REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

JUMBO EAST REALTY INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8380

Members:

CASTAÑEDA, JR., Chairperson,
CASANOVA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

MAR 16 2015

4:30 p.m.

x- -x

DECISION

CASTAÑEDA, JR., J.:

This Petition for Review filed by Jumbo East Realty, Inc. seeks the cancellation of Assessment Notice Nos. 34-06-IT-0916, 34-06-VT-0917, 34-06-WE-0918, 34-06-FT-0919 and 34-06-DS-0920, finding it liable to pay deficiency income tax, value added tax, expanded withholding tax, final tax and documentary stamp tax, respectively, for the taxable year 2006.

THE FACTS

Petitioner Jumbo East Realty, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 3rd floor, Pako Bldg., Pedro Gil corner Gen. Luna Streets, Paco, Manila.[1]

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[1] Par. 1, Petition for Review, Docket, p. 6; Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 163.

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 12, 2007, petitioner filed its Annual Income Tax Return (ITR) for taxable year 2006.[2]

On January 7, 2011, petitioner received a Formal Letter of Demand[3] (FLD). Attached thereto are the Details of Discrepancies[4] and Assessment Notice Nos. 34-06-IT-0916, 34-06-VT-0917, 34-06-WE-0918, 34-06-FT-0919, and 34-06-DS-0920,[5] the details of which are as follows:[6]

DEFICIENCY INCOME TAX pursuant to Sec. 6(B) & 32, NIRC			
Net Income (Loss) per investigation			₱ 1,053,998.00
Add: Adjustment per investigation			
Disallowances – unsupported/non-filing of schedule			
50% disallowance – operating expenses		₱337,588.50	
100% disallowance – taxes & licenses		209,706.00	547,294.50
Income – understated			155,681.36
Adjusted Taxable Income			**₱ 1,756,973.86**
Tax due			₱ 614,940.85
Less: payments			160,834.00
Deficiency Income Tax			₱ 454,106.85
Add: 25% Surcharge (Sec. 248)			
20% Interest p.a. from __ up to 12/31/2010			329,224.97
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)			16,000.00
TOTAL AMOUNT DUE & COLLECTIBLE			**₱ 799,331.82**
DEFICIENCY VALUE-ADDED TAX pursuant to Sec. 108/110/113, NIRC			
Taxable Sales per Return			₱ 3,375,622.00
Add: Adjustment per investigation			
Income – understated			155,681.36
Adjusted taxable income			**₱ 3,531,303.36**
Output tax			₱ 417,870.88
Less: Input tax			-
Value-added Tax payable			₱ 417,870.88

[2] Par. 3, JSFI, Docket, p. 163.
[3] Exhibit "A", Docket, pp. 17-19; Par. 2, JSFI, docket, p. 163; Statement of Material Dates, Petition for Review, Docket, p. 7.
[4] Exhibit "A-1", Docket, p. 20.
[5] Exhibits "A-2" to "A-6", Docket, pp. 21-25.
[6] Exhibit "A", Docket, pp. 17-18.

Less: payments per return				399,556.36
Tax still due & payable			₱	18,314.52
Add: 25% Surcharge (Sec. 248)				
20% Interest p.a. from __ up to 12/31/2010				14,397.11
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)				4,000.00
TOTAL AMOUNT DUE & COLLECTIBLE			**₱**	**36,711.63**
DEFICIENCY EXPANDED WITHHOLDING TAX pursuant to Sec. 79/80, NIRC				
Legal & Audit fee	₱ 70,000.00	x 10%	₱	7,000.00
Security Services	192,183.10	x 2%		3,843.66
Repairs & Maintenance	79,983.00	x 2%		1,599.66
Total EWT due			₱	12,443.32
Less: remittances				10,843.60
Deficiency Expanded Withholding Tax			₱	1,599.72
Add: 25% Surcharge (Sec. 248)				
20% Interest p.a. from __ up to 12/31/2010				1,266.43
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)				700.00
TOTAL AMOUNT DUE & COLLECTIBLE			**₱**	**3,566.15**
DEFICIENCY FINAL TAX pursuant to Sec. 24(2), NIRC				
Dividends payable			₱	6,754,250.00
x Rate				10%
Final Tax Due – Dividends payable			₱	675,425.00
Less: remittances				-
Deficiency Final Tax			₱	675,425.00
Add: 25% Surcharge (Sec. 248)				168,856.25
20% Interest p.a. from __ up to 12/31/2010				534,705.94
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)				20,000.00
TOTAL AMOUNT DUE & COLLECTIBLE			**₱**	**1,398,987.19**
DEFICIENCY DOCUMENTARY STAMP TAX pursuant to Sec. 24(2), NIRC				
Rental Income			₱	3,531,303.36
DST Due			₱	3,532.30
Less: payments				-
Deficiency Documentary Stamp Tax			₱	3,532.30
Add: 25% Surcharge (Sec. 248)				883.08
20% Interest p.a. from __ up to 12/31/2010				2,816.00
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)				1,000.00
TOTAL AMOUNT DUE & COLLECTIBLE			₱	**8,231.37**

On January 28, 2011,[7] petitioner filed a protest of the said assessments, attaching thereto its supporting documents.[8]

On March 25, 2011, petitioner received a letter[9] dated February 25, 2011 from respondent, informing it that its protest has been

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[7] Exhibit "B", Docket, pp. 26-28.
[8] Par. 2, JSFI, Docket, p. 163; Statement of Material Dates, Petition for Review, docket, p. 7.
[9] Exhibit "F", Docket, p. 64.

referred to Revenue Officer Rafael M. Lentejas II for re-investigation and at the same time, respondent revised the previous assessments.[10] The details of the revised assessments are as follows:

