REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

NCH PHILIPPINES, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6840

Members:

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

Promulgated:

APR 04 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition For Review filed by NCH Philippines, Inc. (hereafter "petitioner") appealing the Decision on Disputed Assessment, dated November 24, 2003, rendered by Revenue District Officer Josue E. Emperio of Revenue Region No. 7, Revenue District Office No. 46, Cainta, Rizal denying petitioner's protest against the BIR's fiscal year ended February 1998 deficiency income tax, value-added tax and withholding tax, and praying for the cancellation and withdrawal of the assessments of deficiency income tax, expanded withholding tax, value-added tax and documentary stamp tax in the total amount of P5,131,655.66, as per respondent's "Amended Formal Letter of Demand" dated February 16, 2004, all assessments covering the fiscal year ended February 28, 1998.

THE FACTS

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

Petitioner is a domestic corporation engaged in the manufacture and sale of industrial and mining chemicals, with principal office located between Kms. 19 and 20, North Ortigas Avenue Extension, Cainta, Rizal.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to cancel disputed assessments, with principal office located at the Bureau of Internal Revenue (hereafter "BIR") National Office Building, Diliman, Quezon City, where he may be served with court orders and processes.

On August 20, 2001, petitioner received from the BIR Revenue Region No. 7, Quezon City (hereafter "Region"), a Formal Letter of Demand (*Exhibits" T" to "T-4"*) along with five (5) Formal Assessment Notices (*Exhibits "U"," V"," W", "X"*), all dated August 15, 2001, holding petitioner liable for the following deficiency taxes, inclusive of deficiency increments and compromise penalty, in the aggregate sum of P4,749,090.20 for the fiscal year (FY) ended February 28, 1998:

Type of Tax	Basic Tax Due	20% Interest	Incremental Deficiency	Total Amount Payable
Income Tax	P1,915,878.04	P1,213,517.15		P3,129,395.19
Value-Added Tax (VAT)	426,546.29	305,705.73	P169,348.95	901,600.97
Expanded Withholding Tax (EWT)	195,139.99	143,096.15		338,236.14
Documentary Stamp Tax (DST)	225,442.00	148,415.90		373,857.90
Compromise Penalty				6,000.00
				P4,749,090.20

On September 19, 2001, petitioner filed with the Region its protest letter requesting for the cancellation of the aforesaid assessment notices for lack of factual and legal bases (*Exhibit "Y"*).

Having received no reply from the Region regarding its protest, on April 17, 2002, petitioner filed before this Court a Petition for Review, docketed as C.T.A. Case No. 6457.

During the pendency of C.T.A. Case No. 6457, more particularly on April 29, 2003, the BIR Revenue District Office No. 46, Cainta, Rizal, (hereafter "RDO") issued a Post Reporting Notice *(Exhibit "DD")* informing petitioner of the result of the RDO's reinvestigation on the subject assessments and invited petitioner to an informal conference in order to present its objections thereto. Based on the schedule attached to the Post Reporting Notice, petitioner's alleged deficiency taxes were re-computed as follows:

Type of Tax	Basic Tax Due	20% Interest	Compromise Penalty	Incremental Deficiency	Total Amount Payable
Income Tax	P 6,743.99	P 6,687.79	P 1,500.00		P 14,931.78
Expanded Withholding Tax (EWT)	64,382.77	66,533.15	12,000.00		142,915.92
Value-Added Tax (VAT)	124,506.88	128,665.41	16,000.00	P198,088.86	467,261.15
Documentary Stamp Tax (DST)	13,043.00	13,695.15	3,000.00		29,738.15
Other Compromise Penalties:					
Failure to file Schedule of Taxes & Licenses			1000		1,000.00
Failure to file Schedule of Depreciation			1000		1,000.00
Failure to comply w/ requirements of RR 6-89(Summary List-4 qtrs)			4000		4,000.00
					P 660,847.00

Except for the deficiency VAT assessment of P467,261.15, petitioner paid the deficiency tax assessments covered in the aforesaid Post Reporting Notice on May 14, 2003 and May 16, 2003, to wit:

Type of Tax	Amount Paid	Date of Payment	Exhibit
Income Tax	P 14,931.78	16-May-03	EE
EWT	142,915.92	14-May-03	FF
DST	29,738.15	14-May-03	GG
Compromise Penalties	6,000.00	14-May-03	HH
Total	**P 193,585.85**		

Notwithstanding payments made by petitioner, another Post Reporting Notice dated July 21, 2003 *(Exhibit "II")* was issued by the RDO, where it recomputed for the second time petitioner's alleged deficiency taxes as follows:

Type of Tax	Basic Tax Due	20% Interest	Compromise Penalty	Incremental Deficiency	Total Amount Payable
EWT	P 264,725.65	P 13,236.28			P 277,961.93
VAT	382,192.42	414,044.34	P 16,000.00	P198,088.86	1,010,325.62
					P 1,288,287.55

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On October 15, 2003, petitioner filed a protest *(Exhibit "KK")* on the revised assessments as contained in the Post Reporting Notice dated July 21, 2003. However, in its "Decision on Disputed Assessment" dated November 24, 2003, copy of which was received by petitioner on November 28, 2003 (*Exhibit "MM"*), respondent denied petitioner's protest and advised petitioner of its right to appeal said Decision to this Court within thirty (30) days from receipt thereof. Pursuant to the Decision on Disputed Assessment, petitioner's alleged deficiency taxes were recomputed for the third time, as follows:

Type of Tax	**Basic Tax**	**20% Interest**	**Compromise Penalty**	**Total Amount Payable**
Income Tax	P 730,424.02	P 803,466.42		P 1,533,890.44
EWT	248,795.65	29,026.16		277,821.81
Value-Added Tax	322,096.06	370,410.47	P16,000.00	708,506.53
				P 2,520,218.78

In view of the above final "Decision on Disputed Assessment", on December 16, 2003, petitioner filed a "Motion to Withdraw" praying for the withdrawal of C.T.A. Case No. 6457 without prejudice to the filing of a new petition appealing the aforesaid Decision. On January 28, 2004, this Court granted the motion and accordingly, C.T.A. Case no. 6457 was deemed withdrawn and the case was considered closed and terminated. Thereafter, on December 23, 2004, petitioner filed with this Court the present Petition for Review, docketed as C.T.A. Case No. 6840.

