REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

LIQUIGAZ PHILIPPINES CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8149

Members:

Bautista, *Chairperson*
Cotangco-Manalastas, *JJ.*

Promulgated:

JUN 24 2013

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DECISION

COTANGCO-MANALASTAS, *J.:*

STATEMENT OF THE CASE

This case involves a Petition for Review filed by petitioner Liquigaz Philippines Corporation on August 16, 2010 pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 7(a)(2) of Republic Act (RA) No. 1125, as amended, and Section 3(a)(2) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA).

Petitioner appeals the Formal Letter of Demand[1] (FLD) dated October 16, 2009 and Assessment Notices (FAN) Nos. IT-06-00023[2], IT-06-00024[3], VT-06-00027[4], WE-06-00053[5], and WC-06-00033[6] dated October 16, 2009 issued by the Bureau of Internal Revenue (BIR) Large Taxpayers Service, assessing

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[1] Exhibit "E", docket, pp. 564 to 566; Exhibit "8", BIR Records, pp. 5789 to 5794.
[2] Exhibit "9", BIR Records, p. 5788.
[3] Exhibit "10", BIR Records, p. 5787.
[4] Exhibit "11", BIR Records, p. 5786.
[5] Exhibit "12", BIR Records, p. 5785.
[6] Exhibit "13", BIR Records, p. 5784.

petitioner for alleged deficiency tax liabilities, inclusive of interest and compromise penalties, for the taxable year ending December 31, 2006, consisting of:

Tax Type	Basic	Interest	Compromise Penalty	Total
Income Tax	₱ 189,651,383.69	₱ 96,540,348.19	₱ 50,000.00	₱ 286,241,731.88
No inventory list			25,000.00	25,000.00
Value-Added Tax	17,986,957.82	9,993,849.44	50,000.00	28,030,807.26
WT-Expanded	4,468,074.56	2,494,776.97	25,000.00	6,987,851.53
WT-Compensation	6,010,121.77	3,355,788.54	50,000.00	9,415,910.31
Total	**₱218,116,537.84**	**₱112,384,763.14**	**₱ 200,000.00**	**₱330,701,300.98**

STATEMENT OF FACTS

Petitioner Liquigaz Philippines Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is registered with the BIR with Taxpayer Identification No. 004-735-924-000. Its principal office is situated in 3/F NOL Tower, Commerce Avenue, Madrigal Business Park, Alabang, Muntinlupa City.[7]

Respondent is the Commissioner of Internal Revenue (CIR) who was duly appointed and is empowered to perform the duties of her office, including, among others, the power to decide, cancel and abate tax liabilities pursuant to Section 204(B) of the NIRC of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 16, 2007, petitioner filed with the BIR its Annual Corporate Income Tax Return (ITR) (BIR Form No. 1702) for the taxable year ending December 31, 2006.[8]

For taxable year ending December 31, 2006, petitioner also filed its Quarterly VAT Returns (BIR Form No. 2550Q) and Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E), and its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR Form No. 1601-C) on the following dates:

[7] Par. 3, Joint Stipulation of Facts and Issue, docket, p. 298.
[8] Exhibit "K", docket, pp. 696 to 702.

Quarter	Date of Filing of BIR Form No. 2550Q
First Quarter of 2006	August 23, 2007[9]
Second Quarter of 2006	July 28, 2006[10]
Third Quarter of 2006	August 23, 2007[11]
Fourth Quarter of 2006	August 22, 2007[12]

Month	Date of Filing of BIR Form No. 1601-E	Date of Filing of BIR Form No. 1601-C
January 2006	February 13, 2006[13]	February 10, 2006[14]
February 2006	March 10, 2006[15]	March 10, 2006[16]
March 2006	April 11, 2006[17]	April 11, 2006[18]
April 2006	May 11, 2006[19]	May 10, 2006[20]
May 2006	June 13, 2006[21]	June 13, 2006[22]
June 2006	July 10, 2006[23]	July 11, 2006[24]
July 2006	August 11, 2006[25]	August 10, 2006[26]
August 2006	September 8, 2006[27]	September 8, 2006[28]
September 2006	October 11, 2006[29]	October 11, 2006[30]
October 2006	November 10, 2006[31]	November 10, 2006[32]
November 2006	December 11, 2006[33]	December 11, 2006[34]
December 2006	January 12, 2007[35]	January 12, 2007[36]

On August 31, 2007, the BIR issued Letter of Authority (LOA) No. 2001-00040975[37], authorizing Revenue Officers Rosario A. Arriola, Ma. Catalina G. Benedicto and Larah N. Vito of the Large Taxpayers Audit and Investigation Division II (LTAID II) to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2006 to December 31, 2006.

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9 Exhibit "Z", docket, pp. 734 to 735.
10 Exhibit "AA", docket, pp. 736 to 737.
11 Exhibit "BB", docket, pp. 738 to 739.
12 Exhibit "CC", docket, pp. 740 to 741.
13 Exhibit "PP", docket, p. 786.
14 Exhibit "QQQ", docket, p. 874.
15 Exhibit "QQ", docket, p. 788.
16 Exhibit "RRR", docket, p. 876.
17 Exhibit "RR", docket, p. 790.
18 Exhibit "SSS", docket, p. 878.
19 Exhibit "SS", docket, p. 792.
20 Exhibit "UUU", docket, p. 882.
21 Exhibit "TT", docket, p. 794.
22 Exhibit "VVV", docket, p. 884.
23 Exhibit "UU", docket, p. 796.
24 Exhibit "WWW", docket, p. 886
25 Exhibit "VV", docket, p. 798.
26 Exhibit "XXX", docket, p. 888.
27 Exhibit "WW", docket, p. 800.
28 Exhibit "YYY", docket, p. 890.
29 Exhibit "XX", docket, p. 802.
30 Exhibit "ZZZ", docket, p. 892.
31 Exhibit "YY", docket, p. 805.
32 Exhibit "AAAA", docket, p. 894.
33 Exhibit "ZZ", docket, p. 807.
34 Exhibit "BBBB", docket, p. 896.
35 Exhibit "AAA", docket, p. 809.
36 Exhibit "CCCC", docket, p. 898.
37 Exhibit "B", docket, p. 517; Exhibit "1", BIR Records, p. 5372.

On August 27, 2009, respondent issued a Notice of Informal Conference and Details of Discrepancies, which were received by petitioner on August 28, 2009.[38]

On September 28, 2009, respondent issued a Preliminary Assessment Notice (PAN) and Details of Discrepancies, which were received by petitioner on the same date.[39]

On October 20, 2009, petitioner received the FLD[40] dated October 16, 2009 and FAN Nos. IT-06-00023, IT-06-00024, VAT-06-00027, WE-06-00053, and WC-06-00033 dated October 16, 2009, issued by the BIR Large Taxpayers Service, assessing petitioner for alleged deficiency tax liabilities, inclusive of interest and compromise penalties, for the taxable year ending December 31, 2006.

On November 19, 2009, petitioner filed its protest letter dated November 19, 2009 against the FLD and the FAN with BIR LTAID II.[41]

On November 24, 2009, a Tax Verification Notice (TVN) was issued for the reinvestigation of petitioner's deficiency tax liabilities for the taxable year ending December 31, 2006, pursuant to petitioner's protest letter dated November 19, 2009. Petitioner received said TVN on November 27, 2009.[42]

On January 18, 2010, petitioner submitted to BIR LTAID II documents in support of its protest letter.[43]

Since no decision was issued by respondent on petitioner's protest letter, petitioner filed the instant Petition for Review docketed as CTA Case No. 8149 on August 16, 2010.[44]

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[38] Par. 6, Joint Stipulation of Facts and Issue, docket, p. 299; Exhibits "C" and "C-1", docket, pp. 518 to 533; Exhibit "6", BIR Records, pp. 5646 to 5677.
[39] Par. 7, Joint Stipulation of Facts and Issue, docket, p. 299; Exhibit "D", docket, pp. 534 to 563; Exhibit "7", BIR Records, pp. 5720 to 5736.
[40] Exhibit "E", docket, pp. 564 to 566.
[41] Exhibit "F", docket, pp. 594 to 617; Par. 16, Joint Stipulation of Facts and Issue, docket, p. 301.
[42] Exhibit "G", docket, p. 656; Par. 18, Joint Stipulation of Facts and Issue, docket, p. 301.
[43] Exhibit "H", docket, pp. 657 to 659; Par. 17, Joint Stipulation of Facts and Issue, docket, p. 301.
[44] Pars. 20 and 21, Joint Stipulation of Facts and Issue, docket, p. 301.

On September 20, 2010, respondent filed her Answer[45] to the Petition for Review and raised the following special and affirmative defenses:

> "7. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses.
>
> ***Respondent's right to issue the necessary assessments against petitioner has not yet prescribed***
>
> 8. Contrary to petitioner's allegations, respondent's right to assess petitioner has not yet prescribed.
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> 9. Under Section 2.58 (C) of Revenue Regulations (RR) 2-98, as amended by RR 3-2002, a taxpayer is required to file on or before March 01 of the following year in which payments were made, an Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E) and on or before January 31 of the said year, an Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF).
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> 10. As part of the Annual Information Returns (BIR Form Nos. 1604-E/1604-CF), a taxpayer is also required to submit its manually prepared alphabetical list of employees and list of payees who are recipients of income payments subjected to creditable and final withholding taxes, otherwise known as the Alphalists, on the same due dates mentioned in the foregoing paragraph.
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> 11. A taxpayer shall also be allowed to make its adjustments at the end of the year, which is a process done for the proper determination of its excess credits that will be allowed as deductions against their income tax dues for the taxable quarters/years immediately succeeding the taxable quarters/years.
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> 12. Further, as provided under Section 77(B) of the National Revenue Code (NIRC) of 1997, as amended, a corporate taxpayer is required to file its Annual Income Tax Return (Final Adjustment Return) on or before the fifteenth (15^{th}) day of April, or on or before the fifteenth (15^{th}) day of the fourth (4^{th}) month following the close of the fiscal year, as the case may be.

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[45] Answer, docket, pp. 257 to 270.

13. It must be noted that petitioner's tax deficiencies in its expanded withholding tax and withholding tax on compensation were computed by comparing the amount shown in its Annual Income Tax Return versus the amount reflected in the Alphalists.

14. On the other hand, petitioner's Value-Added Tax (VAT) deficiencies were also computed based on petitioner's taxable sales as reported in its Annual Income Tax Return.

15. In which case, the prescriptive period provided under Section 203 of the National Internal Revenue Code (NIRC) of 1997 should only run from petitioner's actual submission of the foregoing documents, since petitioner's corresponding deficiency taxes were only determined upon respondent's examination of said submitted documents.

