission expense accrued in fiscal year 1998, but remains unpaid as of the end of fiscal year).

d. EWT on Advertising Expense amounting to P185,175.00

Respondent avers that petitioner failed to pay 1% EWT on the P3,703,500.00 worth of advertising expense. Respondent compared the advertising expense per Financial Statements with the advertising expense per EWT return and the difference was assessed, as additional EWT *(BIR Records, p. 1134)*.

Petitioner contends that its advertising expense is part of the Advertising and Promotions account, as reported in its Financial Statements. The other items included in this account are talent fees, promotions, marketing, public relations, sponsorships and prizes. Petitioner further argues that its advertising expense, for instance, the expense incurred for its four-day sale, night market, kids' fun time and other advertisements are not subject to EWT because they were paid directly to media and not to any advertising agency. Accordingly, being paid directly to the media, these are not subject to EWT, under *Section 2.57.2 (E)(4)(h) of Revenue Regulations 2-98*.

The Court-commissioned independent CPA accounted the discrepancy of P3,703,500.00 *(Exhibit "ZZZ"),* as follows:

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		Reference
1. Income payments which were not subjected to EWT Pursuant to applicable EWT Regulations		
a. Payments to advertising agency representing amount charged by media (e.g., newspaper, radio)	P 1,265,032.30	Exhibit ZZZ-2-a
b. Payments for advertisement in souvenir program	28,645.45	Exhibit ZZZ-2-b
c. Payment to PLDT for telephone charges and directory advertisement	201,855.44	Exhibit ZZZ-2-c
d. Represents replenishment of petty cash fund	69,743.30	Exhibit ZZZ-2-d
e. Liquidation of cash advances	244,284.20	Exhibit ZZZ-2-e
f. Payments of membership dues	3,500.00	Exhibit ZZZ-2-f
g. Represents offsetting of expense	7,418.18	Exhibit ZZZ-2-g
h. Represents advances which were previously subjected to EWT	202,272.73	Exhibit ZZZ-2-h
i. Adjustment/reversals to advertising and promotion expense account	(350,574.10)	Exhibit ZZZ-2-i
Sub-total	1,672,177.50	
2. Income payments which were subjected to withholding tax		
a. Income payments representing awards and prizes exceeding P3,000 and other winnings subjected to final withholding tax (FWT) of 20%	158,319.33	Exhibit ZZZ-2-j
b. Income payments to prime contractors and/or subcontractors subjected to EWT at 1%	323,685.89	Exhibit ZZZ-2-k
c. Income payments to other recipient of talent fees subjected to EWT at 10%	158,827.78	Exhibit ZZZ-2-l

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d.	Professional fees paid to taxable juridical persons subjected to EWT at 5%	372,180.52	Exhibit ZZZ-2-m
e.	Income payments to local supplier of goods subjected to EWT at 1%	1,016,729.95	Exhibit ZZZ-2-n
f.	Income payments to customs, real estate, insurance and commercial brokers and agents of professional entertainers subjected to EWT at 5%	1,578.95	Exhibit ZZZ-2-o
	Subtotal	2,031,322.42	
3.	Unaccounted difference	0.08	
Total		**P 3,703,500.00**	

(Exhibit "GGGGGG", Original Docket, pp. 277-279).

After a careful review of the evidence on record, the Court agrees with the findings of the Court-commissioned independent CPA that the income payments made by petitioner, recorded as Advertising and Promotions Expense amounting to P2,031,322.42, were actually subjected to withholding taxes (i.e. final withholding tax, EWT), but at different rates depending on the nature of the payments.

With regard to the income payment which was not subjected to EWT amounting to P1,672,177.50, it must be noted that petitioner failed to submit any evidence, such as the general ledger and source documents for purposes of comparison with the summary *(Exhibit "ZZZ")*, so verification can be made as to whether the reconciling items/transactions

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listed therein really exists. Without these material evidence, petitioner's claim must necessarily fail.

Therefore, respondent's assessment of this item due to petitioner's failure to withhold the 1% EWT on the P1,672,177.50 advertising expense is hereby upheld.

e. EWT on Management Fees amounting to P427,725.48

Respondent avers that petitioner did not pay EWT on the amount of P8,554,509.54, representing management fees paid to GHPI for the fiscal year ended June 30, 1998. Respondent compared the amount of Management Fees per Alpha List with the Management Fees per EWT return and the difference was assessed, as additional expanded withholding tax.

On the other hand, petitioner claims that the management fees paid to GHPI are reflected in the withholding tax returns.

The Court-commissioned independent CPA accounted the discrepancy of P8,554,509.54 as follows:

			Reference
1.	Professional fees paid to juridical persons as Disclosed in the EWT Returns but were considered by the BIR as payment of management fees per Alphalist	(9,125,955.80)	Exhibit AAAA-1
2.	Payments to broker per EWT Returns but Classified by the Company in its Alphalist as Payment of professional fees to juridical persons, thus, considered by the BIR as Payment of management fees	(26,450.00)	Exhibit AAAA-2

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3.	Rental payments per EWT Returns but Classified by the Company in its Alphalist as payment of professional fees to juridical persons, thus, considered by the BIR as Payment of management fees.	(19,157.89)	Exhibit AAAA-3
4.	Payments of professional fees to juridical persons considered by the BIR as payment of management fees per EWT Returns but were not considered as such by the BIR per Alphalist	617,054.15	Exhibit AAAA-4
Total		(8,554,509.54)	

(Exhibit "GGGGGG", Original Docket, pp. 279-280).

The Court finds that the abovementioned reconciling items were reported as income payments, subjected to EWT in the Alpha List and were actually subjected to EWT based on the monthly EWT Returns.

Thus, this item of assessment is hereby cancelled.

f. Expanded Withholding Tax on Professional Entertainers amounting to P33,770.27

Respondent alleges that petitioner failed to pay EWT on the amount of P337,702.71 representing expenses for professional entertainers *(Joint Stipulation of Facts and Issues)*. The Professional Entertainers per Alpha List was compared with the Professional Entertainers per Expanded Withholding Tax and the difference was assessed, as additional expanded withholding tax *(BIR Records, p.1134).*

Contrary to respondent's computation, petitioner argues that it has already withheld 10% EWT on talent fees paid to professional entertainers. The talent fees form part of its Advertising and Promotions

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account, an expense account reported in the financial statement. Petitioner further contends that the alleged variance in the computation of EWT on talent fees per Alphalist of Income Payments Subject to Tax and per Monthly Withholding Tax Returns has no basis because the Alphalist of income payments covers calendar year 1998 (i.e. July 1, 1997 to June 30, 1998), as such, the amount of income payments as recorded in these reports will never match.

The discrepancy amounting to P337,702.71, as found by the Court-commissioned independent CPA, is as follows:

			Reference
1.	Rental payments per EWT returns but classified by the Company in its Alphalist as professional fees paid to entertainers, thus, considered by the BIR as per Alphalist but were not in the computation of professional fees paid to entertainers	(15,789.52)	Exhibit BBBB-1
2.	Payments of professional fees to individuals per EWT returns but classified by the Company in its Alphalist as professional fees paid to entertainers, thus, considered by the BIR as professional fees paid to entertainers per Alphalist	(55,555.56)	Exhibit BBBB-2
3.	Payments of professional fees paid to juridical persons per EWT returns but classified by the Company in its Alphalist as professional fees paid To entertainers, thus, considered by the BIR as professional fees paid to entertainers per Alphalist	(305,263.16)	Exhibit BBBB-3
4.	Payments to other recipients of talent fees per EWT Returns but classified by the Company in its Alphalist as professional fees paid to individuals, thus, not considered by the BIR as payments of professional fees to entertainers per Alphalist	38,905.53	Exhibit BBBB-4
Total		(337,702.71)	

(Exhibit "GGGGGG", Original Docket, pp. 280-281)

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A review of the records reveals that the commissioned independent CPA did not err in finding that the reconciling items were reported as income payments subjected to EWT in the Alphalist and were actually subjected to EWT based on the monthly EWT returns.

Therefore, this item of assessment is also cancelled.

g. On the alleged failure to withhold 1% EWT on Income Payments made to top 5,000 Corporations (Local suppliers) P83,167.55

Respondent maintains that petitioner failed to withhold 1% EWT from the amount of P8,316,755.31 which represents income payments made by petitioner to its local suppliers. The income payments made to the top 5,000 corporations (local suppliers), per Alpha List was compared with the Income Payments made to top 5,000 Corporations per EWT, and the difference was assessed, as additional expanded withholding tax based on *Section 57(B), NIRC, as amended (Joint Stipulation of Facts and Issues, and BIR Records, p. 1134)*.

On its part, petitioner argues that the income payments to its local suppliers had already been subjected to EWT and respondent failed to detect such payments because the Alphalist that was used as basis for assessing EWT on this item covers the calendar year dated December 31, 1998 instead of the fiscal year ended June 30, 1998, its correct accounting period.

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The discrepancy of P8,316,755.31 as accounted by the Court-commissioned independent CPA, is as follows:

			Reference
1.	Income payments to local supplier of goods Subjected to EWT at 1% reported both in the Alphalist and in the monthly EWT returns. However, the amount of EWT base reported in the Alphalist is higher than the amount reflected in the EWT returns due to some reclassification of the Nature of income payments made in the Preparation of the Alphalist.	4,636,272.03	Exhibit CCCC-3-a
2.	Income payments to local supplier of goods subjected to EWT at 1% reported in the Alphalist As payment to local supplier of goods but classified under different category of income payments in the monthly EWT returns.	5,526,787.38	Exhibit CCCC-4-a
3.	Income payments to local supplier of goods subjected to EWT at 1% reported in the EWT returns as income payment to local supplier of Goods but classified as payment to contractors/subcontractors in the Alphalist	(1,846,302.49)	Exhibit CCCC-4-b
4.	Unaccounted difference	(1.61)	
Total		8,316,755.31	

(Exhibit "GGGGGG", Original Docket pp. 281-282)

We agree with the above findings of the Court-commissioned independent CPA that the amount of income payments made by petitioner to its local suppliers of goods, as classified and reported in its Alphalist of Income Payments Subjected to EWT, were actually subjected to EWT, although some items were classified under different categories in the EWT Returns, hence, were not considered by the BIR in

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its assessment. Consequently, this item of assessment is likewise cancelled.

In sum, petitioner is liable to pay deficiency EWT for fiscal year 1998 in the amount of P568,655.18, computed as follows:

1. Professional Fees	P	18,900.00		
Multiply by Tax Rate		0.10	P	1,890.00
2. Accrued Commissions	P	3,975,795.40		
Multiply by Tax Rate		0.05		198,789.77
3. Advertising Expense	P	1,672,177.50		
Multiply by Tax Rate		0.05		83,608.88
TOTAL WITHHOLDING TAX STILL DUE			P	284,288.65
Add: 50% Surcharge				142,144.32
20% Interest (1/25/99 to 7/25/01)				142,222.21
TOTAL AMOUNT STILL DUE			**P**	**568,655.18**

WHEREFORE, premises considered, the present Petition For Review is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED** to pay respondent Commissioner of Internal Revenue the reduced amounts of ONE HUNDRED FOUR MILLION FIVE HUNDRED SEVENTY ONE THOUSAND NINE HUNDRED NINETY SIX AND 38/100 PESOS (P104,571,996.38), representing deficiency income tax, FIVE HUNDRED SIXTY EIGHT THOUSAND SIX HUNDRED FIFTY FIVE AND 18/100 PESOS (P568,655.18), representing deficiency EWT, and TWENTY EIGHT MILLION FOUR HUNDRED FIFTY THREE THOUSAND NINE HUNDRED SIXTY

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AND 74/100 PESOS (P28,453,960.74), representing deficiency value-added tax, or the total amount of ONE HUNDRED THIRTY THREE MILLION FIVE HUNDRED NINETY FOUR THOUSAND SIX HUNDRED TWELVE AND 30/100 PESOS (P133,594,612.30), broken down as follows:

	DEFICIENCY TAX DUE			
	Income Tax	EWT	VAT	TOTAL
Basic	P 50,857,799.71	P 284,288.65	P 14,225,031.73	P 65,367,120.09
Surcharge	25,428,899.85	142,144.32	7,112,515.87	32,683,560.04
Interest	28,285,296.82	142,222.21	7,116,413.14	35,543,932.17
Total	**P 104,571,996.38**	**P 568,655.18**	**P 28,453,960.74**	**P133,594,612.30**

In addition, petitioner is hereby **ORDERED** to pay respondent 20% delinquency interest per annum on the total amount of P133,594,612.30, computed from December 13, 2002 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

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