Meanwhile, during the pendency of the present case, the Region issued an Amended Formal Letter of Demand and Formal Assessment Notice dated Feb. 16, 2004, copy of which was received by petitioner on March 2, 2004. For the fourth time, petitioner's alleged deficiency taxes were recomputed as follows *(Exhibits "NN" and "OO")*:

Type of Tax	Basic Tax Due	20% Interest	Total Amount Payable
Income Tax	P1,837,884.79	P2,113,567.51	P3,951,452.30
Value-Added Tax (VAT)	322,101.66	396,507.14	718,608.80
Expanded Withholding Tax (EWT)	194,352.49	238,664.86	433,017.35
Documentary Stamp Tax (DST)	13,043.00	15,534.21	28,577.21
			P5,131,655.66

Due to the amended computation of the deficiency tax assessments, petitioner filed a protest with the respondent on March 29, 2004 *(Exhibit "PP")*.

On February 7, 2005, upon motion of the petitioner, this Court declared respondent in default for failure to file his answer to the Petition for Review, within the prescribed period.

On May 10, 2005, petitioner filed a "Motion to Admit Supplemental Petition for Review" to reflect the supervening event of the issuance of an "Amended Formal Letter of Demand" dated February 16, 2004 and "Assessment Notices" dated February 16, 2004, both from the Region, which the Court granted on June 17, 2005, and the "Supplemental Petition For Review" was admitted.

Thereafter, the petitioner presented its evidence ex-parte, consisting of the lone testimony of Maricel Villanueva and Formal Offer of Evidence, which was admitted by the Court, except for *Exhibits "M-1" to "M-6" and "MM" to "MM-1"*, which were denied admission for petitioner's failure to present the originals thereof for comparison.

After petitioner rested its case, petitioner filed its "Memorandum" on March 13, 2006 and the case was deemed submitted for decision based on the evidence adduced ex-parte by the petitioner.

ISSUES

Hence, the instant Petition For Review raising the following issues:

I

WHETHER PETITIONER SHOULD BE ALLOWED TO DEDUCT FOR CORPORATE INCOME TAX PURPOSES FOR THE TAXABLE YEAR IN QUESTION (A) EXPENSES CONSISTING OF ACCRUED COMMISSIONS PAYABLE TO ITS SALES REPRESENTATIVES AND INCOME PAYMENTS MADE TO CORNERSTEEL SYSTEM CORPORATION ("CORNERSTEEL"); AND (B) DEPRECIATION ALLOWANCE FOR TRANSPORTATION EQUIPMENT (i.e., MOTOR VEHICLES) ACQUIRED BY PETITIONER FOR USE IN ITS TRADE OR BUSINESS.

II

WHETHER PETITIONER SHOULD BE ALLOWED, FOR THE TAXABLE YEAR IN QUESTION, INPUT VAT CREDITS ON ITS (A) ACQUISITION OF MOTOR VEHICLES THROUGH BPI LEASING CORPORATION

("BPI LEASING"); AND (B) PURCHASES FROM RAFGERZ INTERNATIONAL SERVICE ("RAFGERZ").

III

WHETHER PETITIONER SHOULD BE ALLOWED, FOR THE TAXABLE PERIOD IN QUESTION, A CREDIT FOR THE 3% VAT WITHHELD ON ITS RECEIPT OF GOVERNMENT MONEY PAYMENTS.

IV

WHETHER PETITIONER DURING THE TAXABLE YEAR IN QUESTION, PROPERLY WITHHLED EWT ON (A) ACCRUED COMMISSIONS PAYABLE TO ITS SALES REPRESENTATIVES; (B) INCOME PAYMENTS MADE TO CORNERSTEEL; AND (C) PAYMENTS MADE TO HONDA CARS, INC. RELATIVE TO ITS PURCHASE OF TRANSPORTATION EQUIPMENT (i.e. MOTOR VEHICLES).

V

WHETHER PETITIONER, DURING THE TAXABLE YEAR IN QUESTION, HAD THE OBLIGATION TO WITHHOLD EWT WITH RESPECT TO ITS PAYMENTS TO BPI LEASING FOR ACQUISITION OF TRANSPORTATION EQUIPMENT (i.e. MOTOR VEHICLES) UNDER A CAPITAL LEASE.

VI

WHETHER PETITIONER IS LIABLE FOR DEFICIENCY DST FOR THE TAXABLE YEAR IN QUESTION.

<u>THE COURT'S RULING</u>

The Petition is devoid of merit.

Principal Issue

The foregoing issues raised by petitioner boil down to the principal issue of whether or not petitioner is liable to pay the deficiency income tax, expanded withholding tax and value-added tax for the Fiscal Year ended February 28, 1998 in the total amount of P2,520,218.78, broken down as follows:

	Assessment Payable
Deficiency Income Tax	P1,533,890.44
Deficiency EWT	277,821.81
Deficiency VAT	708,506.53
	P2,520,218.78

Due to the complications brought about by the series of amendments of the assessment made by the respondent during the pendency of this case, it is imperative upon this Court to first resolve the issue on the propriety of such amendments for Us to determine which is the appropriate basis of petitioner's claim.

The records of the case show the assessment and the subsequent amendments thereto, as follows:

	DATE	AMOUNT
Formal Letter of Demand *basis of Petition for Review in CTA Case No. 6457	August 15, 2001	P4,749,090.28
Post Reporting Notice	April 29, 2003	P660,847.00
2nd Post Reporting Notice	July 21, 2003	P1,288,287.55
Decision on Disputed Assessment *basis of withdrawal of CTA Case No.	November 24, 2003	P2,520,218.78

6457 and Petition for Review in CTA Case No. 6840		
Amended Formal Letter of Demand * basis of Supplemental Petition for Review in CTA Case No. 6840	February 16, 2004	P5,131,655.66

It is clear that respondent made amendments twice to the Formal Letter of Demand and even issued the Decision on Disputed Assessment during the pendency of the original appeal, docketed as C.T.A. Case No. 6457, which led the petitioner to withdraw C.T.A. Case No. 6457 and file herein C.T.A. Case No. 6840. However, records show that on February 16, 2004 respondent again issued an Amended Formal Letter of Demand during the pendency of this case, which then again led petitioner to file a Supplemental Petition for Review. This now brings about the issue on whether or not the respondent has still the authority to issue its Amended Formal Letter of Demand dated February 16, 2004, long after herein petitioner had perfected its appeal in the present case.

In resolving this issue posed before Us, this Court finds it apropos and necessary to first discuss the manner by which We acquired jurisdiction over the case at bench.

In this regard, *Section 228 of the National Internal Revenue Code of 1997* (hereafter *"NIRC of 1997"*), *as amended* provides:

> "SEC. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds

that proper taxes should be assessed, he shall first notify the taxpayer of his findings:

xxx xxx

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

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

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

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

On the other hand, *Section 9 of Republic Act No. 9282* provides:

"SECTION 9. Section 11 of the same Act is hereby amended to read as follows:

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> 'SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.-* **Any party adversely affected by a decision**, ruling or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7 (a) (2) herein.
>
> **Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear: *Provided, however,* That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc.*'"
>
> xxx xxx." *(Emphasis Supplied)*

In conjunction thereto, *Section 8 (a) of Rule 42 of the 1997 Rules of Civil Procedure* provides:

> "SEC. 8. *Perfection of appeal; effect thereof.-*
>
> (a) Upon the timely filing of a petition for review and the payment of the corresponding docket and other lawful fees, the appeal is deemed perfected as to the petitioner.

> The Regional Trial Court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.
>
> xxx xxx."

For the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the CIR with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same to the Court of Tax Appeals within thirty (30) days after receipt thereof *(Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, 477 SCRA 215)*. And in cases of inaction by the respondent, as mentioned earlier, *Section 229 of the NIRC of 1997, as amended,* gives the taxpayer the option either: to appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the one hundred eighty (180)-day period provided for under the said section; or to wait for the Commissioner to render a decision on his protest before elevating his case to this Court.

The word "decisions" in *Section 11 of R.A. No. 1125, as amended by R.A. No. 9282*, has been interpreted to refer to the decisions of the CIR on the protest of the taxpayer against the assessments.

Applying the foregoing to the case at bench, respondent's Decision on Disputed Assessment dated November 24, 2003 is the final "decision" referred to in the above-quoted provisions, that should be appealed to the CTA within thirty (30) days from receipt, otherwise the same shall become final, executory and demandable. Respondent himself acknowledged in his Decision on Disputed Assessment dated November 24, 2003 that it is his final decision, to wit:

> "It is requested that your aforesaid deficiency tax liabilities be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision. If you disagree you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof, otherwise our said deficiency tax assessment shall become final, executory and demandable."

Hence, respondent's Decision on Disputed Assessment dated November 24, 2003 is the one appealable to this Court. Consequently, this Court has acquired exclusive appellate jurisdiction over the case when petitioner appealed on December 23, 2003 with this Court, respondent's said Decision on Disputed Assessment. Thereafter, respondent lost jurisdiction over the assessed deficiencies covered by said Decision in view of the fact that petitioner has already perfected its appeal. The respondent has no more authority to issue the Amendment to the Formal Letter of Demand on February 16, 2004 covering the same taxable year and the same type of taxes. Hence, said Amendment to the Formal Letter of Demand is null and void and is no longer binding to petitioner, as petitioner has already appealed said Decision on Disputed Assessment of respondent to this Court.

We now proceed to the determination of the validity of the assessments for deficiency income tax, EWT and VAT, per respondent's Decision on Disputed Assessment dated November 24, 2003.

Deficiency Income And Expanded Withholding Tax (EWT) Assessments

Based on the examiner's finding that petitioner failed to withhold the required withholding tax on the commission expense amounting to P2,096,909.62 deducted by petitioner from its gross income for FY 1998, respondent assessed petitioner of deficiency income tax in the amount of P1,533,890.44, pursuant to *Section 29(j) [now Section 34(K) of the NIRC of 1997, as amended]* and deficiency 5% expanded withholding tax in the amount of P277,821.81. Below are the detailed computations of the said assessments:

DEFICIENCY INCOME TAX

Net income per return/reinvestigation	P 4,342,074.00
Add: Audit Findings/Discrepancies	
a) Income payments-no withholding tax	
P2,784,597.97 – P687,688.35	2,096,909.62
Net income per investigation	P 6,438,983.62

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Income tax due thereon			
	P6,438,983.62 x 35% x 10/12	P 1,878,036.89	
	P6,438,983.62 x 34% x 2/12	364,875.74	P 2,242,912.63
Less:	Tax Credits		
	Paid per return	P 1,451,780.61	
	Creditable withholding tax	60,708.00	1,512,488.61
Deficiency tax			P 730,424.02
Add:	20% Interest p.a. (6/16/98 - 12/15/03)		803,466.42
Amount still due			**P 1,533,890.44**

DEFICIENCY EWT

Accrued Commission (Independent Sales Agents) P2,784,597.97 x 5%	P 139,299.90
Add: 20% Interest p.a. 03/10/98 - 05/14/03	143,880.18
Amount payable on 05/14/03	P 283,180.08
Less: Payment on 05/14/03 (see 0605 dated 05/14/03)	34,384.43
Deficiency tax	P 248,795.65
Add: 20% Interest p.a. (05/15/03-12/15/03)	29,026.16
Amount still due	P 277,821.81

The resolution of whether or not petitioner is liable to pay deficiency income tax in the amount of P1,533,890.44 and deficiency EWT in the amount of P277,821.81 for FY 1998 hinges on the determination of whether or not the required withholding tax on petitioner's claimed deduction for commission expense in the amount of P2,096,909.62 was withheld.

Petitioner's Arguments

Petitioner contends that of the P2,784,597.97 commissions it had accrued (incurred but unpaid) as of the end of FY 1998, only the amount of P687,688.35 representing commissions payable to its independent or

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free lance sales agents is subject to 5% EWT in the amount of P34,384.43, which petitioner paid on May 14, 2003 including the corresponding 25% surcharge, 20% interest and compromise penalties *(Exhibit "FF").* The remaining amount of P2,096,909.62 pertains to commissions due to its sales employees which were subjected to withholding tax at the progressive rates applicable to compensation income at the time of payment.

Invoking *BIR Ruling No. 158-82, Section 2.2 of Revenue Regulations* (hereafter "RR") *No. 6-82, as amended by RR No. 12-86 and Section 2.78.1(A) of RR No. 2-98*, petitioner argues that the commissions it paid to its employees represent compensation income subject to withholding tax on salaries/wages. Petitioner submits that the documents it presented, namely: 1) Year to Date Earnings Summary for the Period December 31, 1997 (*Exhibit "A"*); 2) Year to Date Earnings Summary for the Period December 31, 1998 (*Exhibit "B"*); 3) Alphalist of Employees as of December 31, 1997 (*Exhibit "C"*); and 4) Alphalist of Employees as of December 31, 1998 (*Exhibit "D"*) show that the commissions paid to its employees were reported as part of compensation and that the corresponding withholding taxes were deducted and remitted to the BIR at the time of payment.

Petitioner further points out that the withholding of the tax upon actual payment of the commissions (and not upon their accrual) is supported by *Section 7* of *RR No. 6-82, as amended by RR No. 12-86.* Petitioner maintains that the withholding tax on compensation applies when the compensation is actually or constructively paid. Thus, payment is allegedly a prerequisite for the withholding obligation of the employer to arise, pursuant to *Sections 2.79(A) and 2.83.6 of RR No. 2-98.*

Petitioner submits that since the accrued commission of P2,096,909.92 was properly subjected to withholding tax on compensation, it is not liable to the deficiency 5% EWT of P277,821.81. To subject the commissions of P2,096,909.92 to 5% EWT would constitute double taxation, that is, after being subjected to the progressive income tax rates of 5% to 32% on compensation income, it would again be subject to 5% EWT on commissions paid to brokers.

Petitioner posits that as compensation, the accrued commission must be allowed as deductible expense, pursuant to *Section 29* of the *Tax Code* which states:

> "SEC. 29. Deduction from gross income. – In computing taxable income subject to tax under Sections 21 (a), 24 (a), (b), (c); and 25 (a) (1), there shall be allowed as deductions of the items specified in paragraphs (a) to (i) of this section; xxx

xxx xxx

(a) Expenses.- (1) Business expenses. – (A) In general. – All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a *reasonable allowance for salaries or other compensation for personal services actually rendered*."

Based on *Section 29 of the Tax Code* and BIR Ruling No. 555-88, petitioner asserts that it is not liable to the deficiency income tax of P1,533,890.44.

Petitioner's contentions are devoid of merit.

Pursuant to *Section 32(A)(1) [Section 28(1) of the NIRC of 1977, as amended]*, in relation to *Section 79(A) [Section 72(a) of the NIRC of 1977, as amended] of the NIRC of 1997, as amended,* as implemented by *Section 2.78.1 of RR No. 2-98*, commissions paid by an employer to its employees for personal services rendered constitute compensation income subject to withholding tax on wages.

In this case, the evidence adduced ex-parte by the petitioner does not show that the commissions payable in the amount of P2,096,909.62 as of FY ended February 28, 1998 actually corresponds to petitioner's sales employees, which was paid and that the related tax was withheld and remitted to the BIR in the subsequent FY 1999.

While petitioner's Year to Date Earnings Summary for the Period Ended December 31, 1998 (*Exhibit "B"*) and Alphalist of Employees as of December 31, 1998 (*Exhibit "D"*) reflected a commission amount of P3,045,480.90 which was subjected to withholding tax, the evidence on record does not show whether the said amount included the accrued commissions of P2,096,909.62, as of FY ended February 28, 1998 and did not pertain only to commission expense incurred by petitioner in FY ended February 28, 1999. Petitioner should have submitted other documents, such as a reconciliation schedule, Year to Date Earnings Summary and Alphalist of Employees for the Period Ended December 31, 1999, income tax return for FY 1999 with detailed breakdown of expense deductions claimed or any other document, whereby it can be traced and verified that the subject commissions of P2,096,909.62 formed part of the commission amount of P3,045,480.90 subjected to withholding tax on wages in subsequent FY 1999.

Even granting for the sake of argument that the subject accrued commissions of P2,096,909.62 correspond to petitioner's sales employees, the obligation to withhold the related withholding tax due thereon arises at the time of accrual and not at the time of actual payment thereof, pursuant to *Section 34(K) of the NIRC of 1997, as amended [then Section 29(j) of the NIRC of 1977, as amended]*, which states that:

> "SEC. 34. *Deductions from gross income.* –
>
> xxx xxx
>
> (K) *Additional Requirements for Deductibility of Certain Payments.*- Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, Sections 58 and 81 of this Code."

Corollary thereto, *Section 2.58.5 of RR No. 2-98 [then Section 3 of RR No. 8-90]* provides:

> "***Sec. 2.58.5 Requirement of deductibility***- Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of Code."

Pursuant to the above law and regulations, an expense shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue whether the same is paid or ***payable***. For petitioner's failure, therefore, to prove that it withheld income tax (either at 5% EWT or individual income tax rates) on the accrued commissions of

P2,096,909.62, the same cannot be considered as a valid deduction from petitioner's gross income for FY 1998.

For all of the foregoing, this Court upholds the deficiency income and expanded withholding tax assessments in the respective amounts of P1,533,890.44 and P277,821.81. However, a 25% surcharge shall be imposed in addition to the basic tax due, pursuant to *Section 248(A)(3) of the NIRC of 1997, as amended.* Consequently, petitioner's recomputed deficiency income and EWT liabilities amounted to P1,716,496.25 and P340,020.72, respectively, as shown below:

Type of Tax	Basic Tax	25% Surcharge	20% Interest	Total Amount Payable
Income Tax	P 730,424.02	P 182,606.01	P 803,466.42	**P 1,716,496.45**
EWT	248,795.65	62,198.91	29,026.16	**340,020.72**

DEFICIENCY VAT ASSESSMENT

Respondent assessed petitioner of deficiency VAT in the amount of P708,506.53 due to the disallowance of certain input tax credits and creditable VAT withheld claimed by petitioner for taxable year 1998. The details of the disallowed input taxes and creditable VAT withheld, as well as the assessed interest and compromise penalty, are as follows:

Disallowances	
a). Input Taxes	
BPI Leasing Corporation	P227,854.54
Rafgerz International Services	29,831.00
b.) VAT withheld on Government Money Payments	64,410.31
Total Disallowances	P322,095.85

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Add: Interest	370,410.47
Compromise Penalty	16,000.00
Amount Due	P708,506.32

We now proceed to the determination of the validity of the disallowances made.

a.) *Input Tax of P227,854.54 Arising From Petitioner's Acquisition of Motor Vehicles Through BPI Leasing Corporation*

In denying the input tax credit of P227,854.54, respondent ruled as follows:

> "Verification of the capital lease agreement with BPI and other documents disclosed that the motor vehicles were purchases made by BPI as evidenced by sales invoices issued by Honda Cars, Inc., in favor of BPI, hence, you have no proof to support and claim input tax on said transaction as required by Section 108(a) and 238 of the Tax Code, as amended by, Section 110 and 113 of R.A. 8424. In addition, the capital lease agreement entered into with BPI manifested a transfer of ownership of the said motor vehicles from BPI to NCH Philippines, Inc., which is subject to creditable withholding tax representing an acquisition of motor vehicle, pursuant to RR No. 8-90, as amended by RR No. 2-91, hence, we reiterate the resulting assessment of said finding."

Contrariwise, petitioner contends that the input tax of P227,854.54 pertains to its acquisition of motor vehicles from Honda Cars, Inc. through financing provided by BPI Leasing Corporation under a Capital Lease Agreement. The acquisition of said vehicles is supported by VAT sales invoices issued by Honda to *"BPI Leasing Corp. Leased to NCH Phils., Inc."* Since the lease agreement between BPI Leasing and petitioner is a capital lease, petitioner rightfully claimed the corresponding input tax credits, pursuant to *Section 4.104-1 of RR No. 7-95.*

Petitioner further contends that BPI Leasing Corporation, as a finance company, was not subject to VAT, and could not have claimed any input VAT credit for the same invoices. In practice, under a capital lease, it is the lessee of the vehicle, which claims the input VAT on the acquisition of the vehicle, in the same way that it is the lessee, which claims the depreciation. Moreover, the motor vehicles acquired by petitioner do not fall under the prescribed definition of "automobile" under *Section 4.104-1 of RR No. 7-95, as amended,* as their engine displacements all fall below 2000 cc. Hence, the input tax credit should be allowed.

We find the disallowance with factual and legal basis.

Section 110(A)(1)(b) and (2)(a) of the NIRC of 1997, as amended, enumerates the various sources of input tax credits which may be applied against a VAT taxpayer's output tax liability, pertinent portion of which provides:

> "SEC. 110. Tax Credits. —
>
> (A) Creditable Input Tax. —

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(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:

xxx xxx

(b) Purchase of services on which a value-added tax has been actually paid.

xxx xxx."

At first glance, it would appear that the word "or" in the statement "(1) Any input tax evidenced by a VAT invoice ***or*** official receipt xxx shall be creditable against the output tax" indicates an alternative. However, a further cursory reading of the provisions of *Section 110(A),* particularly *paragraph (2)(a)* thereof, reveals otherwise, to wit:

"SEC. 110. Tax Credits.-

(A) Creditable Input Tax.-

xxx xxx

(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

xxx xxx

"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**." *(Emphasis Supplied)*

Pursuant to the aforecited provision, the input VAT on domestic purchases of goods or properties shall be allowed as a tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoice evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services, including lease or royalty payments, shall be available as a tax credit to the purchaser or lessee or licensee, only upon payment of the compensation, rental, royalty or fee, i.e., upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed.

The provisions of *Section 110(A)(1) and (2) of the NIRC of 1997, as amended,* complements the provisions of *Sections 106(A) and (D),* as well as of *Section 108(A) and (C) of the same Code*, which provide the manner of determining the output VAT due on the sale of goods or properties and sale of services, respectively.

For the sale of goods or properties, the 10% VAT is imposed upon the gross selling price, which is defined under *Section 106(A) of the NIRC of 1997, as amended,* to wit:

> " SEC. 106. – Value-Added Tax or Sale of goods or Properties. –
>
> xxx xxx
>
> "The term '*gross selling price*' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter, or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price.
>
> xxx xxx."

In other words, the VAT on the sale of goods or properties accrues upon the consummation of sale regardless of whether or not the consideration therefor was actually received. It is for this reason that *Section 106(D)* provides that the tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11).

In the case of sale of services and use or lease of properties, the 10% VAT is computed based on gross receipts, which is defined under *Section 108(A) of the NIRC of 1997, as amended*, as follows:

> "SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties.-
>
> (A) Rate and Base of Tax.-
>
> xxx xxx
>
> The term '*gross receipts*' means the total amount of money or its equivalent representing the contract price,

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> compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax."

Clearly, from the foregoing, the VAT on the sale of services including the use or lease of properties accrues upon actual or constructive receipt of the consideration irrespective of whether or not the service has been rendered. Thus, *Section 108(C)* provides that the tax on the sale of services and use or lease of properties shall be computed by multiplying the total amount indicated in the official receipt by 1/11.

In the case at bench, the Capital Lease Agreement No.4143 dated May 9, 2000 (*Exhibit "L-1"*) between petitioner and BPI Leasing Corporation and the Certification issued by the latter on November 12, 2002 (*Exhibit "Z"*) shows that BPI Leasing Corporation purchased certain vehicles from Honda Cars, Inc. and subsequently leased these vehicles to petitioner.

The vehicle sales invoices issued by Honda Cars, Makati, Inc. to "BPI LEASING CORP. LEASED TO NCH PHILS. INC." (*Exhibits "M-1" to "M-6"*) are evidences of the sales transactions between Honda Cars, Makati, Inc. and BPI Leasing Corp.. The phrase "LEASED TO NCH PHILS. INC." appearing on the sales invoices is a mere notation that the vehicles bought by BPI Leasing Corporation are to be leased out to petitioner. It does not alter the fact that indeed the purchaser of the vehicles from Honda Cars, Inc. is BPI Leasing, and not petitioner. Thus, pursuant to *Section 110(A)(2)(a) of the NIRC of 1997, as amended*, the VAT accruing from the sales invoices issued by Honda Cars, Inc. is creditable to the purchaser, BPI Leasing Corp., if it is VAT-registered.

While petitioner's lease agreement with BPI Leasing Corp. is in the nature of a capital lease, petitioner's lease payments to BPI Leasing must have been duly covered by VAT official receipts in order for petitioner to claim input tax credits thereon, pursuant to *Section 110(A)(2)(a) of the NIRC of 1997, as amended.*

This Court, therefore, sustains respondent's disallowance of petitioner's claimed input tax credit of P227,854.54.

b.) Input Tax of P29,831.60 on Purchases from Rafgerz

Respondent disallowed input taxes amounting to P29,831.60 on petitioner's purchases from its supplier, Rafgerz, in view of the verification from the BIR-Integrated Tax System ("ITS") records showing that Rafgerz became a VAT-registered entity only on June 30, 1998. Hence, petitioner cannot claim input tax credits on its purchases from Rafgerz prior to June 30, 1998.

Petitioner disagrees arguing that the BIR Certificate of Registration (*Exhibit "P"*) shows that the proprietor of Rafgerz has been VAT-registered since January 29, 1996. Furthermore, the sales invoices issued by Rafgerz to petitioner *(Exhibits "Q" to "Q-5")* would show that the same were duly stamped with the identification number and VAT registration number of Rafgerz, in substantial compliance with *Section 4.112-2(c) of RR No. 7-95.*

Again, We find the disallowance proper.

The subject input taxes of P29,831.00 pertain to delivery services rendered by Rafgerz to petitioner (*Exhibits "Q" to "Q-5"*). To be creditable against petitioner's output VAT liability, the input tax of P29,831.00 should have been supported by VAT official receipts and not invoices from Rafgerz, as required by *Section 110(A)(2)(a) of the NIRC of 1997, as amended.*

Moreover, while the old Non-VAT invoices issued by Rafgerz were stamped with the latter's VAT registration number, the same were issued beyond the period allowed under paragraph "c" of the Transitory Provisions of RR No. 7-95, which states:

> "Unused invoices or receipts. - Taxpayers who changed status from NON-VAT to VAT or from VAT to NON-VAT as a result of the implementation of RA 7716 should submit on or before January 31, 1996 an inventory of

> unused invoices or receipts as of December 31, 1995 indicating the number of booklets and the corresponding serial numbers. Unused non-VAT invoices/receipts shall be allowed for use in transactions subject to VAT provided the phrase "VAT-registered as of _________" is stamped on all copies thereof. Likewise, unused VAT invoices/receipts shall be allowed in VAT-exempt transactions provided the phrase "Non-VAT registered as of _________" is stamped on all copies thereof. **These unused invoices or receipts with the proper stamp shall be allowed for use in transactions subject to VAT/NON-VAT up to June 30, 1996.**" (Emphasis supplied).

c.) 3% Creditable VAT Withheld Amounting to P64,410.31

Respondent denied petitioner's claimed creditable VAT withheld in the amount of P64,410.31 for being unsubstantiated.

Petitioner, however, maintains that the 3% VAT on government payments in the amount of P64,410.31 had been withheld by the government entities concerned as shown by: (a) the schedule of the 3% VAT withheld by the government for its purchase of goods from petitioner (*Exhibit "CC"*); and (b) the corresponding certificates of VAT withheld on government payments (*Exhibits "CC-2" to "CC-146"*). Consequently, petitioner correctly claimed the amount of P64,410.31 as tax credit against its VAT liability, in accordance with *Section 110(c) [now 114(C)] of the Tax Code*, as implemented by *Section 1.110-3 of RR No. 7-95*. Furthermore, the official receipts issued by petitioner to various

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government agencies show that the amounts received by petitioner from the said agencies are net of the 3% VAT on government payments.

A careful perusal of petitioner's VAT returns for the period March 1997 to February 1998 shows that petitioner's claimed total creditable VAT withheld amounted to P128,910.76, instead of P128,952.72, as computed by respondent, the breakdown of which is shown below:

Period Covered	Creditable VAT Withheld per Return	Per BIR Records Page No.
March-97	P 6,293.15	542, 555
April - June 1997	27,849.07	545
July - Sept. 1997	29,179.29	548
Oct. - Dec. 1997	42,212.91	551
Jan. 1998	14,588.19	552, 555
Feb. 1998	8,788.15	553, 555
	P 128,910.76	

Of the reported creditable VAT withheld of P128,910.76, only the amount of P61,385.30 is duly supported by withholding tax certificates, to wit:

Exh	Withholding Agent	Income Payment	Expanded W/holding Tax	VAT Withheld	Total Amt Withheld
CC-2	Air Transportation Office	P 1,960.00		P 53.46	P 53.46
CC-3	Air Transportation Office	2,057.00	P 20.57	56.10	76.67
CC-4	Air Transportation Office	117,520.00	1,175.20	3,525.60	4,700.80
CC-5	Bislig Water District	14,168.00		386.40	386.40
CC-6	Bislig Water District	4,527.60		123.48	123.48
CC-7	Bislig Water District	6,116.00		166.80	166.80
CC-8	Bislig Water District	4,983.00		135.90	135.90
CC-9	Bislig Water District	5,852.00		159.60	159.60
CC-10	Butuan City Water District	2,255.00	20.50	61.50	82.00
CC-11	Butuan City Water District	3,524.40	32.04	96.12	128.16
CC-12	Butuan City Water District	6,754.00	61.40	184.20	245.60
CC-13	Butuan City Water District	9,450.63	85.91	257.74	343.65
CC-14	Butuan City Water District	12,828.20	116.62	349.86	466.48
CC-15	Cabanatuan City Water District	10,923.00		297.90	297.90
CC-16	Cagayan de Oro City Water Dist	4,928.00		134.40	134.40

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CC-17	Cagayan de Oro City Water Dist	4,224.00		115.20	115.20
CC-18	Cagayan de Oro City Water Dist	7,680.00		230.40	230.40
CC-19	City Government of Calamba	25,878.00	238.08	714.54	952.62
CC-20	City Government of Calamba	40,340.00	403.40	1,210.20	1,613.60
CC-21	City of Koronadal	12,996.50	118.15	354.45	472.60
CC-22	Commission on Population, Reg 10	5,754.76	52.32	156.95	209.27
CC-23	CVPC, Main Campus	20,416.00	204.16	612.48	816.64
CC-24	Dairy Training & Research Inst.	2,050.00	20.50	61.50	82.00
CC-25	Davao Medical Center	4,854.00	48.54	145.62	194.16
CC-26	Daraga Water District			478.95	478.95
CC-27	Daraga Water District		175.60		175.60
CC-28	Development Bank of the Phils			182.15	182.15
CC-29	Development Bank of the Phils			91.80	91.80
CC-30	Development Bank of the Phils			75.00	75.00
CC-31	Development Bank of the Phils	14,029.84	140.30	420.89	561.19
CC-32	Development Bank of the Phils	2,780.00	30.58	91.74	122.32
CC-33	Development Bank of the Phils	9,288.00		278.64	278.64
CC-34	Development Bank of the Phils	10,206.00		306.18	306.18
CC-35	Development Bank of the Phils	10,206.00	102.06		102.06
CC-37	Development Bank of the Phils	9,180.00		275.40	275.40
CC-38	DBP-Tacurong Branch	5,670.00	62.37	187.11	249.48
CC-39	Development Bank of the Phils	5,929.00	59.29	177.87	237.16
CC-40	DECS Regional Office V	30,600.00		1,003.68	1,003.68
CC-41	Esperanza Municipal Hall (Gen. Serv. Dept.)	3,000.00	29.70	89.10	118.80
CC-42	Filipinas Palmoil Industries, Inc.	51,109.20		1,533.28	1,533.28
CC-43	Filipinas Palmoil Industries, Inc.	56,220.12	562.20		562.20
CC-44	Filipinas Palmoil Industries, Inc.	34,320.00		1,029.60	1,029.60
CC-45	Filipinas Palmoil Industries, Inc.	37,752.00	377.52		377.52
CC-46	Filipinas Palmoil Industries, Inc.	28,042.00		841.26	841.26
CC-47	Filipinas Palmoil Industries, Inc.	28,042.00	280.42		280.42
CC-48	Filipinas Palmoil Industries, Inc.	57,264.40		1,717.93	1,717.93
CC-49	Filipinas Palmoil Industries, Inc.	57,264.40	572.64		572.64
CC-50	Filipinas Palmoil Industries, Inc.	12,441.60		373.25	373.25
CC-51	Filipinas Palmoil Industries, Inc.	12,441.60	124.42		124.42
CC-52	Filipinas Palmoil Industries, Inc.	37,537.80		1,126.13	1,126.13
CC-53	Filipinas Palmoil Industries, Inc.	37,537.00	375.38		375.38
CC-54	Filipinas Palmoil Industries, Inc.	27,539.60		826.19	826.19
CC-55	Filipinas Palmoil Industries, Inc.	27,539.60	275.40		275.40
CC-56	Filipinas Palmoil Industries, Inc.	46,620.34		1,398.61	1,398.61
CC-57	Filipinas Palmoil Industries, Inc.	46,620.34	466.21		466.21
CC-58	Filipinas Palmoil Industries, Inc.	5,226.00		156.78	156.78
CC-59	Filipinas Palmoil Industries, Inc.	5,226.00	52.26		52.26
CC-60	Home Development Mutual Fund	8,371.00		228.30	228.30
CC-61	Home Development Mutual Fund	8,371.00	76.10		76.10
CC-62	Home Development Mutual Fund	6,237.00	62.37	187.11	249.48
CC-63	Kalibo Water District	19,767.00	197.67		197.67
CC-64	Kalibo Water District	19,767.00		539.10	539.10
CC-65	Kalibo Water District	12,771.60	127.72		127.72
CC-66	Kalibo Water District	12,771.60		348.32	348.32
CC-67	Laguna Water District		23.10	69.30	92.40

CC-68	Land Bank of the Phils.	9,622.80		262.44	262.44
CC-69	Land Bank of the Phils.			288.68	288.68
CC-70	Land Bank of the Phils.	3,080.00	30.80	92.40	123.20
CC-71	Land Bank of the Phils.	3,058.00	27.80	83.40	111.20
CC-73	Land Bank of the Phils.	3,366.00		100.98	100.98
CC-74	Land Bank of the Phils.	5,670.00	62.37	170.10	232.47
CC-75	Land Bank of the Phils.	3,060.00	33.66	100.98	134.64
CC-76	Land Bank of the Phils.	3,366.00	33.66	91.80	125.46
CC-77	Legazpi City Water District	2,046.00	20.46	55.80	76.26
CC-78	Legazpi City Water District	21,736.00	217.36	592.80	810.16
CC-79	Legazpi City Water District	6,762.00		202.86	202.86
CC-80	Legazpi City Water District	29,892.00	304.15	829.49	1,133.64
CC-81	Mla Int'l Airport Authority	51,359.00	466.90	1,400.70	1,867.60
CC-82	Metro Cebu Water District	10,322.40	93.84	281.52	375.36
CC-83	Metro Cebu Water District	44,039.00	400.35	1,201.06	1,601.41
CC-84	Metro Cebu Water District	36,554.04	332.31	996.93	1,329.24
CC-85	Metro Cebu Water District	118,781.52	1,079.83	3,239.49	4,319.32
CC-86	Metro Cebu Water District	5,852.00	59.00	160.00	219.00
CC-87	Metro Iloilo Water District		53.20	159.60	212.80
CC-88	Metro Vigan Water District	4,404.40		132.13	132.13
CC-89	MSU-Iligan Institute of Technology	16,510.23		610.88	610.88
CC-90	Mindanao State University	59,300.00		1,773.42	1,773.42
CC-91	Municipality of Koronadal	12,996.50		354.45	354.45
CC-92	National Food Authority	3,060.00	33.66	100.98	134.64
CC-93	NEMA – Bislig	10,322.40		281.52	281.52
CC-94	NEMA – Bislig	5,610.00		153.00	153.00
CC-95	Naphire	5,929.00	53.90	161.70	215.60
CC-96	MOSCAT			35.64	35.64
CC-96	MOSCAT			97.20	97.20
CC-97	MOSCAT			29.26	29.26
CC-97	MOSCAT			79.80	79.80
CC-98	Nat'l Power Corporation	13,576.20	123.42	370.26	493.68
CC-99	Butuan City	17,041.20	154.92	464.76	619.68
CC-100	Butuan City	38,966.40	354.24	1,062.72	1,416.96
CC-101	Butuan City	11,858.00	107.80	323.40	431.20
CC-102	Butuan City	8,387.28	76.25	228.74	304.99
CC-103	Cagayan de Oro City	9,464.40	86.04	258.12	344.16
CC-104	Nat'l Power Corp-Mindanao Reg Ctr	19,249.60		544.80	544.80
CC-105	Nat'l Power Corp-Mindanao Reg Ctr	83,538.40		2,278.32	2,278.32
CC-106	Nat'l Power Corp-Mindanao Reg Ctr	83,538.40	759.44		759.44
CC-107	NAPOCOR	26,950.00	245.00	735.00	980.00
CC-108	National Power Corporation	20,016.00	200.16	600.48	800.64
CC-110	National Power Corporation	38,560.00		1,051.64	1,051.64
CC-111	National Power Corporation	15,204.00	152.04		152.04
CC-111	National Power Corporation	16,724.40		456.12	456.12
CC-112	National Power Corporation	14,788.00	147.00		147.00
CC-112	National Power Corporation	16,170.00		441.00	441.00
CC-113	National Power Corporation	68,536.00	685.36		685.36
CC-114	National Power Corporation	15,483.60		422.28	422.28
CC-115	National Power Corporation	17,463.60		476.28	476.28
CC-116	National Power Corporation	30,347.86		827.67	827.67

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CC-117	National Power Corporation	5,126.00		139.80	139.80
CC-118	National Power Corporation	25,551.90		696.87	696.87
CC-119	National Power Corporation	25,806.00		703.80	703.80
CC-120	National Power Corporation	3,363.80		91.74	91.74
CC-121	National Power Corporation	36,718.84		1,001.42	1,001.42
CC-122	National Power Corporation	71,104.00		1,939.20	1,939.20
CC-123	National Power Corporation	17,600.80		480.02	480.02
CC-124	National Power Corporation	49,984.00		1,363.20	1,363.20
CC-125	National Power Corporation	5,375.96	48.87	146.62	195.49
CC-126	PFDA-LFPC	13,859.80	138.60	415.79	554.39
CC-127	PFDA-LFPC	13,859.80	138.60	415.79	554.39
CC-128	PCARRD	4,302.00		129.06	129.06
CC-129	Phil. Fisheries Devt. Authority	20,460.00	204.60	558.00	762.60
CC-130	PNOC-Energy Development Corp			68.10	68.10
CC-131	President Quirino Municipal Hall	3,000.00	29.70	89.10	118.80
CC-132	Prov'l Govt. of Bukidnon	24,464.00		667.00	667.00
CC-133	Prov'l Govt. of Bukidnon	24,464.00	227.00		227.00
CC-134	Prov'l Govt. of Bukidnon	24,464.00	227.00		227.00
CC-135	Provincial Governor's Office	3,000.00	29.70	89.10	118.80
CC-136	Provincial Engineer's Office	8,340.00	82.57	247.70	330.26
CC-137	Provincial General Services Office	14,700.00	145.53	436.59	582.12
CC-138	Provincial Treasurer's Office	2,724.00	26.97	80.90	107.87
CC-139	San Pablo City Water District	2,541.00		69.30	69.30
CC-140	San Pablo Water District	26,998.00		809.85	809.85
CC-141	Tacurong Municipal Planning & Devt.	10,746.00	118.21	354.62	472.83
CC-142	TESDA – 10		64.68	194.04	258.72
CC-143	UP-Los Banos		95.84	261.38	357.22
CC-144	Univ of the Philippines	2,310.00	23.10	69.30	92.40
CC-145	VISCA	12,484.89	113.50	340.50	454.00
CC-146	Zamboanga City Medical Center	45,460.80	454.61	1,239.84	1,694.45
		Total:	**P 15,334.70**	**P61,385.30**	**P76,719.99**

The creditable VAT withheld of P61,385.30 may be applied against petitioner's output VAT liability for FY 1998, pursuant to *Section 114 of the NIRC of 1997, as amended]*, which provides:

> "Sec. 114. Return and Payment of Value Added Tax.-
>
> (c) ***Withholding of Creditable Value-Added Tax.*** — The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making

payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 100 and 102 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor: *Provided, however*, That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%). Provided, further, That the payment for lease or use of properties or property rights to non-resident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent."

However, petitioner's remaining claimed creditable VAT withheld in the amount of P67,525.46 is hereby disallowed for not being substantiated by withholding tax certificates.

Considering the aforesaid disallowed input tax credits and creditable VAT withheld, petitioner is liable to pay deficiency output VAT thereon in the amount of P780,506.40, computed as follows:

Disallowed Input Taxes		
	BPI Leasing	P 227,854.54
	Rafgerz Int'l Services	29,831.00
Disallowed VAT Withheld on govt money payments		67,525.46
Total Disallowances		P 325,211.00
Add:	25% Surcharge	81,302.75
	20% Interest (3/25/98 – 12/25/03)	373,992.65
Amount Payable		**P 780,506.40**

There being no compromise agreement between the parties, the compromise penalty of P16,000.00 originally imposed by the respondent

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is hereby cancelled. However, a 25% surcharge is hereby imposed, in addition to the basic tax due, pursuant to *Section 248(A)(3) of the NIRC of 1997, as amended.*

With the conclusion thus reached, We find no need to discuss the other issues raised in this petition for being moot and academic.

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED**. Accordingly, respondent's Decision on Disputed Assessment dated November 24, 2003 is hereby **AFFIRMED** with the following modifications: petitioner is hereby **ORDERED TO PAY** respondent deficiency income tax, expanded withholding tax and value-added tax in the total amount of TWO MILLION EIGHT HUNDRED THIRTY SEVEN THOUSAND TWENTY THREE PESOS and FIFTY SEVEN CENTAVOS (P2,837,023.57), inclusive of 25% surcharge and 20% deficiency interest, computed as follows:

Type of Tax	**Basic Tax**	**25% Surcharge**	**20% Interest**	**Total Amount Payable**
Income Tax	P 730,424.02	P 182,606.01	P 803,466.42	**P 1,716,496.45**
EWT	248,795.65	62,198.91	29,026.16	**340,020.72**
VAT	325,211.00	81,302.75	373,992.65	**780,506.40**
				P2,837,023.57

In addition, petitioner is hereby held liable to pay 20% delinquency interest on P2,837,023.57 computed from November 28, 2003 until full payment thereof, pursuant to *Section 249(C)(3) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

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

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, Second Division