Respondent's Formal Letter of Demand and Final Assessment Notice (FAN) is valid

16. Respondent negates petitioner's allegation that the Formal Letter of Demand and FAN are null and void for being arbitrary, erroneous and devoid of factual and legal basis and lack of procedural due process.

17. As shown in respondent's Formal Letter of Demand and FAN, petitioner's deficiency taxes were computed based on the following provisions of the law:

Tax Deficiencies	Basis	Amount
Income Tax	Sections 32, 44(A), 34(K), 34(A)(1)(b) of the NIRC of 1997, as amended	P286,266,731.88
Value-Added Tax	Section 106 of the NIRC of 1997, as amended	28,030,807.26
Expanded Withholding Tax	Section 57(B) of the NIRC of 1997, as amended	6,987,851.53
Withholding Tax on Compensation	Sections (24)A(1), 79 & 80 of the NIRC of 1997, as amended	9,415,910.31
Total		**P330,701,300.98**

18. In the case of *Gerry Sevilla, Et Al vs. CIR*, the Honorable Court of Tax Appeals (CTA), ruled that:

> 'The phrase in writing under Section 228 does not exclusively mean written words. Writing consists of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of

data compilation (Black's Law Dictionary, Sixth Edition, page 1609). Indubitably, figures are also writings and if the numerical presentation is understandable enough, then there is no reason why we should automatically reject the same as adequate compliance with the law.'

19. Further, the CTA en banc ruled in the case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*:

'The simple meaning of procedural due process is that a party to a case must be given sufficient opportunity to be heard. Its very essence is to allow all parties the opportunity to present evidence. In administrative cases, the requirement of due process is the right to a hearing, including the right of the party interested or affected to present his own case and submit evidence to support his allegation.'

In which case, the requirement of procedural due process has been clearly provided to petitioner as evidenced by respondent's issuance of the Notice of Informal Conference and Preliminary Assessment Notice (PAN) before it issued the Formal Letter of Demand and FAN.

20. Moreover, Annex A was also attached in respondent's assessment to explain how the individual amounts were obtained and arrived at, to wit:

Income Tax

a. Unrecorded Sales on Undeclared Petron Purchases – P1,049,152.37

The amount represents the gross income on undeclared sales arising from the unrecorded purchases from Petron Corp. as a result of the matching of reported purchases per taxpayer's record and the declared sales of Petron Corp., hence, assessed as undeclared income subject to income tax pursuant to the provisions of Section 32 of the National Internal Revenue Code, in relation to Section 44(A) of the same Tax Code, as amended.

b. Overclaimed Purchases from Asian Angle Konstruk – P2,514,322.72

The amount represents discrepancy as a result of matching of data of Asian Angle Konstruk's sale to

Liquigaz per AITEID as compared to the amount of purchases declared by Liquigaz from Asian Angle Konstruk, hence, an overstatement of purchases amounting to P2,514,332.72 was assessed pursuant to Section 32 of the National Internal Revenue Code, as amended.

c. Income Payments not subjected to Expanded Withholding Tax – P344,537,452.75

The above amount represents income payments not subjected to expanded withholding tax, hence, disallowed pursuant to Section 34(K) of the NIRC, as implemented by Revenue Regulations No. 2-98.

d. Salaries and Wages not subjected to Withholding Tax – P18,781,630.53

The above amount represents income payments not subjected to expanded withholding tax, hence disallowed pursuant to Section 34(K) of the NIRC, as implemented by Revenue Regulations No. 2-98.

e. Unsupported Bad Debts Expense – P8,431,934.00

The above amount represents unsupported bad debts, hence, disallowed pursuant to Section 34(A)(1)(b) of the NIRC, as amended.

f. Unrecorded Sales on Importation – P55,614,853.82

The amount represents the gross income on undeclared sales arising from the unrecorded importation as a result of the matching of reported importation per taxpayer's record and the importation data furnished by the Bureau of Customs to the AITEID-BIR, hence, assessed as undeclared income subject to income tax pursuant to the provisions of Section 32 of the National Internal Revenue Code, in relation to Section 44(A) of the same Tax Code, as amended.

g. Overclaimed Importation – P11,892,375.63

The amount represents discrepancy as a result of matching of reported importation per taxpayer's record and the importation data furnished by the Bureau of Customs to AITEID-BIR, hence, assessed pursuant to Section 32 of the National Internal Revenue Code, as amended.

h. Unsupported Creditable Tax Withheld at Source – P4,582,506.19

The above amount represents creditable Withholding Tax which are unsupported and out of period, hence, disallowed and assessed pursuant to Section 58(B) of the NIRC, as amended.

i. Compromise Penalty on Non Submission of Inventory List – P25,000.00

The taxpayer failed to submit its Inventory List in violation of the provision of Section 244 and 245, in relation to Sections 5 and 6, as implemented by Revenue Memorandum Order 19-2007.

j. Sales to PSPC not subjected to Output Tax – P85,946,167.89

Verification disclosed that sales to PSPC per creditable withholding tax at source (BIR Form 2307) versus Summary List of Sales was understated by P85,946,167.89, hence, assessed as undeclared income subject to income tax pursuant to Section 32 of the NIRC, as amended.

Value-Added Tax

a. Unrecorded Sales on Undeclared Petron Purchases – P1,049,152.37

The amount represents the gross income on undeclared sales arising from the unrecorded purchases from Petron Corp. as a result of the matching of reported purchases per taxpayer's record and the declared sales of Petron Corp., hence, subjected to output tax pursuant to Section 106 of the National Internal Revenue Code, as amended.

b. Sales to PSPC not subjected to Output Tax – P85,946,167.89

Verification disclosed that sales to PSPC per creditable withholding tax at source (BIR Form 2307) versus Summary List of Sales was understated by

P85,946,167.89, hence, assessed pursuant to Section 106 of the NIRC, as amended.

c. Income not subjected to Output Tax – P4,418,775.00

The amount represents the discrepancy between your declared taxable sales per income tax return and taxable sales per VAT returns, hence, subjected to output tax pursuant to Section 106 of the National Internal Revenue Code.

d. Unrecorded Sales on Underclaimed Importation – P55,614,853.52

The amount represents the gross income on undeclared sales arising from the unrecorded importation as a result of the matching of reported importation per VAT returns and the importation data furnished by the Bureau of Customs to the AITEID-BIR, hence, subject to output tax pursuant to Section 106 of the NIRC, as amended.

e. Disallowed Input Tax on Local Purchases

i. Asian Angle Konstruk Purchases – P339,149.99

The above amount represents input taxes claimed from overclaimed purchases, hence, disallowed pursuant to Section 110 of the National Internal Revenue Code, as amended.

f. Disallowed Input Tax on Importations – P4,333.83

The above amount represents input tax from overclaimed importation, hence, disallowed pursuant to Section 110 of the National Internal Revenue Code, as amended.

Withholding Tax

a. Expanded – P4,468,074.56

Income payments subject to creditable withholding tax under Revenue Regulations No. 2-98 and 17-2003 were identified in order to ascertain the correctness of the amount withheld and remitted. The result of such examination and verification revealed that the subject taxpayer is still liable to pay basic deficiency expanded withholding tax amounting to P4,468,74.56 (exclusive of increments), pursuant to Section 57(B) of the National Internal Revenue Code.

b. Withholding Tax on Compensation – P6,010,121.77

Reconciliation of the claimed salaries and wages as against the submitted alphalist disclosed compensation not subjected to withholding tax. The result of such examination and verification revealed that the taxpayer is still liable to pay basic withholding tax on compensation tax amounting to P6,010,121.77 (exclusive of increments) pursuant to Section 24(A)(1), 79 and 80 of the National Internal Revenue Code.

21. Based on the foregoing, respondent avers that the subject assessment is in accordance with Section 228 of the NIRC of 1997, as amended. Had respondent not complied with this provision, i.e. specifying the law and the facts on which the assessment is made, petitioner could not have exhaustively explained in its protest letter its objections against respondent's Formal Letter of Demand and FAN.

22. The Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands* states 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.'" *(Citations omitted)*

On September 22, 2010, this Court issued a Notice of Pre-Trial Conference[46], notifying the parties that the case is set for pre-trial conference on October 22, 2010 and directing the parties and their respective counsels to be present at the pre-trial and to file with this Court their respective Pre-Trial Briefs at least three (3) days before the date of pre-trial.

[46] Docket, p. 273.

On October 13, 2010, petitioner filed its Pre-Trial Brief[47]; while respondent filed her Pre-Trial Brief[48] on October 18, 2010.

During the pre-trial proceedings held on November 19, 2010, this Court gave the counsel for petitioner a period of twenty (20) days from November 19, 2010 or until December 9, 2010 within which to submit the Joint Stipulation of Facts and Issues.[49]

On December 15, 2010, the parties submitted their Joint Stipulation of Facts and Issue.[50]

On January 24, 2011, this Court issued the Pre-Trial Order[51], summarizing the facts and issues stipulated by the parties, the evidence to be presented by the parties and the hearing dates, and stating that the pre-trial is deemed terminated.

During trial, the parties presented and formally offered their respective witnesses and documentary evidence in support of their respective claims and contentions. The case was submitted for decision on September 14, 2012[52], taking into consideration the Memorandum [For the Petitioner][53] filed on August 16, 2012 and respondent's Memorandum[54] filed on September 5, 2012.

STATEMENT OF ISSUES

The parties submitted the following issues[55] for this Court's resolution:

1. Whether or not the right of the CIR to issue the FLD and the FAN against petitioner has already prescribed.

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[47] Docket, pp. 274 to 284.
[48] Docket, pp. 285 to 293.
[49] Minutes of the November 19, 2010 Pre-Trial Proceedings, docket, p. 297.
[50] Docket, pp. 298 to 303.
[51] Docket, pp. 319 to 326.
[52] Resolution dated September 14, 2012, docket, p. 1497.
[53] Docket, pp. 1384 to 1453.
[54] Docket, pp. 1463 to 1495.
[55] Part II, Stipulation of Issues, Joint Stipulation of Facts and Issue, docket, p. 302.

2. Whether or not the assailed FLD and FAN issued by respondent against petitioner is valid.

DISCUSSION/RULING

The Court's jurisdiction

As stated above, on October 20, 2009, petitioner received the FLD dated October 16, 2009 and FAN Nos. IT-06-00023, IT-06-00024, VAT-06-00027, WE-06-00053, and WC-06-00033 dated October 16, 2009, issued by the BIR Large Taxpayers Service, assessing petitioner for alleged deficiency tax liabilities, inclusive of interest and compromise penalties, for the taxable year ending December 31, 2006.

Within the thirty-day period prescribed under Section 228 of the NIRC of 1997, as amended, petitioner filed its protest letter on November 19, 2009 with the with BIR LTAID II.[56] On January 18, 2010, or within the sixty-day period prescribed under Section 228 of the NIRC of 1997, as amended, to submit relevant supporting documents, petitioner submitted to BIR LTAID II documents in support of its protest letter.[57]

Pursuant to Section 228 of the NIRC of 1997, as amended, 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 thirty (30) days from the lapse of the 180-day period. In this case, the 180-day period lapsed on July 17, 2010 without any action on the part of respondent.[58] Thus, petitioner had thirty (30) days from July 17, 2010 or until August 16, 2010 within which to file an appeal before this Court. Indeed, petitioner timely filed the instant Petition for Review with this Court on August 16, 2010.

Since the Petition for Review was filed on time, this Court has jurisdiction to take cognizance of the same pursuant to

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[56] Exhibit "F", docket, pp. 594 to 617; Par. 16, Joint Stipulation of Facts and Issue, docket, p. 301.
[57] Exhibit "H", docket, pp. 657 to 659; Par. 17, Joint Stipulation of Facts and Issue, docket, p. 301.
[58] Par. 20, Joint Stipulation of Facts and Issue, docket, p. 301.

Section 7(a)(2) of RA No. 1125, as amended by Section 7 of RA No. 9282.[59]

Validity of the FLD and the FAN both dated October 16, 2009

Petitioner contends that the FLD and the FAN issued by respondent are null and void for being arbitrary and devoid of procedural due process. Petitioner avers that while the PAN and the FLD enumerated provisions of law on which the assessment is supposedly based, respondent allegedly failed to explain to petitioner how the figures were computed. Petitioner also argues that since respondent failed to reply to the FAN, petitioner was not given the opportunity to refute the finding against it. Petitioner claims that respondent did not bother to examine and scrutinize the voluminous documents which were prepared, accounted, and submitted by petitioner in support of its protest. In petitioner's view, the foregoing acts of respondent make the assessments arbitrary for the latter's failure to comply with the requirements of due process. Petitioner argues that since respondent allegedly violated the procedural requirements prescribed in Section 228 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 12-99, the FAN and the FLD issued against petitioner should be cancelled and declared as null and void.

On the other hand, respondent argues that the FLD and the FAN were issued in accordance with Section 228 of the NIRC of 1997, as amended. According to respondent, the FLD and the FAN cited the provisions of law on which the assessments were based, and the details of discrepancies clearly explained how the individual amounts were arrived at and obtained. Respondent contends that the fact that petitioner was able to exhaustively explain in its protest letter its objections against the FLD and the FAN would prove that the FLD and the FAN contain the factual and legal bases in support of the deficiency tax assessments. Finally, respondent asserts that the requirement of due process has been provided

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[59] SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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

to petitioner as evidenced by respondent's issuance of the Notice of Informal Conference and the PAN prior to the issuance of the FLD and the FAN.

Section 228 of the NIRC of 1997, as amended, provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. However, it is noteworthy to emphasize that assessment notices need not be a full narration of the facts and laws on which the assessment is based. It is enough that petitioner be substantially informed of the law and the facts on which the assessment for a tax liability is made.[60] Thus, so long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[61]

In this case, a perusal of the Notice of Informal Conference, the PAN, and the FLD shows that details of discrepancies, computations and schedules[62] were attached thereto, showing the factual and legal bases of the deficiency tax assessments. This Court holds that said details of discrepancies, computations, and schedules substantially comply with the prescribed requisite of informing petitioner with the factual and legal bases on which the deficiency tax assessments were based, pursuant to Section 228 of the NIRC of 1997, as amended. As aptly pointed out by respondent, petitioner has intelligently and exhaustively made its protest against the FAN and the FLD. This circumstance proves that petitioner was sufficiently informed of the legal and factual bases of the deficiency tax assessments. Hence, petitioner's contention that the FLD and the FAN issued against it failed to disclose the facts and legal bases upon which the deficiency tax assessments were based is untenable.

This Court also finds no merit on petitioner's contention that it was deprived of procedural due process when respondent failed to act on petitioner's protest letter dated November 19, 2009 and examine the voluminous supporting documents submitted by petitioner.

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[60] *ATR KIM ENG Financial Corp. vs. CIR*, CTA Case No. 5722, May 31, 2004.
[61] *Calma, et al. vs. Court of Appeals, et al.*, G.R. No. 122787, February 9, 1999
[62] Exhibits "C-1", "D-1", and "E-1", docket, pp. 519 to 533, 542 to 563, 567 to 569, and 575 to 593.

Pursuant to Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, the procedure in the issuance of deficiency tax assessment shall begin with the conduct of an investigation or examination of the records of a taxpayer for alleged deficiency tax liability. Thereafter, the taxpayer shall be notified in writing of the findings for purposes of an Informal Conference. If there is a sufficient basis to assess the taxpayer of deficiency tax, a PAN shall be issued and sent to the taxpayer. The taxpayer is then given fifteen (15) days to make a Reply and he is also permitted to examine the records and present his arguments in writing. If the taxpayer fails to respond to the PAN, the taxpayer shall then be sent a FLD and FAN, which shall state the facts and the law on which the assessment was based. The taxpayer may file a protest based on such assessment within thirty (30) days. After filing the protest, the taxpayer must submit the relevant supporting documents within sixty (60) days. If the taxpayer fails to file a valid protest against the FLD and FAN, the assessment shall become final and executory.[63]

As stated above, respondent issued a Notice of Informal Conference with Details of Discrepancies on August 27, 2009; which were received by petitioner on August 28, 2009. On September 28, 2009, respondent issued a PAN with Details of Discrepancies; which were received by petitioner on the same date. On October 20, 2009[64], petitioner received the FLD and the FAN dated October 16, 2009. Petitioner filed its protest letter on November 19, 2009 with the BIR LTAID II.[65] On January 18, 2010, petitioner submitted documents in support of its protest letter to BIR LTAID II.[66]

Based on the foregoing, respondent has substantially complied with the requirement of procedural due process when she issued the Notice of Informal Conference, the PAN, the FLD, and the FAN. Respondent even issued a TVN for the re-investigation of petitioner's deficiency tax assessments pursuant to the protest letter filed by petitioner on November 19, 2009. Evidently, petitioner was afforded the opportunity to be heard, which is the very essence of due process. Respondent's failure to appreciate the voluminous supporting documents submitted by petitioner in support of its protest

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[63] RR No. 12-99; *Cargill Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7928, August 23, 2011.
[64] Exhibit "E", docket, p. 564.
[65] Exhibit "F", docket, pp. 594 to 617; Par. 16, Joint Stipulation of Facts and Issue, docket, p. 301.
[66] Exhibit "H", docket, pp. 657 to 658; Par. 17, Joint Stipulation of Facts and Issue, docket, p. 301.

letter is not tantamount to denial of due process. This is because the essence of due process is found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. What the law proscribes is the lack of opportunity to be heard. As long as the party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[67]

Requirement to issue the FAN within the three-year prescriptive period

This Court shall now resolve the issue on whether respondent's right to assess petitioner for the alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation (WTC) is barred by prescription.

Section 203 of the NIRC of 1997, as amended, specifically provides that respondent has three (3) years to assess and collect an internal revenue tax, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That **in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed**. For purposes of this section, **a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day**." *(Emphasis supplied)*

Pursuant to Section 203 of the NIRC of 1997, as amended, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess

[67] *Estares, et al. vs. Court of Appeals, et al.*, G.R. No. 144755, June 8, 2005.

internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[68]

Thus, in determining the last day for respondent to assess petitioner of deficiency income tax, VAT, EWT, and WTC, this Court shall apply the relevant provisions of the NIRC of 1997, as amended, as well as the implementing rules and regulations issued by the BIR, to ascertain the reckoning of the three-year prescriptive period.

Section 77(B) of the NIRC of 1997, as amended, provides for the period to file the Quarterly and Annual Corporate Income Tax Returns, to wit:

> "SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
>
> xxx xxx xxx
>
> (B) *Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be."

In this case, petitioner filed its Annual ITR for taxable year ending December 31, 2006 on April 16, 2007. Applying Section 203 of the NIRC of 1997, as amended, the BIR had until April 16, 2010 within which to issue the FLD and the FAN assessing petitioner for deficiency income tax for taxable year ending December 31, 2006.

With regard to VAT, pursuant to Section 114(A) of the NIRC of 1997[69], as amended, and Section 4.114-1(A) of RR

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[68] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.

[69] SEC. 114. *Return and Payment of Value-added Tax.* –
(A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis.

No. 16-2005, Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer. This Court summarized the dates of filing of petitioner's Quarterly VAT Returns and the corresponding dates within which respondent should assess petitioner for deficiency VAT for the four (4) quarters of calendar year ending December 31, 2006, to wit:

Quarter	Date of Filing of BIR Form No. 2550Q	Last Day of Filing as Required by Law	Last Day to Assess
First Quarter of 2006	August 23, 2007	April 25, 2006	August 23, 2010
Second Quarter of 2006	July 28, 2006	July 25, 2006	July 28, 2009
Third Quarter of 2006	August 23, 2007	October 25, 2006	August 23, 2010
Fourth Quarter of 2006	August 22, 2007	January 25, 2007	August 23, 2010[70]

Anent the deficiency withholding taxes, Sections 2.58(A)(2)[71] and 2.81[72] of RR No. 02-98, as amended by RR No. 06-01 and RR No. 17-03, require the filing of the withholding tax returns on EWT and WTC within ten (10) days after the end of each month for the months of January until November, while the withholding tax return for the month of December should be filed on or before January 15 of the following year. [73]

[70] August 22, 2010 fell on a Sunday.

[71] "SEC. 2.58. *Returns and Payment of Taxes Withheld at Source.* —

(A) Monthly return and payment of taxes withheld at source. —

(1) . . .

(2) WHEN TO FILE —

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (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 15 of the following year; . . .

xxx xxx xxx

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above, unless the EFPS regulations provide for different deadline dates . . ."

[72] "SECTION 2.81. FILING OF RETURN AND PAYMENT OF INCOME TAX WITHHELD ON COMPENSATION (FORM NO. 1601). — Every person required to deduct and withhold the tax on compensation, including large taxpayers as determined by the Commissioner, shall make a return and pay such tax on or before the 10th day of the month following the month in which withholding was made to any authorized agent bank within the Revenue District Office (RDO) or in places where there are no agent banks, to the Revenue District Officer of the City or Municipality where the withholding agent/employer's legal residence or place of business or office is located; provided, however, that taxes withheld from the last compensation (December) for the calendar year shall be paid not later than January 15 of the succeeding year; *Provided, however*, that with respect to taxpayers, whether large or non-large, who availed of the EFPS, the deadline for electronically filing the aforesaid withholding tax return and paying the tax due thereon via the EFPS shall be five (5) days later than the deadlines set above."

