REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GREEN VALLEY MARKETING CORPORATION, Petitioner,	**CTA CASE NO. 8988** Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **MANAHAN**, *JJ.*
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	NOV 03 2017 3:15 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This is a Petition for Review filed by Green Valley Marketing Corporation praying that Assessment Notices Nos. IT-116-LOA-116-2011-00000109-10-14-809, VT-116-LOA-116-2011-00000109-10-14-810, MC-116-LOA-116-2011-00000109-10-14-811 and WE-116-LOA-116-2011-00000109-10-14-812 issued by respondent against petitioner for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and miscellaneous tax (MC) for calendar year 2010 in the aggregate amount of ₱195,931,984.67 be declared void.

STATEMENT OF FACTS

Petitioner is registered with the Bureau of Internal Revenue (BIR) and duly issued a BIR Certificate of Registration No. 8RC0000020168 duly certified by Teresita M. Dizon, OIC-HREA Large Taxpayer Service Division.[1]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 23, 2011, petitioner received Letter of Authority No. LOA-116-2011-00000109[2] from respondent signed by the OIC-ACIR Alfredo V. Misajon, which authorized its representatives to conduct an examination of the former's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2010 to December 31, 2010.[3]

Sometime in March 2013, petitioner received a Letter Notification dated March 5, 2013 from respondent informing it that audit/investigation has been re-assigned pursuant to MOA No. LOA-116-2013-0433 dated February 25, 2013.[4]

On May 6, 2013, petitioner received respondent's First Notice for Presentation of Books of Accounts and Other Relevant Records.[5]

On June 17, 2013, petitioner received BIR's Second Notice for Presentation of Books of Accounts and Other Relevant Records.[6]

On June 21, 2013, petitioner executed a "Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code"[7] in relation to the tax audit being conducted. OIC-Assistant Commissioner for the Large Taxpayers Service, Mr. Alfredo V. Misajon, accepted it on July 17, 2013. The Waiver gave respondent until December 31, 2013 within which to assess petitioner.[8]

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[1] Par. 3, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. IV, p. 2405; Exhibit "P-2", docket vol. III, p. 1346.
[2] Exhibit "R-2", BIR Records, Folder 1, p.2.
[3] Par. 4, Admitted Facts, JSFI, docket, vol. IV, p. 2405.
[4] Par. 5, Admitted Facts, JSFI, docket, vol. IV, p. 2405.
[5] Par. 6, Admitted Facts, JSFI, docket, vol. IV, p. 2405.
[6] Par. 7, Admitted Facts, JSFI, docket, vol. IV, p. 2405.
[7] Exhibit "R-6", BIR Records, Folder 1, p. 356.
[8] Par. 8, Admitted Facts, JSFI, docket, vol. IV, p. 2405.

On September 12, 2013, petitioner executed another Waiver[9] giving respondent until June 30, 2014 within which to assess the former. Mr. Misajon accepted it on September 17, 2013.[10]

On June 3, 2014, petitioner received from respondent the Preliminary Assessment Notice (PAN) together with the Details of Discrepancies.[11]

On June 25, 2014, petitioner received a Formal Letter of Demand (FLD)[12] from respondent BIR, with Details of Discrepancies and attached Assessment Notices[13] Nos. IT-116-LOA-116-2011-00000109-10-14-809, VT-116-LOA-116-2011-00000109-10-14-810, MC-116-LOA-116-2011-00000109-10-14-811 and WE-116-LOA-116-2011-00000109-10-14-812.[14]

On July 25, 2014, petitioner filed its administrative protest[15] in the nature of a request for reconsideration with respondent.

However, respondent failed to act on petitioner's administrative protest. Thus, on February 20, 2015, petitioner filed the instant Petition for Review.

On May 12, 2015, respondent filed his Answer[16], interposing the following special and affirmative defenses:

> "4. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses:
>
> **THE ASSESSMENT HAS BASES BOTH IN FACT AND IN LAW**
>
> 5. Respondent strongly submits that the assessment has bases both in fact and in law which can be gleaned from the following discussion. pc

[9] Exhibit "R-7", BIR Records, Folder 1, p. 357.
[10] Par. 9, Admitted Facts, JSFI, docket, vol. IV, p. 2405.
[11] Par. 10, Admitted Facts, JSFI, docket, vol. IV, p. 2405; Exhibit "R-9", BIR Records, Folder 1, pp. 490-501.
[12] Exhibits "P-26" and "R-12", BIR Records, Folder 1, pp. 523-529.
[13] Exhibits "R-11" to "R-11-c", BIR Records, Folder 1, pp. 519-522.
[14] Pars. 11 and 12, Admitted Facts, JSFI, docket, vol. IV, pp. 2405-2406.
[15] Exhibit "P-27".
[16] Docket, vol. II, pp. 1202-1216.

A. PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX AND VALUE-ADDED TAX (VAT) RESULTING FROM UNDECLARED INCOME.

6. Petitioner is being assessed for deficiency Income Tax and Value-Added Tax resulting from alleged unaccounted income amounting to ₱158,198,435.66. Petitioner argues that such is without merit and lacks factual basis since it was only a result of a comparison of different data reported under the VAT RELIEF System, Tax Reconciliation System (Creditable Withholding Tax Withheld from petitioner as reported by third parties), Summary Alphalist of Creditable Withholding Tax) vis-à-vis the declaration made per Summary List of Sales (SLS).

7. It must be stressed that respondent's audit investigation for deficiency taxes is not confined to the examination of the documents provided or obtained from petitioner. The Commissioner has the power to promulgate rules to ensure the accuracy and truthfulness of the taxes declared and paid by taxpayers. Such power of the Commissioner of Internal Revenue to obtain information from other sources is enshrined in Section 5 of the Tax Code which specifically provides:

xxx xxx xxx

8. Also, lest petitioner must have forgotten, the RELIEF System which stands for "Reconciliation of Listing for Enforcement" was purposely to detect tax leaks by matching the data available under the Bureau's Integrated Tax System (ITS) with data gathered from third party sources. **Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services). Timely recognition and accurate reporting of unregistered taxpayers an non0filers can be made possible.**

9. The Tax Reconciliation System (TRS) on the other hand is geared towards enhancing revenue collection by computerized matching of data available under the Bureau's Integrated Tax System (ITS). **Through the consolidation and cross-referencing of data from withholding agents (WAs) and declaration of income recipients, discrepancy reports can be generated to uncover violations on tax rules and regulations such under declaration of income, non-declaration of income, under remittance and/or non-remittance of taxes withheld, over withholding, under withholding, over declaration of credits to name a few.** Timely recognition and accurate reporting of unregistered taxpayers and non-filers will also be possible.

B. PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX RESULTING FROM DISALLOWED EXPENSES DUE TO NON-WITHHOLDING OF TAX AND UNACCOUNTED COST/EXPENSE.

10. Respondent's audit examination revealed that certain income payments made by petitioner were properly subjected to withholding tax.

11. Thus, the corresponding income tax due thereon is assessed pursuant to Section 32 in relation to Section 27 of the Tax Code.

12. Section 6 of Revenue Regulation No. 14-2002 explicitly provides:

xxx xxx xxx

13. Based on the above quoted provision of Revenue Regulation No. 14-2002 and the findings of respondent that certain payments made by petitioner were not properly subjected to withholding tax, the

disallowed expenses in the amount of ₱89,780,690.14 is proper. Thus, the corresponding income taxes resulting from the disallowed expenses should also be imposed on petitioner.

14. Further, respondent's audit examination also reveals that petitioner failed to submit/present sufficient proof of support such claim of deduction. The following deductions are being disallowed:

Salary	₱ 84,671.41
Freight/Handling	37,230,901.40
Total	₱37,315,572.81

15. Finally, petitioner is being assessed deficiency income tax because of the audit findings that there exist an unaccounted rental expense per reconciliation of Expanded Withholding Tax Return with the amount of claimed rental expenses in petitioner's Financial Statement in the amount of ₱232,857.18.

16. Respondent strongly submits the propriety of such assessment. In *Perez vs. Court of Tax Appeals, et. al* the Honorable Supreme Court made it explicit that **unreflected sources of funds not accounted for in the taxpayer's returns leads to the inference that part of his income had not been reported.**

C. PETITIONER IS LIABLE FOR DEFICIENCY VALUE-ADDED TAX (VAT) RESULTING FROM UNACCOUNTED INCOME DUE TO UNACCOUNTED EXPENSES, UNACCOUNTED RENTAL EXPENSE AND DISALLOWED CREDITABLE INPUT TAXES

17. As discussed previously, respondent's audit findings revealed that there exist an unaccounted income due to unaccounted expenses and unaccounted rental expense, to wit: *[initials]*

Unaccounted Income	₱ 84,671.41
Unaccounted Rental Expense	232,857.18
Total	₱317,528.59

18. Pursuant to Section 106 of the Tax Code, the corresponding findings will not only make petitioner liable for deficiency income tax but also Value-Added Tax (VAT).

19. Finally, respondent's audit assessment reveals that petitioner failed to reconcile the unaccounted difference in the sources of input tax per Summary List of Purchases (SLP) against the declared purchases per VAT Returns which led to the disallowance of corresponding input tax pursuant to Section 110(A) of the Tax Code in the amount of ₱53,738,254.34.

D. PETITIONER IS LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAX (EWT) RESULTING FROM INCOME PAYMENTS NOT PROPERLY SUBJECTED TO WITHHOLDING TAXES

20. Respondent's audit examination reveals that withholding taxes on certain income payments were not paid pursuant to Section 2.57.2 of Revenue Regulation No. 2-98, as amended. Thus the assessment deficiency withholding tax against petitioner, viz:

Total Income payments per audit	₱835,453,720.90
Total Income Payments per EWT returns	745,673,030.76
Difference-Income Payments not subjected to withholding tax	₱89,780,690.14
Basic EWT at various rates	**₱1,311,498.67**

21. Withholding tax is a system by which taxes are collected at source. Tax is collected in advance even before it reaches the hands of the income recipient. It is a means by which the government can collect the appropriate amount of taxes through payors who are

constituted as withholding tax agents. This ensures that taxes will be paid first, and will be paid on time as the government needs the funding to meet its obligations. The system is used to equal or at least approximate or collect in full the tax due from the payee on certain income payments.

22. This obligation of petitioner to withhold and remit the correct tax is its duty as an agent of the government in the collection of taxes and not as a statutory taxpayer.

23. Thus, the assessment on petitioner for failure on its part to withhold the proper taxes is proper.

E. PETITIONER IS LIABLE FOR COMPROMISE PENALTIES

24. Petitioner contends that is should not be subject of the compromise penalties since these are only suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same.

25. Respondent interposes that the compromise penalties are proper and with bases. Audit examination of petitioner disclosed that it failed to file the Summary List of Withholding Taxes (SAWT) and Summary List of Sales (SLS) in violation of Revenue Memorandum Order No. 51-2009. Petitioner is does subject to compromise penalties per violation as provided for in the Tax Code and Revenue Memorandum Order No. 19-2007.

THE ASSESSMENTS AGAINST PETITIONER WERE ISSUED WITHIN THE PERIOD PROVIDED FOR BY LAW

26. Petitioner alleged that it executed a third waiver giving respondent until 31 December 2014 within which to assess the petitioner. As alleged the third waiver bears no stamp of acceptance from respondent.

27. Respondent interposes that alleged third waiver does not exist in the BIR Records. Respondent strongly submits that there are only two waivers involved in the case at hand and with details as follows:

a. The "First Waiver" executed by petitioner on 21 June 2013, extending the period to assess for taxable year 2010 until 31 December 2013. The same was accepted for the respondent by Asst. Commissioner Alfredo V. Misajon on 17 July 2013. The copy of the accepted waiver was received by petitioner on 22 July 2013; and

b. The "Second Waiver" executed by petitioner on 12 September 2013 extending the period to assess for taxable year 2010 until 30 June 2014. The same was accepted for the respondent by Asst. Commissioner Alfredo V. Misajon on 17 September 2013. The copy of the accepted waiver was received by petitioner on 20 September 2013.

28. The Final Assessment Notice (FAN) and the Formal Letter of Demand was issued and served upon petitioner on 25 June 2014. Thus, the same ware issued within the period provided for by the Tax Code.

29. Further, respondent submits that the period of prescription provided for under the Tax Code does not apply to the assessment against petitioner for deficiency Expanded Withholding Taxes (EWT) in the total amount of ₱2,224,383.27.

30. Withholding tax assessments are NOT internal revenue tax as a statutory taxpayer but rather such assessments were issued for failure of respondent to withhold correct taxes it is duty bound to collect as agent. Thus the assessments issued for Deficiency Expanded Withholding Tax are imprescriptible. This obligation of petitioner to withhold and remit the correct taxes is its

duty as an agent of the government in the collection of taxes and not as a statutory taxpayer.

31. By operation of law, the relationship between the Government and the withholding agent is one of agency for which reason the withholding agent only holds the funds withheld by him in trust for the Government. Clearly, the liability of petitioner as taxpayer is different from its liability as withholding agent. This is the reason why liabilities arising from withholding taxes were never covered by tax amnesty programs. Basically, these liabilities arose from a different source of obligation.

32. The liability of a withholding agent is further established under Section 251, Title X of the Tax Code, which provides:

xxx xxx xxx

33. In *Filipinas Synthetic Fiber Corporation vs. Court of Appeals and Commissioner of Internal Revenue*, the Honorable Supreme Court ratiocinated:

> "The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent both the government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Governments agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas, the Commissioner of Internal

Revenue and his deputies are not made liable to law."

34. The tax Code only makes petitioner, as withholding agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax, since the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 57 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.

35. Accordingly, the tax deducted and withheld by withholding agents under the said provision shall be held as a special fund in trust for the government until paid to the collecting officer. It bears emphasis that petitioner as a withholding agent merely holds in trust the amount of tax it withheld and as trustee, it is duty bound to remit to the government the proper amount of tax withheld and this duty is imprescriptible.

THE LETTER OF AUTHORITY (LOA), NOTICE OF INFORMAL CONFERENCE (NIC), PRELIMINARY ASSESSMENT NOTICE (PAN), FORMAL LETTER OF DEMAND (FLD) AND FINAL ASSESSMENT NOTICE (FAN) WERE ISSUED IN ACCORDANCE WITH LAW, RULES AND JURISPRUDENCE.

36. As can be deduced from the following narrations of facts, the procedure prescribed under Revenue Regulations No. 12-99 had been complied with by respondent, viz:

36.1 A Letter of Authority (LOA) No. 116-2011-00000109/SN eLA201100003014 dated 23 September 2011 was issued authorizing Revenue Officers Zenaida Paz, Myrna Ramirez, Ma Salud Maddela, Cletofel Parungao, Allan Maniego, Joel

Aguila/Group Supervisor-Glorializa Samoy of LT Regular Audit Division 1 to examine books of accounts and other accounting records for all internal revenue taxes for the period from January 01, 2010 to December 31, 2010 of petitioner. Copy of the Letter of Authority was issued to petitioner on 26 September 2011. Accompanying the LOA is the Checklist of Requirements requesting the presentation of the required records and documents. The same was served upon petitioner on even date.

36.2 On 06 May 2013 the First Notice was issued reiterating the request for presentation and submission of the documents mentioned in the checklist of requirements.

36.3 On 17 June 2013 the Second and Final Notice for Presentation of Books of Accounts & Other Accounting Records was issued reiterating the previously issued notice with a warning that non-compliance within ten (10) days from receipt will warrant the issuance of a Subpoena Duces Tecum.

36.4 On 21 June 2013, petitioner executed a Waiver (First Waiver) of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code for taxable year 2010 extending the period to assess until 31 December 2013. The same was accepted for the respondent by Asst. Commissioner Alfredo V. Misajon on 17 July 2013. The copy of the accepted waiver was received by petitioner on 22 July 2013.

36.5 On 12 September 2013, petitioner executed another Waiver (Second Waiver) of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code for taxable year 2010 extending the period to assess until 30 June 2014. The same was accepted for the respondent by Asst. Commissioner Alfredo V. Misajon on 17 September 2013. The copy of the accepted waiver was received by petitioner on 20 September 2013.

36.6 On 03 June 2014 the Preliminary Assessment Notice ("PAN") was issued to petitioner on demanding payment of deficiency Income Tax, Value-Added Tax (VAT), Expanded Withholding Tax (EWT), surcharge, interest and compromise penalty for the taxable year 2010. The PAN was received by petitioner on even date.

36.7 Final Assessment Notice (BIR Form No. 0401) and Formal Letter of Demand (FLD) dated 25 June 2014 were issued and received by petitioner on even date. The Formal Letter of Demand is quoted as follows:

> "Please be informed that after investigation here has been found due from you deficiency Income Tax, Value-Added Tax, Miscellaneous Tax and Expanded Withholding Tax for the year ending 31 December 2010, as shown hereunder:

Tax Type	**Assessment No.**	**Amount**
Income Tax Payable	IT-116-LOA-116-2011-00000109-10-14-809	₱71,613,796.56
Value-Added Tax	VT-116-LOA-116-2011-00000109-10-14-810	122,043,804.84
Miscellaneous Tax	MC-116-LOA-116-2011-00000109-10-14-811	50,000.00
Expanded Withholding Tax	WE-116-LOA-116-2011-00000109-10-14-812	2,224,383.27
Total Amount Payable		**₱195,931,984.67**

Jc

36.8 On 25 July 2014, petitioner filed its administrative protest on the Formal Letter of Demand and Final Assessment Notice.

37. Contrary to petitioner's contention, it was accorded every opportunity allowed by law and the rules to contest the assessment. Petitioner therefore cannot just simply claim that it was not accorded due process. Petitioner in alleging denial of due process randomly quoted the decision of the Honorable Supreme Court in the case of *Castillo, et al. vs. Hon. Juan* and interposed that judgment should be rendered upon lawful hearing and must clearly explain its factual and legal basis.

38. With all due respect, respondent strongly interposes that the decision of the Honorable Supreme Court in *Vivo vs. Philippine Amusement and Game Corporation (PAGCOR)* is best applied to the case at hand, thus:

> The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, **procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.** (Emphasis ours)

39. Petitioner was never denied the opportunity to contest respondent's findings. In every stage of the conduct of the audit examination, petitioner was accorded opportunity to submit supporting documents to refute the audit findings. *gr*

40. Hence, petitioner cannot and should not clamor that it was denied due process. In *Calma, et. al. vs. Court of Appeals, et. al.*, the Highest Court made it clear:

> **Administrative due process requires notice and an opportunity to be heard before judgment is rendered. So long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.**

41. Based on the foregoing, the finding of deficiency tax liabilities against petitioner for taxable year 2010 is proper in all respects. It was made explicit by the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands* that:

> "Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. **In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.**"

Thereafter, a Notice of Pre-Trial Conference[17] was issued by the Court, setting the case for pre-trial conference on June 25, 2015. Accordingly, petitioner's Pre-Trial Brief[18] and Respondent's Pre-Trial Brief[19] were both filed on June 19, 2015. However, upon petitioner's motion[20], the pre-trial conference was reset on July 23, 2015[21].

[17] Docket, vol. II, pp. 1218-1219.
[18] Docket, vol. II, pp. 1226-1235.
[19] Docket, vol. II, pp. 1236-1242.
[20] Docket, vol. II, pp. 1258-1260.
[21] Docket, vol. II, pp. 1262.

Pre-trial ensued. The parties submitted their Joint Stipulation of Facts and Issues[22] on August 17, 2015. Thereafter, the Court issued a Pre-Trial Order[23] on September 3, 2015.

On September 7, 2015, upon petitioner's motion[24], this Court commissioned Mr. Rendon P. Gammag, as Independent Certified Public Accountant (ICPA).[25]

During trial, petitioner presented (1) Ms. Emmie Basmayan-Villamor[26], petitioner's General Manager; and (2) Mr. Rendon P. Gammag[27], the ICPA, as its witnesses.

The Amended Formal Offer of Evidence for the Petitioner[28] was filed on March 17, 2016. All exhibits were admitted by this Court, pursuant to the Resolutions[29] dated April 18, 2016 and April 20, 2016.

On the other hand, respondent presented Revenue Officer Carolyn V. Mendoza[30] as his lone witness.

Thereafter, respondent formally offered his exhibits[31] on July 29, 2016, which were all admitted in the Court's Resolution[32] dated August 30, 2016.

This case was deemed submitted for decision on November 24, 2016, considering respondent's Memorandum[33] filed on November 4, 2016 and Memorandum for the Petitioner[34] filed on November 18, 2016.[35]

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[22] Docket, vol. IV, pp. 2404-2415.
[23] Docket, vol. IV, pp. 2418-2425.
[24] Docket, vol. IV, pp. 2368-2371.
[25] Minutes of the Hearing dated September 7, 2015, docket, vol. IV, p. 2427.
[26] Minutes of the Hearing dated September 7, 2015, docket, vol. IV, p. 2427; offered in evidence as Exhibit "P-28" (though marked as Exhibit "P-82"), docket, vol. III, pp. 1267-1280.
[27] Minutes of the Hearing dated February 1, 2016, docket, vol. IV, p. 2515; Exhibit "P-81", docket, vol. IV, pp. 2477-2499.
[28] Docket, vol. IV, pp. 2554-2568.
[29] Docket, vol. IV, pp. 2575-2576 and p. 2579, respectively.
[30] Minutes of the Hearing dated June 22, 2016, docket, vol. IV, p. 2582; Exhibit "R-13", docket, vol. II, pp. 1249-1257.
[31] Respondent's Formal Offer of Evidence, docket, vol. IV, pp. 2588-2596.
[32] Docket, vol. IV, pp. 2606-2607.
[33] Docket, vol. IV, pp. 2633-2648.
[34] Docket, vol. IV, pp. 2654-2674.
[35] Docket, vol. IV, p. 2675.

STATEMENT OF ISSUE

The issue and sub-issue stipulated by the parties for this Court's resolution are as follows[36]:

> Whether petitioner is liable to pay the deficiency IT, VAT, Miscellaneous Tax and EWT for taxable year 2010 in the amount of ₱195,931,984.67, inclusive of interests and compromise.
>
> Whether respondent has sufficiently informed the petitioner in writing of the law and the facts on which the alleged deficiency tax assessments were made and if those assessments have factual and legal bases.

DISCUSSION/RULING

The Court will determine first the timeliness of the filing of the instant Petition for Review.

Section 228 of the National Internal Revenue Code (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: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to

[36] JSFI, docket, vol. IV, p. 2406.

> 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.

The FLD with Details of Discrepancies and Assessment Notices were received by petitioner on June 25, 2014 and petitioner filed its administrative protest on July 25, 2014 or within the thirty-day period prescribed under Section 228 of the NIRC of 1997, as amended.

Moreover, the same section provides that if the protest is not acted upon within 180 days from submission of supporting documents, the taxpayer may appeal the inaction to this Court within 30 days from the lapse of the 180-day period.

In this case, petitioner did not submit additional supporting documents within the 60-day period allowed under Section 228 of the NIRC of 1997, as amended. Hence, counting 180 days from the filing of the administrative protest on July 25, 2014, respondent had until January 21, 2015 to decide on the protest. There being no action on the protest, petitioner had thirty (30) days from January 21, 2015 or until February 20, 2015 within which to file an appeal before this Court. Hence, petitioner timely filed the instant Petition for Review with this Court on February 20, 2015.

The Court shall now determine whether petitioner is liable to pay the deficiency taxes assessed by respondent.

Respondent issued her Formal Letter of Demand[37] (FLD) dated June 25, 2014 against petitioner with total deficiency tax liabilities amounting to ₱195,931,984.67, detailed as follows:

Tax Type	Basic	Interest	Compromise	Total
Income Tax	₱ 42,944,689.00	₱ 28,644,107.56	₱ 25,000.00	₱ 71,613,796.56
VAT	72,760,169.85	49,258,634.99	25,000.00	122,043,804.84
Expanded Withholding Tax	1,311,498.67	887,884.60	25,000.00	2,224,383.27
Miscellaneous Tax			50,000.00	50,000.00
TOTAL	**₱117,016,357.52**	**₱ 78,790,627.15**	**₱ 125,000.00**	**₱195,931,984.67**

I. Income Tax (IT) - ₱71,613,796.56

Respondent assessed petitioner of deficiency IT in the total amount of ₱71,613,796.56, computed as follows[38]:

Taxable Income (Loss) per Return		₱ 4,004,253.69
Add: Adjustments per Audit		
i. Undeclared Income on discrepancies per line-by-line reconciliation	₱ 15,819,843.57	
ii. Disallowed expenses for non-withholding of tax	89,780,690.14	
iii. Unaccounted income from unaccounted expenses	37,548,429.63	143,148,963.34
Adjusted Taxable Income		**₱147,153,217.03**
Tax Due		₱ 44,145,965.11
Less: Tax Credits		
Prior year's excess credits	₱ 461,126.32	
Tax payments for the first three quarters	740,186.94	
Creditable Tax Withheld for the first three quarters	49,896.46	
Creditable Tax Withheld per BIR Form 2307 for the 4Q	257,379.21	
Tax paid per 1702	152,843.79	
Less: Excess MCIT	460,156.61	1,201,276.11
Basic Deficiency Tax		42,944,689.00
Add: Increments		
Interest until August 15, 2014		28,644,107.56
Compromise penalty		25,000.00

[37] Exhibits "P-26" and "R-12", BIR Records, Folder 1, pp.523-529.
[38] *Ibid.*

Total Amount Due		**₱ 71,613,796.56**

As can be seen from the above computation, the assessment arose from the following items:

i.	Undeclared Income on discrepancies per line-by-line reconciliation	₱ 15,819,843.57
ii.	Disallowed expenses for non-withholding of tax	89,780,690.14
iii.	Unaccounted income from unaccounted expenses	37,548,429.63
iv.	Disallowed excess MCIT	460,156.61

The Court shall determine the propriety of each item.

i. Undeclared Income on discrepancies per line-by-line reconciliation – ₱15,819,843.57

As stated in the Details of Discrepancies attached to the FLD, this item of assessment was based on Section 5(B) of the NIRC of 1997, as amended, which grants the Commissioner the power to obtain any information, on a regular basis from any person, any office or agency other than the party whose internal revenue tax liabilities is under audit. This power is further enhanced under the third party information program of the bureau, wherein the BIR can access the records of the taxpayer's suppliers/customers to confirm the accuracy of the declaration made in the tax returns.

The alleged undeclared income on discrepancies per line-by-line reconciliation was computed as follows[39]:

A. Unaccounted income resulting from unaccounted purchases per matching of AITEID data vs SLP	₱ 84,819,343.96
B. Unaccounted income resulting from unaccounted purchases per matching of MAP vs SLP	57,559,248.13
Total	**₱ 142,378,592.09**
Divided by ratio of cost to sale per ITR	90%
Equivalent Sales	**₱ 158,198,435.66**
Multiply by gross profit rate	10%
Total	**₱ 15,819,843.57**

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[39] Schedule 1, Details of Discrepancies, Annex "A" of FLD, BIR Records, Folder 1, pp.523-526.

A. Unaccounted income resulting from unaccounted purchases per matching of AITEID data vs. SLP - ₱84,819,343.96

Respondent maintains that petitioner has unrecorded income in the amount of ₱84,819,343.96 arising from the reconciliation of purchases per SLP (Summary List of Purchases) and AITEID (Audit Information, Tax Exemption and Incentives Division) data, presented as follows[40]:

SUPPLIER	Per SLP	Per AITEID	AITEID > SLP
a. Asia Brewery Incorporated			₱ 54,535,600.14
b. Interbrev Philippines Inc.			24,596,066.55
c. Actuarial Advisers Inc.			7,500.00
d. Allied Bankers Insurance Corporation			1,760.00
e. Angeles Electric Corporation			2,556.68
f. Asian Shipping Corporation			104,822.02
g. Charles Ice Plant and Cold Storage Corp.			312.50
h. Lorenzo Shipping Corporation			1,642,046.12
i. Motormall Davao Corporation			8,482.14
j. Pilipinas Shell Petroleum Corporation			2,837,954.47
k. PJP Auto Center Inc.			1,437.50
l. Rapid Movers and Forwarders Co., Inc.			378,262.79
m. Ravago Equipment Rentals Inc.			28,571.12
n. Topkick Movers Corporation			673,971.93
			₱ 84,819,343.96

Petitioner contends that respondent's allegation has no factual and legal bases considering that petitioner has no unaccounted purchases for taxable year 2010.

Petitioner further argues that the schedule above failed to provide the amounts under columns "Per SLP" and "Per AITEID" to justify that the AITEID data is greater than those declared by petitioner in its SLP. The details stated by the respondent are not sufficient to afford the petitioner the opportunity to intelligently answer the assessment, as well as to prepare documentary evidence to support its position. Needless to say, petitioner cannot properly contest the issues raised by respondent point-by-point because it was not fully or at least substantially informed of its factual basis. ✗

[40] Annex "A-1", Details of Discrepancies, Annex "A" of PAN, BIR Records, Folder 1, pp. 490-498.

We agree with petitioner.

Though respondent provided the legal basis of the assessment, respondent, however, failed to provide the factual bases of the variances per SLP and per AITEID data. Respondent failed to indicate the basis of why the AITEID data is greater than the amounts reported in the petitioner's SLP. Respondent simply did not indicate where the said amounts came from. To reiterate petitioner's argument, said assessment details are not sufficient to afford petitioner the opportunity to intelligently answer the assessment, as well as prepare the documentary evidence in support of its protest.

Even the Court-commissioned ICPA himself, Mr. Rendon P. Gammag, in his Amended Report[41] dated December 8, 2015, was not able to reconcile the differences between SLP and per AITEID data, for lack of details.

In *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*[42], the Supreme Court ruled as follows:

> The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.
>
> We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be

[41] Exhibit "P-82".
[42] G.R. No. 166387, January 19, 2009.

informed of the legal and factual bases of the assessment against it, the assessment in question was void. xxx

Further, both Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99 clearly require the written details on the nature, factual and legal bases of the subject deficiency tax assessments. The reason for the mandatory nature of this requirement is explained in the case of *Commissioner of Internal Revenue vs. Reyes*[43]:

xxx A void assessment bears no valid fruit.

The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not been informed of the basis of the estate tax liability. **Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.** The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery.

Even a cursory review of the preliminary assessment notice, as well as the demand letter sent, reveals the lack of basis for – not to mention the insufficiency of – the gross figures and details of the itemized deductions indicated in the notice and the letter. **This Court cannot countenance an assessment based on estimates that appear to have been arbitrarily or capriciously arrived at.** Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself." (*Emphasis supplied; citations omitted*)

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[43] G.R. No. 159694, January 27, 2006.

Thus, as petitioner cannot be expected to determine and thereafter refute the findings of the examiner without the disclosure of the details of the discrepancies and the factual bases of the assessment made against it, the assessment pertaining thereto is considered void and shall be cancelled accordingly.

B. Unaccounted income resulting from unaccounted purchases per matching of MAP vs. SLP - ₱57,559,248.13

As stated in the Details of Discrepancies, the basis of respondent's assessment is petitioner's alleged "unaccounted income" amounting to ₱57,559,248.13 derived by matching petitioner's SLP and MAP, as follows:

SUPPLIER'S NAME	PER SLP	PER MAP	SLP>MAP
Aboitiz Transport System Corporation	₱ 5,045,711.74	₱ 5,214,775.28	(₱ 169,063.54)
Arce Manpower Services	-	8,950.20	(8,950.20)
Asian Shipping Corporation	3,158,977.77	3,263,799.79	(104,822.02)
Buug Hardware & Gen Merchandise	-	43,526.78	(43,526.78)
Chua Hong / Siu Tian Chua	300,000.00	325,000.00	(25,000.00)
Coren Commercial Co Inc.	-	200,758.93	(200,758.93)
DDIS Inc.	1,258,928.53	1,607,142.84	(348,214.31)
Dennis Trucking Services	2,002,207.23	2,340,935.22	(338,727.99)
Eagle Force Security and Allied Services Corp	-	881,190.49	(881,190.49)
Eric Arada	-	37,500.00	(37,500.00)
FA Freight Services	960,069.21	1,133,154.38	(173,085.17)
Fastcargo Logistic Corporation	3,961,560.13	4,858,772.29	(897,212.16)
Friends Trucking	1,713,468.21	1,760,372.67	(46,904.46)
Gct and Sons Agricultural Devt. Corp	673,135.71	754,661.32	(81,525.61)
George Duran	-	165,000.00	(165,000.00)
Gr Real Estate Lessor	-	340,507.59	(340,507.59)
Gt Distributor Inc	64,707.94	144,274.70	(79,566.76)
Hizon Transport Services and Trading Inc	-	3,045.98	(3,045.98)
Interbev Philippines Inc	285,353,972.41	331,981,981.89	(46,628,009.48)
Jesus Anthony Tan	-	15,789.42	(15,789.42)
Jesus Bajamunde	-	292,452.66	(292,452.66)
Landcom Realty Corporation	-	72,000.00	(72,000.00)
Lfh Venture Merchandising Corporation	-	89,632.15	(89,632.15)
Lorenzo Shipping Corporation	6,042,101.32	7,495,812.74	(1,453,711.42)
Misamis Occidental Electric Cooperative Inc.	-	13,822.08	(13,822.08)

Misamis Occidental II Electric Cooperative Inc.	-	16,498.66	(16,498.66)
Negros Marine Watchman Services Corporation	-	194,285.73	(194,285.73)
Ocean Transport Group of Companies Inc	-	2,773,930.80	(2,773,930.80)
Pna Freight Services	673,802.84	719,877.65	(46,074.81)
Rabukawa Trucking	-	3,498.30	(3,498.30)
Ravago Equipment Rentals Inc	72,282.98	75,019.73	(2,736.75)
Ricardo Tumawak	-	130,000.00	(130,000.00)
Romeo Javelosa	-	56,000.00	(56,000.00)
Royalmaster Services Inc	1,202,984.34	1,490,146.54	(287,162.20)
T Biraogo Trucking Services Inc	1,211,974.33	1,388,110.17	(176,135.84)
Topkick Movers Corporation	4,648,802.13	5,060,502.80	(411,700.67)
Vallecers East Supermart	-	107,142.85	(107,142.85)
Value Care Health Systems Inc	24,160.62	120,803.09	(96,642.47)
Vila Gil Trucking Inc	433,500.00	486,500.00	(53,000.00)
William Uy	-	36,842.11	(36,842.11)
Ym Cargo Transport Corporation	61,607.14	653,571.43	(591,964.29)
Zamboanga Del Norte Electric Coop Inc Dipolog	-	37,467.61	(37,467.61)
Zamboanga Del Sur I Electric Cooperative Inc	-	24,423.05	(24,423.05)
Zamboanga Del Sur II Electric Cooperative Inc	-	3,722.79	(3,722.79)
	₱318,863,954.58	**₱376,423,202.71**	**(₱57,559,248.13)**

On the other hand, petitioner argues that the amounts per SLP as presented by respondent is erroneous.

The Court agrees with petitioner.

Upon careful review of petitioner's SLP[44], the Court finds that the total amount per SLP is equivalent to ₱353,029,525.22 and not ₱318,863,954.58 as claimed by respondent, to wit:

Supplier's Name	SLP per GVMC	SLP per BIR	Discrepancy
Aboitiz Transport System Corporation	₱ 5,226,025.23	₱ 5,045,711.74	₱ 180,313.49
Arce Manpower Services	-	-	-
Asian Shipping Corporation	3,263,799.79	3,158,977.77	104,822.02
Buug Hardware and Gen Merchandise	43,660.71	-	43,660.71
Chua Hong / Siu Tian Chua	325,000.00	300,000.00	25,000.00
Coren Commercial Co Inc.	200,758.93	-	200,758.93
DDIS Inc.	1,580,357.09	1,258,928.53	321,428.56
Dennis Trucking Services	2,340,935.22	2,002,207.23	338,727.99

[44] Exhibits "P-24-a" to "P-24-d", docket, vol. III, pp. 2268-2308.

Eagle Force Security and Allied Services Corp	881,190.49	-	881,190.49
Eric Arada	-	-	-
FA Freight Services	1,133,154.38	960,069.21	173,085.17
Fastcargo Logistic Corporation	4,880,785.92	3,961,560.13	919,225.79
Friends Trucking	1,760,372.67	1,713,468.21	46,904.46
Gct and Sons Agricultural Devt. Corp	754,661.32	673,135.71	81,525.61
George Duran	-	-	-
Gr Real Estate Lessor	-	-	-
Gt Distributor Inc	70,590.48	64,707.94	5,882.54
Hizon Transport Services and Trading Inc	3,045.98	-	3,045.98
Interbev Philippines Inc	309,949,038.96	285,353,972.41	24,595,066.55
Jesus Anthony Tan	-	-	-
Jesus Bajamunde	-	-	-
Landcom Realty Corporation	-	-	-
Lfh Venture Merchandising Corporation	89,632.15	-	89,632.15
Lorenzo Shipping Corporation	7,495,812.74	6,042,101.32	1,453,711.42
Misamis Occidental Electric Cooperative Inc.	7,082.95	-	7,082.95
Misamis Occidental II Electric Cooperative Inc.	14,618.48	-	14,618.48
Negros Marine Watchman Services Corporation	194,285.73	-	194,285.73
Ocean Transport Group Of Companies Inc	2,773,930.80	-	2,773,930.80
Pna Freight Services	719,877.65	673,802.84	46,074.81
Rabukawa Trucking	-	-	-
Ravago Equipment Rentals Inc	75,019.73	72,282.98	2,736.75
Ricardo Tumawak	-	-	-
Romeo Javelosa	-	-	-
Royalmaster Services Inc	1,490,146.54	1,202,984.34	287,162.20
T Biraogo Trucking Services Inc	1,388,110.17	1,211,974.33	176,135.84
Topkick Movers Corporation	5,060,502.80	4,648,802.13	411,700.67
Vallecers East Supermart	117,146.04	-	117,146.04
Value Care Health Systems Inc	24,160.62	24,160.62	-
Vila Gil Trucking Inc	486,500.00	433,500.00	53,000.00
William Uy	-	-	-
Ym Cargo Transport Corporation	653,571.43	61,607.14	591,964.29
Zamboanga Del Norte Electric Coop Inc Dipolog	14,160.51	-	14,160.51
Zamboanga Del Sur I Electric Cooperative Inc	10,489.14	-	10,489.14
Zamboanga Del Sur II Electric Cooperative Inc	1,100.57	-	1,100.57
	₱353,029,525.22	**₱318,863,954.58**	**₱34,165,570.64**

Nowhere in the records of the case can it be found the amount relied upon by respondent. *[initials]*

Nevertheless, petitioner made a reconciliation to account the discrepancies between the amounts per SLP and per MAP, summarized as follows:

	PER SLP	PER MAP	Discrepancy
No Discrepancy	₱ 31,090,308.52	₱ 31,090,308.52	₱ -
SLP > MAP	10,267,617.90	10,224,217.20	43,400.70
Non-VAT (SLP < MAP)	-	1,086,540.28	(1,086,540.28)
Non-VAT portion (SLP <MAP)	71,612.27	216,737.28	(145,125.01)
EWT based on remittances	309,949,038.96	331,981,981.89	(22,032,942.93)
Wrong computation	1,650,947.57	1,823,417.54	(172,469.97)
Total	**₱ 353,029,525.22**	**₱ 376,423,202.71**	**₱ (23,393,677.49)**

Taking into account the discrepancies in the above table, petitioner explained the causes of the discrepancies in this wise[45]:

a. The suppliers' accounts totaling ₱31,090,308.52 have no discrepancy, as shown below:

Supplier's Name	Per SLP	Per MAP	Discrepancy
Asian Shipping Corporation	₱ 3,263,799.79	₱ 3,263,799.79	-
Chua Hong / Siu Tian Chua	325,000.00	325,000.00	-
Coren Commercial Co., Inc.	200,758.93	200,758.93	-
Dennis Trucking Services	2,340,935.22	2,340,935.22	-
Eagle Force Security And Allied Services Corp	881,190.49	881,190.49	-
F A Freight Services	1,133,154.38	1,133,154.38	-
Friends Trucking	1,760,372.67	1,760,372.67	-
GCT And Sons Agricultural Devt. Corp	754,661.32	754,661.32	-
Hizon Transport Services And Trading Inc	3,045.98	3,045.98	-
LFH Venture Merchandising Corporation	89,632.15	89,632.15	-
Lorenzo Shipping Corporation	7,495,812.74	7,495,812.74	-
Negros Marine Watchman Services Corporation	194,285.73	194,285.73	-
Ocean Transport Group Of Companies Inc	2,773,930.80	2,773,930.80	-
P N A Freight Services	719,877.65	719,877.65	-
Ravago Equipment Rentals Inc	75,019.73	75,019.73	-
Royalmaster Services Inc	1,490,146.54	1,490,146.54	-
T Biraogo Trucking Services Inc	1,388,110.17	1,388,110.17	-
Topkick Movers Corporation	5,060,502.80	5,060,502.80	-
Villa Gil Trucking Inc A	486,500.00	486,500.00	-
YM Cargo Transport Corporation	653,571.43	653,571.43	-

[45] Exhibit "P-27".

	₱31,090,308.52	₱31,090,308.52	-

b. Assumed supplier accounts' totaling ₱10,267,617.90 is not less than the amounts declared per MAP, in fact the SLP amounts are greater than the MAP amounts by ₱43,400.70, as shown below:

Supplier's Name	Per SLP	Per MAP	SLP>MAP
Aboitiz Transport System Corporation	₱ 5,226,025.23	₱ 5,214,775.28	₱ 11,249.95
Buug Hardware And Gen Merchandise	43,660.71	43,526.78	133.93
Fastcargo Logistic Corporation	4,880,785.92	4,858,772.29	22,013.63
Vallecers East Supermart	117,146.04	107,142.85	10,003.19
	₱10,267,617.90	**₱10,224,217.20**	**₱ 43,400.70**

c. A total of ₱1,086,540.28 supplier accounts are Non-VAT entities, therefore the purchases made by the petitioner were not subjected to VAT, and the reason why the SLP is less than the MAP, as shown below:

Supplier's Name	Per SLP	Per MAP	Discrepancy
Arce Manpower Services	-	₱ 8,950.20	₱ (8,950.20)
Eric Arada	-	37,500.00	(37,500.00)
George Duran	-	165,000.00	(165,000.00)
GR Real Estate Lessor	-	340,507.59	(340,507.59)
Jesus Anthony Tan	-	15,789.42	(15,789.42)
Jesus Bajamunde	-	292,452.66	(292,452.66)
Rabukawa Trucking	-	3,498.30	(3,498.30)
Ricardo Tumawak	-	130,000.00	(130,000.00)
Romeo Javelosa	-	56,000.00	(56,000.00)
William Uy	-	36,842.11	(36,842.11)
	-	**₱1,086,540.28**	**(₱1,086,540.28)**

d. A total of ₱145,125.01 supplier accounts represents the portion of the purchases that are Non-VAT, again, the purchases made by petitioner are not subject to VAT and the reason why the SLP is less than the MAP, as shown below:

Supplier's Name	Per SLP	Per MAP	Discrepancy
Misamis Occidental Electric Cooperative Inc.	₱ 7,082.95	₱ 13,822.08	(₱ 6,739.13)
Misamis Occidental II Electric Cooperative Inc.	14,618.48	16,498.66	(1,880.18)
Value Care Health Systems Inc	24,160.62	120,803.09	(96,642.47)
Zamboanga Del Norte Electric Coop Inc Dipolog	14,160.51	37,467.61	(23,307.10)

Jc

Zamboanga Del Sur I Electric Cooperative Inc	10,489.14	24,423.05	(13,933.91)
Zamboanga Del Sur II Electric Cooperative Inc	1,100.57	3,722.79	(2,622.22)
	₱ 71,612.27	**₱ 216,737.28**	**(₱145,125.01)**

e. Supplier's account totaling ₱309,949,038.96 per SLP but reported per MAP as ₱331,981,981.89 making the SLP less than the MAP in the amount of ₱22,032,942.93, as shown below, actually represents purchases whose EWT is withheld based on remittances and not in the issuance of invoices:

Supplier's Name	Per SLP	Per MAP	Discrepancy
Interbev Philippines Inc	₱ 309,949,038.96	₱ 331,981,981.89	₱ (22,032,942.93)

f. For the remaining ₱1,650,947.50 per SLP and ₱1,823,417.54 per MAP with a discrepancy of ₱172,464.97 making the SLP less than the MAP is due to a wrong computation, detailed as follows:

Supplier's Name	Per SLP	Per MAP	Discrepancy
DDIS Inc.	₱ 1,580,357.09	₱ 1,607,142.84	(₱ 26,785.75)
GT Distributor Inc	70,590.48	144,274.70	(73,684.22)
Landcom Realty Corporation	-	72,000.00	(72,000.00)
	₱1,650,947.57	**₱1,823,417.54**	**(₱172,469.97)**

Based on the foregoing, petitioner posits that the assessment has no basis because respondent relied on mere presumptions. As such, petitioner argues that the alleged findings of "unaccounted purchases" amounting to ₱57,559,248.13 should be cancelled for lack of factual basis.

Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise; and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.[46]

However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.,* without any foundation

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[46] *Sy Po v. Honorable Court of Tax Appeals, et al.*, G.R. No. 81446, August 18, 1988.

character, the determination of the tax due is without rational basis.[47] As held in the case *of Collector of Internal Revenue vs. Benipayo,*[48] the Court ruled that the assessment must be based on actual facts.

As such, the finding that petitioner had unaccounted purchases cannot be enforced against petitioner; otherwise, the Court stands to tax petitioner arbitrarily. Accordingly, the deficiency income tax assessment on the alleged undeclared income from unaccounted purchases in the amount of ₱57,559,248.13 should be cancelled and withdrawn.

ii. Disallowed expenses for non-withholding of tax – ₱89,780,690.14

Respondent disallowed petitioner's expenses amounting to ₱89,780,690.14 as deductions from its gross income for the alleged non-withholding of tax per matching and reconciliation, determined as follows:

A. Per matching of MAP-SLP	₱ 26,526,122.09
B. Per global reconciliation of income payments	63,254,568.05
Total	**₱ 89,780,690.14**

According to respondent, a comparison of petitioner's income payments subject to withholding tax claimed per financial statement/income tax return as against the withholding tax returns filed (1601E) disclosed that petitioner did not subject to withholding tax certain expenses, hence disallowed pursuant to Section 34(K) of the NIRC of 1997, as amended, which states that *"any amount paid or payable which is otherwise deductible from, or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section, shall be allowed as 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 in (sic) this Section of this Code."*

On the other hand, petitioner contends that the allegation has no factual and legal bases considering that petitioner has properly

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[47] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.
[48] G.R. No. L-13656, January 31, 1962.

subjected all its income payments to withholding tax for the taxable year 2010.

A. Income payments not subject to withholding tax per matching of MAP vs. SLP - ₱26,526,122.09

Petitioner alleges that the comparison of the respondent of the income payments subjected to withholding tax per BIR Form No. 1601E, as against the petitioner's Audited Financial Statements (AFS) and Income Tax Return (ITR), on one hand, and the presentation of petitioner's MAP and SLP as its supporting computation, and the failure to mention the AFS, ITR or the BIR Forms 1601E, on the other hand, are misleading. That the respondent's confusing manner of presentation deprived petitioner to ascertain the facts on which respondent based its assessment. Hence, claiming that the assessment is void.

The Court cannot subscribe to the refutation of petitioner.

It is to be noted that the alleged disallowed expenses arose from the non-withholding of tax on certain payments made by petitioner to its suppliers. But instead of directly comparing the amounts of income payments subject to withholding tax claimed per financial statement/income tax, as categorically stated in the Details of Discrepancies, as against the withholding tax returns filed (BIR Form 1601 E), respondent compared petitioner's SLP with its MAP. Nevertheless, petitioner was still informed of the factual basis of the assessment considering that respondent disclosed the supporting computation of the assessment in the FLD, *i.e.,* the detailed comparison of its SLP and MAP, both of which were available to petitioner at hand. The details indicated therein are sufficient to inform petitioner of the factual basis of the assessment issued.

Based on the supporting schedules presented by respondent, attached as Annexes A-3 and A-4, the source documents used by respondent to arrive at the alleged income payments not subjected to withholding tax amounting to ₱26,526,122.09 are the MAP and SLP, to wit:

Purchases of Services (Annex A-3)	
Per SLP	₱ 15,119,840.39
Per MAP	658,284.44
SLP > MAP	***₱ 14,461,555.95***

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Purchases of Goods (Annex A-4)	
Per SLP	₱ 377,830,331.84
Per MAP	365,765,765.70
SLP > MAP	***₱ 12,064,566.14***
TOTAL	**₱ 26,526,122.09**

The details of the foregoing are as follows:

Purchases of Services (Annex A-3)			
Supplier's Name	**Per SLP**	**Per MAP**	**SLP > MAP**
Columbia Computer Center Davao Inc	₱ 13,035.71	₱ -	₱ 13,035.71
Herman Y Hablo Services	309,309.22	296,229.22	13,080.00
Te Petron Service Center	13,693.10	-	13,693.10
Imelda Petron Station	13,708.95	-	13,708.95
Grace Hardware Corporation	13,917.86	-	13,917.86
Sen Guan Hing	14,375.00	-	14,375.00
Carls Pension House	15,357.24	-	15,357.24
Lim Yao Chiong Ventures Corporation	18,673.44	-	18,673.44
Five Star Motor And Service Center	19,388.39	-	19,388.39
Pagadian Bay Plaza Hotel	21,590.22	-	21,590.22
Kings Technology Marketing	21,696.43	-	21,696.43
Philippine Airlines	22,016.88	-	22,016.88
Robinsons Abenson Appliances Corp	22,200.89	-	22,200.89
Jacinto Canvas Supply	22,321.43	-	22,321.43
Charles Ice Plant & Cold Storage Corporation	22,450.92	-	22,450.92
ECT Enterprises	22,483.92	-	22,483.92
Chino And Irish Catering Services	23,544.70	-	23,544.70
Royal Garden Hotel	23,878.55	-	23,878.55
Dasoma Distributors	25,000.00	-	25,000.00
Mandaue Foam Industries Inc	25,328.57	-	25,328.57
FCT Industrial Fabricators & Services	27,078.66	-	27,078.66
Lispher Inn	28,928.50	-	28,928.50
JRS Express	30,339.30	-	30,339.30
DH Airconditioning Enterprises	35,352.69	-	35,352.69
Buug Hardware And Gen Merchandise	36,294.64	-	36,294.64
Accu Image Productions	37,866.07	-	37,866.07
Street Kings Auto Supply	41,306.23	-	41,306.23
Ventura Marketing & Commercial Development Co	43,824.55	-	43,824.55
Highway Tire Supply	44,223.21	-	44,223.21
Steel Art Billboards Inc	44,642.86	-	44,642.86
Golden Nugget Trucking	157,022.65	111,754.25	45,268.40
Osaka Auto Supply	46,791.52	-	46,791.52
Hotel Camila	48,423.40	-	48,423.40
CW Cole Inc.	54,321.18	-	54,321.18
Albacs Motor And Services	59,883.04	-	59,883.04
JMS Jsall Marketing Services	66,071.43	-	66,071.43

Lofer Petron Service Station	76,609.89	-	76,609.89
Jemje Caltex Station And Convenience Store	77,498.24	-	77,498.24
Davao Light And Power Company	84,203.06	-	84,203.06
Pacific Motor Parts Of Bacolod Inc	87,774.99	-	87,774.99
LFH Venture Merchandising Corporation	89,632.15	-	89,632.15
DBH Caltex Station	91,605.11	-	91,605.11
Tronco Advertising Co Inc	100,000.00	-	100,000.00
Western Advertising And Construction Inc	102,232.14	-	102,232.14
Asco Auto Supply	104,727.69	-	104,727.69
Diplahan Petron Station	107,145.34	-	107,145.34
Valiant Electronics Supply	108,234.36	-	108,234.36
Marjac Service Station	109,362.47	-	109,362.47
Tio Tuan Trucking Services Inc	119,000.00	-	119,000.00
Aquarius Human Resources Dev Corp	385,813.25	250,084.91	135,728.34
Mae Wess Company, Inc.	147,731.62	-	147,731.62
Liloy Caltex Station	161,534.45	216.06	161,318.39
Ultracraft Advertising Corp.	163,680.00	-	163,680.00
Coren Commercial Co., Inc.	187,500.00	-	187,500.00
Negros Marine Watchman Services Corporation	194,285.73	-	194,285.73
Philippine Long Distance Telephone Company	210,745.72	-	210,745.72
Seaoil Super Gasoline Station	293,439.62	-	293,439.62
Bacolod Real State Development Corporation	327,610.70	-	327,610.70
Top Harbor International Inc	718,401.06	-	718,401.06
Eagle Force Security And Allied Services Corp	809,761.92	-	809,761.92
Ocean Transport Group Of Companies Inc	1,648,930.80	-	1,648,930.80
Pilipinas Shell Petroleum Corporation	2,531,963.14	-	2,531,963.14
Petron Fleet Card	4,594,075.59	-	4,594,075.59
TOTAL	**₱15,119,840.39**	**₱ 658,284.44**	**₱ 14,461,555.95**

Purchases of Good (Annex A-4)			
Supplier's Name	**Per SLP**	**Per MAP**	**SLP>MAP**
NCCC Supermarket	₱ 16,604.64	₱ -	₱ 16,604.64
Han-Joy Marketing	23,750.00	-	23,750.00
Asia Brewery Incorporated	377,789,977.20	365,765,765.70	12,024,211.50
TOTAL	**₱377,830,331.84**	**₱365,765,765.70**	**₱12,064,566.14**

Upon verification, the Court finds that the amount per SLP should be ₱396,320,243.95, of which the amount of ₱370,607,375.02 was subjected to withholding tax, while the amount of ₱25,712,868.93 was not, to wit: *gr*

Supplier's Name	PER SLP	Per MAP	SLP > MAP
A. Purchases of Services			
Accu Image Productions	₱ 37,866.07		₱ 37,866.07
Albacs Motor And Services	59,883.04		59,883.04
Aquarius Human Resources Dev Corp	698,592.30	₱ 250,084.91	448,507.39
Asco Auto Supply	104,727.69		104,727.69
Bacolod Real State Development Corporation	327,619.63		327,619.63
Buug Hardware And Gen Merchandise	43,660.71	43,526.78	133.93
Carls Pension House	15,892.95		15,892.95
Charles Ice Plant & Cold Storage Corporation	22,450.92		22,450.92
Chino And Irish Catering Services	23,544.70		23,544.70
Columbia Computer Center Davao Inc	13,035.71		13,035.71
Coren Commercial Co., Inc.	200,758.93	200,758.93	0.00
CW Cole Inc.	92,008.46		92,008.46
Dasoma Distributors	25,000.00		25,000.00
Davao Light And Power Company	99,990.20		99,990.20
DBH Caltex Station	91,908.68		91,908.68
DH Airconditioning Enterprises	95,504.48		95,504.48
Diplahan Petron Station	107,145.34		107,145.34
Eagle Force Security And Allied Services Corp	881,190.49	881,190.49	0.00
ECT Enterprises	22,483.92		22,483.92
FCT Industrial Fabricators & Services	27,078.66		27,078.66
Five Star Motor And Service Center	20,000.00		20,000.00
Golden Nugget Trucking	157,022.65	111,754.25	45,268.40
Grace Hardware Corporation	14,498.22		14,498.22
Herman Y Hablo Services	309,309.22	296,229.22	13,080.00
Highway Tire Supply	44,223.21		44,223.21
Hotel Camila	60,708.67		60,708.67
Imelda Petron Station	13,708.95		13,708.95
Jacinto Canvas Supply	22,321.43		22,321.43
Jemje Caltex Station And Convenience Store	79,015.10		79,015.10
JMS Jsall Marketing Services	66,071.43		66,071.43
JRS Express	30,651.80		30,651.80
Kings Technology Marketing	21,696.43		21,696.43
LFH Venture Merchandising Corporation	89,632.15	89,632.15	0.00
Liloy Caltex Station	175,027.32	216.06	174,811.26
Lim Yao Chiong Ventures Corporation	18,673.44		18,673.44
Lispher Inn	28,928.50		28,928.50
Lofer Petron Service Station	95,045.74		95,045.74
Mae Wess Company, Inc.	177,579.62		177,579.62
Mandaue Foam Industries Inc	25,328.57		25,328.57
Marjac Service Station	116,862.47		116,862.47
Marjac Service Station			0.00
Negros Marine Watchman Services Corporation	194,285.73	194,285.73	0.00

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Ocean Transport Group Of Companies Inc	2,773,930.80	2,773,930.80	0.00
Osaka Auto Supply	48,621.52		48,621.52
Osaka Auto Supply			0.00
Pacific Motor Parts Of Bacolod Inc	87,774.99		87,774.99
Pagadian Bay Plaza Hotel	22,233.08		22,233.08
Petron Fleet Card	4,594,075.59		4,594,075.59
Philippine Airlines	22,016.88		22,016.88
Philippine Long Distance Telephone Company	479,052.41		479,052.41
Pilipinas Shell Petroleum Corporation	3,966,212.97		3,966,212.97
Robinsons Abenson Appliances Corp	22,200.89		22,200.89
Royal Garden Hotel	25,655.33		25,655.33
Seaoil Super Gasoline Station	311,227.31		311,227.31
Sen Guan Hing	14,375.00		14,375.00
Steel Art Billboards Inc	44,642.86		44,642.86
Street Kings Auto Supply	49,449.10		49,449.10
Te Petron Service Center	14,184.17		14,184.17
Te Petron Service Center			0.00
Tio Tuan Trucking Services Inc	119,000.00		119,000.00
Top Harbor International Inc	718,401.06		718,401.06
Tronco Advertising Co Inc	100,000.00		100,000.00
Ultracraft Advertising Corp.	163,680.00		163,680.00
Valiant Electronics Supply	159.82		159.82
Ventura Marketing & Commercial Development Co	49,035.48		49,035.48
Ventura Marketing & Commercial Development Co			0.00
Western Advertising And Construction Inc	111,160.71		111,160.71
Sub-total	***₱ 18,488,023.50***	***₱ 4,841,609.32***	***₱ 13,646,414.18***
B. Purchases of Goods			
Nccc Supermarket	18,493.25		18,493.25
Han-Joy Marketing	23,750.00		23,750.00
Asia Brewery Incorporated	377,789,977.20	365,765,765.70	12,024,211.50
Sub-total	***₱ 377,832,220.45***	***₱ 365,765,765.70***	***₱ 12,066,454.75***
TOTAL	**₱ 396,320,243.95**	**₱ 370,607,375.02**	**₱ 25,712,868.93**

In his report, the ICPA explained that part of petitioner's expenses were not subjected to tax as the same were exempt from withholding tax, as follows:

Supplier's Name	**Amount Exempt from Withholding Tax (Annex IC-70)**
Accu Image Productions	₱ 7,955.36
Albacs Motor And Services	18,651.79
Aquarius Human Resources Dev Corp	289,375.60
Asco Auto Supply	104,727.68
Bacolod Real State Development Corporation	327,619.63
Buug Hardware And Gen Merchandise	133.93

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Carls Pension House	15,762.50
Charles Ice Plant & Cold Storage Corporation	19,370.54
Chino And Irish Catering Services	28,981.64
CW Cole Inc.	48,528.57
Dasoma Distributors	25,000.00
Davao Light And Power Company	122,869.82
DBH Caltex Station	65,160.94
DH Airconditioning Enterprises	95,504.46
Diplahan Petron Station	66,906.30
ECT Enterprises	22,483.93
FCT Industrial Fabricators & Services	30,328.66
Five Star Motor And Service Center	13,262.50
Golden Nugget Trucking	45,268.09
Grace Hardware Corporation	6,785.71
Han-Joy Marketing	13,750.00
Herman Y Hablo Services	13,080.00
Highway Tire Supply	38,357.14
Hotel Camila	33,730.34
Imelda Petron Station	13,708.43
Jacinto Canvas Supply	22,321.43
Jemje Caltex Station And Convenience Store	59,833.37
JMS Jsall Marketing Services	66,071.43
Kings Technology Marketing	21,696.43
Liloy Caltex Station	139,808.92
Lofer Petron Service Station	64,080.55
Mae Wess Company, Inc.	167,225.36
Mandaue Foam Industries Inc	31,181.25
Marjac Service Station	116,929.46
Osaka Auto Supply	23,051.19
Pacific Motor Parts Of Bacolod Inc	86,958.05
Pagadian Bay Plaza Hotel	8,830.36
Petron Fleet Card	3,901,818.81
Philippine Airlines	24,804.88
Philippine Long Distance Telephone Company	193,982.61
Robinsons Abenson Appliances Corp	22,200.89
Royal Garden Hotel	1,776.79
Seaoil Super Gasoline Station	229,618.41
Steel Art Billboards Inc	44,642.86
Street Kings Auto Supply	62,289.11
Te Petron Service Center	1,689.29
Tio Tuan Trucking Services Inc	58,000.00
Top Harbor International Inc	711,326.60
Tronco Advertising Co Inc	80,000.00
Ultracraft Advertising Corp.	68,583.75
Valiant Electronics Supply	159.82
Ventura Marketing & Commercial Development Co	55,415.03
Western Advertising And Construction Inc	97,803.57
TOTAL	**₱ 7,829,403.78**

However, the ICPA did not explain nor provide justification why the amount of ₱7,829,403.78 from the foregoing suppliers was exempted from withholding tax. Neither did petitioner and the ICPA provide the appropriate supporting documents for the Court to determine the nature of the transactions purported to be exempt from withholding taxes. Consequently, the entire amount of ₱25,712,868.93 shall be disallowed as deductible expense from petitioner's gross income for its failure to withhold taxes thereon.

B. Income payments not subject to withholding tax per global reconciliation - ₱63,254,568.05

Respondent compared the income payments per petitioner's financial statement and income tax return as against the withholding tax returns (BIR Form No. 1601E) filed by petitioner, and found that the amount of ₱63,254,568.05, as determined below, was not subjected to withholding taxes, hence, disallowed pursuant to Section 34(K) of the NIRC of 1997, as amended:

	Subject to 1%	**Subject to 2%**	**Total**
Purchases per Cost of Sales	₱ 708,757,373.28	₱ 47,384,410.60	₱ 756,141,783.88
Security Services		1,935,654.84	1,935,654.84
Other Outside Services		12,128,798.15	12,128,798.15
Advertising	14,510,036.21	4,423,887.44	18,933,923.65
Repairs and Maintenance		1,870,829.05	1,870,829.05
Research and Development		275,210.29	275,210.29
Office Supplies	434,963.08		434,963.08
Insurance		40,596.42	40,596.42
Representation and Entertainment		262,222.22	262,222.22
Transportation and Travel		1,804,197.72	1,804,197.72
Fuel and Oil	10,221,912.78		10,221,912.78
Communication, Light and Water		1,291,418.88	1,291,418.88
Miscellaneous	13,284.90		13,284.90
Additions to PPE	157,124.00		157,124.00
Total	₱ 734,094,694.25	₱ 71,417,225.61	₱ 805,511,919.86
Amount subject per EWT Return	697,747,747.59	44,509,604.22	742,257,351.81
Difference - Income Payments not subjected to withholding tax - FS>EWT Return	**₱ 36,346,946.66**	**₱ 26,907,621.39**	**₱ 63,254,568.05**

Conversely, petitioner counters that the alleged non-withholding tax based on the global reconciliation made by the respondent is without merit because not all income payments are covered by the expanded withholding tax system under Revenue Regulation No. 02-98. *n*

Further, petitioner noted, upon its review of the global reconciliation of the respondent, that the discrepancies cited were caused by items that are not subject to expanded withholding tax, such as, but not limited to the following:

1. Casual Purchases or from a person who is not considered as a Regular Supplier;
2. Petty Cash Disbursements incurred by Salesmen and Sales Offices such as, but not limited to meals, representation and entertainment, gasoline, out-of-town fieldwork expenses and supplies; and/or
3. Expenses that were paid in cash such as, but not limited to prepaid cellphone loads, registered mails transmitted to customers and the like.

Apart from the foregoing allegations, petitioner did not specify which and how much of the foregoing expense accounts were not subject to withholding tax. Without providing the necessary documents to support its claim, the Court cannot ascertain whether the income payment of ₱63,254,568.05 is indeed not subject to withholding tax.

It must be remembered that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of tax assessments. In other words, the taxpayer contesting the validity or correctness of an assessment must prove not only that the CIR is wrong but the taxpayer is right, otherwise, the presumption in favor of the correctness of tax assessment stands.[49]

Mere allegations without adducing evidence are not sufficient. Allegation is not synonymous with proof.[50] In the absence of proof, the Court is constrained to uphold the assessment of respondent against petitioner. Accordingly, the amount of ₱63,254,568.05 shall be disallowed as deductible expense from petitioner's gross income.

In sum, the disallowed expenses for non-withholding of tax are recomputed as follows:

A. Per matching of MAP-SLP	₱ 25,712,868.93

[49] *Sy Po v. Honorable Court of Tax Appeals, et al.*, G.R. No. 81446, August 18, 1988.
[50] *Martin v. Hon. Court of Appeals and Manila Electric Company*, G.R. No. 82248, January 30, 1992.

B. Per global reconciliation of income payments	63,254,568.05
Total	**₱88,967,436.98**

iii. Unaccounted income from unaccounted expenses - ₱37,548,429.63

The alleged unaccounted income from unaccounted expenses of ₱37,548,429.63 arose from the following:

Unaccounted income due to unaccounted expenses	₱ 84,671.41
Overstatement of expenses	37,230,901.04
Unaccounted rental expense per reconciliation of EWT returns vs FS	232,857.18
Total	**₱ 37,548,429.63**

A. Unaccounted income due to unaccounted expenses - ₱84,671.41

According to respondent, petitioner's failure to submit/present proof for the unaccounted cost/expenses claimed led to the disallowance of said costs/deductions and were made part of the gross income, pursuant to Section 32 of the NIRC of 1997, as amended.

The alleged unaccounted cost was computed by comparing the salaries and wages reported per AFS and ITR as against the alphalist of employees, to wit:

Salaries, SSS, HDMF and related accounts	₱ 24,674,275.00
Less: SSS, HDMF	1,599,900.01
Salaries per FS/ITR	₱ 23,074,374.99
Less: per Alphalist	
Non-Taxable Salaries	₱ -
Taxable Salaries	23,159,046.40
Difference	**₱ (84,671.41)**

Since the amount of salaries per alphalist is higher than the salaries expense reflected in the ITR/FS, respondent simply inferred that petitioner had undeclared income.

The Court finds the assessment erroneous. *ge*

A close scrutiny of the alphalist for the taxable year 2010 and BIR Form No. 1601-C clearly indicates that the salaries expense amounted to ₱23,074,374.71, to wit:

Schedule	Subject to Tax	Not Subject to Tax	Total
Schedule 7.1	₱ 800,222.00	₱ 61,427.20	₱ 861,649.20
Schedule 7.2	791,202.16	113,654.19	904,856.35
Schedule 7.3	18,766,367.55	2,156,673.26	20,923,040.81
Schedule 7.4	364,724.60	20,103.75	384,828.35
Total	**₱ 20,722,516.31**	**₱ 2,351,858.40**	**₱ 23,074,374.71**

Period Covered	Subject to Tax	Not Subject to Tax	Total
January	₱ 1,712,504.52	₱ 79,400.53	₱ 1,791,905.05
February	2,061,100.17	82,206.47	2,143,306.64
March	1,635,013.40	76,711.53	1,711,724.93
April	1,858,362.86	83,376.50	1,941,739.36
May	1,719,543.20	77,981.14	1,797,524.34
June	1,896,990.21	81,095.70	1,978,085.91
July	1,659,528.05	77,687.58	1,737,215.63
August	1,578,697.89	75,329.10	1,654,026.99
September	1,613,926.00	76,279.43	1,690,205.43
October	1,667,957.97	78,558.30	1,746,516.27
November	1,721,924.47	78,770.87	1,800,695.34
December	1,596,967.57	1,484,461.25	3,081,428.82
Total	**₱ 20,722,516.31**	**₱ 2,351,858.40**	**₱ 23,074,374.71**

Thus, no discrepancy exists, except for the amount of ₱0.28 (₱23,074,374.99 less ₱23,074,374.71) which is attributable to rounding off difference.

Even so, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[51] Hence, even granting that there is an unaccounted expense, such as those pertaining to payments for salaries, wages and other benefits, the same is not prohibited by law.

Bearing in mind that an unaccounted expense is not prohibited by law, it goes without saying that petitioner can exercise its

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[51] *Commissioner of Internal Revenue v. Phoenix Assurance Co. Ltd.*, G.R. No. L-19727, May 20, 1965.

discretion on whether or not it will declare a lesser amount of deductions or none at all.

Furthermore, it is worthy to note that the imputation of alleged undeclared income is based on a mere presumption that since there were undeclared expenses, there were corresponding undeclared income. Even if these alleged unaccounted expenses are to be treated as unaccounted sources of income, the same will be offset by recording the equivalent payments as expenses. As such, no taxable income will result from the said transactions.

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[52]

For lack of factual basis, the deficiency income tax assessment pertaining to the alleged undeclared income from unaccounted expenses of ₱84,671.41 is cancelled.

B. Overstatement of expenses - ₱37,230,901.04

According to respondent, petitioner's failure to submit/present proof for the overclaimed expenses led to the disallowance of said costs/deductions and were made part of the gross income, pursuant to Section 32 of the NIRC of 1997, as amended.

The alleged unaccounted cost of ₱37,230,901.04 was computed as follows:

Supplier's Name	**Amount per SLP**
Charles Ice Plant and Cold Storage Co.	₱ 22,450.92
Golden Nugget Trucking	157,022.65
Herman Y Hablo Services	309,309.22
JRS Express	30,339.30
Ocean Transport Group of Companies	1,648,930.80
Petron Fleet Card	4,594,075.59
Philippines Airlines	22,016.88
Pilipinas Shell Petroleum Corporation	2,531,963.14
Tio Tuan Trucking Services Inc	119,000.00

[52] *Collector of Internal Revenue v. Benipayo*, G.R. No. L-13656, January 31, 1962.

Top Harbor International Inc	718,401.06
Total	**₱ 10,153,509.56**
Freight and Handling per FS	47,384,410.60
Difference - overstated freight/handling	**(₱ 37,230,901.04)**

Petitioner contends that no discrepancy exists between the amounts claimed per FS as against those reported in its SLP as it made a proper accounting of its transactions.

In his amended report, the ICPA noted that petitioner booked purchases from suppliers "Petron Fleet Card" and "Pilipinas Shell Petroleum Corporation" under the account "Fuel and Oil" and not under the "Freight-In" account. Also, purchases from supplier "Charles Ice Plant and Cold Storage Co." was recorded under "Advertising and Promotions" account and not under "Freight-In" account, to wit[53]:

Date	Voucher No.	Supplier	Amount	Expense Account
12/01/2010	12-10-1007	Pilipinas Shell Petroleum Corporation	₱278,806.58	Fuel and Oil
11/03/2010	11-10-1004	Petron Fleet Card	230,380.93	Fuel and Oil
12/06/2010	12-10-1032	Charles Ice Plant and Cold Storage Co.	600.00	Advertising and Promotion

Based on further verification, the freight-in account per SLP amounts to ₱40,503,959.16, as detailed below[54]:

Registered Name of Supplier	Taxable Amount
2Go Group, Inc.	₱ 7,500.00
700 Logistics	21,457.50
Aboitiz Air Transport Corp	3,566.65
Aboitiz One Inc	1,500.00
Aboitiz Transport System Corporation	4,662,359.38
Arce Manpower Services	8,950.20
Asian Shipping Corporation	5,362,442.23
Bacolod Real State Development Corporation	327,204.00
Cebu Port Authority	22.32
Citiline Enterprises	14,337.14
CW Cole Inc.	57,385.71
David Trucking Services	118,059.24
Dennis Trucking Services	2,211,212.27
E C Creencia Trading	3,887.05
Elmars Stevedoring Arrastre Trucking & Porter	35.00

[53] Exhibit "P-82" (Amended ICPA Report), p. 22.
[54] Annex "IC-67", Amended Annex 63 to 71, pp.1355-1356.

Evergood Trucking	7,857.14
F A Freight Services	1,133,154.37
Fastcargo Logistics Corporation	4,268,519.60
Fastpak International Corp	2,999.64
Friends Trucking	1,608,616.13
GCT And Sons Agricultural Devt Corp	624,705.50
Golden Nugget Trucking	157,022.33
Goldline Commercial	53.57
Good Deal Hauling Services	13,658.04
Guedeon Transport Services	257,206.80
Han-Joy Marketing	13,750.00
Hannie And Joy Trucking Service	3,750.00
Herman Y Hablo Services	309,309.24
Hizon Transport Services And Trading Inc.	3,945.98
Hyper Speed Service Corporation	7,230.00
Integrated Ports Services Of Ozamiz,Inc.	1,338.97
Jomalia Shipping Corporation	803.57
JRS Business Corporation	27,358.35
JSY Transport Services Inc	16,805.19
Kheri Lines Inc.	1,385,579.24
LBC Express Min Inc	357.14
LFH Venture Merchandising Corporation	89,632.15
Lorenzo Shipping Corporation	3,893,796.10
M/V Nicole Star Ferry	14,973.21
Mae Wess Company, Inc.	159,100.36
Mail And More Business Services	95.00
Mercantile Corporation Of Davao	3,591.32
Montenegro Lines	3,139.29
M-V Nicole Star Ferry	18,053.57
Negros Navigation Co Inc	1,364.57
Non Vat Sales Office	143,134.54
Non Vat Supplier	235,463.58
Ocean Transport Group Of Companies Inc	2,773,930.79
P N A Freight Services	719,877.66
Philippine Airlines	2,768.66
Philippine Ports Authority	15.00
Philippine Salvage Construction And Trading C	30.50
Prudential Customs Brokerage Service	2,147.40
Rabukawa Trucking	3,498.30
Rapid Movers And Forwarders Co Inc	378,262.79
Ravago Equipment Rentals Inc.	70,797.94
Royalmaster Services Inc.	1,494,368.61
Selecta Press Inc	3,232.14
South Dockhandlers Inc	82.68
Starlite Ferry, Inc.	3,553.57
T Biraogo Trucking Services Inc.	1,388,110.44
Tio Tuan Trucking Services Inc	62,000.00
Top Harbor International Inc	710,021.78
Topkick Movers Corporation	4,544,602.70

Villa Gil Trucking Inc.	486,500.00
Weesam Express	303.57
YM Cargo Transport Corporation	653,571.43
Grand Total	**₱ 40,503,959.16**

Thus, the amount of unsupported freight-in per SLP is ₱6,880,450.84; derived from matching the Freight-In per FS in the amount of ₱47,384,410.00[55] against the verified Freight-In per petitioner's SLP amounting to ₱40,503,959.16.

Consequently, the assessed amount of overstatement of expenses shall be reduced to ₱6,880,450.84.

C. Unaccounted rental expenses per reconciliation of EWT returns vs. FS - ₱232,857.18

Based on the comparison of petitioner's rent expense per FS and per EWT return, respondent's examiner found that petitioner failed to report in its FS the rent expense in the amount of ₱232,857.18 and considered the same as unaccounted source of cash, computed as follows[56]:

Rent Expense per FS	₱ 3,140,321.77
Rent Expense per 1601E	3,373,178.95
Difference - Unaccounted source of cash	**(₱ 232,857.18)**

Petitioner, on the other hand, argues that the alleged unaccounted rent expense in the amount of ₱232,857.18 is reported under the account Advertising-Rental of Promo Equipments for Special Events in the financial statements. Further, petitioner avers that respondent failed to inquire from the petitioner the composition of the income payments subjected to withholding tax amounting to ₱3,373,178.95 vis-à-vis the rent expense reported per AFS amounting to ₱3,140,321.77.[57]

According to petitioner, the rental payments reported in the Annual Aphalist of Payees are as follows[58]: *gr*

[55] Note 10, Exhibit "P-8-a" (AFS), docket, vol. III, p. 1558.
[56] Schedule 5, Details of Discrepancies, Annex "A" of FLD, BIR Records, Folder 1, p. 524.
[57] Par. 68, Petition for Review, docket, vol. I, p. 31.
[58] *Ibid.*

TIN	SUPPLIER'S NAME	PER MAP
103307069	Buug Hardware And Gen Merchandise	₱ 43,526.78
006408276	DDIS Inc.	1,607,142.84
180513736	GR Real Estate Lessor	340,507.59
100103314	GT Distributor	11,765.08
004361557	GT Distributor Inc	132,509.62
000470445	Landcom Realty Corporation	72,000.00
102723827	Vallecers East Supermart	71,428.57
102723827	Vallecers East Supermarket	17,857.14
102723827	Vallecers East Supermart	17,857.14
100126392	Chua Hong / Siu Tian Chua	325,000.00
078892004	Eric Arada	37,500.00
121503452	George Duran	165,000.00
911215505	Jesus Anthony Tan	15,789.42
905046820	Jesus Bajamunde	292,452.66
919050715	Ricardo Tumawak	130,000.00
117383187	Romeo Javelosa	56,000.00
102724602	William Uy	36,842.11
Totals		**₱ 3,373,178.95**

Upon verification, petitioner withheld and paid the five percent (5%) withholding tax on its rental payments on real and personal properties which include, but not limited to, the following: land transport equipment, water transport equipment, air transport equipment, industrial equipment, scientific equipment, agricultural machinery and equipment, construction/civil engineering machinery and equipment, telecommunications equipment, office furniture/machines/equipment, main frame computer and all other computer machines/equipment, materials handling equipment and auxiliary equipment. Also, petitioner paid the expanded withholding tax on a timely manner as evidence by the BIR Forms[59] duly received by the BIR and machine validated by the bank. Likewise, the the aforementioned suppliers were properly reported on the monthly alphalist of payees (MAP) attached to the withholding tax returns. Moreover, considering that the foregoing expenses were properly reflected in petitioner's AFS, lodged under the expense accounts Rental and Advertising, respondent's assessment, therefore, is without basis. Accordingly, the assessment pertaining thereto shall be cancelled.

iv. Disallowed excess MCIT - ₱460,156.61 Jr

[59] Exhibits "P-12-a" to "P-12-l", docket, vol. III, pp. 2195-2231.

Respondent deducted the excess of MCIT over RCIT amounting to ₱460,156.61 from the total tax credits/payment of ₱1,661,432.72[60] but gave no explanation in the FLD. The Court can only surmise that the excess MCIT was disallowed in order to recapture the tax benefit realized by petitioner in carrying the said amount to the succeeding year.

However, the Court finds it improper for respondent to disallow the said excess MCIT because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2011. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In fine, petitioner is liable for basic deficiency income tax in the amount of ₱28,294,209.73, as computed below:

Taxable Income (Loss) per Return		₱ 4,004,253.69
Add: Adjustments per Audit		
Disallowed expenses for non-withholding of tax	₱ 88,967,436.98	
Unaccounted income from unaccounted expenses	6,880,450.84	95,847,887.82
Adjusted Taxable Income		**₱ 99,852,141.51**
Tax Due		₱ 29,955,642.45
Less: Tax Credits		
Prior year's excess credits	₱ 461,126.32	
Tax payments for the first three quarters	740,186.94	
Creditable Tax Withheld for the first three quarters	49,896.46	
Creditable Tax Withheld per BIR Form 2307 for the Fourth Quarter	257,379.21	
Tax paid per BIR Form 1702	152,843.79	1,661,432.72
Basic Deficiency Tax		**₱ 28,294,209.73**

II. Value-Added Tax (VAT) - ₱122,043,804.84

Respondent found petitioner liable for deficiency VAT in the amount of ₱122.043,804.84, computed as follows[61]:

Taxable Sales per VAT returns		₱ 829,380,471.26
Add: Adjustment per Audit		
i. Unaccounted income due to unaccounted expenses	₱ 84,671.41	
ii. Unaccounted rental expense	232,857.18	

[60] Exhibit "P-8", docket, vol. III, p. 1532.
[61] Exhibits "P-26" and "R-12", BIR Records, Folder 1, p. 528.

iii. Undeclared Sales on discrepancies per line-by-line reconciliation	158,198,435.66	158,515,964.25
Gross Receipts per Audit		**₱ 987,896,435.51**
Output tax		₱ 118,547,572.26
Less: Creditable Input tax		
Input tax carried over from previous period		
Add: Input tax claimed for the year	₱ 94,240,853.37	
Less: iv. Overclaimed input per matching of SLP vs VAT returns	53,738,254.34	40,502,599.03
VAT Due		78,044,973.23
Less: VAT paid		5,284,803.38
VAT Still due - Basic		72,760,169.85
Add: Increments		
Interest until August 15, 2014	49,258,634.99	
Compromise penalty	25,000.00	49,283,634.99
Total Amount Due		**₱ 122,043,804.84**

As shown above, the deficiency VAT arose from the following findings:

i.	Unaccounted income due to unaccounted expenses	₱ 84,671.41
ii.	Unaccounted rental expense	232,857.18
iii.	Undeclared Sales on discrepancies per line-by-line reconciliation	158,198,435.66
iv.	Overclaimed input per matching of SLP vs VAT returns	53,738,254.34

i. Unaccounted income due to unaccounted expenses - ₱84,671.41

This assessment was based on the same findings under the deficiency income tax assessment, that since the amount of salaries per alphalist is higher than reflected in the ITR/FS, respondent simply inferred that petitioner had undeclared income which is subject to VAT pursuant to Section 106 of the NIRC of 1997, as amended.

The Court finds the assessment devoid of merit.

As discussed earlier *[item I(iii)(A)]*, no discrepancy exists.

Also, even if these alleged unaccounted expenses are to be treated as unaccounted sources of income subject to output VAT, the same will be offset by recording the equivalent payments as expenses for which input tax credits may be claimed. Hence, no VAT-able income will result from the said transactions. Accordingly, the deficiency VAT assessment on this item shall be cancelled.

ii. Unaccounted rental expense - ₱232,857.18

This assessment is based on the same finding under the deficiency income tax assessment that petitioner had an undeclared income from unaccounted rental expenses based on the comparison of claimed income payments per BIR Form No. 1601-E as against the AFS.

As discussed earlier *[item I(iii)(C)]*, considering that petitioner properly accounted its rental expenses per AFS, lodged under the expense accounts Rental and Advertising, respondent's assessment, therefore, is without basis. Accordingly, the deficiency VAT assessment pertaining thereto shall be cancelled.

iii. Undeclared Sales on discrepancies per line-by-line reconciliation - ₱158,198,435.66

As discussed under item *I(i)(A) and (B)*, the assessment has no basis because respondent relied on mere presumptions, thus, cancelled for lack of basis. That being the case, the imposition of VAT thereon shall also be cancelled and withdrawn.

iv. Overclaimed input per matching of SLP vs. VAT returns – ₱53,738,254.34

According to respondent, petitioner's failure to reconcile the unaccounted difference in the sources of input tax per SLP vs. VAT returns led to the disallowance of corresponding input tax, pursuant to Section 110(a) of the NIRC of 1997, as amended, to wit:

Sources of input tax claimed per VAT returns	₱ 785,340,444.75
Sources of input tax per SLP	337,521,658.56
Difference - overclaimed source of input tax	**₱ 447,818,786.19**

fc

Disallowed input tax	**₱ 53,738,254.34**

Petitioner asserts that respondent's claims have no merit as no discrepancy exists between the input tax claimed per VAT returns and per SLP.

Upon verification, the Court finds that indeed no discrepancy exists between the input tax claimed per VAT returns and per SLP. In fact, contrary to the claim of respondent, petitioner's purchases actually amount to ₱784,032,657.01, and not ₱785,340,444.75 nor ₱337,521,658.56, to wit:

Purchases	**Services**	**Capital Goods not exceeding ₱1 Million**	**Goods Other than Capital Goods**	**Total**
January	₱ 2,858,114.38		₱ 55,602,765.62	₱ 58,460,880.00
February	4,061,061.34	₱ 959.50	55,226,265.59	59,288,286.43
March	4,109,573.47	1,419.64	72,141,041.46	76,252,034.57
Total - 1st qtr	***₱ 11,028,749.19***	***₱ 2,379.14***	***₱ 182,970,072.67***	***₱ 194,001,201.00***
April	₱ 5,292,443.67	₱ 22,200.89	₱ 56,877,142.97	₱ 62,191,787.53
May	4,472,343.61	7,187.50	60,463,814.33	64,943,345.44
June	1,719,502.17		63,216,236.28	64,935,738.45
Total - 2nd qtr	***₱ 11,484,289.45***	***₱ 29,388.39***	***₱ 180,557,193.58***	***₱ 192,070,871.42***
July	₱ 5,394,427.53	₱ 29,732.14	₱ 43,563,072.50	₱ 48,987,232.17
August	3,034,768.60	2,098.21	50,264,944.90	53,301,811.71
September	6,965,914.95		61,714,751.76	68,680,666.71
Total - 3rd qtr	***₱ 15,395,111.08***	***₱ 31,830.35***	***₱ 155,542,769.16***	***₱ 170,969,710.59***
October	₱ 5,220,974.83		₱ 65,301,154.53	₱ 70,522,129.36
November	4,678,507.82		69,774,055.55	74,452,563.37
December	2,259,745.69	21,116.06	79,735,319.52	82,016,181.27
Total - 4th qtr	***₱ 12,159,228.34***	***₱ 21,116.06***	***₱ 214,810,529.60***	***₱ 226,990,874.00***
TOTAL	**₱ 50,067,378.06**	**₱ 84,713.94**	**₱ 733,880,565.01**	**₱ 784,032,657.01**

Hence, the disallowance should be cancelled.

In view of the foregoing, the Court finds petitioner's VAT deficiency assessment devoid of merit. Accordingly, the same should be cancelled.

III. Expanded Withholding Tax (EWT) - ₱2,224,383.27

jc

Respondent assessed petitioner of deficiency EWT, as shown below[62]:

Basic Deficiency Tax		₱ 1,311,498.67
Add: Increments		
Interest until 08/15/2014	₱ 887,884.60	
Compromise penalty	25,000.00	912,884.60
Total Amount Due		**₱2,224,383.27**

The details of the basic deficiency EWT are as follows:

	Subject to 1%	Subject to 2%	Subject to 5%	Subject to 15%	Total
Purchases per Cost of Sales	₱ 708,757,373.28	₱ 47,384,410.60			₱ 756,141,783.88
Rental			₱ 3,140,321.77		3,140,321.77
Professional Fees				₱ 42,500.00	42,500.00
Security Services		1,935,654.84			1,935,654.84
Other Outside Services		12,128,798.15			12,128,798.15
Advertising	14,510,036.21	4,423,887.44			18,933,923.65
Repairs and Maintenance		1,870,829.05			1,870,829.05
Research and Development		275,210.29			275,210.29
Office Supplies	434,963.08				434,963.08
Insurance		40,596.42			40,596.42
Representation and Entertainment		262,222.22			262,222.22
Transportation and Travel		1,804,197.72			1,804,197.72
Fuel and Oil	10,221,912.78				10,221,912.78
Communication, Light and Water		1,291,418.88			1,291,418.88
Miscellaneous	13,284.90				13,284.90
Additions to PPE	157,124.00				157,124.00
Unaccounted rental Expense			232,857.18		232,857.18
Total	**₱ 734,094,694.25**	**₱71,417,225.61**	**₱3,373,178.95**	**₱42,500.00**	**₱808,927,598.81**
Less: Amount subjected per EWT Return	697,747,747.59	44,509,604.22	3,373,178.95	42,500.00	745,673,030.76
Total Income Payments not subjected to withholding tax per global reconciliation	**₱ 36,346,946.66**	**₱26,907,621.39**	-	-	**₱ 63,254,568.05**
Add: Income payments not subjected to withholding per matching of MAP – SLP	12,064,566.14	14,461,555.95			26,526,122.09
Income Payments not subjected to withholding tax	**₱ 48,411,512.80**	**₱41,369,177.34**	-	-	**₱ 89,780,690.14**

[62] Exhibits "P-26" and "R-12", BIR Records, Folder 1, p. 528.

EWT Due	**₱ 484,115.13**	**₱ 827,383.55**			**₱ 1,311,498.67**

Basically, the foregoing arose from (1) the comparison of the income payments per petitioner's AFS/ITR as against the withholding tax returns (BIR Form No. 1601E), where respondent found a discrepancy of ₱63,254,568.05; and (2) the matching of MAP against SLP, where respondent found a discrepancy of ₱26,526,122.09.

As already discussed under item *I(ii)(A)*, out of the discrepancy of ₱26,526,122.09, the Court finds that only the amount of ₱25,712,868.93 was not subjected to withholding tax, while under item *I(ii)(B)*, the amount not subjected to withholding taxes was ₱63,254,568.05.

Accordingly, the assessment for deficiency EWT shall be upheld but in the modified amount of ₱1,295,214.73, as computed below:

Income Payments not subjected to withholding tax per global reconciliation	₱ 36,346,946.66	₱ 26,907,621.39	₱ 63,254,568.05
Add: Income payments not subjected to withholding per matching of MAP - SLP	12,066,454.75	13,646,414.18	25,712,868.93
Income Payments not subjected to withholding tax	**₱ 48,413,401.41**	**₱ 40,554,035.57**	**₱ 88,967,436.98**
EWT Rate	1%	2%	
EWT Due	**₱ 484,134.01**	**₱ 811,080.71**	**₱ 1,295,214.73**

IV. Miscellaneous Tax (MC) – ₱50,000.00; and Compromise Penalties on the Deficiency Income Tax, Value-Added Tax, and Expanded Withholding Tax - ₱75,000.00

Respondent's verification disclosed that petitioner failed to file summary alphalist of withholding taxes (SAWT) and summary list of sales (SLS), in violation of Revenue Memorandum Order (RMO) 51-2009, for which a penalty of ₱25,000.00 for each failure or in the total amount of ₱50,000.00 was imposed.

Likewise, respondent imposed compromise penalties on the deficiency income tax, VAT and EWT, amounting to ₱25,000.00 for each deficiency or in the total amount of ₱75,000.00.

Such imposition cannot be sustained. *(initials)*

Under RMO No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is 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 that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[63] 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.[64]

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The deficiency VAT[65] and miscellaneous tax[66] assessments, as well as the compromise penalties, issued by respondent against petitioner for taxable year 2010 are **CANCELLED**. On the other hand, the deficiency income tax and expanded withholding tax assessments are **PARTIALLY UPHELD**. Accordingly, petitioner is ordered to pay the amount of **₱36,986,780.57**, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	Surcharge	Total
Income Tax	₱ 28,294,209.73	₱ 7,073,552.43	₱ 35,367,762.16
Expanded Withholding Tax	1,295,214.73	323,803.68	1,619,018.41
TOTAL	**₱ 29,589,424.46**	**₱ 7,397,356.11**	**₱ 36,986,780.57**

In addition, petitioner is ordered to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱28,294,209.73 and expanded withholding tax of ₱1,295,214.73 computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Deficiency Interest Computed From

[63] *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[64] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., et al.*, G.R. No. 35266, January 21, 1991.
[65] Assessment Notice No. VT-116-LOA-116-2011-00000109-10-14-810.
[66] Assessment Notice No. MC-116-LOA-116-2011-00000109-10-14-811.

Income Tax	15-Apr-2011
EWT	11-Jan-2011

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱36,986,780.57 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from August 15, 2014 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

Catherine T. Manahan
CATHERINE T. MANAHAN
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

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