DEFICIENCY INCOME TAX[11]			
Taxable Income			₱ 1,053,998.00
Add: Adjustment per investigation			
Disallowance – unsupported/non-filing			
50% disallowance–operating		₱ 337,588.50	
100% disallowance–taxes & licenses		209,706.00	547,294.50
Income – understated (Annex A)			155,681.36
Adjusted Taxable Income			**₱ 1,756,973.86**
Income Tax Due			₱ 614,940.85
Less: Income Tax Payment			280,479.97
Income Tax Deficiency			₱ 334,460.88
Add: Interest		₱ 262,070.72	
Compromise Penalty		16,000.00	278,070.72
INCOME TAX PAYABLE			**₱ 612,531.60**
DEFICIENCY VALUE-ADDED TAX[12]			
Sales			₱ 3,375,622.34
Add: Income – understated			155,681.36
			₱ 3,531,303.70
Output Tax			₱ 417,870.88
Less: Input tax			-
Value-added Tax Due			₱ 417,870.88
Less: Value-added Tax Payment			399,556.37
Deficiency Value-added Tax			₱ 18,314.51
Add: Interest		₱ 14,397.11	
Compromise Penalty		4,000.00	18,397.11
VALUE-ADDED TAX PAYABLE			**₱ 36,711.62**
EXPANDED WITHHOLDING TAX ANALYSIS[13]			
Legal & Audit Fee	₱ 70,000.00	x 10%	₱ 7,000.00
Security Services	192,183.10	x 2%	3,843.66
Repairs & Maintenance	79,983.00	x 2%	1,599.66
Total	**₱342,166.10**		**₱ 12,443.32**
Less: remittances			10,843.60
Deficiency Expanded Withholding Tax			1,599.72
Add: Interest			1,266.43
Compromise Penalty			700.00
TOTAL EWT DEFICIENCY			**₱ 3,566.15**
DEFICIENCY FINAL TAX[14]			
Dividends Payable			₱ 6,754,250.00
Final Tax Rate			10%
Final Tax Due – Dividends Payable			675,425.00

[10] Par. 2, JSFI, Docket, p. 163; Statement of Material Dates, Petition for Review, Docket, p. 7.
[11] Exhibit "F-2", Docket, p. 70.
[12] Exhibit "F-4", Docket, p. 72.
[13] Exhibit "F-3", Docket, p. 71.
[14] Exhibit "F-5", Docket, p. 73.

Less: Remittance			574,325.00
Final Tax Deficiency			101,100.00
Add: Interest (₱574,325.00 up to 01-05-2010)		₱ 344,909.70	
Interest (₱101,100.00 up to 03-15-2011)		84,757.81	429,667.51
Compromise Penalty			16,000.00
TOTAL DIVIDENDS TAX PAYABLE			**₱ 546,767.51**
DEFICIENCY DOCUMENTARY STAMP TAX[15]			
Rental Income			₱ 3,531,303.36
DST Due			₱ 3,531.30
Less: DST payments			-
Deficiency DST			₱ P 3,531.30
Add: Surcharge		₱ 882.83	
Interest		2,777.45	
Compromise Penalty		1,000.00	4,660.28
TOTAL DST PAYABLE			**₱ 8,191.58**

On April 19, 2011, petitioner submitted its Reply[16] dated April 15, 2011 to the revised assessment.

On October 17, 2011, petitioner received a letter dated September 19, 2011[17] from respondent, revising anew the assessments and reducing further the amounts of deficiency income tax, deficiency VAT, deficiency final tax, and deficiency DST.[18]

Thus, on November 16, 2011, petitioner filed the present Petition for Review.

Respondent filed her Answer[19] on January 16, 2012, raising the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

xxx xxx xxx

8. The Honorable Court has no jurisdiction to entertain the instant petition for review due to prematurity. The Petitioner is, in actuality, questioning the validity of the Final Assessments and the recomputed assessments based on the reinvestigation granted after

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[15] Exhibit "F-6", docket, p. 74.
[16] Exhibit "G", docket, pp. 75-78.
[17] Exhibits "I" to "I-5", docket, pp. 110-117.
[18] Par. 2, JSFI, docket, p. 163; Statement of Material Dates, Petition for Review, docket, p. 7.
[19] Docket, pp. 125-132.

the Final Assessments were protested. There are no final assessments issued as a result of the reinvestigation;

9. The findings of the revenue officer who conducted the reinvestigation is still subject for review by the Assessment Division, approval by the Commissioner of Internal Revenue or her duly authorized representative, the Regional Director; and, the subsequent issuance of the Preliminary Assessment Notice and the Final Assessment Notice;

10. In sum, the adversely affected party may file a petition for review with the Honorable Court within the thirty (30) days from receipt of the adverse ruling or inaction of the Commissioner of Internal Revenue or her duly authorized representative, the Regional Director. Hence, it is primordial that the decision or ruling or inaction must be attributed to Respondent herein. However, in the case at bar, there was none because the 19 September 2011 letter would clearly show that the letter was signed by the Revenue District Officer Petronillo C. Fernando only and not by the Regional Director as authorized representative of Respondent or by the Commissioner herself. The word 'decisions' in Section 7 (a) (1) of R.A. 1125, as amended by R.A. No. 9282, has been interpreted to refer to the decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments as held by the Honorable Court in the case of Mizuho Corporate Bank, Ltd. Manila Branch vs. The Commissioner of Internal Revenue, C.T.A. Case No. 7082, 8 January 2007;

11. Petitioner deemed the issuance of the 19 September 2011 letter signed by the Revenue District Oficer Petronillo C. Fernando as a denial of its protest and the computations attached thereto as Assessments which is not yet final. Had Petitioner exercised prudence and not haphazardly invoked the intervention of the Honorable Court, Respondent would have exhausted all administrative remedies. xxx

xxx xxx xxx

12. The assessment attached to the 19 September 2011 letter was a mere computation of how the revenue district officer came up with the amounts in his reinvestigation. xxx

xxx xxx xxx

13. Since there is no Final Assessments issued yet to the Petitioner as a result of Petitioner's Protest, Petitioner has no cause of action to file the instant petition for review;