[73] Pursuant to Sections 2.58(A)(2) and 2.81 of RR No. 02-98, as amended, with respect to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the set deadlines unless the EFPS regulations provide for different deadline dates. In relation thereto, RR No. 26-2002 provides for staggered filing of monthly withholding tax returns (except withholding of Final VAT and withholding of Percentage Tax) of taxpayers enrolled in the EFPS based on industry classification. In this case, petitioner files its return and pays the tax due thereon under EFPS. However, there is nothing in the records that indicates under which industry it was

The Court summarized below the dates relevant to the filing of petitioner's tax returns for EWT and WTC:

Month	Date of Filing of BIR Form No. 1601-E	Date of Filing of BIR Form No. 1601-C	Last Day of Filing as Required by Law	Last Day to Assess
January 2006	February 13, 2006	February 10, 2006	February 10, 2006	*February 13, 2009/**February 10, 2009
February 2006	March 10, 2006	March 10, 2006	March 10, 2006	March 10, 2009
March 2006	April 11, 2006	April 11, 2006	April 10, 2006	April 13, 2009[74]
April 2006	May 11, 2006	May 10, 2006	May 10, 2006	*May 11, 2009/**May 11, 2009[75]
May 2006	June 13, 2006	June 13, 2006	June 13, 2006[76]	June 15, 2009[77]
June 2006	July 10, 2006	July 11, 2006	July 10, 2006	*July 10, 2009/**July 13, 2009[78]
July 2006	August 11, 2006	August 10, 2006	August 10, 2006	*August 11, 2009/**August 10, 2009
August 2006	September 8, 2006	September 8, 2006	September 11, 2006[79]	September 11, 2009
September 2006	October 11, 2006	October 11, 2006	October 10, 2006	October 12, 2009[80]
October 2006	November 10, 2006	November 10, 2006	November 10, 2006	November 10, 2009
November 2006	December 11, 2006	December 11, 2006	December 11, 2006[81]	December 11, 2009
December 2006	January 12, 2007	January 12, 2007	January 15, 2007	January 15, 2010

*Last day to assess petitioner for deficiency EWT
**Last day to assess petitioner for deficiency WTC

As aforestated, the FLD and the FAN, dated October 16, 2009, assessing petitioner for alleged deficiency income tax, VAT, EWT, and WTC for the calendar year ending December 31, 2006, were received by petitioner on October 20, 2009.

Based on the foregoing, it is clear that the FLD and the FAN were issued beyond the last day prescribed under Section 203 of the NIRC of 1997, as amended, to assess petitioner for deficiency VAT for the second quarter of 2006 as well as for deficiency EWT and WTC for the months of January 2006 to September 2006. Thus, respondent's right to assess petitioner for said deficiency taxes has prescribed. /

classified, hence, for purposes of counting the prescription, the deadlines set under RR No. 2-98 were observed.

[74] April 11, 2009 fell on a Saturday.
[75] May 10, 2009 fell on a Sunday.
[76] June 10, 2006 fell on a Saturday and June 13, 2006 was the next business day.
[77] June 13, 2009 fell on a Saturday.
[78] July 11, 2009 fell on a Saturday.
[79] September 10, 2006 fell on a Sunday.
[80] October 11, 2009 fell on a Sunday.
[81] December 10, 2006 fell on a Sunday.

This Court shall now proceed to determine the merits of the subject assessments.

Imposition of Compromise Penalties

This Court notes that respondent imposed compromise penalties on the subject deficiency taxes in the total amount of ₱200,000.00, broken down as follows:

Tax Type	Compromise Penalty
Income Tax	₱ 50,000.00
No inventory list	25,000.00
Value-Added Tax	50,000.00
WT-Expanded	25,000.00
WT-Compensation	50,000.00
Total	**₱ 200,000.00**

Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-07, compromise penalties 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. Thus, compromise penalties imply mutual agreement between the taxpayer, on one hand, and the CIR, on the other. Absent any showing that petitioner consented to the compromise penalties, the same should not be imposed. Accordingly, this Court holds that respondent's imposition of compromise penalties, without the consent of petitioner, cannot be sustained.

Deficiency Withholding Tax on Compensation

Respondent assessed petitioner for deficiency WTC for taxable year 2006 in the amount of ₱9,415,910.31, computed as follows:

Per F/S			
Cost of Sales			
Salaries & Wages			₱ 8,111,441.00
Operating Expenses			
Salaries & Wages			40,577,257.79
Overtime			893,833.37
13th Month			2,417,540.25
Bonus			4,638,250.00
Total			₱ 56,638,322.41

Per Alphalist	Non-Taxable	Taxable	
13th Month	₱ 2,154,415.10	₱ 3,557,704.37	
SSS, Philhealth	728,787.20		
Salaries	784,201.59	30,631,583.62	
Totals	₱ 3,667,403.89	₱ 34,189,287.99	37,856,691.88
Salaries and Wages still subject to WHT			₱ 18,781,630.53
Rate of Tax			32%
Deficiency WHT on Compensation			₱ 6,010,121.77
Add: 20% Interest			
1/16/2007-10/31/2009 - 1019 days			3,355,788.54
Compromise Penalty			50,000.00
Deficiency WHT on Compensation Due and Collectible			**₱ 9,415,910.31**

In its Memorandum, petitioner claims that respondent, in determining petitioner's deficiency WTC, compared the compensation-related accounts found in petitioner's financial statements (FS) against the alphalist for compensation. However, respondent used a substantially different amount to represent petitioner's total compensation under the alphalist.

A perusal of the Monthly Remittance Returns of Creditable Income Tax Withheld on Compensation (BIR Form No. 1601-C)[82] filed by petitioner for taxable year 2006 disclosed salaries and wages in the aggregate sum of ₱51,715,657.03, broken down as follows:

EXHIBIT	MONTH	TOTAL	NON-TAXABLE	TAXABLE	TAX W/HELD
EE-1	January	₱ 3,658,419.03	₱ -	₱ 3,658,419.03	₱ 946,001.30
EE-2	February	4,011,463.10	955,361.70	3,056,101.40	751,640.04
EE-3; EE-13	March	4,274,891.35	78,491.70	4,196,399.65	1,098,857.18
EE-4	April	8,449,681.93	83,658.30	8,366,023.63	2,447,932.77
EE-5	May	3,250,329.78	107,408.69	3,142,921.09	797,504.77
EE-6	June	2,551,787.62	105,791.70	2,445,995.92	550,390.15
EE-7	July	4,064,173.11	140,649.60	3,923,523.51	988,964.73
EE-8	August	3,656,738.55	155,016.73	3,501,721.82	841,631.90
EE-9	September	3,620,972.73	211,587.97	3,409,384.76	768,476.63
EE-10	October	3,514,676.01	225,031.99	3,289,644.02	763,185.38
EE-11	November	5,782,279.61	1,152,433.37	4,629,846.24	1,197,230.15
EE-12	December	4,880,244.21	483,459.80	4,396,784.41	818,814.73
Total per BIR Form 1601-C		**₱ 51,715,657.03**	**₱ 3,698,891.55**	**₱ 48,016,765.48**	**₱ 11,970,629.73**

A comparison of the total compensation per petitioner's FS as found by respondent and the total of all monthly compensation declared in BIR Forms No. 1601-C revealed a discrepancy of ₱4,922,665.38, computed as follows:

Total salaries & wages per petitioner's FS as found by respondent	₱ 56,638,322.41
Less: Withholding tax on compensation remitted per BIR Forms No. 1601-C	51,715,657.03
Difference	**₱ 4,922,665.38**

[82] Exhibits "EE-1" to "EE-13" as attachments to Exhibit "QQQQ"; Exhibits "QQQ" to "CCCC".

The Independent CPA[83] noted that the aforesaid difference pertains to accrued employee costs in the amount of ₱2,708,475.13[84] and pension cost in the amount of ₱2,214,190.55 paid for by petitioner's home office for the expatriates assigned in the Philippines which were erroneously included in the salaries account.[85]

While Section 79(A) of the NIRC of 1997 and Section 2.79(A) of Revenue Regulations (RR) No. 2-98, as amended, require the withholding of tax upon payment of the compensation, petitioner failed to present documents proving that the compensation of ₱2,708,475.13 was merely accrued as of December 31, 2006. Likewise, petitioner did not present any evidence to support the alleged pension cost paid for by its home office in the amount of ₱2,214,190.55.

In the absence of proof that the claimed salaries and wages in the total amount of ₱4,922,665.38 is not subject to withholding tax, this Court finds petitioner liable for the corresponding deficiency withholding tax.

In this case, the above difference of ₱4,922,665.38 should be subjected to withholding tax on compensation based on the graduated tax rates of 5% to 32%. However, the employees to whom the compensation pertained to were not individually identified. Hence, *We* note that the BIR used the highest tax rate of 32%, in computing the deficiency withholding tax on compensation. In its protest letter dated November 19, 2009[86], however, petitioner correctly pointed out that the appropriate tax rate to be used should be the effective rate computed based on the total withholding tax on compensation paid divided by the total amount of taxable compensation reported during the taxable year 2006, as shown below:

Total withholding tax on compensation	₱ 7,683,415.03[87]	**22.11%**
Total taxable compensation	₱ 34,755,338.33[88]	

[83] Antonio O. Maceda, Jr. of Maceda Farnacio & Co.
[84] Exhibit "QQQQ", under B.2 of the Findings, page 9.
[85] Exhibit "QQQQ", under B.2 of the Findings, page 10.
[86] Exhibit "F", docket, p.612.
[87] Amount lifted from Alphalist of Employees, Exhibit "DDDD-1", docket, pp. 903-909.
[88] *Ibid.*

Therefore, petitioner's basic deficiency WTC for taxable year 2006 amounts to ₱1,088,401.32, computed as follows:

Total salaries & wages per petitioner's FS as found by respondent	₱ 56,638,322.41
Less: Withholding tax on compensation remitted per BIR Form No. 1601-C	51,715,657.03
Salaries & wages still subject to withholding tax	₱ 4,922,665.38
Tax rate	22.11%
Deficiency withholding tax on compensation	**₱ 1,088,401.32**

As earlier noted by this Court, respondent's right to assess petitioner of deficiency WTC for the months of January to September 2006 had already prescribed. Petitioner was, however, unable to establish that the salaries and wages of ₱4,922,665.38 pertained to the months of January to September 2006. In the absence of proof to the contrary, this Court shall consider the amount of ₱4,922,665.38 as pertaining to petitioner's claimed salaries & wages for the months of October to December 2006.

Deficiency Expanded Withholding Tax

Per comparison of petitioner's expense items/income payments as reflected in its financial statements with those shown in its alphalist for the year 2006, respondent found that the amounts of ₱242,267,449.61 and ₱102,270,003.14 were not subjected to 1% EWT of ₱2,422,674.50 and 2% EWT of ₱2,045,400.06, respectively, pursuant to Section 57(B) of the NIRC of 1997, as amended, in relation to RR No. 2-98, as amended by RR No. 17-03. Below is the detailed breakdown of the said amounts:

	Per FS	**Per Alphalist**	**Difference**
Additions to PPE:			
Gas Tanks and Cylinders	72,564,481.00	21,076,472.45	51,488,008.55
Machinery & Equipment	5,065,571.00	5,065,571.00	-
Transportation Equipment	25,010,679.00	25,010,679.00	-
Furniture, Fixtures & Equipment	2,627,939.00	-	2,627,939.00
Cost of Sales			
Purchases	817,707,904.60	635,158,416.71	182,549,487.89
Operating Expenses			
Printed Papers, Docs, Books	971,798.35	-	971,798.35

	Transportation & Travel:			
	Cars-Fuel	3,117,919.41	-	3,117,919.41
	Small Equipment & Materials	513,180.42	-	513,180.42
	Small Office Equipment	212,479.52	-	212,479.52
	Membership & Subscriptions:			
	Gifts	786,636.47	-	786,636.47
	Total	928,578,588.77	686,311,139.16	**242,267,449.61**
	1% EWT Due	9,285,785.89	6,863,111.39	**2,422,674.50**
Additions to PPE:				
	Buildings & Improvement	452,143.00	452,143.00	-
	Construction in Progress	29,781,287.00	29,781,287.00	-
Cost of Sales				
	Freight-in	95,897,145.00	77,832,304.18	18,064,840.82
	Insurance	2,592,288.00		2,592,288.00
	Throughput Fees	35,625,000.00	35,625,000.00	-
	Filing Costs	30,853,608.00	30,853,608.00	-
	Other Overhead	29,143,816.00	29,143,816.00	-
Operating Expenses:				
	Salaries, Wages & Employee Benefits-			
	External Med Care	1,894,602.80		1,894,602.80
	Rent:			
	Office Equipment	2,631.57		2,631.57
	Forklift Trucks	15,000.00		15,000.00
	Cylinder Trucks	28,493.96		28,493.96
	Bulk Trucks	31,250.00		31,250.00
	Diesel Pumps	10,000.00		10,000.00
	Outside Services:			
	Other Contractor-Security	2,150,960.58		2,150,960.58
	Software House	191,367.61		191,367.61
	Interimpers Employee	3,581,791.28		3,581,791.28
	Other Fees	1,296,246.01		1,296,246.01
	Repairs & Maintenance:			
	Ground & Building	1,347,687.00		1,347,687.00
	Machine & Equipment	1,132,024.53		1,132,024.53
	Cars	1,113,993.85		1,113,993.85
	Cylinders Painting	3,113,046.98		3,113,046.98
	Cylinders Valves/Regulators	30,357.14		30,357.14
	Computer Equipment	5,377.61		5,377.61
	Insurance:			
	Fire	2,241,914.85		2,241,914.85
	Trucks	233,568.30		233,568.30
	Cars	222,586.31		222,586.31
	Others	4,765,111.99		4,765,111.99

	Transportation & Travel:			
	Travel Costs	10,640,779.13		10,640,779.13
	Communication, Light & Power:			
	Electricity	1,555,346.09	315,071.31	1,240,274.78
	Water	117,459.11		117,459.11
	Truck	827,688.12		827,688.12
	Telephone	1,497,739.32		1,497,739.32
	Portable Telephone	1,451,611.28		1,451,611.28
	Postal Costs	114,440.07		114,440.07
	Fax	42,159.19		42,159.19
	Leaseline	233,942.93		233,942.93
	Internet	273,494.89		273,494.89
	Membership & Subscriptions	4,089,504.13		4,089,504.13
	Interest Expense	35,075,883.00		35,075,883.00
	Bank Charges	2,599,886.00		2,599,886.00
	Total	306,273,232.63	204,003,229.49	**102,270,003.14**
	2% EWT Due	6,125,464.65	4,080,064.59	**2,045,400.06**
	Rent – Ground & Building	7,953,509.84	7,953,509.84	-
	5% EWT Due	397,675.49	397,675.49	-
	Outside Services			
	Lawyers	2,657,027.11	2,657,027.11	-
	Accountants	745,454.55	745,454.55	-
	Commissions	2,170,840.00	2,170,840.00	-
	Total	5,573,321.66	5,573,321.66	-
	10% EWT Due	557,332.17	557,332.17	-
	Total Expenses/Income Payments	1,248,378,652.90	903,841,200.15	**344,537,452.75**
	Total EWT Due	16,366,258.20	11,898,183.64	**4,468,074.56**

In its protest letter[89], petitioner argues that the starting figure per audit of the BIR as regards its local purchases should be ₱514,882,102.91 and not ₱817,707,904.60. Petitioner explains that its total importation amounted to ₱5,900,612,768.09 and not ₱5,597,786,966.40[90] as computed by the BIR. Thus, after deducting petitioner's total importation of ₱5,900,612,768.09 from the total purchases per FS of ₱6,415,494,871.00[91], the resulting amount of ₱514,882,102.91 would represent its local purchases that were subjected to the 1% withholding tax.

[89] Exhibit "F", docket, p. 601.
[90] Exhibit "E-1", docket, p. 587.
[91] Exhibit "J", docket, p. 693.

This Court agrees with petitioner. As aptly noted by the Court-commissioned Independent CPA, petitioner's importations amounting to ₱5,900,612,768.09 were duly supported by bills of lading, suppliers' invoices, Bureau of Customs Import Entries and Internal Revenue Declarations (IEIRDs), and official receipts.[92] Therefore, petitioner's local purchases for the year 2006 actually amounted to ₱514,882,102.91. Since this figure is lower than the amount of ₱635,158,416.71 purchases found by respondent to have been subjected to 1% EWT per alphalist, this Court holds that petitioner is not liable for any deficiency 1% EWT on local purchases.

Anent the interest and bank charges in the respective amounts of ₱35,075,883.00 and ₱2,599,886.00, upon which a 2% deficiency EWT was imposed by respondent, the Independent CPA reported that petitioner's interest expense was not subjected to withholding tax.[93] Ms. Maricel A. Cambe, petitioner's Corporate Accounting Head, corroborated the Independent CPA's findings saying that petitioner maintains an account with the creditor bank and the interest payments and bank charges were automatically debited from petitioner's bank account. The bank allegedly did not deduct the applicable withholding taxes from the amount it debited; consequently, petitioner did not issue any creditable withholding tax certificates to the bank.[94]

Petitioner submits that the subject interest expense and bank charges are not subject to withholding tax since they are automatically debited from its bank account. However, under RR No. 2-98, as amended, and as clarified by Revenue Memorandum Circular No. 72-04[95], interest on loans, service fees, and other charges are considered as payments for services rendered, hence, subject to 2% EWT. Consequently, petitioner is liable to pay the deficiency 2% EWT imposed on interest payments and bank charges paid to the creditor bank. It is petitioner's responsibility, as a withholding agent, to make arrangements with the creditor bank that the amount which the latter would automatically debit from petitioner's account should be net of the 2% EWT.

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92 Exhibits "DD" to "DD-83" as attachments to Exhibit "QQQQ".
93 Exhibit "QQQQ", page 19, docket, p. 1065.
94 Exhibit "RRRR", Item Nos. 79 to 81, docket, pp. 1090 to 1091.
95 See Q18, A18, Q19 and A19 of RMC No. 72-04.

With respect to the remaining expenses/income payments in the amounts of ₱59,717,961.72[96] and ₱64,594,234.14[97], respondent's deficiency 1% and 2% EWT assessment thereon shall be upheld. While petitioner presented its Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) [BIR Forms No. 1601-E] with the attached EFPS Payment Details for the years 2005[98], 2006[99], and 2007[100], Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax [BIR Form No. 1604-E] with attached Alphalist of Payees for the years 2005[101], 2006[102], and 2007[103], entries in the General Ledger for Freight-In[104], Insurance Cost[105], External Med-Care[106] and Travel Cost[107], and Independent CPA report dated May 27, 2011[108] to prove that it withheld and remitted the EWT due on the said expenses, this Court finds these documents insufficient. Petitioner should have presented its detailed general ledger showing the breakdown of the expenses per FS and reconciled these amounts with the income payments reflected per its alphalists for the years 2005, 2006, and 2007.

It bears stressing that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[109] As a result, petitioner is liable to pay basic deficiency EWT in the amount of ₱2,642,579.68, computed as follows:

	Amount		Tax Rate	Deficiency EWT
Income payments subject to 1% EWT	₱ 242,267,449.61			
Less: Income payments erroneously treated by respondent as pertaining to petitioner's local purchases	(182,549,487.89)	₱ 59,717,961.72	1%	₱ 597,179.62
Income payments subject to 2% EWT		102,270,003.14	2%	2,045,400.06
Total		**₱161,987,964.86**		**₱ 2,642,579.68**

[96] ₱242,267,449.61 less ₱182,549,487.89.
[97] ₱102,270,003.14 less ₱35,075,883.00 and ₱2,599,886.00.
[98] Exhibits "BBB" to "MMM", inclusive of sub-markings, docket, pp. 811 to 835.
[99] Exhibits "PP" to "XX", and "YY" to "AAA", inclusive of sub-markings, docket, pp. 786 to 810.
[100] Exhibits "DD" to "OO", inclusive of sub-markings, docket, pp. 742 to 785.
[101] Exhibits "PPP" to "PPP-1", docket, pp. 867 to 873.
[102] Exhibits "OOO" to "OOO-1", docket, pp. 854 to 866.
[103] Exhibits "NNN" to "NNN-1", and "KKKK" to "KKKK-1", docket, pp. 836 to 853 and 986 to 1002.
[104] Exhibit "JJJJ", docket, pp. 982 to 985.
[105] Exhibit "LLLL", docket, pp. 1003 to 1025.
[106] Exhibit "MMMM", docket, pp. 1026 to 1037.
[107] Exhibits "NNNN" to "NNNN-8".
[108] Exhibit "QQQQ", docket, pp. 1056 to 1065.
[109] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

It is to be noted that while respondent's right to assess petitioner of deficiency EWT for the months of January to September 2006 had already prescribed, petitioner was unable to establish that the above income payments pertain to the months of January to September 2006. Thus, in the absence of proof, this Court shall consider the total income payments of ₱161,987,964.86 as pertaining to the months of October to December 2006.

