Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

OAKWOOD MANAGEMENT SERVICES (PHILIPPINES), INC., Petitioner,	**CTA Case No. 7989**
-versus-	Members: **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MINDARO-GRULLA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 08 2013 4:29 p.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review,[1] filed by petitioner-Oakwood Management Services (Philippines), Inc., seeking the cancellation of respondent's Formal Assessment Notice (FAN) dated January 14, 2009, assessing petitioner for: (a) deficiency income tax; (b) deficiency value-added tax (VAT); (c) deficiency final withholding of VAT (Final VAT); (d) deficiency expanded withholding tax (EWT); (e) deficiency final withholding tax (FWT); (f) deficiency documentary stamp tax (DST) on subscribed capital stock; (g) deficiency documentary stamp tax on petitioner's "Due to Affiliates"; (h) compromise penalty for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to petitioner's alleged failure to file certain tax returns.

[1] Docket, pp. 1-33.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at 25th Floor, 88 Corporate Center, 141 Valero Street cor. Sedeño Street, 1229 Makati City.[2]

Respondent is duly appointed to perform the duties of her office, including, *inter alia,* the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4 of the NIRC of 1997, as amended. She holds office at the 5th Floor, Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City.[3]

Respondent issued a Letter of Authority (LOA) No. 00046254[4] dated November 28, 2006 duly authorizing Revenue Officer Emma L. Pascual and Group Supervisor Crisanto Q. Calvarido, Jr. to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year ending December 31, 2005. Attached to the said LOA is a Checklist of Requirements[5] dated November 28, 2006, requiring petitioner to submit vital documents needed in the examination of internal revenue taxes for taxable year ending December 31, 2005.[6]

On February 20, 2007, respondent issued the Second Notice dated February 1, 2007, requiring petitioner to submit for the second time the required records for 2005 enumerated under the Checklist of Requirements.[7]

On April 2, 2007, petitioner, in compliance with the LOA No. 00046254 dated November 28, 2006, Checklist of Requirements dated November 28, 2006 and Second Notice dated February 1, 2007, submitted certain documents enumerated in its Transmittal Letter dated April 2, 2007, through its authorized representative, Alona Q. Macinas of Probooks Outsourcing, Inc.[8]

Petitioner's Annual ITR (BIR Form No. 1702), Quarterly ITR (BIR Form 1702Q), Quarterly VAT Returns (BIR Form 2550Q), Monthly VAT Declarations (BIR Form 2550M), Monthly Remittance Return of Final a

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[2] Par. 1, Facts Admitted in Respondent's Answer and Pre-Trial Brief, (Facts Admitted), Joint Stipulation of Facts and Issues (JSFI), Ibid, p. 269.
[3] Pars. 3 and 4, Facts Admitted , JSFI, Id, 270.
[4] Exhibit "2".
[5] Exhibit "3".
[6] Par. 15, Facts Stipulated on at the Pre-Trial Conference, JSFI, Id, p. 273; Exhibits "2-B" and "3-B".
[7] Par. 17, Facts Stipulated on at the Pre-Trial Conference, JSFI, Id, p. 273; Exhibits "4" to "4-B".
[8] Par. 18, Facts Stipulated on at the Pre-Trial Conference, JSFI, Id, p. 273.

Income Tax (BIR Form No. 1601-F), Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form 1601-E) and Annual Information Return of Creditable Taxes Withheld (BIR Form 1604-E) for taxable year 2005 which were all filed with the BIR bear its BIR-registered address located at 6/F Glorietta 4, Ayala Center, Makati City.[9]

On January 6, 2009, petitioner received by mail the Preliminary Assessment Notice (PAN) with attached Details of Discrepancies all dated December 23, 2008,[10] assessing it of the following deficiency taxes and penalties summarized below:

Assessment Notice for Deficiency Taxes/Penalties	Tax Due	Surcharge (50%)/ Penalty Interest	Total Amount Due
(a) Income Tax	P 3,639,894.95	P 1,984,490.67	P 5,624,385.61
(b) VAT	16,000.00	9,275.62	25,275.62
(c) Final VAT	600,000.00	508,356.16	1,108,356.16
(d) EWT	58,487.74	34,772.16	93,259.90
(e) FWT	1,920,000.00	1,621,479.45	3,541,479.45
(f) DST on subscribed capital stock	39,600.00	40,907.34	80,507.34
(g) DST on Due to affiliates	1,011.30	1,044.69	2,055.99
(h) Penalty for failure to file returns			59,400.00
Total Amount Payable			**P 10,534,720.07**

On January 16, 2009, or ten (10) days after the receipt of the said PAN and before the lapse of the 15-day reglementary period for petitioner to respond to the PAN, petitioner received the Final Assessment Notice (FAN) dated January 14, 2009.[11] The details[12] of the taxes and penalties assessed and sought to be collected from petitioner are as follows:

Assessment Notice for Deficiency Taxes/Penalties	Tax Due	25% Surcharge	Interest (up to 2.16.09)	Total Amount Due
(a) Income Tax	P 3,639,894.95		P 2,068,258.11	P5,708,153.06
(b) VAT	16,000.00		9,792.88	25,792.88
(c) Final VAT	600,000.00	P150,000	372,164.38	1,122,164.38
(d) EWT	58,487.74		36,118.18	94,605.92
(e) FWT	1,920,000.00	480,000.00	1,185,665.75	3,585,665.75
(f) DST on subscribed capital stock	39,600.00	9,900.00	31,918.68	81,418.68
(g) DST on balance of due to	1,011.30	252.83	815.14	2,079.27

[9] Par. 19, Facts Stipulated on at the Pre-Trial Conference, JSFI, Id, pp. 273-274.
[10] Par. 5, Facts Admitted, JSFI, Id, p. 270.
[11] Par. 15, Petition for Review, Id, p. 5.
[12] Exhibits "C" to "C-4".

affiliates				
(h) Compromise Penalty				59,400.00
Total Amount Payable				**P 10,679,279.94**

On January 21, 2009, within the 15-day reglementary period, petitioner filed its answer to the PAN, disputing the assessments stated therein by submitting Reply Letters dated January 19, 2009 and January 21, 2009.[13]

On February 13, 2009, petitioner filed its protest to the FAN.[14] In a transmittal letter dated April 7, 2009, petitioner submitted the relevant documents in support of its protest to the FAN and the same was received by respondent on April 8, 2009.[15]

Due to respondent's failure to make a decision within the reglementary period provided for by law, petitioner filed the instant petition before this Court.

In her Answer[16] filed on January 15, 2010, respondent raised the following special and affirmative defenses:

> "7. He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses;
>
> 8. Under Section 228 of the 1997 Tax Code, it is partly provided that:
>
>> **"Sec. 228. Protesting of Assessment. –** 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."* (Emphasis supplied)

[13] Par. 6, Facts Admitted, JSFI, Id, p. 270; Exhibits "E" to "F-1".
[14] Par. 10, Petition for Review, Id, p. 4; Exhibits "H" and "H-1".
[15] Exhibits "I" and "I-1".
[16] Docket, pp. 200-206.

In the instant case, under **paragraph 2 of the Petition for Review** filed by petitioner, the latter categorically stated and admitted that: *'The Protest Letter was filed to administratively protest the Formal Assessment Notice issued by the respondent dated 14 January 2009 and received by Petitioner on 16 February 2009 (hereinafter referred to as 'FAN').*

Premised from the foregoing, since petitioner received the subject Formal Assessment Notice (FAN) issued by the respondent dated 14 January 2009, on February 16, 2009, (sic)[17] pursuant to Section 228 of the 1997 Tax Code, petitioner has thirty (30) days from February 16, 2009 or until March 18, 2009, within which to file an administrative protest. The fact, that petitioner failed to file an administrative protest with the BIR within the 30-day period, that is, from February 16, 2009 to March 18, 2009, therefore, the subject deficiency income tax, value-added tax, final withholding of value-added tax, expanded withholding tax, final withholding tax, documentary stamp tax on subscribed capital stock, documentary stamp tax on petitioner's due to affiliates account and compromise penalties for taxable year 2005 has already become final, executory and demandable. As such, this Honorable Court has no jurisdiction to act on the instant Petition for Review.

9. The Supreme Court in the case of **Ker & Company, Ltd. vs. CTA, et al., L-12396, January 31, 1962** and **Commissioner of Internal Revenue vs. Joseph, et al., L-14034, August 30, 1962,** has ruled that:

> 'If a statutory remedy provides as condition precedent that the action to enforce must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.'

10. The Letter of Authority issued by the respondent to herein petitioner for examination of all its internal revenue taxes for taxable year 2005 was validly served and received by petitioner through its authorized a

[17] Should be January 16, 2009 based on the Re-Direct Examination of Ma. Richelle Aritalla by Atty. Lovely E. Lim of Transcript of Stenographic Notes Taken During the Hearing on July 21, 2010, pp. 21 and 22.

representatives within thirty (30) days from the date it was issued.

11. The Letter of Authority issued by the respondent was valid and binding upon herein petitioner. Under **BIR Ruling No. DA-121-01 dated July 18, 2001,** which squarely answers the issues raised by herein petitioner, the Commissioner of Internal Revenue, clearly states that:

> "Nowhere from RMO No. 12-98, or any other internal revenue issuances on audit programs and policies, is it mentioned that the lapse of 120-days from the date the revenue examiner received the Letter of Authority and the failure of the said examiner to secure a revalidation within the said 120-days (sic) period will give rise to the taxpayer's immunity from audit for that particular period. The requirement is merely directory and is intended to enhance efficiency while at the same time ensure quality audit. It does not in any way affect the right of the government to issue assessment notices for deficiency taxes within the period/s set forth by law.' Thus, at any time within the regular three year prescriptive period for issuing assessment notices under Section 203 of the Tax Code, the Commissioner or his duly authorized representative, in this case the Regional Director, may still issue an order revalidating Letter of Authority No. 000015124.' [Emphasis supplied]

Likewise, in the most recent **Revenue Memorandum Circular (RMC) No. 23-2009 dated 16 April 2009** *(Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division),* the Commissioner of Internal Revenue clearly stated that:

> "The revalidation of LA shall give rise to the extension of the period within which the Revenue Officer (RO) assigned to the case shall submit the report of investigation to the higher authorities for review and approval, without

> the imposition of applicable administrative sanctions. Depending on the classification of the pending tax case, said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances. Failure on the part of the RO to request for the revalidation of LA or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.'[Emphasis supplied]

12. Petitioner was assessed for deficiency income tax, value-added tax, final withholding of value-added tax, expanded withholding tax, final withholding tax, documentary stamp tax on subscribed capital stock, documentary stamp tax on petitioner's due to affiliates account and compromise penalties for taxable year 2005, for the reason that during the administrative investigation of its tax case by the BIR, petitioner failed to substantiate or controvert by concrete evidence the BIR findings, as shown under the Details of Discrepancies attached to the Formal Assessment Notice (FAN) dated January 14, 2009, and the Preliminary Assessment Notice (PAN) dated December 23, 2008, which are briefly discussed hereunder, viz:

A.) Income Tax:

1. Petitioner failed to properly withhold and remit the expanded withholding tax due on its income payments pursuant to Section 57 and 58 of the 1997 Tax Code. Hence its claimed expenses in the amount of P7,635,580.60 were disallowed pursuant to Section 34(K) of the same Code.

2. Petitioner failed to provide supporting evidence on its claimed creditable withholding tax in the amount of P2,425,703.00, hence, the same was disallowed pursuant to Section 2.58.3 of Revenue Regulations No. 2-98;

3. Petitioner's Annual Income Tax Return reflected a tax credit in the amount of P2,364,787.00 to be carried over to the succeeding years/s. Considering that the tax benefit of this amount has

already been forwarded to the succeeding periods as provided under Section 76(B) of the 1997 Tax Code and Section 2.58(C) of Revenue Regulations No. 2-98, the same has been disallowed for the current year to recapture the tax benefit thereon.

B.) Value-Added Tax:

1. Petitioner failed to present any document to support its claimed input taxes of P16,000.00, that the same came from a VAT Registered Entity, hence, the amount of P16,000.00 was disallowed pursuant to Section 110 of the 1997 Tax Code.

C.) Final Withholding of Value-Added Tax:

1. Petitioner failed to subject to withholding tax of value-added tax the income payments on management services rendered by a parent non-resident foreign corporation amounting to P6,000,000.00, thus, it was assessed pursuant to Section 4.114 of Revenue Regulations No. 2-98, as amended by Section 7 of Revenue Regulations No. 14-2002.

D.) Expanded Withholding Tax:

1. Petitioner failed to remit the corresponding withholding tax on the income payments for professional fees in the amount of P322,201.60 and Marketing Expense in the amount of P1,313,379.00, hence, it is liable to pay a deficiency EWT pursuant to Section 2.57.2 of Revenue Regulations No. 2-98.

E.) Final Withholding Tax:

1. Petitioner failed to remit the corresponding withholding tax on the income payments for management services in the amount of P6,000,000.00, hence, it is liable to pay a deficiency FWT pursuant to Section 28(B) of the 1997 NIRC.

F.) Documentary Stamp Tax:

1. Petitioner failed to pay the documentary stamp tax on subscribed and paid up capital stock

amounting to P7,920,000.00, hence, it is assessed for deficiency DST in the amount of P39,600.00, pursuant to Section 175 of the 1997 NIRC.

2. Petitioner failed to remit the documentary stamp tax on due to affiliated companies, hence, it is assessed for deficiency DST in the amount of P1,011.08, pursuant to Section 180 of the 1997 NIRC.

G.) Compromise Penalty:

1. Petitioner was suggested to pay the compromise penalties in the aggregate amount of P59,400.00, in lieu of criminal prosecution since it failed to file the withholding tax on compensation returns and pay the corresponding withholding of value-added tax, final withholding tax on management fees rendered by non-resident corporations and documentary stamp tax due on subscribed capital stock and loans from affiliated company pursuant to Section 255 of the 1997 Tax Code.

13. Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, when the disputed Preliminary Assessment Notice (PAN) dated December 23, 2008 and Formal Assessment Notice (FAN) dated January 14, 2009 was issued to herein petitioner. Records clearly show that petitioner was duly afforded an opportunity to controvert the initial findings of the respondent on its deficiency taxes for taxable year 2005 through the issuance of a Notice for Informal Conference and Preliminary Assessment Notice (PAN) dated December 23, 2008. Likewise, petitioner was duly appraised by the respondent of the factual and legal basis (sic) on how and why he (respondent) arrived such (*sic*) a deficiency income tax, value-added tax, final withholding of value-added tax, expanded withholding tax, final withholding tax, documentary stamp tax on subscribed capital stock, documentary stamp tax on petitioner's due to affiliates account and compromise penalties for taxable year 2005 through the issuance of the Details of Discrepancies attached to the Formal Assessment Notice (FAN) dated January 14, 2009, and the Preliminary Assessment Notice (PAN) dated December 23, 2008, as well as other BIR

Correspondence to petitioner which are found in the BIR records of this case.

14. The assessments issued against petitioner for deficiency income tax, value-added tax, final withholding of value-added tax, expanded withholding tax, final withholding tax, documentary stamp tax on subscribed capital stock, documentary stamp tax on petitioner's due to affiliates account and compromise penalties for taxable year 2005 were made in accordance with law and regulations.

15. All presumptions are in favor of the correctness of tax assessments issued by the respondent.

During trial, both parties submitted their respective testimonial and documentary evidence. Thereafter, the case was submitted for decision on August 17, 2012, taking into consideration petitioner's Memorandum, filed on August 2, 2012 and respondent's Manifestation and Motion, filed on August 3, 2012, stating that she is adopting all her arguments (factual and legal) and affirmative defense found in her Answer dated January 14, 2010 as part of her Memorandum.

The issues, as stated in the Joint Stipulation of Facts and Issues, are as follow:

A.

1. WHETHER OR NOT PETITIONER FILED THE ADMINISTRATIVE PROTEST AGAINST THE FORMAL ASSESSMENT NOTICE DATED 14 JANUARY 2009 WITHIN THE THIRTY (30)-DAY PERIOD UNDER SECTION 228 OF THE TAX CODE.

2. WHETHER OR NOT THIS HONORABLE COURT HAS JURISDICTION TO TAKE COGNIZANCE OF THIS PETITION FOR REVIEW

B.

1. WHETHER OR NOT THE RIGHT OF PETITIONER TO DUE PROCESS WAS VIOLATED BY RESPONDENT WHEN –

i. **RESPONDENT ALLEGEDLY FAILED TO ISSUE A NOTICE OF PRELIMINARY CONFERENCE TO PETITIONER AND TO ACTUALLY HOLD SUCH PRELIMINARY CONFERENCE; AND**

ii. **RESPONDENT ALLEGEDLY ISSUED THE FORMAL ASSESSMENT NOTICE BEFORE THE LAPSE OF THE 15-DAY PERIOD FROM DATE OF RECEIPT OF PRELIMINARY ASSESSMENT NOTICE GRANTED BY LAW FOR PETITIONER TO RESPOND TO THE PRELIMINARY ASSESSMENT NOTICE;**

2. **WHETHER OR NOT RESPONDENT HAS COMPLIED WITH THE DUE PROCESS REQUIREMENTS MANDATED UNDER SEC. 228 OF THE TAX CODE, AS IMPLEMENTED BY REVENUE REGULATIONS NO. 12-99, PRIOR TO THE ISSUANCE OF PRELIMINARY ASSESSMENT NOTICE DATED 23 DECEMBER 2009[18] (sic) AND FORMAL ASSESSMENT NOTICE DATED 14 JANUARY 2009.**

3. **WHETHER OR NOT PETITIONER WAS FULLY APPRAISED (sic) BY RESPONDENT ON THE FACTUAL AND LEGAL BASIS HOW AND WHY RESPONDENT ARRIVED AT SUCH A DEFICIENCY INCOME TAX, VALUE ADDED TAX, FINAL WITHHOLDING OF VALUE ADDED TAX, EXPANDED WITHHOLDING TAX, FINAL WITHHOLDING TAX, DOCUMENTARY STAMP TAX ON SUBSCRIBED CAPITAL STOCK, DOCUMENTARY STAMP TAX ON PETITIONER'S DUE TO AFFILIATES ACCOUNT AND COMPROMISE PENALTIES ASSESSED AGAINST PETITIONER FOR TAXABLE YEAR 2005;**

C.

WHETHER OR NOT PETITIONER IS LIABLE TO PAY –

i. **DEFICIENCY INCOME TAX AND RELATED INTEREST THEREON, IN THE AGGREGATE AMOUNT OF PHP5,708,153.06;**

ii. **DEFICIENCY VALUE-ADDED TAX AND RELATED INTEREST THEREON, IN THE AGGREGATE AMOUNT OF PHP25,792.88;**

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[18] Should be 2008.

iii. **DEFICIENCY FINAL WITHHOLDING VALUE-ADDED TAX AND RELATED SURCHARGE AND INTEREST THEREON, IN THE AGGREGATE AMOUNT OF PHP1,122,164.38**

iv. **DEFICIENCY EXPANDED WITTHOLDING TAX AND RELATED INTEREST THEREON IN THE AGGREGATE AMOUNT OF P94,605.92, ON SPECIFIC PAYMENTS MADE TO THIRD PARTIES;**

v. **DEFICIENCY FINAL WITHHOLDING TAX AND RELATED SURCHARGE AND INTEREST THEREON, IN THE AGGREGATE AMOUNT OF PHP3,585,665.75;**

vi. **DEFICIENCY DOCUMENTARY STAMP TAX ON SUBSCRIBED CAPITAL STOCK AND RELATED SURCHARGE AND INTEREST THEREON, IN THE AGGREGATE AMOUNT OF PHP81,418.68;**

vii. **DEFICIENCY DOCUMENTARY STAMP TAX ON BALANCE OF DUE TO AFFILIATES ACCOUNT AND RELATED SURCHARGE AND INTEREST THEREON, IN THE AGGREGATE AMOUNT OF PHP2,079.27; AND**

viii. **COMPROMISE PENALTY OF P59,400.00 FOR ALLEGED FAILURE TO FILE RETURNS IN VIOLATION OF SECTION 255 OF THE TAX CODE.**

The Court shall discuss the issues in seriatim.

Whether or not petitioner filed the administrative protest against the FAN within the 30-day period

To resolve this issue, Section 228 of the NIRC of 1997, as amended, is instructive, *viz.:*

> "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."

In conjunction therewith, Section 3.1.5 of Revenue Regulations No. 12-99 provides:

> "3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.
>
> The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto. The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit

the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable."

In the instant case, it should be recalled that in respondent's Answer dated January 15, 2010, which she adopted as part of her Memorandum, she stated that "under **paragraph 2 of the Petition for Review** filed by petitioner, the latter categorically stated and admitted that: *'The Protest Letter was filed to administratively protest the Formal Assessment Notice issued by the respondent dated 14 January 2009 and received by Petitioner on 16 February 2009 (hereinafter referred to as "FAN")*. Premised from the foregoing, since petitioner received the subject Formal Assessment Notice (FAN) issued by the respondent dated 14 January 2009, on February 16, 2009, pursuant to Section 228 of the 1997 Tax Code, petitioner has thirty (30) days from February 16, 2009 or until March 18, 2009, within which to file an administrative protest. The fact, that petitioner failed to file an administrative protest with the BIR within the 30-day period, that is, from February 16, 2009 to March 18, 2009, therefore, x x x this Honorable Court has no jurisdiction to act on the instant Petition for Review."

However, after a careful perusal of the records of the case, this Court finds that petitioner received the FAN on January 16, 2009 and not on February 16, 2009, as shown in the the Re-Direct Examination of Ma. Richelle Aritalla, by Atty. Lovely E. Lim, to wit:

"Atty. Lim

In the Petition for Review particularly paragraph 2 that respondent's counsel had been identified, it was stated that the protest letter was filed administratively to protest the Formal Assessment Notice of respondent dated January 14, 2009 and received by petitioner on 16 February 2009.

Q Is this statement from your personal knowledge true and correct?

MS. ARITALLA

A No, Ma'am.

ATTY. LIM

Q what should be the true statement?

MS. ARITALLA

A January 16, 2009

ATTY. LIM

Q Is the?

MS. ARITALLA

A Is the day that I received the formal Assessment Notice". [19]

As can be gleaned from the foregoing testimony, petitioner received the FAN on January 16, 2009. Reckoned from January 16, 2009, petitioner had 30 days or until February 15, 2009, within which to file its administrative protest. Records show that petitioner filed its protest to the FAN, thru a letter[20] dated February 11, 2009 addressed to Ms. Ma. Nieva A. Guerrero, OIC-Regional Director of Revenue Region No. 8 which was received by respondent on February 13, 2009. Thus, pursuant to Section 228 and Section 3.1.5 of Revenue Regulations No. 12-99, petitioner's administrative protest was timely filed.

Whether or not this Honorable Court has jurisdiction to take cognizance of this Petition for Review

Section 228 of the NIRC of 1997, as amended, further states:

[19] Re-Direct Examination of Ms. Ma. Richelle Aritalla (Petitioner's Witness) by Atty. Lovely E. Lim (Counsel for the Petitioner), Transcript of Stenographic Notes Taken During the Hearing on July 21, 2010, pp. 21-22.
[20] Exhibit "H".

> "x x x 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."

Here, records reveal that on February 11, 2009, petitioner seasonably filed its protest to the FAN and, subsequently, in a transmittal letter[21] dated April 7, 2009, petitioner submitted the relevant documents in support of its protest and said documents were received by respondent on April 8, 2009. Applying Section 228, respondent had 180 days or until October 5, 2009 to act on the said protest. However, respondent failed to make a decision within the reglementary period provided by law, thus, petitioner had thirty (30) days from October 5, 2009 or until November 4, 2009 within which to appeal respondent's inaction before this Court. Records show that petitioner filed its Petition for Review on November 4, 2009. Thus, this Court has jurisdiction to take cognizance of this Petition for Review.

Whether or not the right of petitioner to due process was violated by respondent when the latter allegedly failed to issue a Notice of Preliminary Conference to petitioner and to actually hold such preliminary conference

Section 3 of Revenue Regulations No. 12-99 provides:

> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:

[21] Exhibits "I" and "I-1".

> 3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. <u>If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case.</u> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted." (Underscoring ours)

Based on the above-quoted Section 3.1.1 of Revenue Regulations No. 12-99, what is important, to constitute a valid notice of informal conference, is not the mere issuance of the "notice of informal conference" but the (a) report of the BIR officer making the audit of the taxpayer's records; and (b) written notice informing the taxpayer of the discrepancy or discrepancies in the payment his income tax.

In the instant case, respondent complied with all the requirements for a valid notice of informal conference. Respondent's officer who conducted the audit of petitioner's records issued a memorandum report[22] dated October 15, 2007 stating therein the result of his investigation and attaching thereto the details of discrepancies[23] showing the factual and legal bases of his findings. Furthermore, petitioner also received a Post Reporting Notice from the

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[22] Exhibits "6".
[23] Exhibit "6-B".

respondent showing the discrepancies in the payment of its taxes.[24] Petitioner, therefore, was given the opportunity to refute respondent's findings which, unfortunately it failed to do so. Hence, this Court cannot accept petitioner's contention that it was not given a notice of informal conference and that no informal conference was ever conducted. Clearly, respondent has complied with the due process requirements mandated by law prior to the issuance of the PAN dated December 23, 2009 and Formal Assessment Notice dated January 14, 2009.

Whether or not the right of petitioner to due process was violated by respondent when the latter allegedly issued the FAN before the lapse of the 15-day period from the date of receipt of the preliminary assessment notice granted by law for petitioner to respond to the Preliminary Assessment Notice.

As previously stated, on January 16, 2009, or ten (10) days after the receipt of the PAN on January 6, 2009, and before the lapse of the 15-day reglementary for petitioner to respond to the PAN, petitioner received the Final Assessment Notice (FAN) dated January 14, 2009.[25] Thus, petitioner is of the view that the issuance of the FAN before the lapse of the 15-day period violated its right to due process.

We do not agree.

The CTA *En Banc* has already ruled in the case of *Commissioner of Internal Revenue vs. Steelasia Manufacturing Corporation (CTA EB Case No. 631, December 22, 2011). Steelasia Manufacturing Corporation vs. CIR (CTA EB Case No. 632, December 22, 2011)* that:

> "On the allegation that the CIR failed to observe the 15-day period for any taxpayer to contest the PAN before a FAN is issued mandated under RR No. 12-99 and Section 228 of the NIRC of 1997 in violation of its right to due process, suffice it to say that due process in our jurisdiction refers to the right of the taxpayer to be informed of the legal and factual findings of the BIR

[24] Exhibits "8", "8-A" and "8-B".
[25] Par. 15, Petition for Review, Docket, p. 5.

as regards its deficiency taxes, and the opportunity to be heard through protest. [26]

Note that a **preliminary assessment notice preparatory to the issuance of a formal or final assessment notice is not, legally speaking, an assessment even if it contains a computation of the tax liabilities of a taxpayer and a demand for payment of the computed tax liabilities was made in such preliminary assessment notice.[27] Section 228 of the NIRC of 1997 clearly refers to the Final Assessment Notice that should be formally protested to by SAMC; else, the same becomes final and executory.[28]**

It cannot be denied that SAMC was duly informed of the assessment issued against it as it was able to intelligently contest the subject assessment via its protest letter dated March 26, 2001. Thus, SAMC was afforded due process." (Emphasis supplied)

Moreover, in the case of *Keppels Fels Energy, Inc., vs. Commissioner of Internal Revenue (CTA Case No. 6826, July 21, 2011),* the Second Division of the CTA held:

"Petitioner impugns the validity of the Assessment Notice on the deficiency expanded withholding tax on the ground that it was issued before the lapse of the period given to the petitioner to file its Comment on the Pre-Assessment Notice (PAN). Records show that petitioner received the PAN on January 28, 2003. Said PAN stated that petitioner is given fifteen (15) days from the receipt thereof within which to file its Comment. On February 5, 2003, or eight (8) days after the service of PAN, petitioner received two formal letters of demand and five unnumbered Final Assessment Notices (FAN), all dated January 24, 2003. Petitioner alleges that respondent violated Section 228 of the NIRC and RR No. 12-99 in the issuance of the assessments by disregarding the mandatory procedural requirements provided therein. Petitioner

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[26] Standard Chartered Bank vs. Commissioner of Internal Revenue, CTA Case No. 7253, June 25, 2010.
[27] Tax Rights and Remedies by Victorino C. Mamalateo, p. 758.
[28] Direct Container Line Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7616, September 10, 2009.

further alleges that respondent issued the FAN without giving the petitioner the opportunity to respond to the PAN, thus, effectively violating the former's right to procedural due process.

Petitioner's contention has no merit.

Pursuant to Section 228 of the 1997 NIRC and RR 12-85, a protest against the PAN, unlike the protest against the FAN, is not indispensable. 'In fact, a preliminary assessment notice may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the preliminary assessment notice final and unappealable. xxx'[29]

It is clear from the foregoing that what the law requires is the filing of the protest against the FAN, failure to do so will cause the same to become final and executory.

In the instant Petition, it is undeniable that the essential elements of due process which are notice and opportunity to be heard, were aptly accorded to petitioner. Although only a few days apart, both the PAN and the FAN were served upon it. That petitioner was not able to take advantage of the full fifteen (15) days given for it to file its Comment on the FAN cannot override the fact that petitioner was still given enough opportunity to defend itself against the assessments. To further bolster the fact that it has been given adequate opportunity to refute the charges against it, petitioner was able to timely file its administrative protest before the respondent. It was able to extensively discuss its position on the deficiencies being assessed against it. In sum, it is evident that petitioner's right to a hearing was sufficiently observed and protected." (Emphasis supplied)

Based from the foregoing, it can be inferred that a protest against the PAN, unlike the protest against the FAN, is not indispensable. A preliminary assessment notice may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the

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[29] Security Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6564, November 28, 2006.

preliminary assessment notice final and unappealable. Thus, the issuance of the FAN before the lapse of the fifteen (15) day period for the taxpayer to file its protest to the PAN, inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment notice and that it was able to intelligently contest the FAN by filing a protest letter within the period provided by law. Moreover, this Court observed that petitioner was afforded the procedural due process required by law when it was fully apprised of the legal and factual bases of the assessment issued against it and that petitioner was given the opportunity to substantially protest or dispute the assailed assessments via its protest letter.

This Court will now determine whether or not petitioner is liable to pay the assessed deficiency internal revenue taxes.

Deficiency Income Tax, Expanded Withholding Tax, Final Withholding of VAT and Final Withholding Tax

Since the deficiency income tax, expanded withholding tax, final withholding of VAT and final withholding tax arose from the same items of expenses, they will be discussed together hereafter.

Respondent's deficiency income tax assessment was computed as follows:[30]

Taxable income per ITR		₱ 3,751,530.00
Add: Disallowed Expenses due to non-withholding (Schedule 1)		7,635,580.60
Adjusted net income		₱ 11,387,110.60
Tax due		₱ 3,700,810.95
Less: Tax credit/Payment		
Prior year's excess credit	₱ 2,425,703.00	
Creditable tax withheld per BIR Form 2307	1,158,331.00	
Total	₱ 3,584,034.00	
Less: Unsupported Creditable tax withheld	1,158,331.00	
Excess tax credit carried over to succeeding period	2,364,787.00	60,916.00
Deficiency income tax		₱ 3,639,894.95
Add: Interest (4.16.06 to 2.16.09)		2,068,258.11
Total amount due		**₱ 5,708,153.06**

Disallowed expenses due to non-withholding—₱7,635,580.60

Upon comparison of the following expenses reflected in petitioner's annual income tax return (ITR) and financial statements

[30] Exhibit "C-2".

(FS)[31] *vis-à-vis* the amount shown in its alphalist,[32] respondent's examiner found discrepancies, to wit:[33]

EWT	Per FS/AITR	Per Alphalist	Difference
Professional fees	₱ 536,747.00	₱ 214,545.40	₱ 322,201.60
Marketing expense	1,313,379.00	-	1,313,379.00
Total	*₱ 1,850,126.00*	*₱ 214,545.40*	*₱ 1,635,580.60*
FWT			
Management services	6,000,000.00	-	6,000,000.00
Total	**₱ 7,850,126.00**	**₱ 214,545.40**	**₱ 7,635,580.60**

The foregoing expenses were disallowed and petitioner was assessed of deficiency income tax, deficiency expanded withholding tax for failure to withhold from professional fees and marketing expenses paid, and final withholding tax and final withholding of VAT for failure to withhold from management service fees paid to non-resident foreign corporation.

Professional Fees—₱322,201.60

Examination of petitioner's audited financial statements, as attached to its annual income tax return for the year 2005, shows that it reported professional fees amounting to ₱536,747.00.[34] In her Judicial Affidavit,[35] Ms. Alona Q. Macinas, the accountant of Probooks Outsourcing Services, Inc. *(Probooks)*, formerly Professional Outsourcing Services, Inc., which provides accounting services for petitioner, gave a breakdown of the foregoing amount, to wit:[36]

Payee	Amount
Probooks Outsourcing Services, Inc.	₱ 240,000.00
Follosco Morallos & Herce	241,747.41
Diaz Murillo Dalupan & Co.	55,000.00
TOTAL	**₱ 536,747.41**

On the other hand, petitioner's alphalist reveals that the professional fees that were subjected to expanded withholding tax amounted to ₱254,254.40 representing professional fees paid to *Probooks*[37] for the months of October 2004 to October 2005, as detailed below:

[31] Exhibit "K".
[32] Exhibit "O-3".
[33] Schedule 1, Exhibit "C-3".
[34] Exhibit "K", Section D, Line 79.
[35] Exhibit "N⁶".
[36] Exhibit "N⁶", Item 34.
[37] Exhibit "O-3".

Professional Fee	Inv /Billing No.	Exhibit No.	Gross Amount Subject to EWT	Gross Amount Not Subject to EWT	EWT	VAT	Net Payment	Exhibit No.	OR No.	OR Date
PF - Oct 2004	675	N[5]	₱18,181.82		₱1,818.18	₱1,818.18	₱18,181.82			
PF - Nov 2004	669	O[5]	18,181.82		1,818.18	1,818.18	18,181.82			
PF - Dec 2004	682	P[5]	18,181.82		1,818.18	1,818.18	18,181.82			
PF - Jan 2005	13	HH	20,000.00		2,000.00	2,000.00	20,000.00			
Out of Pocket Cost	18			₱20,586.62	-	-	20,586.62			
			₱74,545.46	**₱20,586.62**	**₱7,454.55**	**₱7,454.55**	**₱ 95,132.08**	GG-I	027	4/12/2005
PF - Feb 2005	27	Q[5]	20,000.00		2,000.00	2,000.00	20,000.00			
PF - Mar 2005	33	R[5]	20,000.00		2,000.00	2,000.00	20,000.00			
			40,000.00	**-**	**4,000.00**	**4,000.00**	**40,000.00**	II-I	034	5/16/2005
PF - Apr 2005	040	S[5]	**20,000.00**		**2,000.00**	**2,000.00**	**20,000.00**	JJ-I	040	6/20/2005
PF - May 2005	56	T[5]	20,000.00		2,000.00	2,000.00	20,000.00			
PF - June 2005	62	U[5]	20,000.00		2,000.00	2,000.00	20,000.00			
PF - July 2005	72	V[5]	20,000.00		2,000.00	2,000.00	20,000.00			
			60,000.00	**-**	**6,000.00**	**6,000.00**	**60,000.00**	KK-I	049	8/26/2005
PF - Aug 2005	80	W[5]	20,000.00		2,000.00	2,000.00	20,000.00			
PF - Sept 2005	86	X[5]	20,000.00		2,000.00	2,000.00	20,000.00			
PF - Oct 2005	97	Y[5]	20,000.00		2,000.00	2,000.00	20,000.00			
			60,000.00	**-**	**6,000.00**	**6,000.00**	**60,000.00**	LL-I	068	12/7/2005
TOTAL			**₱254,545.46**	**₱20,586.62**	**₱25,454.55**	**₱25,454.55**	**₱275,132.08**			

The creditable withholding taxes at the rate of 10% of the foregoing professional fees were remitted by petitioner as follows:

Exhibit	Period Covered	Income Payments	Withholding Tax	Date of Remittance
S, T	Oct 2004 to Jan 2005	₱ 74,545.40	₱ 7,454.54	10-May-05
U, V	Feb to Mar 2005	40,000.00	4,000.00	6-Jun-05
W, X	Apr-05	20,000.00	2,000.00	6-Jul-05
Z, AA	May to July 2005	60,000.00	6,000.00	7-Sep-05
EE, FF	Aug to Oct 2005	60,000.00	6,000.00	10-Jan-06
	TOTAL	**₱ 254,545.40**	**₱ 25,454.54**	

It should be noted that respondent's examiner used the amount ₱214,545.40 in her computation of professional fees not subjected to EWT, instead of the amount of ₱254,545.40. The discrepancy of ₱40,000.00 is attributable to the professional fees for the months of February and March 2005 of which the corresponding withholding tax of ₱4,000.00 remitted on June 6, 2005 was not considered and included by respondent's examiner in his computation[38].

However, inasmuch as only the professional fees for the year 2005 was recognized by petitioner as expense in its annual ITR and audited FS and to be able to make a reasonable comparison, respondent's examiner should have excluded payments from the

[38] BIR Records, p.99.

alphalist pertaining to year 2004 in the amount of ₱54,545.46, consisting of the following:

Exhibit	Invoice/SOA No.	Invoice/SOA Date	Period Covered	Amount
N[5]	0675	11/12/2004	Oct-04	₱ 18,181.82
O[5]	0669	11/9/2004	Nov-04	18,181.82
P[5]	0682	12/8/2004	Dec-04	18,181.82
			TOTAL	**₱ 54,545.46**

Thus, the amount of professional fees per alphalist should be ₱200,000.00. Using this amount, the discrepancy between the professional fees reported per ITR/FS and per alphalist should be ₱336,747.00, computed thus:

Per Financial Statements	₱ 536,747.00
Per Alphalist	200,000.00
Difference	**₱ 336,747.00**

In its protest to the FAN, petitioner avers that a portion of disallowed professional fees refers to the following payments:[39]

Payee	Amount
Follosco Morallos & Herce (FMH)	₱ 241,747.41
Diaz Murillo Dalupan & Co. (DMD)	55,000.00
TOTAL	**₱ 296,747.41**

Petitioner argues that above professional fees incurred by petitioner were for the services provided by its auditors and lawyers which are general professional partnerships exempt from withholding tax pursuant to Section 2.57.5 of Revenue Regulations No. 2-98, as amended by Section 4 of Revenue Regulations No. 14-02, which provides:[40]

> "**Sec. 2.57.5. Exemption from Withholding** - The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> (A) xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

[39] Exhibit "H", p. 8.
[40] Exhibit "H", p. 8.

xxx xxx xxx

(4) General professional partnerships

xxx xxx xxx"

It is a jointly stipulated fact that the said service providers, DMD and FMH, are registered with the Securities and Exchange Commission (SEC) as general professional partnerships engaged in the practice of accounting and general practice of law, respectively.[41]

Petitioner submitted statements of accounts and official receipts to further support its allegation, summarized as follows:

Exhibit	SOA Date	OR Date	Payee	Gross Amount*	Exclusive of VAT
QQ, RR	4/21/2006	5/23/2006	Diaz Murillo Dalupan & Co.	₱ 67,200.00	₱ 60,000.00
TTT, SSS	2/28/2005	5/4/2005	Follosco Morallos & Herce	121,017.24	121,017.24
WWW, VVV	10/31/2005	12/13/2005	Follosco Morallos & Herce	164,790.05	164,790.05
ZZZ, YYY	3/15/2006	5/23/2006	Follosco Morallos & Herce	132,558.61	118,355.90
			TOTAL	**₱ 485,565.90**	**₱ 464,163.19**

**Inclusive of 12% VAT*

The Court notes that the foregoing amounts include cost and expenses pertaining to years 2004, 2006 and 2007 which are already outside the subject taxable year 2005. Thus, computing the professional fees for the taxable year 2005 and excluding the costs and expenses charged by FMH and DMD yields the amount of ₱296,889.02, as shown below:

Exhibit	Statement of Account Date	Particulars	Amount		Expense for 2005 (Excluding Costs & Expenses)	
QQ	4/21/2006	Dec. 31, 2005 audit		₱ 60,000.00		₱ 60,000.00
TTT	2/28/2005	Monthly retainer (Nov. 2004 to Feb. 2005)	SGD 1,200.00		SGD 600.00	
		Directors fees (Feb. 2005 to Jan. 2006)	821.00		752.58	
		Costs & expenses	193.00		-	
		Subtotal	SGD 2,214.00		SGD1,352.58	
		Forex rate	54.66	121,017.24	54.66	73,932.02
WWW	10/31/2005	Monthly retainer (Mar. to Oct. 2005)	SGD 2,400.00		SGD2,400.00	
		Costs & expenses	597.00		-	
		Subtotal	SGD 2,997.00		SGD2,400.00	
		Forex rate	54.985	164,790.05	54.985	131,964.00
ZZZ	3/15/2006	Monthly retainer (Nov. 2005 to Feb. 2006)	SGD 1,200.00		SGD 600.00	

[41] Paragraphs 12 and 13, Facts Stipulated on at the Pre-Trial Conference, Joint Stipulations of Facts and Issues, Docket, p. 272.

		Directors fees (Feb. 2006 to Jan. 2007)	880.00		-	
		Costs & expenses	211.27		-	
		Subtotal	SGD 2,291.27		SGD 600.00	
		Forex rate	51.66	118,355.90	51.66	30,993.00
		TOTAL		**₱464,163.19**		**₱296,889.02**

Thus, petitioner has sufficiently proven that its payments to general professional partnerships in the year 2005 amounting to ₱296,747.41[42] as reported in its audited financial statements are properly substantiated. Accordingly, the same shall not be subjected to expanded withholding taxes.

However, there still remains a discrepancy of ₱40,000.00, computed as follows:

Difference of professional fees per FS and per Alphalist (as adjusted)	₱ 336,747.00
Payments to GPPs (rounded off)	296,747.00
Discrepancy	**₱ 40,000.00**

This amount pertains to petitioner's payment to *Probooks* for the months of November and December 2005, which are not in the alphalist for the year 2005 because it was paid in the succeeding year, as evidenced by statements of accounts[43] and official receipts[44] covering the subject periods.

However, Section 2.57.4 of Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 12-01, provides when the obligation to withhold the tax arises, thus:

> "SECTION 2.57.4 Time of Withholding. – **The obligation of the payor to deduct and withhold the tax under Section 2.57 of these Regulations arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset,** whichever is applicable, in the payor's books, whichever comes first. The term "payable" refers to the date the obligation becomes due, demandable or legally enforceable.
>
> Provided, however, that where income is not yet paid or payable but the same has been recorded as an expense or

[42] With a difference of ₱141.61 (₱296,889.02 less ₱296,747.41) due to rounding off.
[43] Exhibits "MM" and "OO".
[44] Exhibits "NN" and "PP".

asset, whichever is applicable, in the payor's books, the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purposes." *(Emphasis supplied)*

Based on the foregoing provision, the duty of petitioner to withhold arises when the professional fees were paid, becomes payable, or were accrued/recorded as expense in petitioner's books, whichever comes first. After which, the corresponding return and remittances must be made within 10 days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 25 of the following year.[45]

Thus, since the amount of ₱40,000.00 representing professional fees for the months of November and December 2005 had been accrued or recognized by petitioner as expense in its FS for the year ending December 31, 2005, petitioner then is already obligated to withhold the corresponding tax amounting to ₱4,000.00 which is due for payment on January 25, 2006.

As can be gleaned from the records, petitioner remitted the withholding taxes due thereon but only on February 10, 2006 and March 1, 2006 for the amounts of ₱2,000.00 each. Thus, for being belatedly remitted, the same shall be imputed with surcharges and interest computed from January 25, 2006 until February 10 and March 1, 2006, pursuant to Sections 248(A)(4) and 249(A) of the NIRC of 1997, as herein computed:

Deficiency on Increments for Late Remittance of Withholding Taxes on Professional Fees		
Withholding Taxes due on January 25, 2006		₱ 4,000.00
Add: 25% Surcharge	₱ 1,000.00	
Interest [(01-25-06 to 02-10-06)/(01-25-06 to 03-01-06)]		
(₱2,000.00 x 20% x 16 days/365)	17.53	
(₱2,000.00 x 20% x 35 days/365)	38.36	1,055.89
Total		₱ 5,055.89
Less: Payments - 02-10-06 and 03-01-06		4,000.00
Total Amount Due		**₱ 1,055.89**

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

Marketing Expense—₱1,313,379.00

Respondent disallowed marketing fees amounting to ₱1,313,379.00 on the ground that petitioner allegedly failed to withhold the expanded withholding tax amounting to ₱26,267.58.

Petitioner avers that its marketing expenses for the year 2005 in the amount of ₱1,313,379.00 actually pertain to its share in the regional public relations and marketing expenses incurred outside the Philippines by Oakwood Asia Pacific Pte Ltd. (OAP), petitioner's parent company, which are supported by invoices from OAP, as summarized below:[46]

Exhibit	Date	Invoice	Particulars	Amount
JJJ	7/31/2005	OMSP-050702	Share of public relations and marketing expenses – January to June 2005	₱ 735,017.05
KKK	11/30/2005	OMSP-051102	Share of public relations and marketing expenses – July to October 2005	276,787.72
LLL	11/30/2005	OMSP-051103	Sales and services assessment incentives – June, August and September 2005	17,585.75
NNN	12/31/2005	OMSP-051203	Share of public relations and marketing expenses – November to December 2005	268,092.59
OOO	12/31/2005	OMSP-051204	Sales and services assessment incentives – October and November 2005	15,895.50
			TOTAL	**₱ 1,313,378.61**

Petitioner also submitted the allocation[47] and breakdown of the public relations and marketing expenses and supporting invoices and official receipts,[48] which were examined by the Court-commissioned independent CPA.[49]

It should be noted that of the total marketing expense of ₱1,313,379.00, only the amount ₱1,279,897.36, as detailed below, pertains to petitioner's share of regional public relations and marketing expense:

Exhibit	Date	Invoice	Amount
JJJ	7/31/2005	OMSP-050702	₱ 735,017.05
KKK	11/30/2005	OMSP-051102	276,787.72
NNN	12/31/2005	OMSP-051203	268,092.59
		TOTAL	**₱ 1,279,897.36**

[46] Exhibit "H^6-1".
[47] Exhibits "H^6-1-2", "H^6-1-106" and "H^6-1-155".
[48] Exhibits "H^6-1-1" to "H^6-1-181".
[49] Mr. Jerome Antonio B. Constantino of Constantino Guadalquiver & Co.

The remaining ₱33,481.25 pertains to sales and services assessment incentives for the months of June, August, September, October and November 2005. The Court examined company-wide reports on sales and services assessment scores for several evaluation dates, summarized as follows:

Exhibit	Evaluation Date	Location	Employee Name	Amount	Score %
H6-1-151	6/23/2005	Ayala-Oakwood Premier Ayala Center [NA PHI]	Irene Ocapo	US$ 125.00	97
H6-1-152	8/25/2005	Ayala-Oakwood Premier Ayala Center [NA PHI]	Karen Jacobo	75.00	93
H6-1-153	9/15/2005	Ayala-Oakwood Premier Ayala Center [NA PHI]	Oliver Babadilla	125.00	98
LLL	*Subtotal*—Tax Invoice No. OMSP-051103 dated 11/30/2005			US$ 325.00	
	Forex rate			54.11	
				₱ 17,585.75	
H6-1-180	10/13/2005	Ayala-Oakwood Premier Ayala Center [NA PHI]	Miela Zemeles	US$ 150.00	100
H6-1-181	11/23/2005	Ayala-Oakwood Premier Ayala Center [NA PHI]	Maile Ramirez	150.00	100
OOO	*Subtotal*—Tax Invoice No. OMSP-051204 dated 12/31/2005			US$ 300.00	
	Forex rate			52.985	
				₱ 15,895.50	
	TOTAL			**₱ 33,481.25**	

Based on the foregoing, it can be surmised that sales and services assessment incentives are given to employees who achieve high scores in the evaluation conducted by the company. For the months of June, August, September, October and November 2005, five (5) employees received such monetary incentives and were recorded as marketing expenses. The same amounts were billed to petitioner by OAP.

Citing BIR Ruling DA 058-08 dated February 1, 2008, petitioner asserts that its share of the expenses with the parent company is exempt from expanded withholding tax. However, a reading of the said BIR Ruling tells that it was issued for San Miguel Corporation (SMC) and not for herein petitioner. Albeit the subject matter of the ruling for SMC is similar with petitioner's allegation, the Court cannot ascertain whether or not said ruling is on all fours with the instant case. Moreover, petitioner is assessed of deficiency income tax for the year 2005 while the BIR Ruling for SMC is in the year 2008.

Nevertheless, in another instance, respondent's Bureau ruled thus:[50]

[50] ITAD Ruling No. 129-03 dated August 18, 2003.

> "**By its very nature, reimbursement of expenses is not income but merely a return of capital. Accordingly, said reimbursement is not subject to withholding tax.** *(BIR Ruling No. DA-384-98 dated August 24, 1998)* In the instant case, therefore, the reimbursement by SKF Philippines of the administration expenses incurred by AB SKF is not subject to withholding tax." *(Emphasis supplied)*

The BIR recognizes interrelated group of companies sharing costs in Revenue Audit Memorandum Order (RAMO) No. 1-98. However, petitioner must prove that such arrangement exists between petitioner and its parent company and that sharing should only involve reimbursement of costs, without any mark-up or additional charges.

In an Affidavit,[51] OAP's Chief Financial Officer, Chai Soo Chiao, stated that OAP billed petitioner for reimbursement of the cost of marketing expenses incurred by OAP on behalf of petitioner pursuant to the Service Agreement dated 15 January 2000.[52]

Examination of the submitted documents shows that the shared marketing expenses were mere reimbursements of costs without additional charges or mark-up. Hence, the disallowance of petitioner's marketing expenses in the amount of ₱1,313,379.00 should be set aside.

As previously discussed, petitioner has proven that the difference found by respondent's examiner pertain to a) professional fees paid to general professional partnerships not subject to income and withholding ; and, b) marketing expenses which are petitioner's share of public relations and marketing expenses of its parent company and were proven to be mere reimbursements of costs. Accordingly, respondent's deficiency income tax and EWT assessments related to these expenses should likewise be cancelled.

Management Services—₱6,000,000.00

Respondent disallowed petitioner's marketing expenses in the amount of ₱6,000,000.00 for its alleged failure to withhold the corresponding final withholding tax and VAT therefrom. Petitioner argues that the subject amount pertain to management fees it paid to OAP, a non-resident foreign corporation, as evidenced by a Service

[51] Exhibit "H[6]-4".
[52] Exhibit "H[6]-5".

Agreement between petitioner and OAP.[53] Pursuant to the Agreement, service fees are as follows:[54]

"xxx xxx xxx

Starting 1 January 2001, Oakwood Philippines agrees to pay a service fee to Oakwood Asia in a sum of **Five Hundred Thousand Pesos Philippine Currency (Php500,000.00) per month** or its equivalent in any other foreign currency to be designated by Oakwood Asia. *(emphasis supplied)*

xxx xxx xxx"

Thus, for the year 2005, petitioner paid OAP the total amount of ₱6,000,000.00 (₱500,000.00 x 12 months). This is supported by tax invoices issued by OAP to petitioner, summarized as follows:

Exhibit	Date	Invoice	Amount
B-5	1/1/2005	OMSP-050101	₱ 500,000.00
C-5	2/1/2005	OMSP-050201	500,000.00
D-5	3/1/2005	OMSP-050301	500,000.00
E-5	4/1/2005	OMSP-050401	500,000.00
F-5	5/1/2005	OMSP-050501	500,000.00
G-5	6/1/2005	OMSP-050601	500,000.00
H-5	7/1/2005	OMSP-050701	500,000.00
I-5	8/1/2005	OMSP-050801	500,000.00
J-5	9/1/2005	OMSP-050901	500,000.00
K-5	10/1/2005	OMSP-051001	500,000.00
L-5	11/1/2005	OMSP-051101	500,000.00
M-5	12/1/2005	OMSP-051201	500,000.00
		TOTAL	**₱6,000,000.00**

The Agreement further provides, under the heading "Warranty":

"5.3 It is confirmed that, in performing its works and duties under this Agreement, **Oakwood Asia shall prepare and provide the services to Oakwood Philippines only from Malaysia or elsewhere where outside [the] Philippines**. Oakwood Asia shall at all times be an independent contractor and any and all staff of Oakwood Asia who are assigned to perform the services under this Agreement shall not be considered employees or staff of Oakwood Philippines. xxx" *(emphasis supplied)*

[53] Ibid.
[54] Section 3.1, Exhibit "H^6-5".

Petitioner asserts that its payments to OAP for management services performed abroad are not subject to income tax and withholding tax. In support thereto, petitioner submitted the following documents:

1. Securities and Exchange Commission (SEC) Certificate of Non-Registration of Oakwood Asia Pacific Ltd. – *Exhibit H^6-2*

2. Accounting & Corporate Regulatory Authority (ACRA) Registration of OAP in Singapore – *Exhibit H^6-3*

Examination of the foregoing only proves that OAP is a non-resident foreign corporation, but does not necessarily prove that the services it rendered were actually performed abroad. To further support its claim, petitioner presented the BIR Ruling DA-ITAD-145-02 dated August 21, 2002 it obtained from respondent's bureau, thus:[55]

> "2. *Whether the Service Fees payable to Oakwood Asia are exempt from Philippine income tax, hence Oakwood Phils. is not required to withhold income tax upon its remittance of such Service Fees.*
>
> Pursuant to Section 28(B)(1) of the Tax Code of 1997, **non-resident foreign corporations are subject to income tax only on income derived from all sources within the Philippines**. Consequently, Oakwood Asia, being a non-resident foreign corporation is **not subject to income tax on income derived from sources outside the Philippines.**
>
> 3. *Whether the service fees and reimbursement are not subject to value-added tax in view of the fact that the services herein being remunerated are performed outside of the Philippines and the reimbursements pertain to such services so rendered.*
>
> Inasmuch as it has been the representation that the abovementioned services will be performed by Oakwood Asia in Malaysia or in some other jurisdiction outside the Philippines and **from time to time, Oakwood Asia may have to send its personnel to the Philippines, for short periods** which should not, in aggregate, exceed 183 days in any calendar year, **the fees paid by Oakwood Phils. for**

[55] Exhibit "H^6-9".

services rendered in the Philippines are subject to the 10% value-added tax pursuant to Section 108 of the Tax Code of 1997. Accordingly, Oakwood Phils. being the payor in control of the payment shall be responsible for the withholding of VAT on such fees on behalf of Oakwood Asia xxx." *(Emphasis and underscoring supplied)*

Relying on said ruling, petitioner argues that since the services are generally performed outside the Philippines, said transaction is not subject to income tax and VAT. Thus, it is not required to withhold FWT and VAT from its payments to OAP.

Scrutiny of the following submitted documents, which were examined by the Court-commissioned CPA, proved otherwise:

1. List of Officers of OAP providing management services to petitioner in the year 2005 – *Exhibit H^6-6*

2. Bureau of Immigration Certification on the travel schedule of the officers listed – *Exhibit H^6-7 to H^6-7h(1)*

3. Certificate of Employment of OAP employees – *Exhibit H^6-8*

As established, OAP sent the following employees to the Philippines in the year 2005 to perform management services:[56]

Exhibit	Name of Staff	Period of Travel	No. of Days	Purpose
H^6-7c(1) to H^6-7e(1)	Puryan Karimbil George Mathew	Feb. 22-23, 2005	2	To review security arrangements at Oakwood Premier Ayala Center
		Mar. 18-20, 2005	3	Property tour and meeting with property owner
		May 10-11, 2005	2	Operations review
		Jun. 20-21, 2005	2	Business development
		Sep. 27-28, 2005	2	Budget meeting
		Oct. 16, 2005 to Feb. 7, 2006	114	Operations review
H^6-7g(1) and H^6-7h(1)	Cheong Cher Ling Jacqueline	Aug. 17-19, 2005	3	Training needs analysis and to review training materials
H^6-7a(1) and H^6-7b(1)	Robert Alan Philips	Feb. 20-24, 2005	5	Review marketing strategies
	TOTAL		**133**	

Considering that the foregoing personnel performed services within the Philippines, the management services therefore, are subject

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[56] Exhibit "H^6-6".

to income tax and VAT and, petitioner is responsible to withhold the same from its payment to OAP. Thus, respondent is correct in disallowing said expense and in assessing petitioner for deficiency income tax. Moreover, since it cannot be ascertained which portion of the assessed amount of ₱6,000,000.00 pertain to services rendered outside or within the Philippines, the Court is constrained to uphold respondent's final withholding tax and final withholding of VAT assessments in its entirety.

Unsupported Creditable Tax Withheld—₱1,158,331.00

Respondent disallowed petitioner's creditable tax withheld for the year 2005 in the amount of ₱1,158,331.00[57] for allegedly being unsupported. However, petitioner submitted its Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) to support creditable withholding taxes amounting to ₱1,312,791.43, summarized as follows:

Exhibit	Period Covered	Payor	CWT
L4	1/1/2005 to 3/31/2005	Makati Property Ventures Inc.	₱ 286,034.97
M4	4/1/2005 to 6/30/2005	Makati Property Ventures Inc.	296,952.61
N4	7/1/2005 to 9/30/2005	Makati Property Ventures Inc.	306,276.88
O4	10/1/2005 to 12/31/2005	Makati Property Ventures Inc.	423,526.97
		TOTAL	**₱ 1,312,791.43**

It should be noted that the total amount of creditable withholding tax per BIR Form No. 2307 exceeds the amount claimed by petitioner in its annual income tax return for 2005 by ₱154,460.43 (₱1,312,791.43 less ₱1,158,331.00). *Probooks*' accountant assigned to keep petitioner's books, Ms. Alona Q. Macinas, explained the difference, to wit:[58]

"109) **FMH**: xxx. Can you explain the difference?

> **MS. MACINAS:** When petitioner prepared its Annual Income Tax Return for 2005, the creditable tax withheld per BIR Form No. 2307 was computed based on total payments actually collected by petitioner from Makati Property Ventures Inc./Oakwood Premier Ayala Center during the year. However, Makati Property Ventures Inc./Oakwood Premier Ayala Center gave petitioner the Certificates of Creditable Tax Withheld at Source (BIR

[57] Exhibit "K", Lines 28C and 28D.
[58] Exhibit "N6", Item No. 109.

Form 2307) based on revenue earned in 2005, regardless of date of collection."

Based on the foregoing, considering that petitioner's claimed CWT for the year 2005 is duly supported by Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307), the disallowance of said CWT and assessment of deficiency income tax should be cancelled by respondent.

Disallowed Excess Tax Credit Carried Over to Succeeding Period—₱2,364,787.00

Respondent disallowed petitioner's excess tax credits carried over to the succeeding period reflected in petitioner's 2005 Annual Income Tax Return in the amount of ₱2,364,787.00[59] to recapture the tax benefit thereon, considering that the tax benefit of this amount has already been forwarded to succeeding periods as provided by Section 76(B) of the NIRC and Section 2.58(C) of Revenue Regulations [No.] 2-98.[60]

However, We find it improper for respondent to disallow the excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2006. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

Considering that petitioner has enough tax credits for the year 2005 even when its income is adjusted to include the disallowed management service fees, petitioner is not liable for deficiency income tax, as determined below:

Taxable income per ITR		₱ 3,751,530.00
Add: Disallowed Expenses due to non-withholding (Schedule 1)		6,000,000.00
Adjusted net income		₱ 9,751,530.00
Tax due		₱ 3,169,247.25
Less: Tax credit/Payment		
Prior year's excess credit	₱ 2,425,703.00	
Creditable tax withheld per BIR Form 2307	1,158,331.00	3,584,034.00
Deficiency income tax		₱ (414,786.75)

On the other hand, petitioner is liable to pay the deficiency final withholding of VAT and final withholding tax, as computed below:

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[59] Exhibit "K", Line 29.
[60] Exhibit "C-3", Item VII.

Tax Type	Tax Base	Tax Rate	Basic Tax Due
Final VAT	₱ 6,000,000.00	10%	₱ 600,000.00
FWT	₱ 6,000,000.00	32%	1,920,000.00
Total			**₱ 2,520,000.00**

Deficiency Value-added Tax

Respondent's examiner contends that out of the petitioner's claimed input taxes of ₱24,000.00, ₱16,000.00 was found to be unsupported, thus assessed petitioner of deficiency VAT.

Petitioner avers that its claimed input taxes of ₱24,000.00 were incurred on service fees paid to *Probooks* who performs accounting services for petitioner and are properly supported by VAT invoices, to wit:[61]

Exhibit	Invoice/Bill No.	Invoice/Bill Date	Period Covered	Amount	VAT
HH	013	1/20/2005	Jan-05	₱ 20,000.00	₱ 2,000.00
Q^5	027	2/22/2005	Feb-05	20,000.00	2,000.00
R^5	033	3/17/2005	Mar-05	20,000.00	2,000.00
S^5	040	4/4/2005	Apr-05	20,000.00	2,000.00
T^5	056	5/13/2005	May-05	20,000.00	2,000.00
U^5	062	6/14/2005	Jun-05	20,000.00	2,000.00
V^5	072	7/11/2005	Jul-05	20,000.00	2,000.00
W^5	080	8/19/2005	Aug-05	20,000.00	2,000.00
X^5	086	9/20/2005	Sep-05	20,000.00	2,000.00
Y^5	097	10/14/2005	Oct-05	20,000.00	2,000.00
MM	106	11/3/2005	Nov-05	20,000.00	2,000.00
OO	119	12/7/2005	Dec-05	20,000.00	2,000.00
			TOTAL	**₱ 240,000.00**	**₱ 24,000.00**

Petitioner also submitted the official receipts issued by *Probooks* for petitioner's payments for accounting services rendered for the year 2005, summarized as follows:

Exhibit	OR No.	OR Date	Period Covered	Input Tax
GG	027	4/12/2005	Jan 05	₱ 2,000.00
II	034	5/16/2005	Feb to Mar 05	4,000.00
JJ	040	6/20/2005	Apr 05	2,000.00
KK	049	8/26/2005	May to Jul 05	6,000.00
LL	068	12/7/2005	Aug to Oct 05	6,000.00
NN	077	1/19/2006	Nov 05	2,000.00
PP	081	2/14/2006	Dec 05	2,000.00
			TOTAL	**₱ 24,000.00**

[61] Exhibit "H", p. 11.

However, Section 110(A)(1)(b) in relation with Section 113(A)(2) of the NIRC of 1997, as amended, respectively provides:

> "**SEC. 110.** ***Tax Credits.—***
>
> (A) *Creditable Input Tax.—*
>
> (1) Any **input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113** hereof on the following transactions **shall be creditable against the output tax**:
>
> xxx xxx xxx
>
> (b) Purchase of services on which a value-added tax has been actually paid."
>
> "**SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons.—***
>
> (A) *Invoicing Requirements.*—A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services**." *(emphasis supplied)*

It is clear from the above-quoted provisions that for purchases of services, the corresponding value-added tax is creditable to the purchaser upon payment of compensation as evidenced by VAT official receipts.

In the present case, since the payment made by petitioner to *Probooks* for the following input taxes amounting to ₱4,000.00 were made outside the taxable year 2005, the same should be disallowed:

Exhibit	OR No.	OR Date	Period Covered	Input Tax
NN	077	1/19/2006	Nov 05	₱ 2,000.00
PP	081	2/14/2006	Dec 05	2,000.00
			TOTAL	**₱ 4,000.00**

Hence, only the input taxes in the amount of ₱20,000.00 (₱24,000.00 less ₱4,000.00) can be credited against petitioner's output taxes for the subject taxable period.

Accordingly, petitioner should be made liable to pay basic deficiency VAT in the amount of ₱4,000.00, as computed below:

Gross receipts per return		₱ 11,583,301.32
Output VAT		₱ 1,158,330.13
Less: Claimed input tax	₱ 24,000.00	
Less: Disallowed input tax	4,000.00	20,000.00
VAT Payable		₱ 1,138,330.13
VAT Paid		1,134,330.13
Basic tax due		**₱ 4,000.00**

Documentary Stamp Tax

Respondent's examiner found that petitioner allegedly failed to pay DST on the following:[62]

Items	Amount	Rate	DST
Subscribed Capital Stock	₱ 7,920,000.00	₱1 on each ₱200	₱ 39,600.00
Due to affiliated company[63]	674,051.00	₱0.30 on each ₱200	1,011.30
TOTAL			**₱ 40,611.30**

Petitioner disagrees and submitted documentary evidence to refute respondent's findings.

Subscribed capital stock—₱7,920,000.00

The assessed capital stock in the amount of ₱7,920,000.00 represents petitioner's 79,200 shares at ₱100.00 par value subscribed and paid-up capital.[64]

Petitioner avers that DST on the issuance of its subscribed capital stock has been paid and submitted its Documentary Stamp Tax Declaration/Return (BIR Form No. 2000) showing the following information:[65]

Particulars	Amount
DST on original issue of shares of stock (₱7,920,000.00 x 1%)	₱ 79,200.00
Penalties (Surcharge, interest & compromise)	37,007.67
Total amount paid	**₱ 116,207.67**

[62] Exhibit "C-3", Item XII.
[63] Exhibit "K-4".
[64] Exhibit "K", Balance Sheet as of December 31, 2005 attached to the Annual Income Tax Return for 2005.
[65] Exhibit "K6".

Together with the said DST return is the bank official receipt pertaining to petitioner's payment of the foregoing.[66]

Thus, petitioner proved that it is not liable for deficiency DST on the issuance of its subscribed capital stock.

Due to affiliated company—₱674,051.00

In its audited financial statements, petitioner reported a liability "Due to an affiliated company" in the amount of ₱674,051.00.[67] In relation thereto, petitioner disclosed in Note 8 of its audited financial statements the nature of its related party transactions,[68] to wit:

> "The Company has a management service agreement with OAP whereby the latter agreed to provide consultancy and management services to the Company for a monthly fee of ₱500,000. The Company's other transactions with OAP consist of reimbursement of various expenses and advances in the normal course of business."

Respondent assessed petitioner for its alleged failure to pay the documentary stamp tax thereon pursuant to Section 180 of the NIRC of 1997, as amended by Republic Act No. 9243, which provides:

> "SEC. 180. *Stamp Tax on All Bills of Exchange or Drafts.*—On all bills of exchange (between points within the Philippines) or drafts, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each Two hundred pesos (₱200), or fractional part thereof, of the face value of any such bill of exchange or draft."

Petitioner asserts that the assessed amount consists of reimbursements of various expenses and advances used in the normal course of business with OAP and which are billed to Oakwood and, is not evidenced by any of the instruments mentioned in the preceding provision of law.[69]

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[66] Exhibit "L[6]".
[67] Exhibit "K-4".
[68] Exhibit "K-6".
[69] Exhibit "H", p. 14.

The independent CPA obtained a Schedule of Owing to OAP for the taxable year 2005 amounting to ₱674,050.99, shown hereafter,[70] which is equal to the "Due to an affiliated company" liability reported in the audited financial statements in the amount of ₱674,051.00 (rounded off):

Date	Particulars/Bill No.	JV No.	Amount
12/31/2005	To record Inv. No. OMSP-051202	251209	₱ 110,038.65
12/31/2005	To record Inv. No. OMSP-051203	251210	268,092.59
12/31/2005	To record Inv. No. OMSP-051204	251211	15,895.50
12/31/2005	To record Inv. No. OMSP-051205	251212	280,024.25
	TOTAL		**₱ 674,050.99**

The Court found that the foregoing schedule is supported by the following invoices and certified true copies of their attachments:[71]

Exhibit	Invoice Date	Invoice No.	Amount	
MMM	12/31/2005	051202	SGD 3,453.70	₱ 110,038.65
PPP	12/31/2005	051205	8,788.91	280,024.25
NNN	12/31/2005	051203	8,414.42	268,092.59
OOO	12/31/2005	051204	300.00	15,895.50
		TOTAL	**SGD 20,957.03**	**₱ 674,050.99**

Thus, petitioner has proven that the assessed amounts pertain to reimbursements of various expenses and are not evidenced by any of the instruments mentioned in Section 180 of the NIRC of 1997, as amended. Hence, respondent's deficiency DST assessment on petitioner's due to affiliates is without factual basis and should be cancelled.

Penalty for failure to file returns—₱59,400.00

Respondent imposed compromise penalties for petitioner's failure to file the following returns in the total amount of ₱59,400.00:[72]

Nature of Violation	Violated Provision	Suggested Compromise
Failure to File Withholding of VAT Return	Sec. 4.114 of RR 2-98	₱ 20,000.00
Failure to File Final Withholding Tax Return	Sec. 2.58 of RR 2-98	25,000.00
Failure to File Documentary Stamp Tax	Sec. 175/180 NIRC	12,000.00
Failure to File Withholding Tax on Compensation Returns		2,400.00
TOTAL		**₱ 59,400.00**

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[70] Exhibit "H^6-10".
[71] Exhibits "H^6-1-154" to "H^6-1-181" and "H^6-10-1" to "H^6-10-44".
[72] Exhibit "C-4".

Such imposition cannot be sustained. Under Revenue Memorandum Order No. 01-90, "compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalties. 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 which is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[73] 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.[74]

In view of the foregoing, petitioner is liable for deficiency final withholding of VAT, final withholding tax and VAT for the year 2005 in the amount of ₱3,156,055.89, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax	Surcharge (25%)	20% Interest	Total
Final VAT	₱ 600,000.00	₱ 150,000.00		₱ 750,000.00
FWT	1,920,000.00	480,000.00		2,400,000.00
VAT	4,000.00	1,000.00		5,000.00
Sub-Total	**₱ 2,524,000.00**	**₱ 631,000.00**		**₱ 3,155,000.00**
Deficiency Increments for Late Remittance of EWT		1,000.00	₱ 55.89	1,055.89
TOTAL	**₱2,524,000.00**	**₱ 632,000.00**	**₱ 55.89**	**₱3,156,055.89**

In addition, petitioner is likewise liable to pay:

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

1) On the deficiency final withholding tax computed from January 15, 2006 until full payment thereof;

2) On the deficiency final withholding of VAT computed from January 10, 2006 until full payment thereof; and

[73] The Phil. International Fair, Inc. vs. The Collector of Internal Revenue et al., G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 781.

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

3) On the deficiency VAT computed from January 25, 2006 until full payment thereof.

(b) Delinquency interest at the rate of 20% per annum on the total amount due of ₱3,155,000.00 representing deficiency final withholding tax, final withholding of VAT and deficiency VAT and on the deficiency interest which have accrued as aforestated in (a) computed from February 16, 2009 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended; and

(c) Delinquency interest at the rate of 20% per annum on the deficiency increments for late remittance of withholding taxes in the amount of ₱1,055.89 computed from February 16, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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. CASTANEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice