REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHIL FOODS PROPERTIES, INC., *Petitioner,* **CTA CASE NO. 8185**

-*versus*-

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

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PHIL FOODS PROPERTIES, INC., *Petitioner,* **CTA CASE NO. 8238**

-*versus*-

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

Members:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:

DEC 03 2014
12:47 p.m.

x ---x

D E C I S I O N

BAUTISTA, J:

The Case

This is an appeal from the two Final Decision on Disputed Assessment ("FDDA") of respondent dated September 27, 2010 and February 7, 2011, against petitioner for alleged deficiency internal revenue taxes inclusive of interest covering the taxable years 2006 and 2004, respectively, pursuant to Section 228 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC").[1]

The Parties[2]

Petitioner Phil Foods Properties, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at U-1811 Cityland 10 Tower 1, Ayala Avenue corner H.V. dela Costa Street, Makati City and primarily engaged on realty operations.

Respondent Commissioner of Internal Revenue ("CIR") is the chief of the Bureau of Internal Revenue ("BIR"), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. Respondent may be served with summons, notices and other legal processes of this Honorable Court at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.

The Facts

As stated in the Consolidated Joint Stipulation of Facts and Simplification Issues ("CJSFSI") dated December 22, 2011,[3] the factual antecedents of this consolidated case are as follows:

> "**<u>TAX ASSESSMENT COVERING TAXABLE YEAR 2006</u>**
>
> xxx xxx xxx
>
> 3. Sometime in September 2007, [r]espondent issued a Tax Verification Notice No. 00050351 dated September 7, 2007, authorizing Revenue Officer (RO) RYAN L. DAGALANGIT under the supervision of Group Supervisor (GS) MARIVEL G. BELLO of Revenue District Office No. 50 - Revenue Region No. 8 to examine/audit [p]etitioner's internal revenue taxes for the period from January 1, 2006 to December 31, 2006.

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[1] *Records*, CTA Case No. 8185, pp. 1-2; CTA Case No. 8232, pp. 4-5.
[2] *Id.*, Consolidated *Joint Stipulation of Facts and Simplification Issues* ("CJSFSI"), pp. 214-222.
[3] *Id.*, p. 108-113.

4. After the Revenue Officer conducted his examinations which includes but not limited to the duly filed tax returns, books and other accounting records of [p]etitioner, the former submitted his report on his findings, which as a result, a Notice for Informal Conference dated February 19, 2009 was issued assessing [p]etitioner for the following alleged deficiency internal revenue taxes for the taxable year 2006, in the total amount of P3,931,307.77, inclusive of interest and compromise penalties, to wit:

Tax Type	Basic	Interest	Compromise	Total
Income Tax	P2,603,499.85	P954,616.61	P25,000.00	P3,583,116.46
VAT	195,917.50	84,897.58	16,000	296,815.08
EWT	16,309.00	7,067.23	3,000	26,376.23
Penalty - Non-Issuance of OR			25,000	25,000
TOTAL				**P3,931,307.78**

5. After a series of informal discussions, [r]espondent issued a Preliminary Assessment Notice dated December 7, 2009 (hereinafter referred to as **"PAN"**), wherein [p]etitioner was being assessed for alleged deficiency taxes, inclusive of interest and compromise penalties, in the total amount of P4,256,62[7].68 broken down as follows:

Tax Type	Amount
Income Tax	P3,920,232.00
Value-Added tax	310,462.14
EWT	25,933.54
TOTAL	**P4,256,627.68**

6. Despite having protested the PAN, [r]espondent issued an Assessment Notice-Formal Assessment Notice on January 13, 2010 (AN-FAN) reiterating the alleged deficiency internal revenue taxes contained in the PAN as follows:

Tax Type	Assessment No.	Total
Income Tax	IT-WN50351-06-10-0130	P3,998,302.06
Value-Added tax	VT- WN50351-06-10-130	316,473.86
EWT	WT- WN50351-06-10-130	26,433.98
TOTAL		**P4,341,209.90**

7. On October 1, 2010, [p]etitioner received a Final Decision on Disputed Assessment (attached herein as Annex "A") of [r]espondent, through Jaime B. Santiago, CESO V, Regional Director of Revenue Region No. 8, finally denying the protest of [p]etitioner thereby reiterating the alleged assessment for internal revenue taxes contained in the AN-FLD for the collection of the alleged internal revenue taxes and requesting the [p]etitioner to pay the aforesaid alleged tax liability within ten (10) days from receipt on or before November, 5, 2010, otherwise, petitioner may opt to appeal with this Honorable Court of Tax Appeals within thirty (30) days from receipt on October 1, 2010 or until October 31, 2010.

8. The EXISTENCE of the following documents:

(a) The Tax Verification Notice No. 00050351 dated September 5, 2007;

(b) The Notice of Informal Conference dated February 19, 2009;

(c) The Preliminary Assessment Notice dated December 7, 2009;

(d) The Details of Discrepancies attached to the Preliminary Assessment Notice dated December 7, 2009;

(e) The Formal Assessment Notice and Letter of Demand dated January 13, 2010; and

(f) The Final Decision on Disputed Assessment dated September 27, 2010 covering taxable year 2006.

TAX ASSESSMENT COVERING TAXABLE YEAR 2004

9. Sometime in February 2606, [r]espondent issued a Tax Verification Notice No. 128052 dated February 8, 2006, authorizing Revenue Officer (RO) JOEL F. EVANGELLSTA under the supervision of Group Supervisor (GS) JOSEPHINE M. ELARMO of Revenue District Office No. 50 - Revenue Region No. 8, Makati City to examine/audit herein [p]etitioners internal revenue taxes for the period from January 1, 2004 to December 31, 2004.

10. After the Revenue Officer conducted his examinations on the records of the [p]etitioner, which includes but not limited to the duly filed tax returns, books and other accounting records of herein [p]etitioner, the former submitted his report on his findings through a Notice for Informal Conference dated December 5, 2007 assessing herein [p]etitioner for the following alleged deficiency internal revenue taxes for the taxable year 2004, in the total amount of **P4,207,957.83** inclusive of interest and compromise penalties, to wit:

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	P2,021,239.64	-	P1,095,345.76	P25,000.00	P3,141,585.40
Value-Added Tax	6,000.00	-	3,514.52	1,500.00	11,014.52
EWT	150,724.24	-	89,113.13	16,000.00	255,837.37
DST	450,000.00	-	268,520.55	16,000.00	734,520.55
Compromise Penalties					50,000.00
Open Cases/Late Returns					15,000
TOTAL					P4,207,957.83

11. After a series of informal discussions, herein [r]espondent issued a Preliminary Assessment Notice dated July 25, 2008 (hereinafter referred to as "**PAN**"), whereby herein [p]etitioner was being assessed for alleged deficiency taxes, inclusive of interest, in the total amount of **P4,513,477.44**, broken down as follows:

Tax Type	Basic Tax	20% Interest	Amount
Income Tax	P2,620,760.96	1,747,652.65	P4,368,413.61
Value-Added tax	6,000.00	4,260.82	10,260.82

EWT	13,000.00	9,303.01	22,303.01
DST	90,000.00	22,500.00	112,500.00
TOTAL			**P4,513,477.44**

12. Based on the PAN, [p]etitioner duly filed a Protest within the time required by the regulations contesting the factual and legal basis of the [r]espondent's assessment.

13. Despite having protested the PAN, herein [r]espondent issued an Assessment Notice-Formal Assessment Notice on August 21, 2008 (AN-FAN) reiterating the following alleged deficiency internal revenue taxes contained in the PAN for taxable year 2004:

Tax Type	Assessment No.	Total
Income Tax	IT-128052-04-08-0415	P4,430,163.05
Value-Added tax	VT-128052-04-08-0415	10,402.19
Expanded Withholding Tax	WT-128052-04-08-0415	22,609.32
Documentary Stamp Tax	DS-128052-04-08-0415	112,500.00
TOTAL		P4,575,674.56

14. On February 9, 2011, herein [p]etitioner received a Final Decision on Disputed Assessment issued by [r]espondent, through the Regional Director of Revenue Region No. 8, Hon. Jaime B. Santiago, CESO V, finally denying the protest and requiring petitioner to pay the alleged internal revenue tax deficiencies or to file an appeal to the Office of the BIR Commissioner or to the Honorable Court of Tax Appeals within thirty (30) days from receipt on February 9, 2011 or until March 11, 2011.

15. Revenue Regulation No. 13-2000 enumerates the mandatory requirements for an interest expense to be deductible broken down as follows:

(a) There must be indebtedness;
(b) There should be an interest expense paid or incurred upon such indebtedness;
(c) The indebtedness must be that of the taxpayer;
(d) The indebtedness must be connected with the taxpayers trade, business or exercise of profession;

(e) The interest expense must have been paid or incurred during the taxable year;
(f) The interest must have been stipulated in writing;
(g) The interest must be legally due;
(h) The interest payment arrangement must not be between related taxpayers as mandated in Sec. 34(B)(2)(b), in relation to Sec. 36(B), both of the Tax Code of 1997;
(i) The interest must not be incurred to finance petroleum operations; and,
(j) In case of interest incurred to acquire property used in trade, business or exercise of profession, the same was not treated as a capital expenditure"

Thus, on October 29, 2010, petitioner filed a Petition for Review with the Court, docketed as CTA Case No. 8185.[4]

On January 17, 2011, respondent filed her Answer in the case docketed as CTA Case No. 8185,[5] interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

5. Section 228 of the Tax Code, partly provides:

'Sec. 228. Protesting of Assessment. - Such assessment may be protested administratively by cling a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting

[4] *Id.*, pp. 1-10, with attachments.
[5] *Id.*, pp. 71-73.

> documents shall have been submitted, otherwise, the assessment shall become final.'

Implementing the aforesaid provision, Section 3, 3.1.5 of Revenue Regulations No. 12-99 dated September 6, 1999, provides that the taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of cling of his letter of protest, otherwise, the assessment shall become final, executory, and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit and the said Revenue Officer shall state this fact in his report of investigation.

In the instant case, since the petitioner failed to submit the required documents for scrutiny and evaluation by the Revenue Officer who conducted the audit examination of its 2006 tax case, within sixty (60) days from filing its protest, the subject income tax, value-added tax and expanded withholding tax assessments has already become final, executory and demandable. As such, this Honorable Court has no jurisdiction to act on the instant petition.

6. Assuming arguendo that this Honorable Court has jurisdiction to act on the instant petition, [p]etitioner was assessed for deficiency income tax, value-added tax and expanded withholding tax and increments for taxable year 2006, for the reason that during the administrative investigation of its tax case by the respondent CIR, petitioner failed to substantiate or controvert by proper documentary evidence the BIR findings, as shown under the Details of Discrepancies attached to the Final Decision on Disputed Assessment dated September 27, 2010 and Formal Assessment Notices (FAN) dated January 13, 2010, which are briefly discussed hereunder, via:

A.) Deficiency Income Tax:

- Petitioner failed to withhold the appropriate withholding tax due on Professional Fees. Hence, its claimed expenses was disallowed due to non-withholding pursuant to Section 34(K) of the 1997 Tax Code, it is clearly provided that...any amount paid or payable which is otherwise deductible from, or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section, shall be allowed as deductions only if its shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue.