VALIDITY OF THE ASSESSMENTS

14. Petitioner's claim that Assessment Notices Nos. 34-06-IT-0916, 34-06-VT-0917, 34-06-WE-0918, 34-06-FT-0919 and 34-06-DS-0920 covering deficiency income tax, deficiency value added tax, deficiency expanded withholding tax, deficiency final tax and deficiency documentary stamp tax for taxable year 2006 are null and void for failure of Respondent to sufficiently inform Petitioner of the legal and factual bases in violation of Sec. 228 of the Tax Reform Act of 1997 and the Due Process Clause of the Constitution are false and misleading. The truth of the matter is, Petitioner has been fully informed of the legal and factual bases of the assessments;

15. The Formal Letter of Demand dated 29 December 2010 and the Details of Discrepancies attached as Annex 'A' thereto enumerated in detail the facts and the laws on which the computations were made;

16. After Petitioner filed the Protest on 28 January 2011, Revenue District Officer Petronillo C. Fernando sent two letters dated 25 February 2011 and 19 September 2011 including annexes attached thereto enumerating in both letters the facts and the laws on which the computations were made. These facts allowed Petitioner to intelligently file a reply dated 19 April 2011 even attaching thereto Petitioner's own annexes; Jr

xxx xxx xxx

19. In the protest letter dated 27 January 2011, Petitioner admitted that Petitioner cannot locate receipts or invoices to support its claim for ordinary and necessary expenses; that official receipts were issued in the name of EB Barcelon Inc., the former corporate name of petitioner herein, Jumbo Realty Inc.; that, Petitioner attached several documents to their protest; hence, Petitioner stated that:

> 'These are ordinary and necessary expenses which are all supported by receipts or invoices but unfortunately we cannot locate them at present because the accountant handling the books of the company at the time is no longer with us.'
>
> 'We respectfully submit that the taxes and licenses paid in 2006 should be allowed and we disagree to the findings of 100% disallowance of 2006 taxes and licenses. In this regard we are again submitting the 'Schedule of Taxes, Licenses and Fees' together with the corresponding supporting documents attached hereto as Annexes 'A' to 'A-6' for your reference. The official receipts are in the name of EB Barcelon Inc., the former corporate name of Jumbo Realty, Inc.'

xxx xxx xxx

21. The Annex 'A' attached to Annex 'I' to the Petition for Review would clearly show that Petitioner replaced its name from E.B. Barcelon Enterprises, Inc. to Jumbo East Realty, Inc. as early as August 1982. And in the year 2006, Jumbo East Realty Inc. has still been using the name E.B. Barcelon Enterprises, Inc. and Petitioner admitted such fact in its letters attached as Annexes 'G' and 'I' to the Petition for Review as there are receipts issued in the name of E.B. Barcelon Enterprises, Inc.;

22. Petitioner was claiming as expenses on utilities and communications official receipts issued in the name of E.B. Barcelon Enterprises, Inc., as legitimate expenses of herein Petitioner, Jumbo East Realty, Inc. This undisputable fact would lead one to believe that, if Petitioner was using its old corporate name, it is possible that Petitioner earned income under the same and old corporate name;

23. These facts taken altogether would distinctly and clearly show the evident bad faith on the part of Petitioner."

The parties submitted their Joint Stipulation of Facts and Issues[20] on April 12, 2012; and on April 24, 2012, the Court issued its Pre-Trial Order[21].

During trial, petitioner and respondent presented their testimonial and documentary evidence.

Pursuant to the March 3, 2014 order of this Court,[22] respondent filed her Memorandum[23] on March 27, 2014 and petitioner filed its Memorandum[24] on May 8, 2014. Thereafter, the case was submitted for decision.

THE ISSUES

The parties submitted the following issues[25] for the resolution of this Court:

a) Does this Honorable Court have jurisdiction to entertain this petition?

b) Do the said assessment notices violate Section 228 of R.A. 8424 or the Tax Reform Act of 1997 as

[20] Docket, pp. 163-164.
[21] Docket, pp. 177-185.
[22] Minutes of the hearing dated March 3, 2014, Docket, p. 431.
[23] Docket, pp. 432-445.
[24] Docket, pp. 452-464.
[25] JSFI, Docket, pp. 163-164.

amended and the Due Process Clause of the Constitution as to render them a nullity?

c) If they are not, do the Assessment Notice Nos. 34-06-IT-0916; 34-06-VT-0917; 34-06-WE-0918; 34-06-FT-0919; and 34-06-DS0920, have any factual and legal bases?

d) Whether or not Petitioner can be held liable for using the old corporate name "EB Barcelon, Inc." of petitioner Jumbo Realty Inc., when the change of name was made in 1982 in receipts claimed as legitimate expenses by Petitioner in 2006.

THE COURT'S RULING

Whether or not the Court has jurisdiction over the case.

Respondent argues that petitioner wrongly considered the September 19, 2011 letter signed by Revenue District Officer Petronilo C. Fernando as a denial of its protest. Furthermore, respondent avers that the findings of the revenue officer who conducted the reinvestigation are still subject for review by the Assessment Division, which must be with the approval of respondent or her duly authorized representative, the Regional Director.

On the other hand, petitioner asserts that this Court has jurisdiction to entertain the Petition, as the language used in the assessment notices and FLD leaves no room to doubt that it is a final determination of respondent. Moreover, petitioner argues that respondent clothed her Regional Directors the authority to decide with finality any matter falling within the ambit of her power. While it may be argued that it was not the Regional Director, but the Revenue District Officer, who acted upon the said protest, the action of the Revenue District Officer is considered the action of the Regional Director given the realities of the administrative machinery of the government.

In the case of *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et. al.*[26], the Supreme Court ruled that:

> The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.
>
> We laid down the rule that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment, thus:
>
> ...we deem it appropriate to state that **the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.**"*(Emphasis supplied)*

In the *Oceanic Case*, the Supreme Court held that the Commissioner of Internal Revenue should always indicate in clear and unequivocal language her final decision on the disputed assessment. Here, the subject letter dated September 19, 2011 states:

> "This has reference to your protest letter dated April 15, 2011 raising several issues against the revised computation of deficiency taxes prepared last February 25, 2011. After considering your protest and its supporting documents **the following findings still stands.** xxx xxx xxx" *(Emphasis supplied)*

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[26] G.R. No. 148380, December 9, 2005, 477 SCRA 205 citing the case of *Surigao Electric Company, Inc. v. Court of Tax Appeals*, G.R. No. L-25289, June 28, 1974, 57 SCRA 523.

From the foregoing, the subject letter of the respondent clearly states that its findings *vis a vis* the petitioner's deficiency tax assessments stand. Hence, there is no doubt that the September 19, 2011 letter of respondent is the denial of the protest contemplated under Section 228 of the National Internal Revenue of 1997, as amended (NIRC of 1997, as amended), which provides:

> "SEC. 228.**Protesting of Assessment**. –
>
> xxx xxx xxx
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

On the issue whether the letter issued by Revenue District Officer Petronillo C. Fernando constitutes the final decision of the respondent on petitioner's protest, Section 7 of the NIRC of 1997, as amended, provides:

> "SEC. 7. **Authority of the Commissioner to Delegate Power.**- The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner: **Provided, However, That the following powers of the Commissioner shall not be delegated**:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau; *gr*

> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."*(Emphasis supplied)*

Under Section 7 of the NIRC of 1997, as amended, the general rule is that the CIR may delegate the powers vested in her to any or such subordinate officials with the rank equivalent to a division chief or higher. However, the same admits of several exceptions, as enumerated above. It is noteworthy that the power to assess is not included as one of the exceptions to the powers which may be delegated by respondent. *Ergo*, the same may be delegated to her subordinate officials.

On the other hand, the power to delegate the examination and assessment of any taxpayer is provided for under Section 6 of the NIRC of 1997, as amended, *viz:*

> "SEC 6.**Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement.** –
>
> (A) *Examination of Returns and Determination of Tax Due*. - After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: Provided, however; That

> failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> **The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.**"*(Emphasis supplied)*

Based from the above-quoted provisions, the respondent may delegate her power to examine and assess any taxpayer. Meanwhile, such power is not expressly mentioned under the exceptions provided for in Section 7 of the NIRC of 1997, as amended. Hence, applying the foregoing provisions in the present case, the letter signed by Revenue District Officer Petronillo constitutes the final decision of the respondent because the power to assess petitioner may be delegated upon the former.[27]

Moreover, it is clear from the letter dated February 25, 2011 that petitioner's case has been elevated to Revenue Officer Rafael M. Lentejas II, and that the letter dated September 19, 2011 issued and signed by Revenue District Officer Petronilo C. Fernando is a mere reiteration of the February 25, 2011 letter which found petitioner liable for deficiency income tax, value added tax, expanded withholding tax, final tax and documentary stamp tax, respectively. In other words, the September 19, 2011 issued by the Revenue District Officer is tantamount to a denial of petitioner's protest, which denial is ripe for appeal before this Court.

Considering the foregoing, the Court rules that it is clothed with jurisdiction to take cognizance of the case.

Whether or not the subject assessments were lawfully issued by the respondent.

Petitioner asserts that the subject assessments are void for failure of respondent to sufficiently inform the petitioner of the legal and factual bases thereof. Further, the revisions of the assessments of its deficiency taxes show that respondent is uncertain as to its tax liabilities. *gr*

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[27] See *PEA Tollway Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 7382, Resolution dated December 19, 2006.

On the other hand, respondent contends that the subject assessments state the facts and the laws from which the assessments were based, enabling petitioner to file an intelligent reply.

A reading of the September 19, 2011 letter[28] denying the subject protest shows that the same set forth, in detail, the factual and legal bases of respondent's assessment. Hence, petitioner's right to due process was not violated and the subject assessments were lawfully issued by respondent.

Whether or not petitioner should be held liable based on the assessments.

Finally, the Court shall proceed to determine the correctness of the subject assessments.

On October 17, 2011, petitioner received respondent's letter dated September 19, 2011 denying the protest but reducing further the amounts for deficiency income tax, deficiency value added tax, deficiency final tax and deficiency documentary stamp tax.[29] Details of the revised assessments are as follows:

DEFICIENCY INCOME TAX[30]				
Taxable Income			₱	1,053,998.00
Less: Disallowance of Expenses for Failure to Substantiate				
50% disallowance				442,441.00
Adjusted Taxable Income			₱	1,496,439.00
Income Tax Rate				35%
Income Tax due			₱	523,753.65
Less: Income Tax payment				276,903.49
Income Tax Deficiency			₱	246,850.16
Add: Interest		₱ 220,339.13		
Compromise		16,000.00		236,339.13
INCOME TAX PAYABLE			₱	**483,189.29**
DEFICIENCY VALUE ADDED TAX[31]				
Revenue			₱	3,375,622.34
Multiply: VAT Rate				12%
Output tax			₱	405,074.68
Less: Input tax				-

[28] *Supra.*, Note 13.
[29] JSFI, par. 17, Docket,p. 163.
[30] Exhibit "I-1", Docket, p. 113.
[31] Exhibit "I-2", Docket, p. 114.

VAT Due			₱	405,074.68
Less: VAT Payment				399,556.37
VAT Deficiency			₱	5,518.31
Add: Interest		₱ 5,167.56		
Compromise Penalty		1,500.00		6,667.56
TOTAL VAT PAYABLE			₱	**12,185.87**
EXPANDED WITHHOLDING TAX ANALYSIS[32]				
Legal & Audit Fee	₱ 70,000.00	10%	₱	7,000.00
Security Services	192,183.10	2%		3,843.66
Repairs & Maintenance	79,983.00	2%		1,599.66
Total	₱342,166.10		₱	12,443.32
Less: remittances				10,843.60
Deficiency Expanded Withholding Tax			₱	1,599.72
Add: Interest				1,266.43
Compromise Penalty				700.00
TOTAL EWT DEFICIENCY			₱	**3,566.15**
DEFICIENCY FINAL TAX[33]				
Dividends payable			₱	6,754,250.00
Multiply: Final Tax Rate				10%
Final Tax Due – Dividends payable				675,425.00
Less: Remittance				574,325.00
Final Tax Deficiency			₱	101,100.00
Add: Interest (₱574,325.00 up to 01-05-2010)		₱ 344,909.70		
Interest (P 101,100.00 up to 03-15-2011)		84,757.81		429,667.51
Compromise Penalty				16,000.00
TOTAL DIVIDENDS TAX PAYABLE			₱	**546,767.51**
DEFICIENCY DOCUMENTARY STAMP TAX[34]				
Rental Income			₱	3,531,303.36
DST Due			₱	3,531.30
Less: DST payments				-
Deficiency DST			₱	3,531.30
Add: Surcharge		₱ 882.83		
Interest		2,777.45		
Compromise Penalty		1,000.00		4,660.28
TOTAL DST PAYABLE			₱	**8,191.58**

I. Deficiency Income Tax- ₱483,189.29

The final revised deficiency income tax assessment of ₱483,189.29 arose from the following:

a.	50% disallowance of various operating expenses	₱337,588.50	
	50% disallowance of taxes and licenses	104,852.50	₱442,441.00
b.	disallowance of petitioner's claimed creditable taxes withheld during the year		

[32] Exhibit "I-3", Docket, p. 115.
[33] Exhibit "I-5", Docket, p. 117.
[34] Exhibit "I-4", Docket, p. 116.

	Creditable taxes withheld during the year per ITR	₱168,781.00[35]	
	Less: Creditable taxes withheld with certificates (BIR Forms No. 2307) as found by respondent	76,784.49[36]	₱ 91,996.51

The Court shall determine the propriety of the aforesaid disallowances.

a. 50% disallowance of various expenses and taxes and licenses - ₱442,441.00

Invoking Sections 232, 235 and 34 of the NIRC of 1997, as amended, respondent disallowed the amount of ₱442,441.00 representing 50% of petitioner's claimed deductions for the following operating expenses including taxes and licenses for petitioner's failure to substantiate the same:[37]

Operating Expenses	**Claimed Amount Per ITR**	**50% Disallowance**
Transportation	₱ 107,767.00	₱ 53,883.50
Utilities	209,905.00	104,952.50
Reprsentation	62,666.00	31,333.00
Stationeries and Supplies	39,430.00	19,715.00
Communications	138,922.00	69,461.00
Insurance	44,190.00	22,095.00
Donation	22,395.00	11,197.50
Miscellaneous	49,902.00	24,951.00
	₱ 675,177.00	**₱337,588.50**
Taxes and Licenses	₱ 209,706.00	**₱104,852.50**
	Total	**₱ 442,441.00**

The Court finds the disallowance in order.

Section 34(A)(1)(b) of the NIRC of 1997, as amended, states that:

> "SEC. 34.*Deductions from Gross Income.* — xxx
>
> (A) *Expenses.* —
> xxx

[35]Exhibit "H", the sum of ₱126,537 and ₱42,244.00 (lines 28C and 28D).
[36]Exhibit "I", Docket, p. 111.
[37]Exhibit "I-1", Docket, p. 113; Exhibit "A-1", Docket, p. 20.

> (a) *In General.* — There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession, including:
>
> 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 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."

Clearly, no deduction from gross income shall be allowed unless the taxpayer shall *substantiate with sufficient evidence* the amount of expense being deducted, and 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.

In the case of *Cyanamid Philippines, Inc. v. The Court of Appeals, the Court of Tax Appeals and Commissioner of Internal Revenue*[38], the Supreme Court held that:

> Laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.

Deductions for income tax purposes partake of the nature of tax exemptions; hence, if tax exemptions are strictly construed, then deductions must also be strictly construed.[39] ℛ

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[38]G.R. No. 108067, January 20, 2000, citing *CIR v. Mitsubishi Metal Corporation*, 181 SCRA 214.
[39] *CIR v. General Foods (Phils.), Inc.*, G.R. No.143672, April 24, 2003, 401 SCRA 545.

Consequently, the burden of proof rests upon the petitioner to prove that it is entitled to deduct from its gross income the various operating expenses in the total amount of ₱675,177.00 and taxes and licenses in the amount of ₱209,706.00.

However, petitioner failed to submit its supporting documents, i.e., invoices or official receipts, to substantiate its claimed operating expenses of ₱675,177.00. While petitioner submitted various official receipts (Exhibits "B-2" to "B-7"[40]) to support its claimed taxes and licenses in the amount of ₱209,706.00, the same were denied admission by the Court for petitioner's failure to present their original copies for comparison, except for Exhibit "B-6".[41] Nevertheless, Exhibit "B-6" cannot be accorded any probative value in the present case as it pertains to a payment made in 2007 and hence, irrelevant.

Considering that petitioner's claimed deductions for various operating expenses in the amount of ₱675,177.00 and taxes and licenses in the amount of ₱209,706.00 were not adequately supported by documentary evidence, the Court upholds the respondent's disallowances. In this regard, the Court shall apply the 50% rule of approximation provided under Sections 2.3 and 2.4(c) of Revenue Memorandum Circular (RMC) No. 23-2000, in relation to Section 6(B) of the NIRC of 1997, as amended, *to wit*:

> "**SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.–*
>
> xxx xxx xxx
>
> **(B)** *Failure to Submit Required Returns, Statements, Reports and other Documents.* - **When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.** ge

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[40] Docket, pp. 30-35.

[41] Resolutions dated August 29, 2012 and November 14, 2012, Docket, pp. 226-227 & 277-280.

In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes."*(Emphasis supplied)*

"**REVENUE MEMORANDUM CIRCULAR NO. 23-2000**

SECTION 2. *Prescribed Revenue Procedures.* —

xxx xxx xxx

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

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

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

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

After filing of the complaint against the taxpayer for violation of the *Subpoena Duces Tecum*, the Legal Division/Prosecution Division shall immediately return the docket of the case to the concerned Revenue Officer. The Revenue Officer shall, upon receipt of the docket, immediately proceed to determine the taxpayer's deficiency internal revenue tax liability in accordance with the "Best Evidence Obtainable."

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

xxx xxx xxx

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

b. Disallowed Creditable Taxes Withheld –₱91,996.51

Respondent's findings show that out of petitioner's reported creditable taxes withheld during the year in the amount of ₱168,781.00[42], only the amount of ₱76,784.49 is duly supported by Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307).[43] Hence, the remaining declared creditable taxes withheld in the amount of ₱91,996.51 were disallowed.

A careful scrutiny of the BIR Forms No. 2307 presented by petitioner confirmed respondent's finding that only the amount of ₱76,784.49 creditable withholding taxes were duly substantiated, *to wit:*

[42]Exhibit "H", the sum of ₱126,537 and ₱42,244.00 (lines 28C and 28D).
[43]Exhibit "I", Docket, p. 111.

	Period	Amount of Income Payment	Tax Withheld	Exhibit
Ang, Gui	10-01-06 to 12-31-06	₱ 66,270.60	₱ 3,313.53	"G-7"[44]
Union Electrical Supply, Inc.	10-01-06 to 12-31-06	132,645.00	6,632.25	"G-8"[45]
EPC Marketing / Edward P. Chan	10-01-06 to 12-31-06	284,499.00	14,224.95	"G-9"[46]
Clinton Apparel, Inc.	10-01-06 to 12-31-06	9,000.00	450.00	"G-10"[47]
Romeo Sy	01-20-06 to 12-20-06	336,684.00	16,834.20	"G-11"[48]
SyGuiTiak	10-1-06 to 10-31-06	26,652.00	1,332.60	"G-12"[49]
SyGuiTiak	11-1-06 to 11-30-06	26,652.00	1,332.60	"G-13"[50]
SyGuiTiak	12-1-06 to 12-31-06	26,652.00	1,332.60	"G-14"[51]
Jean HilisTating	01-31-06 to 12-31-06	89,880.00	4,494.00	"G-15"[52]
Carlos Melo	01-01-06 to 12-31-06	75,456.00	3,772.80	"G-16"[53]
Myrna Pinga	01-01-06 to 12-31-06	70,692.00	3,534.60	"G-17"[54]
Felipe Tabang	01-01-06 to 12-31-06	69,180.00	3,459.00	"G-18"[55]
Export & Industry Bank	01-01-06 to 12-31-06	321,427.20	16,071.36	"G-19"[56]
Total		**₱1,535,689.80**	**₱ 76,784.49**	

Thus, on the basis thereof, the Court likewise sustains the respondent's deficiency income tax assessment. Accordingly, petitioner is liable to pay the basic deficiency income tax in the total amount of ₱246,850.16, computed as follows:

Taxable Income		₱ 1,053,998.00
Add: 50% disallowance – operating expenses	₱ 104,852.50	
50% disallowance – taxes and licenses	337,588.50	442,441.00
Adjusted Taxable Income		₱ 1,496,439.00
Income Tax Rate		35%
Income Tax Due		₱ 523,753.65
Less: Tax Credits/Payments		
Prior Year's Excess Credits other than MCIT	₱ 119,383.00	
Tax Payments for the First Three Quarters	36,469.00	
Creditable Tax Withheld for the Four Quarters	76,784.49	
	44,267.00	
Total Tax Credits/Payments		276,903.49
Income Tax Deficiency		**₱ 246,850.16**

[44] Docket, p. 94.
[45] Docket, p. 95.
[46] Docket, p. 96.
[47] Docket, p. 97.
[48] Docket, p. 98.
[49] Docket, p. 99.
[50] Docket, p. 100.
[51] Docket, p. 101.
[52] Docket, p. 102.
[53] Docket, p. 103.
[54] Docket, p. 104.
[55] Docket, p. 105.
[56] Docket, p. 106.

II. Deficiency Value Added Tax - ₱12,185.87

Respondent assessed petitioner for deficiency Value Added Tax (VAT) in the amount of ₱12,185.87, inclusive of increments, based on the following computation:

DEFICIENCY VALUE ADDED TAX[57]		
Revenue		₱ 3,375,622.34
Multiply: VAT Rate		12%
Output tax		₱ 405,074.68
Less: Input tax		-
VAT Due		₱ 405,074.68
Less: VAT Payment		399,556.37
VAT Deficiency		₱ 5,518.31
Add: Interest	₱ 5,167.56	
Compromise Penalty	1,500.00	6,667.56
TOTAL VAT PAYABLE		**₱ 12,185.87**

Upon verification of the Monthly Value-Added Tax Declarations (BIR Forms No. 2550M) and Quarterly VAT Returns (BIR Forms No. 2550Q)[58] the Court notes that the deficiency in the amount of ₱5,518.31 arose from the month of January 2006, as follows:

Return Period (Taxable Year 2006)	VATable Receipts	Output VAT per Return	Exhibit	Output per BIR Audit	Discrepancy
January	₱ 275,918.78	₱ 27,591.87	"C"	₱ 33,110.25	**₱5,518.38**
1st Quarter	837,179.47	94,943.16	"C-2"	100,461.54	5,518.38
2nd Quarter	860,536.02	103,264.32	"C-6"	103,264.32	-
3rd Quarter	832,937.09	99,952.47	"C-10"	99,952.45	(0.02)
4th Quarter	844,969.76	101,396.39	"C-14"	101,396.37	(0.02)
Total (1st to 4th Qtrs)	**₱3,375,622.34**	**₱399,556.34**		**₱405,074.68**	**₱5,518.34**

Respondent subjected the January receipts to 12% VAT rate instead of 10%, the rate applicable for the said period.

Anent thereto, Section 108 (A) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337, authorized the President of the Philippines, upon the recommendation of the Secretary of Finance, to raise the VAT imposed on the sale of services and use

[57] Exhibit "I-2", Docket, p. 114.
[58] Exhibits "C", "C-1", "C-2", "C-4", "C-5", "C-6", "C-8", "C-9", "C-10", "C-12", "C-13" & "C-14", Docket, pp. 36-50.

or lease of properties from 10% to 12% after meeting certain conditions, thus:

> "SEC. 108.**Value-added Tax on Sale of Services and Use or Lease of Properties**.–
>
> (A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
>
> (i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or
>
> (ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%);"

Through RMC No. 07-06 dated January 31, 2006, the BIR published the full text of the Memorandum from Executive Secretary Eduardo Ermita dated January 31, 2006 announcing that the President has approved the recommendation of the Secretary of Finance to increase the VAT rate from 10% to 12% effective February 1, 2006 pursuant to Section 4 of RA No. 9337.

On the basis of the foregoing, it is clear that petitioner properly subjected its gross receipts for the month of January 2006 to 10% VAT, which is the applicable rate for that taxable period. Hence, the Court declares that deficiency VAT assessment should be cancelled.

III. Deficiency Expanded Withholding Tax - ₱ 3,566.15

Respondent assessed the petitioner of deficiency expanded withholding tax in the total amount of ₱3,566.15, inclusive of increments, computed as follows: *ge*

EXPANDED WITHHOLDING TAX ANALYSIS[59]			
Legal & Audit Fee	₱ 70,000.00	10%	₱ 7,000.00
Security Services	192,183.10	2%	3,843.66
Repairs & Maintenance	79,983.00	2%	1,599.66
Total	₱ 342,166.10		₱ 12,443.32
Less: remittances			10,843.60
Deficiency Expanded Withholding Tax			₱ 1,599.72
Add: Interest			1,266.43
Compromise Penalty			700.00
TOTAL EWT DEFICIENCY			**₱ 3,566.15**

Petitioner argued that the repairs and maintenance was paid to persons not subject to expanded withholding tax (EWT) such as carpenters who undertook some repairs in its office.[60] However, no supporting documents were presented to corroborate its assertion. Anent the remaining accounts under audit, no supporting documents were presented to oppose such findings. As previously discussed, Section 34(A)(1)(b) of the NIRC of 1997, as amended, provides that no deduction from gross income is allowed unless the taxpayer can substantiate the same with sufficient evidence. Consequently, respondent's assessment of basic deficiency withholding tax in the total amount of ₱1,599.72 should be sustained.

IV. Deficiency Final Tax - ₱ 546,767.51

Petitioner's deficiency final tax was computed as follows:

Dividends payable		₱ 6,754,250.00
Multiply: Final Tax Rate		10%
Final Tax Due – Dividends payable		₱ 675,425.00
Less: Remittance		574,325.00
Final Tax Deficiency		₱ 101,100.00
Add: Interest (₱ 574,325.00 up to 01-05-2010)	₱344,909.70	
Interest (₱ 101,100.00 up to 03-15-2011)	84,757.81	429,667.51
Compromise Penalty		16,000.00
TOTAL DIVIDENDS TAX PAYABLE		**₱ 546,767.51**

Petitioner admitted that due to lack of funds when dividends for 2006 were declared, the related final taxes withheld in the amount of ₱574,325.00 was paid only on January 10, 2011[61]

[59] Exhibit "I-3", Docket, p. 115.
[60] Petitioner's Reply dated April 15, 2011 to Revised Assessment, Docket, p. 77.
[61] Exhibit "E" and "E-1", Docket, pp. 62-63.

On the other hand, respondent considered the payment made on January 10, 2011 and stated that the Bureau was only collecting the increments as adjusted per period of payment[62].

The Court finds for the respondent.

Section 2.57.4 of Revenue Regulation No. 02-98, as amended by Revenue Regulations No. 12-2001, provides when the obligation to withhold the tax arises, thus:

> "SECTION 2.57.4.Time of Withholding. – The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulation arises **at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first.** The term "payable" refers to the date the obligation becomes due, demandable or legally enforceable.
>
> Provided, however, that where income is not yet paid or payable but the same has been recorded as an expense or asset, whichever is applicable, in the payor's books, the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes."*(Emphasis supplied)*

Based on the above-cited provision, petitioner is liable to withhold the corresponding final tax on dividends declared at the time it is paid, becomes payable, accrued or recorded as an expense or asset, whichever comes first. After which, the corresponding return and remittance of the final tax must be made within 10 days after the end of each month, except for taxes withheld for the month of December of each year, which return shall be filed and the final tax be paid on or before January 15 of the following year.[63]

Considering that it had dividends payable as of December 31, 2006 in the amount of ₱6,754,250.00[64], petitioner was already obligated to withhold and remit the final tax due thereon on January

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[62] Exhibit "I", Docket, p. 112.

[63] Section 2.58(A)(2) of RR No. 2-98, as amended by RR No. 12-01, Annex "B" (2).

[64] Petitioner's Comparative Balance Sheet as of December 31, 2006 and 2005, under Current Liabilities, BIR Records, p. 136.

15, 2007. Thus, petitioner's partial final tax remittance in the amount of ₱574,325.00 was belatedly made on January 10, 2011. Pursuant to Section 248(A)1) and 249(A) of the NIRC of 1997, as amended, petitioner shall be held liable for the corresponding surcharge and interest in the respective amounts of ₱143,581.25 and ₱458,201.21 totalling ₱601,782.46, computed as follows:

Final WithholdingTax Paid on January 10, 2011	₱ 574,325.00
Increments for Late Remittance:	
25% Surcharge	₱ 143,581.25
20% Interest from Jan. 15, 2007 to Jan. 10, 2011	
(₱574,325.00 x 20% x 1456/365)	458,201.21
Total	**₱ 601,782.46**

In addition, petitioner is liable to pay basic deficiency final tax in the amount of ₱101,100.00, computed as follows:

Dividends Payable	₱ 6,754,250.00
Final Tax Rate	10%
Final Tax Due	₱ 675,425.00
Less: Final Tax Remittance on January 10, 2011	574,325.00
Deficiency Final Tax	**₱ 101,100.00**

V. Deficiency Documentary Stamp Tax - ₱8,191.58

For petitioner's failure to present proofs of documentary stamp tax payments on lease contracts entered into during taxable year 2006, respondent assessed petitioner of deficiency documentary stamp tax in the total amount of ₱8,191.58 inclusive of increments, computed as follows:

DEFICIENCY DOCUMENTARY STAMP TAX[65]		
Rental Income		₱ 3,531,303.36
DST Due		₱ 3,531.30
Less: DST payments		-
Deficiency DST		₱ 3,531.30
Add: Surcharge	₱ 882.83	
Interest	2,777.45	
Compromise Penalty	1,000.00	4,660.28
TOTAL DST PAYABLE		**₱ 8,191.58**

[65] Exhibit "I-4", Docket, p. 116.

Petitioner alleged that the corresponding documentary stamp taxes were paid but the returns and receipts evidencing payment cannot be located.[66]

However, petitioner's assertion does not hold water. Well-settled is the rule that all presumptions are in favor of the correctness of the assessment and the burden of proof is upon petitioner to prove otherwise.[67]

In the present case, petitioner failed to provide supporting documents to dispute the assessment. Thus, the assessment is presumed correct. Therefore, petitioner is liable for basic deficiency documentary stamp tax pursuant to Section 194 of the NIRC, as amended, in the amount of ₱3,532.30, computed as follows:

Rental Income	₱ 3,531,303.36		
Documentary Stamp Tax:			
Fist 2,000.00	2,000.00	3.00	3.00
In excess of first 2,000.00	3,529,303.36	3,529,303.6 x 1/1000	3,529.30
Documentary Stamp Tax Due			**₱3,532.30**

VI. Compromise Penalties - ₱35,200.00

Respondent imposed a total amount of ₱35,200.00 compromise penalties against the petitioner, broken down as follows:

Tax type	Compromise Penalty
Income Tax	₱ 16,000.00
Value Added Tax	1,500.00
Expanded Withholding Tax	700.00
Documentary Stamp Tax	1,000.00
Final Tax	16,000.00
Total	**₱ 35,200.00**

Under Revenue Memorandum Order No. 1-90, compromise penalties are only amounts suggested in settlement of criminal liability, and the same may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalties.

[66] Exhibit "G", Docket, p. 78.

[67] *CIR v. Court of Appeals, et. al.*, G.R. Nos. 104151 & 105563, March 10, 1995 & *Inter-Provincial Autobus Co., Inc. v. CIR,* 98 Phil. 290[1956].

Significantly, it is also well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[68]Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[69]

Hence, there being no compromise agreement between the parties in the instant case, the ₱35,200.00 compromise penalties imposed by respondent should be cancelled.

In sum, petitioner is able to show that its deficiency VAT assessment and compromise penalties are improper. However, the Court finds that petitioner is liable to pay its deficiency income tax, expanded withholding tax, documentary stamp tax and final tax, but in a reduced amount, in relation to the subject assessments.

WHEREFORE, in view thereof, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner for taxable year 2006 covering deficiency value-added tax in the amount of ₱12,185.87 and compromise penalties in the amount of ₱35,200.00 are hereby **CANCELLED**. However, respondent's assessments for taxable year 2006 covering deficiency income tax, expanded withholding tax, documentary stamp tax and final tax are hereby **UPHELD**, but in the modified amount of ₱1,043,135.19, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Tax	25% Surcharge	20% Interest	Total
Income Tax	₱ 246,850.16	₱ 61,712.54		₱ 308,562.70
Expanded W/holding Tax	1,599.72	399.93		1,999.65
Final Tax	101,100.00	25,275.00		126,375.00
Documentary Stamp Tax	3,532.30	883.08		4,415.38
Sub-total	**₱353,082.18**	**₱ 88,270.55**		**₱ 441,352.73**
Increments on Late Remittance of Final Tax		₱ 143,581.25	₱ 458,201.21	₱ 601,782.46

[68] *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et. al.,* G.R. Nos. L-1298 and L-12932, March 31, 1962, 4 SCRA 781.

[69] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc.,* G.R. No.L-35266, January 21, 1991, 193 SCRA 92-93.

Sub-total		**P 143,581.25**	**P 458,201.21**	**P 601,782.46**
TOTAL	**P353,082.18**	**P 231,851.80**	**P 458,201.21**	**P1,043,135.19**

In addition, petitioner shall be liable to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, expanded withholding tax, final tax and documentary stamp tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

Tax Type	**Basic Tax**	**Deficiency Interest Computed from**
Income Tax	₱ 246,850.16	April 15, 2007
Expanded Withholding Tax	1,599.72	January 15, 2007
Final Tax	101,100.00	January 15, 2007
Documentary Stamp Tax	3,532.30	January 5, 2007

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱441,352.73 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from October 17, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended; and

(c) Delinquency interest at the rate of 20% per annum on the deficiency increments for late remittance of final tax in the amount of ₱601,782.46 computed from October 17, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
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.

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.

ROMAN G. DEL ROSARIO
Presiding Justice