<u>Deficiency Income Tax</u>

Respondent assessed petitioner of deficiency income tax for taxable year 2006 in the amount of ₱286,241,731.88, computed as follows:[110]

Taxable Income per return				₱ 64,702,897.40
Add:	Adjustments			
a.	Unrecorded sales on undeclared Petron Purchases (Secs.32 & 44(A) of the NIRC)		₱ 1,049,152.37	
b.	Overclaimed Purchases from Asian Angle Kunstruck (Sec. 32 of the NIRC)		2,514,322.72	
c.	Expenses not subjected to withholding tax (Sec. 34(K) of the NIRC)			
	Income payments not subjected to 1% EWT	₱242,267,449.61		
	Income payments not subjected to 2% EWT	102,270,003.14	344,537,452.75	
d.	Salaries & Wages not subjected to Wtax (Sec. 34(K) of the NIRC)		18,781,630.53	
e.	Unsupported Bad Debts (Sec. 34(A)(1)(b) of the NIRC)		8,431,934.00	
f.	Unrecorded Sales on Underclaimed Importation (Secs. 32 & 44(A) of the NIRC)		55,614,853.82	
g.	Overclaimed Importation (Sec. 32 of the NIRC)		11,892,375.63	
h.	Undeclared sales to PSPC (Sec. 32 of the NIRC)		85,946,167.89	528,767,889.71
Taxable Income per investigation				₱ 593,470,787.11
Income tax rate				35%
Tax due per audit/investigation				₱ 207,714,775.49
Less:				
	Prior year's Excess Credit		₱42,986,386.59	
	Creditable Tax Withheld Per 2307	₱18,337,632.00		
	Less: Unsupported/Out-of-Period	4,582,506.19	13,755,125.81	
	Total		₱56,741,512.40	
	Less: Carry-Over Per Return		38,678,120.60	18,063,391.80
Basic Income Tax Due				₱ 189,651,383.69
Add:	Increments			
	Surcharge		₱ -	
	Interest (04/16/06-10/31/09) 929 days		96,540,348.19	
	Compromise		50,000.00	96,590,348.19
Total Deficiency Income Tax				**₱ 286,241,731.88**

The determination of whether or not the assessment is correct shall depend on the propriety of the income imputed

[110] Exhibit "E", docket, p. 564.

as well as the expense deductions and tax credits disallowed by respondent, namely:

a.	Unrecorded sales on undeclared Petron purchases	₱ 1,049,152.37
b.	Overclaimed purchases from Asian Angle Kunstruck	2,514,322.72
c.	Expenses not subjected to EWT	344,537,452.75
d.	Salaries & wages not subjected to Wtax	18,781,630.53
e.	Unsupported bad debts	8,431,934.00
f.	Unrecorded sales on underclaimed importation	55,614,853.82
g.	Overclaimed importation	11,892,375.63
h.	Undeclared sales to PSPC	85,946,167.89
i.	Unsupported/out-of-period CWT	4,582,506.19
j.	CWT Carried-over per return	38,678,120.60

a. Unrecorded Sales on Undeclared Petron Purchases – ₱1,049,152.37

Based on the records of Petron, respondent purportedly found sales to petitioner in the amount of ₱29,361,061.13; which was not recorded as purchases in petitioner's books. Respondent assumed that the said goods were ultimately sold by year-end and the gross profit from the sale of the same was added to petitioner's taxable sales per return. Respondent computed the alleged unrecorded sales of ₱1,049,152.37 as follows: [111]

Undeclared purchases	₱ 29,361,061.13
Divided by Cost of Sales Ratio	96.55%
Sales Revenue per audit	₱ 30,410,213.50
Less: Unclaimed purchases	29,361,061.13
Taxable sales per audit	**₱ 1,049,152.37**

Petitioner disagrees with respondent's findings and submitted a schedule[112] reflecting purchases in the total amount of ₱6,415,494,870.88, which includes purchases from Petron amounting to ₱28,349,221.41.

A careful examination of petitioner's audited financial statements[113] and annual income tax return for taxable year 2006[114] disclosed that petitioner's cost of sales amounting to ₱6,703,710,266.00 consisted of purchases in the amount of ₱6,415,494,871.00, which is the same figure reflected in

[111] Exhibit "E-1", docket, pp. 583 to 585.
[112] Exhibit "F", Annex "B", docket, pp. 638 to 640.
[113] Exhibit "J", Note 17, docket, p. 693.
[114] Exhibit "K", line 16C, docket, p. 696.

petitioner's schedule of purchases. Thus, the subject purchases from Petron were duly reported.

The Court-commissioned Independent CPA found in the Alphalist of Payees for taxable year 2006 that petitioner also had purchases amounting to ₱1,193,813.05 from Petron through its Fleet Card.[115] It should be noted that the summary[116] of Petron sales to petitioner, which was compared to petitioner's purchases, does not specify whether or not the same were made through fleet card. The Court is thus constrained to consider petitioner's purchases through the use of fleet card.

A fleet card is a credit facility which allows fleet vehicles of a company to fuel up and pay later. Petitioner's purchases through fleet card are not for resale; hence, they are not included in petitioner's cost of sales. As a consequence, respondent's computation using the cost of sales ratio to determine the taxable sales does not apply to petitioner's purchases from Petron through fleet card.

Based on the foregoing, this Court finds that petitioner properly reported and fully accounted for its purchases from Petron as shown below:[117]

Purchases from Petron per respondent's audit		₱ 29,361,061.13
Less: Purchases from Petron reported as part of petitioner's cost of sales	₱ 28,349,221.41	
Purchases through Petron's Fleet Card	1,193,813.05	29,543,034.46
Difference		**₱ (181,973.33)**

Consequently, the deficiency income tax assessment on the alleged unrecorded sales from undeclared Petron purchases should be cancelled for lack of factual basis.

b. Overclaimed purchases from Asian Angle Konstruk – ₱2,514,322.72

Per respondent's audit information, Asian Angle Konstruk (AAK) recorded sales to petitioner amounting to ₱5,192,358.85[118] but petitioner reported purchases of

[115] Exhibit "QQQQ", page 8, docket p. 1054.
[116] Exhibit "E-1", docket, pp. 583.
[117] Exhibits "QQQQ", page 8 and "OOO-1"
[118] Exhibit "E-1", docket, p. 586.

₱7,706,608.47[119]; hence, the discrepancy representing alleged overclaimed purchases.

Upon examination of the schedules presented, this Court found that the discrepancy amounts to ₱2,514,249.72 (not ₱2,514,322.72), computed as follows:

	Amount
Asian Angle Konstruk Summary of Sales to Liquigaz	₱ 5,192,358.85
Petitioner's Summary of purchases from Asian Angle Konstruk	7,706,608.57
Difference	**₱ 2,514,249.72**

Petitioner counter-argues that its recorded purchases from AAK are duly substantiated with invoices and official receipts.[120] However, petitioner failed to submit the invoices and official receipts for the perusal of the Court. Hence, petitioner's unsupported purchases in the amount of ₱2,514,249.72 shall be disallowed pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended, which states:

> "SEC. 34. *Deductions from Gross Income.* – xxx
>
> (A) *Expenses.* –
>
> (1) *Ordinary and Necessary Trade, Business or Professional Expenses.* –
>
> xxx xxx xxx
>
> (b) *Substantiation Requirements.* – No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the, development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

c. Expenses not Subjected to Expanded Withholding Tax – ₱344,537,452.75

Based on the finding that petitioner failed to withhold and remit the EWT on certain expenses in the amount of

[119] Exhibit "E-1", docket, p. 592.
[120] Exhibit "F", page 22, docket, p. 615.

₱344,537,452.75 pursuant to RR No. 2-98, as amended by RR No. 17-03, in relation to Section 57(B) of the NIRC of 1997, as amended, as discussed under the deficiency EWT assessment, respondent disallowed the said amount as deduction from petitioner's taxable gross income.

As earlier discussed, petitioner failed to prove that it properly withheld and remitted the EWT due on its income payments of ₱161,987,964.86. Consequently, the said amount shall be disallowed from petitioner's claimed deductible expenses pursuant to Section 34(K) of the NIRC of 1997, as amended, which states that:

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

d. Salaries and Wages not subjected to Withholding Tax –₱18,781,630.53

Respondent claims that the salaries and wages for the year 2006 in the amount of ₱18,781,630.53 were not subjected by petitioner to withholding tax pursuant to Sections 24(A)(1), 79, and 80 of the NIRC of 1997, as amended. As a consequence of the alleged non-withholding, respondent disallowed said amount from petitioner's claimed deductible expenses.

As earlier stated under the deficiency WTC assessment, petitioner failed to prove that it withheld and remitted the withholding tax due on the salaries and wages of ₱4,922,665.38. Hence, the same cannot be deducted by petitioner from its taxable gross income pursuant to Section 34(K) of the NIRC of 1997, as amended.

e. Unsupported bad debts – ₱8,431,934.00

Pursuant to Section 34(A)(1)(b) of the NIRC of 1997, as amended, respondent disallowed petitioner's claimed deduction for bad debts in the amount of ₱8,431,934.00 for being unsupported. On the other hand, petitioner posits that such write-off is lawful and valid and that the same is adequately supported by documents.[121]

Section 34(E) of the NIRC of 1997, as amended, allows bad debts written-off as deductions from gross income, thus:

> "SEC. 34. *Deductions from Gross Income.* – xxx
>
> (E) *Bad Debts.* –
>
> (1) *In General.* – Debts due to the taxpayer actually ascertained to be worthless and charged off within the taxable year except those not connected with profession, trade or business and those sustained in a transaction entered into between parties mentioned under Section 36(B) of this Code: *Provided*, That recovery of bad debts previously allowed as deduction in the preceding years shall be included as part of the gross income in the year of recovery to the extent of the income tax benefit of said deduction."

The above provision is implemented by Section 3 of Revenue Regulations No. 5-99, as amended by RR No. 25-02, which enumerates the requirements for deductibility of bad debts from gross income, to wit:

> "Sec. 3. *Requisites for valid deduction of bad debts from gross income.* – The requisites for deductibility of bad debts are:
>
> (1) There must be an existing indebtedness due to the taxpayer which must be valid and legally demandable;
>
> (2) The same must be connected with the taxpayer's trade, business or practice of profession;
>
> (3) The same must not be sustained in a transaction entered into between related parties enumerated under Sec. 36(B) of the Tax Code of 1997;

[121] Exhibit "F", page 22, docket, p. 615.

(4) The same must be actually charged off the books of accounts of the taxpayer as of the end of the taxable year; and

(5) The same must be actually ascertained to be worthless and uncollectible as of the end of the taxable year."

However, other than the testimony[122] of its Corporate Accounting Head, stating that the said receivables could no longer be collected despite utmost effort exerted and collection letters sent to customers and that most of the customers are no longer in business, petitioner did not present documents to prove compliance with the requirements for deductibility of the amount of ₱8,431,934.00 as bad debts. Hence, respondent's disallowance of the said amount from petitioner's claimed deductions from gross income for taxable year 2006 shall remain.

f. Unrecorded sales on underclaimed importation – ₱55,614,853.82 and
g. Overclaimed importation – ₱11,892,375.63

Respondent computed the alleged unrecorded sales of ₱55,614,853.82 on petitioner's underclaimed importation as follows:[123]

Excess per BOC vs. per taxpayer's record	₱ 1,556,409,894.65
Cost of sales ratio*	96.55%
Sales revenue per audit on excess of importation	1,612,024,748.47
Less: Unclaimed purchases per BOC	1,556,409,894.65
Taxable sales per audit	**₱ 55,614,853.82**

*Cost of sales ratio computation:

Cost of sales	₱ 6,703,710,266.00	**96.55%**
Net sales	₱ 6,942,696,690.00	

At the same time, respondent found and disallowed petitioner's alleged overclaimed importation amounting to ₱11,892,375.63.

Petitioner reiterates that its importations for the year 2006 amounted to ₱5,900,612,768.09 and not ₱5,597,786,966.40 as found by respondent. In addition,

[122] Exhibit "RRRR", item nos. 83 and 84, docket, p. 1091.
[123] Exhibit "E-1", docket, p. 593.

petitioner asserts that respondent's assessment lack legal and factual bases, depriving it of the right to mount a proper defense. As such, petitioner believes that the said assessment should be considered void.[124]

A closer examination of the FAN and the Formal Letter of Demand reveals that respondent failed to include the importation data obtained from the Bureau of Customs which was compared to petitioner's records on importation. Neither was it offered to the Court in evidence. Further, respondent cited Section 44(A) of the NIRC of 1997, as amended, as legal basis of its assessment of unrecorded sales on importation of ₱55,614,853.82. The said provision is quoted hereunder for easy reference:

> "SEC. 44. *Period in which Items of Gross Income Included.* – The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under Section 43, any such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer, there shall be included in computing taxable income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period."

Petitioner correctly noted that respondent failed to properly cite the pertinent provision of the law to support her findings. Thus, pursuant to Section 228 of the NIRC of 1997, as amended, respondent's assessment arising from the alleged underclaimed and overclaimed importations for the year 2006 should be cancelled for lack of factual and legal bases.

h. Undeclared sales to PSPC - ₱85,946,167.89

Upon comparison of petitioner's sales to Pilipinas Shell Petroleum Corporation (PSPC) as reflected in BIR Forms No. 2307 and as shown in petitioner's Summary List of Sales, respondent's examiner found that petitioner's sales to PSPC is understated by ₱85,946,167.88, computed as follows:[125]

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[124] Exhibit "F", pages 22 to 23, docket, pp. 615 to 616.
[125] Exhibits "E-1", docket, pp. 568 and 582.

Per Petitioner's Summary Alphalist of Withholding Taxes:[126]		
	₱ 8,434,539.20	
	62,814,546.99	
	82,728,650.70	
	75,192,969.00	₱ 229,170,705.89
Per Summary List of Sales:[127]		
January	₱ 29,136,347.00	
February	34,311,157.90	
March	30,277,999.60	
April	7,929,537.04	
May	22,796,062.50	
June	18,214,507.18	
July	558,926.79	
August	-	
September	-	
October	-	
November	-	
December	-	143,224,538.01
Difference		**₱ 85,946,167.88**

Petitioner contends that its sales to PSPC in the year 2006 amounted to ₱153,977,736.89, broken down as follows:[128]

Exhibit	Period	Amount
HHHH	1st Quarter	₱ 82,728,650.70
HHHH-1	2nd Quarter	62,814,546.99
HHHH-2	3rd Quarter	8,434,539.20
GGGG	**TOTAL**	**₱ 153,977,736.89**

Petitioner argues that the difference should only be ₱10,753,198.88 (₱153,977,736.89 less ₱143,224,538.01). *We* note that the remaining unexplained difference of ₱75,192,969.00 (₱85,946,167.88 less ₱10,753,198.88) can be traced to petitioner's Summary Alphalist of Withholding Taxes (SAWT)[129]. Petitioner was not, however, able to fully explain the discrepancy of ₱85,946,167.88; thus, this Court has to sustain the assessment. Accordingly, petitioner shall be held liable for the corresponding deficiency income tax.

[126] BIR Records, Folder II, pp. 283 to 284.
[127] BIR Records, Folder III, pp. 297 to 438.
[128] Exhibit "F", page 3 and Annex "C", docket, pp. 596 and 641.
[129] *Supra*, Note 126 (SAWT for the month of December 2006 in the total amount of P18,337,919.24).

i. Unsupported/Out-of-period Creditable Withholding Taxes – ₱4,582,506.19

Respondent found that for taxable year 2006, petitioner had ₱4,582,506.19 creditable withholding taxes that are unsupported and/or out-of-period.[130]

To refute respondent's findings, petitioner submitted Certificates of Creditable Taxes Withheld (BIR Form No. 2307) issued by its suppliers but the same were not admitted by the Court as evidence for failure by petitioner to present the original.[131] Consequently, petitioner tendered the same as excluded evidence,[132] which was granted by the Court in a Resolution[133] dated August 29, 2012.

On the other hand, the Independent CPA examined several of petitioner's Certificates of Creditable Taxes Withheld for the year 2006 amounting to ₱8,038,115.00.[134] Upon examination of the certificates, this Court found that creditable withholding taxes of ₱2,296,030.51 were properly supported by BIR Forms No. 2307, broken down as follows:

Exhibit	Payor	CWT
UU-85	Barrientos & Co Inc.	₱ 14,148.32
UU-110	Cardinal Ceramics Mfg.	119,908.75
UU-53	Insulflex Industries	2,585.36
UU-52	Insulflex Industries	3,348.50
UU-49	Insulflex Industries	1,650.63
UU-74	Mariwasa Siam Ceramics	304,569.81
UU-75	Mariwasa Siam Ceramics	443,999.96
UU-76	Mariwasa Siam Ceramics	311,429.08
UU-77	Mariwasa Siam Ceramics	424,870.47
UU-202	Phil Steel Coating Corp.	39,927.00
UU-201	Phil Steel Coating Corp.	43,228.86
UU-200	Phil Steel Coating Corp.	51,789.11
UU-199	Phil Steel Coating Corp.	34,582.83
UU-221	Quality Container Corp.	8,959.62
UU-219	Quality Container Corp.	10,223.84
UU-220	Quality Container Corp.	12,873.21
UU-230	Roberts Automotive & Indtl. Parts	27,461.72
UU-231	Roberts Automotive & Indtl. Parts	27,135.07
UU-232	Roberts Automotive & Indtl. Parts	28,972.28
UU-233	Roberts Automotive & Indtl. Parts	32,316.28
UU-236	Royal Tern Ceramics Phils Inc.	38,868.99
UU-235	Royal Tern Ceramics Phils Inc.	45,131.60

[130] Exhibit "E-1", docket, pp. 580 to 581.
[131] Resolution dated October 25, 2011, docket, pp. 1111 to 1135 and Resolution dated June 11, 2012, docket, pp. 1338 to 1355.
[132] Tender of Excluded Evidence filed on June 27, 2012, docket, pp. 1356 to 1367.
[133] Docket, pp. 1455 to1457.
[134] Exhibit "UU" as attached to Exhibit "QQQQ".

UU-234	Royal Tern Ceramics Phils Inc.	35,036.31
UU-233	Royal Tern Ceramics Phils Inc.	50,849.36
UU-259	Sonic Steel Industries Inc.	5,151.56
UU-253	Sonic Steel Industries Inc.	19,883.95
UU-252	Sonic Steel Industries Inc.	16,416.96
UU-254	Sonic Steel Industries Inc.	28,802.00
UU-255	Sonic Steel Industries Inc.	15,847.39
UU-256	Sonic Steel Industries Inc.	42,053.77
UU-257	Sonic Steel Industries Inc.	16,127.46
UU-258	Sonic Steel Industries Inc.	5,325.88
UU-266	Steel Centre Phils. Corp.	569.60
UU-267	Steel Centre Phils. Corp.	1,302.57
UU-268	Steel Centre Phils. Corp.	1,562.71
UU-269	Steel Centre Phils. Corp.	601.77
UU-270	Steel Centre Phils. Corp.	1,022.58
UU-271	Steel Centre Phils. Corp.	332.84
UU-272	Steel Centre Phils. Corp.	322.33
UU-273	Steel Centre Phils. Corp.	891.08
UU-274	Steel Centre Phils. Corp.	245.97
UU-275	Steel Centre Phils. Corp.	784.08
UU-305	United Perlite Corp.	3,360.15
UU-304	United Perlite Corp.	4,492.21
UU-306	United Perlite Corp.	8,466.89
UU-307	United Perlite Corp.	1,712.68
UU-308	United Perlite Corp.	1,331.81
UU-309	United Perlite Corp.	3,114.03
UU-310	United Perlite Corp.	2,441.28
	TOTAL	**₱ 2,296,030.51**

Thus, only the creditable withholding taxes of ₱2,286,475.68 (₱4,582,506.19 less ₱2,296,030.51) should be disallowed from petitioner's claimed total tax credits.

j. CWT carried-over per return – ₱38,678,120.60

It was improper for respondent to disallow the excess tax credits of ₱38,678,120.60[135] reflected in petitioner's 2006 Annual Income Tax Return because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2007. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In summary, petitioner is liable to pay basic deficiency income tax for taxable year 2006 in the amount of ₱55,939,514.83, computed as follows:

Taxable Income per Return					₱ 64,702,897.40
Add:	Adjustments				
	a.	Overclaimed purchases from Asian Angle Kunstruck		₱ 2,514,249.72	
	b.	Expenses not subjected to 1% EWT	₱ 59,717,961.72		

[135] Exhibit "K", line 31, docket, p. 697.

		Expenses not subjected to 2% EWT	102,270,003.14	161,987,964.86	
	c.	Salaries & wages not subjected to w/holding tax		4,922,665.38	
	d.	Unsupported bad debts		8,431,934.00	
	e.	Undeclared sales to PSPC		85,946,167.89	263,802,981.85
Taxable Income per Investigation					₱328,505,879.25
Income Tax Rate					35%
Income Tax Due per Investigation					₱114,977,057.74
Less:	Prior year's excess credits			₱ 42,986,386.59	
	Creditable taxes withheld per BIR Forms 2307		₱18,337,632.00		
	Less: Unsupported/out-of-period creditable w/holding taxes		2,286,475.68	16,051,156.32	59,037,542.91
Deficiency Income Tax					₱ 55,939,514.83

Deficiency Value-added Tax

Respondent's detailed computation of the deficiency VAT assessment for taxable year 2006 in the amount of ₱28,030,807.26 is reproduced below:[136]

Taxable sales per return			₱6,890,189,183.00
Add: Adjustments			
a. Unrecorded sales on undeclared Petron purchases		₱ 1,049,152.37	
b. Sales to PSPC not subjected to output tax		85,946,167.89	
c. Income not subjected to output tax		4,418,775.00	
d. Unrecorded sales on underclaimed importation		55,614,853.52	147,028,948.78
Adjusted taxable sales per audit			₱ 7,037,218,131.78
Tax rates		10%	₱ 56,426,703.20
		12%	₱ 776,754,132.00
Output tax per audit/investigation			₱ 833,180,835.20
Less: Input tax			
Carry-over from previous quarter		₱ 558,300.00	
Per return	₱ 814,102,324.00		
Deferred to succeeding period	8,009,192.00		
Total	₱ 806,093,132.00		
Less: Disallowed input tax (importation & Asian Angle Kunstrukt)	343,483.82		
Total	₱ 805,749,648.18		
Less: Carry-over to previous quarter	5,059,657.50	800,689,990.68	801,248,290.68
VAT Payable per audit/investigation			₱ 31,932,544.52
Less: VAT payments for the year per VAT return			13,945,586.70
Amount still due and payable			₱ 17,986,957.82
Add: Increments			
Surcharge		₱ -	
Interest (1.21.07 to 10.31.09)		9,993,849.44	
Compromise		50,000.00	10,043,849.44
Total Deficiency VAT			**₱ 28,030,807.26**

[136] Exhibit "E", docket, p. 565.

As can be gleaned from the above computation, the deficiency VAT assessment arose from the following items:

a. Unrecorded sales on undeclared Petron purchases	₱ 1,049,152.37
b. Sales to PSPC not subjected to output tax	85,946,167.89
c. Income not subjected to output tax	4,418,775.00
d. Unrecorded sales on underclaimed importation	55,614,853.52
e. Disallowed input tax	343,483.82
f. Input tax carried-over to next quarter	5,059,657.50

This Court shall discuss each item hereafter.

a. Unrecorded sales on undeclared Petron purchases – ₱1,049,152.37

This assessment was based on the same examiner's finding under the deficiency income tax assessment that petitioner had undeclared sales in the amount of ₱1,049,152.37 arising from undeclared purchases from Petron for taxable year 2006. Citing Section 106 of the NIRC of 1997, as amended, respondent imposed 12% VAT on the alleged undeclared sales of ₱1,049,152.37.

As discussed earlier, records show that for the year 2006, petitioner's purchases from Petron amounted to ₱29,543,034.46, broken down as follows:

Purchase from Petron reported as part of Cost of Sales per AFS and ITR	₱ 28,349,221.41
Purchases through Petron Fleet Card	1,193,813.05
TOTAL	**₱ 29,543,034.46**

Petitioner properly reported the amount of ₱28,349,221.41 as part of its cost of sales; while the amount of ₱1,193,813.05, by its nature, was not for resale and did not form part of petitioner's cost of sales. It was erroneous on the part of respondent to impute against petitioner an unrecorded sales amounting to ₱1,049,152.37. Therefore, the deficiency VAT assessment on this item should be cancelled for lack of factual basis.

b. Sales to PSPC not subjected to output tax – ₱85,946,167.89

As earlier stated, this Court holds that respondent's finding on petitioner's undeclared sales to PSPC is in order. Hence, the corresponding deficiency VAT assessment is likewise in order.

c. Income not subjected to output tax – ₱4,418,775.00

Invoking Section 106 of the NIRC of 1997, as amended, respondent imposed 12% VAT on the amount of ₱4,418,775.00 representing the discrepancy in petitioner's taxable sales per income tax return/FS and per VAT returns, as computed below:[137]

Per VAT Returns:		
Vatable sales	₱ 6,890,189,183.00	
Zero-rated sales	61,615,924.00	
Total		₱ 6,951,805,107.00
Per FS:		
Net sales	₱ 6,942,969,690.00	
Proceeds on disposal of equipment	7,408,763.00	
Trading/Terminal Income	91,252.00	
Other income	19,246.00	
Income from cylinder deposits	5,734,931.00	
Total		6,956,223,882.00
Discrepancy		**₱ (4,418,775.00)**

Petitioner contends that the difference between its sales per income tax return (₱6,942,969,690.00) and taxable sales per VAT returns (₱6,890,189,183.00) can be accounted for by taking into consideration the zero-rated sales for 2006 and adding it to the taxable sales per VAT returns. Petitioner points out that the combined taxable sales per VAT returns and zero-rated sales account for the entire sales per income tax return.[138]

This Court disagrees with petitioner. Zero-rated sales amounting to ₱61,615,924.00 was included by respondent in computing for the ₱4,418,775.00 sales discrepancy. Moreover, adding the amount of ₱61,615,924.00 zero-rated sales to the taxable sales per VAT returns of ₱6,890,189,183.00 would

[137] Docket, p. 560.
[138] Exhibit "F". docket, p. 597.

sum up to ₱ 6,951,805,107.00 and not to the amount of ₱6,942,969,690.00 sales reported per income tax return.

As can be seen from respondent's computation, the discrepancy of ₱4,418,775.00 originated from petitioner's unreported sales/income from disposal of equipment, trading/terminal income, income from cylinder deposits and other income. In the absence of contrary evidence, the sales/income of ₱4,418,775.00 shall be considered to have been generated by petitioner in its ordinary course of business and a 12% VAT should be imposed thereon pursuant to Section 105 of the NIRC of 1997, as amended, which states that:

> "SEC. 105. *Persons Liable.* – Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> xxx xxx xxx
>
> The phrase ***'in the ordinary course of trade or business'*** **means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto**, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity." *(Emphasis supplied)*

d. Unrecorded sales on underclaimed importation – ₱55,614,853.52

Since respondent's position that petitioner underclaimed its importation for the year 2006 is devoid of legal and factual bases, this Court holds that the corresponding deficiency VAT assessment should be cancelled.

e. Disallowed input tax on overclaimed importation and on overclaimed purchases from Asian Angle Konstruk – ₱343,483.82

Respondent disallowed petitioner's input taxes for the year 2006 in the aggregate amount of ₱343,483.82, broken down as follows:[139]

	Gross Amount	Input Tax
On overclaimed importation	₱ 11,892,375.63	₱ 4,333.83
On overclaimed purchases from Asian Angle Konstruk	2,514,249.72	339,149.99
TOTAL	**₱ 14,406,625.35**	**₱ 343,483.82**

The computation of input tax on petitioner's overclaimed purchases from Asian Angle Konstruk is shown hereunder:[140]

	Amount	Output/Input Tax
Asian Angle Konstruk Summary of Sales to Liquigaz	₱ 5,192,358.85	₱ 585,643.04
Petitioner's Summary of purchases from Asian Angle Konstruk	7,706,608.57	924,793.03
Difference	**₱ 2,514,322.72**[141]	**₱ 339,149.99**

Since it has been ruled that respondent's assessment on petitioner's overclaimed importation is void, the input tax corresponding thereto should not be disallowed. On the other hand, since respondent's assessment on petitioner's overclaimed purchases from Asian Angle Konstruk has been upheld, the input tax corresponding thereto should be disallowed.

Thus, the disallowed input taxes for the year 2006 should only be ₱339,149.99.

f. Input tax carried-over to next quarter – ₱5,059,657.50

It was improper for respondent to disallow petitioner's excess input tax in the amount of ₱5,059,657.50[142] reflected in its Quarterly VAT Return for the fourth quarter of 2006 because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding quarter/year 2007. Since the tax benefit will be in the succeeding quarter/year, at most, petitioner may only be assessed in the said succeeding quarter/year.

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[139] Exhibit "E-1, docket, pp. 567 to 568 and "Exhibit "F", page 5, docket, p. 598.
[140] Exhibit "E-1", docket, pp. 586 and 592.
[141] Amount as found by BIR, see Exhibit "E-1", docket p. 567. However, as discussed earlier under item b of deficiency income tax, amount should be P2,514,249.72.
[142] Exhibit "CC", line 27, docket, p. 740.

Therefore, petitioner's basic deficiency VAT liability for taxable year 2006 should be reduced to ₱6,123,285.76, computed as follows:

Taxable sales per return			₱6,890,189,183.00
Add: Adjustments			
a. Sales to PSPC not subjected to output tax		85,946,167.89	
b. Income not subjected to output tax		4,418,775.00	90,364,942.89
Adjusted taxable sales per audit			₱ 6,980,554,125.89
Tax rates	₱ 581,712,843.82[143]	10%	58,171,284.38
	6,398,841,282.07[144]	12%	767,860,953.85
Output tax per audit/investigation			₱ 826,032,238.23
Less: Input tax			
Carry-over from previous quarter		₱ 558,300.00	
Per return	₱ 814,102,324.00		
Deferred to succeeding period	8,009,192.00		
Total	₱ 806,093,132.00		
Less: Disallowed input tax (Asian Angle Konstruk)	339,149.99	805,753,982.01	806,312,282.01
VAT Payable per audit/investigation			₱ 19,719,956.22
Less: VAT payments for the year per VAT return			13,945,586.70
Deficiency VAT			**₱ 5,774,369.52**

While respondent's right to assess petitioner of deficiency VAT for the second quarter of 2006 had already prescribed, petitioner was unable to point out which portion of the assessment pertains to the prescribed period which is the second quarter of 2006. Thus, this Court is constrained to consider the entire assessment as pertaining to the first, third and fourth quarters of 2006.

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax, value-added tax, expanded withholding tax, and withholding tax on compensation for taxable year 2006 are hereby **AFFIRMED** with **MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the reduced amount of **₱81,806,081.69**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

[143] VAT rate was increased from 10% to 12% effective February 1, 2006 (RMC No. 7-06). Since it cannot be ascertained to which months the adjusted taxable sales per audit pertained, the same was apportioned as follows: P6,980,554,125.89 x 1/12 x 10% and P6,980,554,125.89 x 11/12 x 12%.

[144] *Ibid.*

Tax Type	Basic Deficiency	25% Surcharge	Total
Income Tax	₱ 55,939,514.83	₱ 13,984,878.71	₱ 69,924,393.54
Value-added Tax	5,774,369.52	1,443,592.38	7,217,961.90
Expanded Withholding Tax	2,642,579.68	660,644.92	3,303,224.60
Withholding Tax on Compensation	1,088,401.32	272,100.33	1,360,501.65
Total	**₱ 65,444,865.35**	**₱ 16,361,216.34**	**₱ 81,806,081.69**

In addition, petitioner is hereby **ORDERED** to **PAY**:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, value-added tax, expanded withholding tax, and withholding tax on compensation 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
Income Tax	April 15, 2007
Value-added Tax	January 25, 2007
Expanded Withholding Tax	January 15, 2007
Withholding Tax on Compensation	January 15, 2007

b) Delinquency interest at the rate of 20% per annum on the total amount of **₱81,806,081.69** and on the 20% deficiency interest which have accrued as aforestated in (a), computed from October 31, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CONCURS:

LOVELL R. BAUTISTA
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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