- Petitioner failed to support by proper documents its claimed expenses in the total amount of P7,106,188.00.

B.) Value-Added Tax:

- Petitioner failed to substantiate by proper documentary evidence that the other income of P100,800.00 was not subject to VAT.

- Petitioner failed to present any evidence to support its claimed input tax, hence, the same was disallowed pursuant to Section 110 of the Tax Code.

C.) Expanded Withholding Tax:

- Petitioner failed to remit the corresponding withholding tax due on its income on professional fees, hence, it is liable thereto pursuant to Section 2.57 of RR2-98.

7. Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, when the disputed Preliminary Assessment Notice (PAN) dated December 7, 2009, Formal Assessment Notices (FAN) dated January 13, 2010 and Final Decision on Disputed Assessment dated September 27, 2010 were issued to herein petitioner. Records clearly show that petitioner was duly afforded an opportunity to controvert the findings of the respondent CIR on its deficiency taxes for taxable year 2006 through the issuance of a Notice for Informal Conference dated February 19, 2009 and other

BIR Letter Notices addressed to petitioner. Likewise, petitioner was duly appraised by the respondent of the factual and legal basis on how and why she (respondent) arrived such a deficiency income, value-added tax and expanded withholding tax for taxable year 2006 through the issuance of the Details of Discrepancies attached to the Final Decision on Disputed Assessment dated September 27, 2010 and Formal Assessment Notice (FAN) dated January 13, 2010, as well as other BIR Correspondence to petitioner which an found on the BIR records of this case.

8. The assessments issued against petitioner for deficiency income tax, value-added tax and expanded withholding tax, for taxable year 2006 were made in accordance with law and regulations.

9. All presumptions are on favor of the correctness of tax assessments issued by the respondent."

On March 11, 2011, petitioner filed another Petition for Review, which was docketed as CTA Case No. 8238.[6]

On May 23, 2011, respondent filed her Answer in the case docketed as CTA Case No. 8238,[7] interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

3. She reiterates and repleads the preceding paragraphs of this answer as part her Special and Affirmative Defenses;

4. The assessments in question were made and issued in accordance with law, rules and regulations;

5. Under Section 228 of the Tax Code of 1997, as implemented by Revenue Regulations No. 12-99, assessment notice may be protested administratively by filing a request of reconsideration or reinvestigation, in such form and manner as may be prescribed by

[6] *Records*, CTA Case No. 8238, pp. 4-15, with attachments.
[7] *Id.*, pp. 101-102.

implementing rules and regulations, within thirty (30) days from receipt of the assessment, otherwise the assessment shall become final, executory and demandable.

6. The assessments have long become final, executory and demandable for failure on the part of the petitioner to properly and timely protest the assessments and to submit relevant documents in support of its protest.

7. All presumptions are on favor of the correctness of tax assessments **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)**."

On May 27, 2011, the parties filed their JSFI,[8] and thus a Pre-Trial Order[9] was issued on June 10, 2011, for the case docketed as CTA Case No. 8185.

On July 27, 2011, the parties filed their JSFI[10] for the case docketed as CTA Case No. 8185.

On August 31, 2011, petitioner filed a Motion for Consolidation (CTA Case 8238 and CTA Case 8185),[11] praying that the two cases be consolidated as it deals with identical issues except only for the taxable periods covered.

On September 21, 2011, the Second Division of the Court issued a Resolution[12] granting the Motion for Consolidation of the case docketed as CTA Case No. 8238 to the case docketed as CTA Case No. 8185, which was assigned to the Third Division.

Considering the consolidation, the Court ordered the parties to submit their respective consolidated Pre-Trial Briefs[13] before the scheduled consolidated Pre-Trial.[14]

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[8] *Records*, CTA Case No. 8185 & 8238, pp. 108-113.
[9] *Id.*, pp. 124-129.
[10] *Records*, CTA Case No. 8238, pp. 125-130.
[11] *Id.*, pp. 138-141.
[12] *Records*, CTA Case No. 8185 & 8238, pp. 168-169.
[13] *Id.*, pp. 181-193 and 195-198.
[14] *Id.*, p. 180.

On December 22, 2011, the parties filed a Consolidated Joint Stipulation of Facts and Simplification of Issues,[15] thus a corresponding Pre-Trial Order for the consolidated cases was issued on January 11, 2012.[16]

On July 2, 2012, petitioner filed its Formal Offer of Evidence,[17] which was resolved by the Court on July 31, 2012.[18]

On July 31, 2013, petitioner again filed a Formal Offer of Evidence,[19] offering the additional documentary exhibits.

On the other hand, respondent filed her Formal Offer of Evidence[20] on August 28, 2013. In response, petitioner filed a Comment (to Formal Offer of Evidence August 27, 2013).[21]

On September 24, 2013, the Court issued a Resolution admitting the exhibits offered in its Formal Offer of Evidence dated July 31, 2013.[22] In the same manner, a Resolution was issued by the Court on October 25, 2013, resolving respondent's Formal Offer of Evidence,[23] as well as ordering the parties to file simultaneously within thirty (30) days their respective memorandum.

On December 18, 2018, petitioner filed its Memorandum (for the petitioner),[24] while respondent filed on December 16, 2013, through registered mail, a Manifestation and Motion stating that she is adopting all her arguments in the respective Answers filed for the consolidated case.[25]

Thus on January 3, 2014, the Court promulgated a Resolution[26] submitting the case for Decision.

Hence, this Decision.

[15] *Id.*, pp. 214-222.
[16] *Id.*, pp. 230-239.
[17] *Id.*, pp. 318-330.
[18] *Id.*, pp. 640-641.
[19] *Id.*, pp. 703-706.
[20] *Id.*, pp. 731-748.
[21] *Id.*, pp. 766-768.
[22] *Id.*, p. 770.
[23] *Id.*, p. 772.
[24] *Id.*, pp. 784-811.
[25] *Id.*, pp. 813-817.
[26] *Id.*, p. 820.

The Isssues[27]

Based on the Consolidated Joint Stipulation of Facts and Simplification of Issues filed on December 22, 2011, the issues to be resolved in these consolidated cases are as follows:

"**Tax Assessment Covering Taxable year 2006**

1. Whether or not the FORMAL ASSESSMENT NOTICE issued by respondent against petitioner for the taxable year 2006 is valid.

2. Whether or not petitioner has been deprived of due process that renders the assessment null and void.

3. Whether or not the deficiency income tax, value-added tax and expanded withholding tax assessments issued by respondent to petitioner for taxable year 2006 has already become final and executory for failure of petitioner to submit the required documents in support of its protest, pursuant to Section 228 of the NIRC, as implemented by Section 3 of Revenue Regulations 12-99 dated September 6, 1999.

4. Whether or not petitioner failed to withhold and remit to the BIR the corresponding withholding tax due on its income payment on professional fees.

5. Whether or not petitioner failed to substantiate by proper documents its claimed expenses in the total amount of Php7,106,188.00.

6. Whether or not petitioner is liable to pay the amounts of Php4,355,193.73, Php343,955.98, and Php28,721.71 (all inclusive of interest) as deficiency income tax, value added tax and expanded withholding tax for taxable year 2006.

Tax Assessment Covering Taxable year 2004

[27] *Id.*, pp. 219-221.

7. Whether or not the FORMAL ASSESSMENT NOTICE issued against petitioner for the taxable year 2004 is valid.

8. Whether or not petitioner is liable for DEFICIENCY in Income Tax in the amount of Php4,430,163.05, Value-Added Tax in the amount of Php10,402.19, Expanded Withholding Tax in the amount of Php 22,609.32, Documentary Stamp Tax in the amount of Php112,500 and Surcharge, interest, and compromise penalties, all for taxable year 2004.

9. Whether or not respondents disallowance of petitioner's interest expense in the amount of Php6,886,212 is valid.

10. Whether or not respondent's disallowance of petitioner's direct charges in the amount of Php95,541.00 is valid.

11. Whether or not respondent's disallowance of petitioner's expenses in the amount of Php130,000.00 due to non-withholding on the part of petitioner is proper and valid.

12. Whether or not petitioner's claimed creditable withholding tax in the amount of P345,000.00 was not substantiated with Form 2307 as provided under Section 2.58.3(B) of Revenue Regulations No. 2-98, thus should be disallowed.

13. Whether or not petitioner's input tax claimed per return was substantiated with corresponding VAT invoices or official receipts, hence, should be disallowed.

14. Whether or not petitioner already paid the corresponding documentary stamp tax (DST) due on loan agreement between petitioner and Gardenia Bakeries (PHILs.), Inc. in the amount of Php112,500.00."

The Ruling of the Court

The Court finds _______________ in the Petition for Review.

The consolidated assessment case against petitioner for taxable years 2004 and 2006 is as follows:

Taxable Year	Type of Tax	Total Amount
2004	Income Tax	5,712,540.88
	Value Added Tax	13,341.37
	Expanded Withholding Tax	28,977.53
	Documentary Stamp Tax	201,106.85
Sub-Total		**Php5,955,966.63**
2006	Income Tax	4,355,193.73
	Value Added Tax	343,955.98
	Expanded Withholding Tax	28,721.71
Sub-Total		**Php4,727,871.42**
Grand Total		**Php10,683,838.05**

The Court shall first discuss the common issues for the cases docketed as CTA Case No. 8185 and CTA Case. 8238. In particular, the Court will resolve the issue of the validity of the FAN and the observance of due process. In addition, the issue that respondent raised in her Answer for CTA Case No. 8185,[28] is that the assessment has already become final and executory for failure to submit the required documents in support of the protest filed, must also be discussed.

It is enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law.[29] While "taxes are the lifeblood of the government," the power to tax has its limits, to safeguard the interests of the taxpayers. In the case of *Commissioner of Internal Revenue v. Algue, Inc.*,[30] the Supreme Court held that:

> "Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the

[28] *Id.*, pp. 71-73.
[29] Section 1, Article III, 1987 Constitution.
[30] 241 Phil. 829 (1988).

authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

xxx xxx xxx

It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. x x x (*Emphasis supplied*)

Thus, under the provisions Revenue Regulation ("RR") No. 12-99,[31] it provides that:

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment

[31] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty, September 14, 1999.

> 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 law, rules and regulations, or jurisprudence on which the assessment is based,** otherwise, the formal letter of demand and assessment notice shall be void x x x" (*Emphasis supplied*)

A careful perusal of the records show that in this respect, the FAN issued by respondent on January 10, 2010 contained all the information needed, in that it contained the facts, law, rules and regulations which formed the basis of the assessment, which is a mandatory requirement under Section 228 of the 1997 NIRC.

Anent to this issue, respondent has raised the question of whether or not the protest letters filed by petitioner was sufficient since it did not have any supporting documents during the filing, nor within sixty (60) days thereon. It is the theory of respondent that this lack of supporting documents made both assessments final and executory.[32]

In this situation, Section 228 of the 1997 NIRC provides:

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

[32] *Records*, CTA Case No. 8185 & 8238, pp. 71-73 and 101-102.

In the case of *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*,[33] the taxpayer did not submit supporting documents within the sixty (60) days from the filing of protest because it had already attached the relevant documents upon its filing of a protest letter. The Supreme Court went on to explain that the term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer, but that the BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

Thus, the fact that petitioner chose to submit the protest without supporting documents does not invalidate the fact of filing a protest. The lack of documentation will only matter when the BIR evaluates the merits of the said protests,[34] but it does not result in the deficiency assessment being final and executory.

Thus, in the case docketed as CTA Case No. 8185 ("2006 Assessment"), when respondent issued the FDDA on September 27, 2010,[35] petitioner was correct in bringing up the disputed assessment to the Court.

However, the same cannot be said of CTA Case No. 8238 ("2004 Assessment"). A FAN was issued by the BIR on August 21, 2008,[36] which was received by petitioner on August 22, 2008.[37] A protest was filed by petitioner on October 2, 2008,[38] which was clearly filed out of time, as Section 228 of the 1997 NIRC only allows the taxpayer thirty (30) days from the receipt of the assessment.

Thus, the 2004 Assessment became final and executory. For this reason, the assessments did not become disputed assessments as subject to the Court's review under the law.[39]

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[33] G.R. Nos. 172045-46 June 16, 2009. 589 SCRA 253.
[34] *Records*, CTA Case No. 8185 & 8238, pp. 30-33.
[35] *Exhibit* "14."
[36] *Exhibit* "27."
[37] *Exhibit* "27-D."
[38] *Records*, CTA Case No. 8238, pp. 34-38.
[39] Republic Act No. 9282 amending RA 1125 by expanding the jurisdiction of the CTA, enlarging its membership and elevating its rank to the level of a collegiate court with special jurisdiction. Pertinent portions of the amendatory act provides thus:
Sec. 7. Jurisdiction. - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

That being said, there is no need to further discuss the other issues raised in the 2004 Assessment. The Court shall now proceed with the issues relating to the 2006 Assessment.

A. Income Tax

Taxable Income (loss) per ITR		(424,278.00)
Add: Adjustment/ Disallowance		
a. Disallowed Expenses for Non Withholding	163,090.00	
b. Unsupported Expenses	7,106,188.00	7,269,278.00
Total		6,845,000.00
Add: Net operating loss carried over		424,278.00
Adjusted Taxable income per investigation		7,269,278.00
Basic Income Tax Due		2,544,247.30
Less: Allowable tax credits/ payments		
Prior year's excess credit	2,284,634.00	
Creditable tax withheld	345,000.00	
Subtotal	2,629,634.00	
Less: Adjustments		
Excess MCIT over Income Tax	134,815.00	
Amount carried over to succeeding year	2,494,819.00	
Subtotal	2,629,634.00	-
Basic Deficiency Income Tax		2,544,247.30
Add: Interest (April 16, 2007 to November 5, 2010)		1,810,946.43
TOTAL AMOUNT DUE		**4,355,193.73**

a) Professional Fees

The basis of respondent's assessment is the failure of petitioner to withhold the necessary EWT for the corresponding professional fees declared in its audited financial statements and ITR for the year ended December 31, 2006. Petitioner contends that the said assessment has no basis since the professional fees were paid to a General Professional

1. Decisions of the Commissioner of Inernal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

Partnership, which are not subject to income tax pursuant to Section 26[40] of the 1997 NIRC.

Upon careful examination of the evidence, the Court notes that petitioner merely submitted billing statements instead of official receipts or invoices to support its alleged deduction.

Such billing statements do not qualify as sufficient proof in order for the said professional fees to be considered deductible for income tax purposes.

In the case of *H. Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*,[41] the Supreme Court ruled that the requisites for the deductibility of ordinary and necessary trade or business expenses, like those paid for security and janitorial services, management and professional fees, and rental expenses, are that: (a) the expenses must be ordinary and necessary; (b) they must have been paid or incurred during the taxable year; (c) they must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) they must be supported by receipts, records or other pertinent papers. The proper substantiation requirement for an expense to be allowed is the official receipt or invoice.[42]

As such, the disallowance of Php163,090.00 should be upheld.

b) Interest Expense

Respondent alleged that the interest expense amounting to Php6,886,507.00 should be disallowed since it arose from the loan agreement between petitioner and Gardenia Bakeries (Philippines), Inc. (Gardenia) which is considered as a related party-transaction pursuant to Section 34 (B)(2)(b)[43] of the 1997

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[40] Section 26. 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.

41 G.R. No. 173373, July 29, 2013, citing Commissioner of Internal Revenue v. Isabela Cultural Corporation, G.R. No. 172231, February 12, 2007, 515 SCRA 556, 563.

[42] *Id.*

[43] Sec. 34. *Deductions from Gross Income.* -

xxx xxx xxx

(2) *Exceptions.* - xxx (b) If both the taxpayer and the person to whom the payment has been made or is to be made are persons specified under Section 36 (B); xxx

NIRC and Section 4 (d)(2)(iii) of RR No. 13-2000. BIR alleged that Gardenia owns 80%[44] of petitioner's outstanding capital stock, computed as follows:

Stockholders Per General Information Sheet	Shares Subscribed	Par Value	Subscribed Amount	% of Ownership
Eusebio V. Tan	299,998	10	2,999,980	20%
Gardenia Bakeries (Phils.), Inc.	199,998	60	11,999,880	80%
Alessandra G. Cochico	1	10	10	0%
Reynaldo J. Concepcion	1	10	10	0%
Tan Kong King	1	60	60	0%
Derek Cheong Kheng Beng	1	60	60	0%
Total Outstanding Shares	500,000		15,000,000	

However, BIR's computation of percentage of ownership is erroneous. Pursuant to the SEC Memorandum Circular 8-2013, issued on May 20, 2013, the computation of percentage of ownership should be based on the number of shares, to wit:

> *"Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors."*

Consequently, the computation of percentage of ownership of Gardenia over petitioner shall be computed as follows:

Stockholders Per General Information Sheet	No. of Shares Subscribed	Computation	Percentage of Ownership
Eusebio V. Tan	299,998	299,998/500,000	60%
Gardenia Bakeries (Phils.), Inc.	199,998	199,998/500,000	40%
Alessandra G. Cochico	1		
Reynaldo J. Concepcion	1		
Tan Kong King	1		
Derek Cheong Kheng Beng	1		

N

[44] *Exhibit* "33-B."

Total Outstanding Shares	500,000		

Since petitioner was able to prove that Gardenia is not a related party as contemplated under the 1997 NIRC and that petitioner was able to comply with the requirements of deductibility under RR 13-2000, petitioner is entitled to deduct Php6,886,507.00 as interest expense.

c) *Taxes and Licenses*

Respondent assessed petitioner for unsupported taxes and licenses expense amounting to Php217,770.00 pursuant to Section 34(A)(1)(b)[45] of the 1997 NIRC. However, upon review the 2006 ITR,[46] the Court notes the only Php58,535.00 was expressly declared as Taxes and Licenses under Section D while the balance of Php159,235.00 was declared as Direct Charges - Others under Schedule 3. A further perusal of petitioner's submitted evidence shows that the said expense was properly supported by documents as indicated below:

Date	Source Document	Particulars	Exhibit	Amount
19-Jan-06	Business Permit	Municipal Permit	W-1	58,535.00
27-Mar-06	OR No. 413932	1st Q RPT	W-2	39,808.80
26-Jun-06	OR No. 451602	2nd Q RPT	W-3	19,904.40
26-Jun-06	OR No. 451603		W-4	19,904.40
30-Sep-06	OR No. 512725	3rd Q RPT	W-5	19,904.40
30-Sep-06	OR No. 512726		W-6	19,904.40
14-Dec-06	OR No. 514612	4th Q RPT	W-7	19,904.40
14-Dec-06	OR No. 514614		W-8	19,904.40
TOTAL				**Php 217,770.20**

However, it was noted that Exhibit W-2 was in the name of Gardenia instead of the petitioner. Consequently, the same should be disallowed and petitioner may only deduct Php177,961.40 as Taxes and Licenses expense for 2006.

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[45] SEC. 34. *Deductions from Gross Income.* –

xxx xxx xxx

(A) *Expenses.* -

(1) *Ordinary and Necessary Trade, Business or Professional Expenses.* – *xxx* (b) *Substantiation Requirements.* - No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

[46] *Exhibit* "G."

d) Unsupported Other Expenses

Respondent assessed petitioner for the unsupported Other Expenses amounting to Php1,911.00 pursuant to Section 34(A)(1)(b)[47] of the 1997 NIRC.

Upon careful scrutiny of the evidence presented, the alleged deduction referred to the following:

Date	Ref	Particulars	Amount	Exhibit		Amount
11-Jan-06	JV#1	Misc. on Jan 2006 retainer fee-BMLO	179.00			
22-Feb-06	JV#14	Misc on Dec05 & Jan06 retainer fee-CTDI	424.00	Y-1	OPE	424.00
21-Apr-06	JV#38	Misc. on Mar06 retainer fee-BMLO	32.00	O-3	OPE	32.00
21-Apr-06	JV#42	Bank service charge on January 2006	200.00			
21-Apr-06	JV#43	Bank service charge on February 2006	200.00			
21-Apr-06	JV#44	Bank service charge on March 2006	200.00			
02-Jun-06	JV#54	Misc. on Apr06 retainer fee-CTDI	316.00	Y-4	OPE	316.00
10-Jun-14	JV#57	Misc. on May06 retainer fee-CTDI	77.50	Y-5	OPE	77.50
28-Jul-06	JV#73	Misc. on July06 retainer fee-BMLO	411.00	O-7	OPE	411.00
30-Sep-06	JV#91	Over recording of bank charges	(710.00)			
06-Oct-06	JV#95	Misc. on Sept06 retainer fee-CTDI	210.00	Y-9	OPE	210.00
10-Oct-06	JV#96	Misc. on Sept2006 retainer fee-BMLO	200.00	O-9	OPE	200.00
18-Oct-06	JV#98	Misc. on Oct2006 retainer fee-BMLO	24.00	O-10	OPE	24.00
23-Oct-06	JV#99	Misc. on Oct2006 retainer fee-CTDI	140.00	Y-10	OPE	140.00
13-Dec-06	JV#109	Misc. on Aug2006 retainer fee-BMLO	7.50	O-8	OPE	7.50
TOTAL			**1,911.00**			**1,842.00**

**OPE means Out-of-Pocket Expenses as shown in the billing statements of the respective supplier*

Based from the above schedule, only Php1,842.00 out of the Php1,911.00 was supported by billing statements of the suppliers. However, as have been previously discussed, expenses should be supported by either official receipts or invoices in order to be deductible for the taxable period.

In this case, petitioner merely provided journal vouchers and billing statements to support such transaction instead of its respective official receipts or invoices.

Consequently, the assessment of BIR should be upheld for petitioner's failure to comply with the substantiation requirements under the 1997 NIRC.

Thus, the Php1,911.00 claimed as a deduction should be disallowed.

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[47] *Id.*

e) *Net Operating Loss Carry-Over (NOLCO), Amount Credit Forward to Succeeding Year, and Minimum Corporate Income Tax (MCIT)*

Respondent alleged in its assessment that the following items should be disallowed, considering that the tax benefit of this amount has already been forward to succeeding periods, as provided in the 1997 NIRC, to wit:

NOLCO	Php 424,278.00
Amount Carried Over to Succeeding Year	2,494,819.00
Excess MCIT	134,815.00
Total	Php 3,053,912.00

Since petitioner had no taxable income for the calendar year ended December 31, 2007, petitioner has the right to carry over the abovementioned items to the succeeding taxable periods.

Moreover, respondent cannot disallow the same on the ground that it was already carried forward to the succeeding year because any tax benefit derived by petitioner from the abovementioned items redound to the succeeding calendar year ending December 31, 2005. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

f) *Computation of Income Tax for the year ended December 31, 2006*

After taking into account all the valid disallowances from petitioner's claimed deductions from gross income for taxable year 2006, petitioner would still be in a net loss position and will not result to any deficiency tax, computed as follows:

Taxable Income (loss) per ITR			(424,278.00)
Add: Adjustment/Disallowance			
a. Disallowed Expenses for Non Withholding		163,090.00	
b. Unsupported Expenses			
i. Interest Expense	-		
ii. Taxes and Licenses	39,808.80		
iii. Other Expenses	1,911.00	41,719.80	204,809.80
Total			(424,278.00)
TAX DUE (MCIT: Php6,740,765 x 2%)			**134,815.30**
Less: Allowable tax credits/payments			
Prior year's excess credit		2,284,634.00	
Creditable Tax Withheld (1st to 3rd Q)		258,750.00	

Creditable Tax Withheld (4th Q)	86,250.00	
Subtotal		2,629,634.00
TAXPAYABLE/OVERPAYMENT		**(2,494,818.70)**

B. Value Added Tax

a) <u>Unsupported Gross Receipts</u>

Respondent assessed petitioner for unsupported gross receipts amounting to Php100,800.00 for failure to properly substantiate it's claim that these transactions were non-taxable.

Upon careful examination of the evidence presented, the Court notes that such transaction refers specifically to a reversal of previous accrued expenses. However, petitioner's Journal Voucher No. 06-123[48] discloses a debit of the Professional Fee and credit of Other Income amounting to Php100,800.00, instead of a debit of a corresponding liability account and credit of an expense account. Thus, this document shows that petitioner's contention is incorrect. Such a transaction should be subject to VAT.

Consequently, respondent was correct in assessing petitioner for the unsupported gross receipts for petitioner's failure to provide sufficient evidence to support its claim, as illustrated below.

Date	Vatable Amount	VAT Rate	Output Tax Per Month	Output Tax Per Quarter
Jan-06	575,000.00	10%	57,500.00	
Feb-06	575,000.00	12%	69,000.00	
Mar-06	575,000.00	12%	69,000.00	195,500.00
Apr-06	575,000.00	12%	69,000.00	
May-06	575,000.00	12%	69,000.00	
Jun-06	575,000.00	12%	69,000.00	207,000.00
Jul-06	575,000.00	12%	69,000.00	
Aug-06	575,000.00	12%	69,000.00	
Sep-06	575,000.00	12%	69,000.00	207,000.00
Oct-06	575,000.00	12%	69,000.00	
Nov-06	575,000.00	12%	69,000.00	
Dec-06	575,000.00	12%	69,000.00	207,000.00

[48] *Exhibit* "AB-2."

		Php 816,500.00
Add:	Unsupported Gross Receipts Php100,800 x 12% VAT	12,096.00
		Php 828,596.00

*Pursuant to Revenue Memorandum Circular (RMC) No. 8-2006, the VAT rate will increase from 10% to 12% effective February 1, 2006.

b) Unsupported Input Tax

Respondent assessed petitioner's Input Taxes amounting to Php183,821.50 for its failure to provide the necessary documents required by Section 110[49] of the 1997 NIRC to show whether the said input tax in fact came from a VAT registered entity.

Under Section 110(A)(1)[50] of the 1997 NIRC, any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113[51] of the same code shall be creditable against the output tax.

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[49] SEC. 110. *Tax Credits.* - (A) *Creditable Input Tax.* - (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: (a) Purchase or importation of goods:
(i) For sale; or (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or (iii) For use as supplies in the course of business; or (iv) For use as materials supplied in the sale of service; or (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.
(b) Purchase of services on which a value-added tax has been actually paid.
(2) The input tax on domestic purchase of goods or properties shall be creditable: (a) To the purchaser upon consummation of sale and on importation of goods or properties; and (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.
(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows: (a) Total input tax which can be directly attributed to transactions subject to value-added tax; and (b) A ratable portion of any input tax which cannot be directly attributed to either activity.
The term "*input tax*" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person.
It shall also include the transitional input tax determined in accordance with Section 111 of this Code. The term "*output tax*" means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.
(B) *Excess Output or Input Tax.*- If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person.
If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters.
any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
(C) *Determination of Creditable Input Tax.*- The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.
The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments the Bureau of Customs.
[50] *Id.*
[51] SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
(A) *Invoicing Requirements.* - A VAT-registered person shall, for every sale, issue an invoice or receipt.
In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt: (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

However, upon careful scrutiny of the evidence presented by the petitioner, it was noted that only photocopies of the VAT returns – BIR Forms 2250M and 2550Q – were submitted, and neither supporting official receipts nor invoices were provided to rebut the assessment of respondent.

For this reason, the assessment shall be upheld for petitioner's failure to comply with Sections 110 and 113 of the 1997 NIRC and the corresponding Input taxes to be credited against the Output tax for the period should be disallowed.

c) *Input Tax Carried Over to Succeeding Year*

According to respondent, the excess input tax carried over to succeeding year in the amount of Php148,672.72 was deducted from total creditable input tax, considering the said amount has been credited against the estimated quarterly liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 110(B)[52] of the 1997 NIRC, as amended by RA 9361,[53] to wit:

> "(B) Excess Output or Input Tax - **If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters**: Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

Thus, respondent's assessment should be upheld because of petitioner's failure to substantiate its Input VAT for the period. This resulted in the disallowance of its claim for input

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(B) *Accounting Requirements*. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded.
The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

[52] *See* Note 50.

[53] An Act Amending Section 110(B) of the National Internal Revenue Code of 1997, as amended, And For Other Purposes, 21 November 2006.

tax for 2006 which should have been deducted to the output tax for the same period.

However, the VAT liability of petitioner should be computed as follows:

			First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Output Tax			195,500.00	207,000.00	207,000.00	219,096.00	828,596.00
Less: Input Tax							
	Less:	Transitional/Presumptive Input tax					
		Carried over from Previous Quarter	548,272.72	352,772.72	145,772.72		548,272.72
		Domestic Purchases	-				-
		Total Available Input Taxes	548,272.72	352,772.72	145,772.72	-	548,272.72
		Less: Any Refund/TCC Claimed	-				
		Net Creditable Input Tax	548,272.72	352,772.72	145,772.72	-	548,272.72
VAT Payable			(352,772.72)	(145,772.72)	61,227.28	219,096.00	280,323.28
		Tax Credits/Payments					
		Advance Payments					
	Less:	Creditable VAT Withheld					
	Total Tax Credits/Payments		-	-	-	-	-
SHOULD BE VAT PAYABLE / OVERPAYMENT			(352,772.72)	(145,772.72)	61,227.28	219,096.00	280,323.28
			Less: Payments Already Made				
			a) 2550-Q 3rd Q			31,118.50	
			b) 2550-Q 4th Q			67,140.00	98,258.50
			VAT STILL PAYABLE				182,064.78

*The Fourth Quarter Output tax includes the 12% VAT on the unsupported gross receipts for 2006 (Php207,000 + Php12,096 = Php219,096).

C. Expanded Withholding Tax

Respondent assessed petitioner for non-payment of EWT based on professional fees amounting to Php16,309.00. Petitioner declared such an amount as a deduction in its 2006 ITR. However, a review of the records reveals that petitioner indeed failed to provide substantial proof that the alleged professional fees were indeed paid to a General Professional Partnerships. Therefore, its contention that there was no need to withhold EWT is untenable.

Thus, the said assessment for non-withholding of EWT should be upheld and petitioner be held liable to a basic tax deficiency of Php16,309.00.

In sum, the following items which were assessed will be considered as an allowable deduction from petitioner's gross income for taxable year 2006, as enumerated below:

Interest Expense	Php6,886,507.00
Taxes and Licenses	177,961.40
NOLCO	424,278.00
Amount Carried Over to Succeeding Year	2,494,819.00
Excess MCIT	134,815.00
	Php10,118,380.40

WHEREFORE, in view of the foregoing, the Petition for Review docketed as CTA Case No. 8185 by petitioner Phil Foods Properties, Inc. is hereby **DENIED** for lack of jurisdiction, while the Petition for Review docketed as CTA Case No. 8238 by petitioner Phil Foods Properties, Inc. is hereby **PARTIALLY GRANTED.**

Petitioner is hereby **ORDERED TO PAY** the deficiency for Value-Added Tax and Expanded Withholding Tax for the taxable year ended December 31, 2006, in the modified amount of Php567,992.06, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the 1997, computed as follows:

Type of Tax	Basic Deficiency	25% Surcharge	Total
Value Added Tax	Php182,064.78	Php182,064.78	Php364,129.56
Expanded Withholding Tax	163,090.00	40,772.50	203,862.50
			Php567,992.06

In addition, petitioner is liable to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(C) of the NIRC of 1997:

i. On the basic deficiency VAT of Php182,064.78 computed from January 25, 2007 until full payment thereof;

ii. On the basic deficiency EWT of Php163,090.00 computed from January 15, 2007 until full payment thereof; and

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of Php567,992.06 representing deficiency Value-Added Tax and Expanded Withholding Tax, and on the 20% deficiency interest which have accrued as aforestated in (a), computed from November 5, 2010 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice