REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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SURPLUS MARKETING CORPORATION, Petitioner,	**CTA Case No. 9290**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUN 30 2020 4:28 p.m.

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DECISION

UY, J.:

Before this Court is a Petition for Review filed by Surplus Marketing Corporation, petitioner, on March 11, 2016, against the Commissioner of Internal Revenue, respondent, praying for the cancellation and setting aside of respondent's *Final Decision*, finding petitioner liable for alleged deficiency taxes, penalties and interests for taxable year 2010, listed as follows:

(a) Income Tax in the amount of ₱145,271,573.72;
(b) Improperly Accumulated Earnings Tax in the amount of ₱19,510,137.37;
(c) Value Added Tax in the amount of ₱229,470,890.49;
(d) Expanded Withholding Tax (EWT) in the amount of ₱739,029.64;
(e) Withholding Tax on Compensation (WTC) in the amount of ₱5,921,671.78;
(f) Documentary Stamp Tax in the amount of ₱223,699.24.

THE FACTS

Petitioner Surplus Marketing Corporation, is a corporation duly organized and existing under the laws of the Philippines. It is primarily engaged in the business of trading such as, but not limited to garments on a wholesale and retail basis.[1] Petitioner may be served with notices, pleadings and other processes at Suite 1102, 11th Floor, 139 Corporate Center 139 Valero Street, Salcedo Village, 1227 Makati City.[2]

On the other hand, respondent Commissioner of internal Revenue (CIR) is being sued in his official capacity as the head of the Bureau of Internal Revenue (BIR), having been duly appointed to exercise the powers and perform the duties of his office including, *inter alia*, the power to decide disputed assessments, refunds or internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code.[3]

Respondent holds office and may be served with summons, notices and other processes at the 5th Floor, BIR National Office Bldg., BIR Road, Diliman, Quezon City.[4]

On April 29, 2011, petitioner filed its *Annual Income Tax Return* (ITR) for taxable year (TY) 2010.[5]

On September 23, 2011, the BIR Large Taxpayers Regular Audit Division 1 issued Letter of Authority (LOA) No. LOA-116-2011-00000137 authorizing Revenue Officers Olivia Aviles, Aurora Pelayo, Olivia Sison, Rogelio Gonzales, Riza Budano and Group Supervisor Marivic Bautista to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2010 to December 31, 2010 pursuant to Audit Criteria for TY 2009 and 2010.[6]

Thereafter, petitioner, through Cecilia R. Patricio, executed five (5) *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* to wit:

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[1] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 4, p. 2123.
[2] Par. 2, Admitted Facts, JSFI, Docket – Vol. 4, p. 2123.
[3] Par. 3, Admitted Facts, JSFI, Docket – Vol. 4, p. 2123.
[4] JSFI, Admitted Facts, par. 4, Docket – Vol. 4, p. 2123.
[5] Exhibit "P-10-a", Docket – Vol. 5, pp. 2489 to 2491.
[6] Exhibit "P" and "R-1", BIR Records, Folder 1, p. 4.

Waivers	Date of Execution	Prescriptive period of BIR's right to assess
1st Waiver	May 29, 2013[7]	December 31, 2013
2nd Waiver	September 23, 2013[8]	June 30, 2014
3rd Waiver	March 3, 2014[9]	September 30, 2014
4th Waiver	July 18, 2014[10]	December 31, 2014
5th Waiver	October 20, 2014[11]	March 31, 2015

On August 13, 2014, respondent issued a *Preliminary Assessment Notice* (PAN)[12] assessing petitioner for deficiency taxes for the taxable year 2010, broken down as follows:

Tax Type	Basic Amount	Surcharge	Interest	Compromise Penalty	Total
IT	121,436,023.32	-	80,147,775.39	50,000.00	201,633,798.71
IAET	13,966,929.30	3,491,732.33	9,637,181.22	25,000.00	27,120,842.85
VAT	156,245,041.45	-	107,809,078.60	50,000.00	264,104,120.05
EWT	938,241.02	-	655,830.47	25,000.00	1,619,071.49
WTC	7,313,100.88	-	5,046,039.61	25,000.00	12,384,140.49
DST	309,136.10	77,284.03	213,303.91	20,000.00	619,724.04
Reg. Fee	12,500.00	-	8,625.00	3,000.00	24,125.00

On February 5, 2015, petitioner received a copy of the *Formal Letter of Demand* (FLD) with Details of Discrepancies and Audit Result/Assessment Notices[13] from Nestor S. Valeroso, OIC-Assistant Commissioner, Large Taxpayer Service assessing petitioner for alleged deficiency taxes, penalties and interest for the taxable year 2010, as follows:[14]

Tax Type	Basic Amount	Surcharge	Interest	Compromise Penalty	Total
IT	81,936,096.59	-	66,204,366.05	50,000.00	148,190,462.64
IAET	8,966,929.30	2,241,732.33	7,395,026.59	25,000.00	18,628,688.22
VAT	132,254,361.69	-	107,985,686.32	50,000.00	240,290,048.01
EWT	372,503.68	-	307,203.78	16,000.00	695,707.46
WTC	3,037,955.58	-	2,505,401.97	25,000.00	5,568,357.55

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[7] Exhibit "R-3", BIR Records, Folder 1, p. 543.
[8] Exhibit "R-4", BIR Records, Folder 1, p. 544.
[9] Exhibit "R-5", BIR Records, Folder 1, p. 546.
[10] Exhibit "R-7", BIR Records, Folder 1, p. 669.
[11] Exhibit "R-9", BIR Records, Folder 1, p. 670.
[12] Exhibit "R-8", BIR Records, Folder 1, pp. 619 to 626.
[13] Exhibit "R-11", BIR Records, Folder 1, pp. 684 to 698.
[14] Par. 6, Admitted Facts, JSFI, Docket – Vol. 4, p. 2124.

DST	109,136.10	27,284.03	90,004.54	12,000.00	238,424.67
TOTAL	**226,676,982.94**	**2,269,016.36**	**184,487,689.25**	**178,000.00**	**413,611,688.55**

On March 9, 2015, petitioner filed with respondent its protest letter[15] to the FLD questioning the validity of the said assessments for lack of factual and legal bases.[16]

On October 16, 2015, petitioner received a copy of the *Final Decision on Disputed Assessment* (FDDA)[17] denying petitioner's protest in part and finding petitioner liable for alleged deficiency taxes, penalties and interests for TY 2010 in the total amount of ₱401,137,002.25, broken down as follows:[18]

Tax Type	Basic Amount	Surcharge	Interest	Compromise Penalty	Total
IT	75,518,239.06	-	69,703,334.66	50,000.00	145,271,573.72
IAET	8,966,929.30	2,241,732.33	8,276,475.74	25,000.00	19,510,137.37
VAT	118,319,180.24	-	111,101,710.25	50,000.00	229,470,890.49
EWT	372,503.68	-	350,525.96	16,000.00	739,029.65
WTC	3,037,955.58	-	2,858,716.20	25,000.00	5,921,671.79
DST	109,067.10	-	102,632.14	12,000.00	223,699.24
TOTAL	**206,323,874.97**	**2,241,732.33**	**192,393,394.95**	**178,000.00**	**401,137,002.25**

Petitioner filed a letter requesting for reconsideration before the CIR on November 16, 2015.[19] Thereafter, on February 12, 2016, petitioner received a denial letter[20] from the CIR of petitioner's request for reconsideration reiterating the assessment contained in the FDDA.[21]

Subsequently, petitioner filed the instant *Petition for Review* on March 11, 2016 assailing the said assessment.

Respondent filed his *Answer* on June 20, 2016,[22] interposing the following special and affirmative defenses: (1) That there was no error or illegality that can be ascribed to respondent's assessment of

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[15] Exhibit "P-7" and Exhibit "R-12", BIR Records – Vol. 1, pp, 699 to 744.
[16] Par. 7, Admitted Facts, JSFI, Docket – Vol. 4, p. 2124.
[17] Exhibit "P-6" and Exhibit "R-14", BIR Records – Vol. 1, pp. 797 to 808.
[18] Par. 8, Admitted Facts, JSFI, Docket – Vol. 4, p. 2124 to 2125.
[19] Exhibit "P-8" and Exhibit "R-15", BIR Records – Vol. 1, pp. 809 to 848.
[20] Exhibit "P-1" and Exhibit "R-17", BIR Records – Vol. 1, p. 854.
[21] Par. 9, Admitted Facts, JSFI, Docket – Vol. 4, p. 2125.
[22] Docket – Vol. 3, pp. 1435 to 1443.

petitioner's deficiency tax liability, as respondent properly appraised petitioner of its tax deficiencies; and (2) That the law heavily presumes upon the favor of the propriety and exactness of the tax assessments.

Pre-trial conference was initially set on October 13, 2016.[23] However, upon motion of petitioner filed on September 27, 2016,[24] and without objection from respondent,[25] Pre-Trial Conference was reset to February 9, 2017.[26] Petitioner filed its *Pre-Trial Brief* on February 3, 2017,[27] while respondent filed her *Pre-Trial Brief* on February 6, 2017.[28]

After the Pre-Trial Conference held on February 9, 2017[29], petitioner filed a *Motion to Allow the Engagement of an Independent Certified Public Accountant* was filed on February 17, 2017.[30] On February 27, 2017, the parties filed their *Joint Stipulation of Facts and Issues,*[31] which was approved in the Resolution dated March 9, 2017.[32] Thus, Pre-Trial was deemed terminated and the Court subsequently issued the Pre-Trial Order dated March 27, 2017.[33]

During trial, petitioner presented Elrey T. Ramos,[34] the Court commissioned Independent Certified Public Accountant (ICPA) and Florita V. Sabangan,[35] petitioner's Accounting Manager.

On September 22, 2017,[36] petitioner filed its *Formal Offer of Evidence* without respondent's comment despite due notice.[37]

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[23] Docket – Vol. 3, p. 1445 to 1446.
[24] Petitioner's "*Motion for Cancellation of the October 13, 2016 Pre-Trial Conference*", Docket – Vol. 3, p. 1454 to 1456.
[25] Respondent's "*Comment*" filed on October 4, 2016, Docket – Vol. 3, p. 1459 to 1461.
[26] Order dated September 30, 2016, Docket – Vol. 3, p. 1457.
[27] Docket – Vol. 3, pp. 1473 to 1480.
[28] Docket – Vol. 3, pp. 2021 to 2024.
[29] Docket – Vol. 4, pp. 2032 to 2034.
[30] Petitioner's "*Motion to Allow the Engagement of an Independent Certified Public Accountant*" was granted by the Court in the Order dated April 4, 2017, Docket – Vol. 4, pp. 2041 to 2043 and Docket – Vol. 4, pp. 2173 to 2175, respectively.
[31] Docket – Vol. 4, pp. 2123 to 2131.
[32] Resolution dated March 9, 2017, Docket-Vol. 4, pp. 2139-A to 2139-B.
[33] Docket – Vol. 4, pp. 2154 to 2164.
[34] Exhibit "P-77", Docket – Vol. 4, pp. 2352 to 2421; Exhibit "P-81", Docket –Vol. 5, pp. 2877 to 2881.
[35] Exhibit "P-33", Docket-Vol. 3, pp. 1484 to 1525.
[36] Docket – Vol. 5, pp. 2437 to 2475.
[37] Records Verification Report dated October 13, 2017, Docket – Vol. 5, p. 2825.

In the Resolution dated December 6, 2017, the Court admitted some of petitioner's evidence, while those exhibits that were not found in the records of the case and those exhibits that were formally offered but failed to correspond with the documents actually marked, were denied admission.

Hence, petitioner filed a *Motion for Partial Reconsideration (of the Resolution promulgated on December 6, 2017)* on December 22, 2017,[38] praying that the Court partially reconsider the assailed Resolution, to allow resubmission of the denied exhibits, to set a hearing for the identification of the USB containing said exhibits and to allow petitioner to re-offer same documents. For his part, respondent interposed his objection thereto in his *Comment to Petitioner's Motion for Partial Reconsideration* filed on January 19, 2018.[39]

On March 14, 2018, the Court granted petitioner's motion to allow re-submission of re-marked exhibits and set a hearing for the identification of the USB containing said exhibits. Thus, resolution of petitioner's *Motion for Partial Reconsideration of the Resolution promulgated on December 6, 2017* was held in abeyance.[40] Petitioner filed its *Manifestation and Compliance (Re: Resolution promulgated on March 14, 2018)* on March 26, 2018.[41]

Subsequently, petitioner filed a *Supplemental Formal Offer of Evidence for the Petitioner* on April 10, 2018.[42] On July 4, 2018, the Court partially granted petitioner's *Motion for Partial Reconsideration of the Resolution promulgated on December 6, 2017* and admitted the exhibits in petitioner's *Supplemental Formal Offer of Evidence.* [43]

On September 21, 2018, the instant case was transferred to this Court's Third Division pursuant to CTA Administrative Circular No. 02-2018, "Reorganizing the Three (3) Divisions of the Court" dated September 18, 2018.[44]

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[38] Docket – Vol. 5, pp. 2839 to 2848.
[39] Docket – Vol. 5, pp. 2852 to 2854.
[40] Docket – Vol. 5, pp. 2864 to 2869.
[41] Docket – Vol. 5, pp. 2871 to 2873.
[42] Docket – Vol. 5, pp. 2888 to 2893.
[43] Docket – Vol. 5, pp. 2903 to 2906.
[44] Order dated September 21, 2018, Docket – Vol. 5, p. 2910.

Subsequently, respondent presented his sole witness, Revenue Officer (RO) Aurora Pelayo on January 17, 2019.[45]

On February 4, 2019, respondent filed his *Formal Offer of Evidence,*[46] with petitioner's *Comment (on the Respondent's Formal Offer of Evidence)* filed on February 13, 2019.[47] Thereafter, the Court admitted all of respondent's documentary evidence on March 15, 2019.[48]

On April 17, 2019, respondent filed his *Manifestation* stating that he is adopting the arguments raised in his Answer in lieu of filing a *Memorandum.*[49] On the other hand, petitioner filed a *Motion for Extension of Time to Submit Petitioner's Memorandum* on April 24, 2019, praying for an additional period of twenty (20) days from April 25, 2019, or until May 15, 2019, to file its memorandum.[50] The Court granted the same on May 2, 2019.[51]

On May 15, 2019, petitioner filed its *Memorandum.*[52] Consequently, this case was submitted for decision on May 20, 2019.[53] Hence, this Decision.

THE ISSUE

The parties stipulated a sole issue for this Court's resolution, to wit:

> "Whether or not petitioner is liable for the alleged deficiency taxes for the taxable year 2010 in the aggregate amount of ₱401,137,002.24, inclusive of penalties and interests; which alleged deficiencies were assessed per Final Decision on Disputed Assessment ("FDDA") and was sustained by the respondent in his (sic) Final Decision denying the Motion for Reconsideration on the FDDA."[54]

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[45] Minutes of the hearing and Order dated January 17, 2019, Docket – Vol. 5, pp. 2912 to 2913.
[46] Docket – Vol. 5, pp. 2915 to 2921.
[47] Docket – Vol. 5, pp. 2923 to 2930.
[48] Docket – Vol. 5, pp. 2934 to 2935.
[49] Docket – Vol. 5, pp. 2936 to 2937.
[50] Docket – Vol. 5, pp. 2939 to 2941.
[51] Order dated May 2, 2019, Docket – Vol. 5, p. 2944.
[52] Docket – Vol. 5, pp. 2945 to 3002.
[53] Resolution dated May 20, 2019, Docket – Vol. 5, p. 3004.
[54] Issue, JSFI, Docket – Vol. 4, p. 2125.

Petitioner's arguments:

In assailing respondent's assessments of deficiency taxes, petitioner raises the following arguments, to wit:

INCOME TAX

Petitioner disputes the adjustments in the taxable income per Income Tax Return, itemized as follows:

A. *Under-Declaration of Sales*

Petitioner alleges that it has no under-declaration of sales and assails respondent's assessment on the following grounds: (1) The assessment is based on unverified third-party information derived from BIR's system; (2) Respondent's use of extrapolation method in arriving at what it deemed undeclared sales is highly speculative; and (3) The purchase transaction is not a basis for assessing income tax.

B. *Disallowed Sales Returns and Allowances*

The discount fees and sales discounts which comprise the disallowed "sales returns and allowances" are supported and, thus, are valid deductions for purposes of computing any alleged income tax liability of petitioner.

C. *Disallowed Expenses*

Respondent erred in disallowing deductible expenses in the amount of ₱27,724,704.62. Allegedly, these expenses should not be disallowed because these are valid deductions from petitioner's gross income and are duly supported. Thus, this assessment should be cancelled for lack of factual or legal bases.

D. *Disallowed Expenses Due to Non-withholding of Tax*

The deficiency assessment for Expanded Withholding Tax (EWT) in the amount of ₱10,373,770.13 should be cancelled for want of factual or legal bases. At the very least, the same should be reduced insofar as it was able to prove that portion of expenses which are exempt from withholding tax pursuant to Revenue Regulations No. 2-98 as amended.

E. *Unsupported Creditable Tax Withheld*

Tax credits claimed in its ITR were supported by BIR Form 2307 which were reviewed and verified by the ICPA and only the amount ₱13,506.23 were found to be unsupported.

<u>IMPROPERLY ACCUMULATED EARNINGS TAX</u>

Petitioner contends that the unappropriated Retained Earnings (RE) of ₱24,285,696.00 was the proper amount that should be considered in computing Improperly Accumulated Earnings Tax (IAET). Thus, respondent's deficiency assessment must be cancelled. Petitioner further asserts that it will be deprived of its right to due process because the alleged IAET liability of petitioner for CY 2010 was based on wrong facts and figures.

<u>VALUE-ADDED TAX</u>

A. *Undeclared Income*

The deficiency VAT assessment is allegedly without factual or legal bases. Petitioner asserts that there was failure of respondent to present the required Certifications / Sworn Statements required under Revenue Memorandum Orders No. 42-2003 and 46-2004. That in the absence of the said Certifications/Sworn Statements, the assessment is based on unverified data and are therefore mere presumptions.

B. *Disallowed Input Due to Failure to Comply with Invoicing Requirement*

The subject invoices having been issued by VAT-registered suppliers are substantially compliant with invoicing requirements and should not affect the related input tax claim of the petitioner.

<u>EXPANDED WITHHOLDING TAX (EWT)</u>

A. *Disallowed Expenses Due to Non-Withholding of EWT*

Petitioner contends that its reconciliation on the alleged disallowed expenses due to non-withholding of EWT showed reduced difference that the ICPA was able to confirm through his independent audit.

B. Purchases not subjected to EWT per Summary List of Purchases (SLP) vs Audit Information Tax Exemption and Incentives Division (AITEID)

The BIR examiners allegedly captured incorrect amount of sales and that respondent's deficiency assessment on EWT is simply based on a mere assumption and not on facts, and the same must be cancelled and set aside.

WITHHOLDING TAX ON COMPENSATION

Anent the salaries per Financial Statement (FS), petitioner alleges that the BIR examiners were not able to capture the correct amount of salaries, wages and employee benefits reported in petitioner's FS and ITR. As verified by the ICPA, salaries, wages and employee benefits per audited FS amounted to ₱94,792,410.93 and not ₱75,099,717.95 as claimed by the BIR.

With regard to gross compensation per Alphalist, petitioner alleges that the BIR examiners did not capture the correct amount of compensation of minimum wage earners duly reflected in the Alphalist of employees. In addition, the gross compensation used by the BIR examiners in other items under this assessment refer only to the taxable compensation extracted by the BIR examiners from the Alphalist of Employees and did not consider the non-taxable compensation.

Petitioner also disagrees with the use of the maximum withholding rate of 32% in the assessment. Rather, petitioner contends that it may be more reasonable to follow the method used by the ICPA, considering that only a few of petitioner's employees earns more than ₱500,000.00 net taxable compensation.

Lastly, petitioner submits that the ICPA was able to validate based on the evidence and reconciliations, that the difference between salaries and wages per financial statements against the alphalist per BIR assessment should be reduced to ₱1,971,379.05 and the corresponding basic deficiency tax assessment should also be reduced to ₱142,816.23.

DOCUMENTARY STAMP TAX (DST)

The DST due on all rental payments under existing lease contracts are allegedly being remitted to the BIR by the lessor verified by the ICPA. Hence, the DST deficiency assessment is without factual and/or legal bases.

COMPROMISE PENALTY

Petitioner disagrees with the imposition of the compromise penalty by respondent. Petitioner asserts that it may not be compelled to pay the same because by its very nature it implies mutual agreement between the parties in respect to the thing or subject which is so compromised. Allegedly, the choice of paying or not paying it distinctly belongs to the taxpayer.

Respondent's counter-arguments:

Respondent counter-argues that petitioner was informed of the factual and legal bases of the subject deficiency tax assessment through various assessment notices issued during the course of the administrative audit of its tax deficiencies. Clearly, the Details of Discrepancies found in the FLD/FAN attached to the Petition as Annex "F", confirms that respondent was informed of the factual and legal bases of the assessment pursuant to Section 228 of the 1997 NIRC, as amended.

Contrary to petitioner's arguments, RMO No. 46-2004 deserves no consideration in the determination of this case. RMO No. 46-2004 was issued to provide additional supplement and guidelines in handling Letter Notices. The instant case involves an audit of all its internal revenue taxes pursuant to Audit Criteria for Taxable Years 2009 and 2010. Thus, to belabor a discussion thereon would be futile considering the inapplicability of the cited RMO to this case.

Moreover, respondent submits that the law heavily presumes upon the favor of the propriety and exactness of tax assessments. Allegedly it is up to petitioner to present evidence to establish the inaccuracy or outright invalidity of the assessment made against it. Corollarily, petitioner's failure to do so further confirms the propriety and exactness of the assessment.

THE COURT'S RULING

The instant *Petition for Review* is partly meritorious.

Factual and legal bases of the assailed assessments

In the FDDA, respondent assessed petitioner for deficiency income tax, IAET, VAT, EWT, WTC and DST in the aggregate amount of ₱145,271,573.72, broken down as follows:

Taxable income per return			P57,156,877.00
Add: Adjustments			
A. Under-declaration of sales	A.1		
1. Gross Profit on local purchases (RMO 42-2003)	A.1.1	199,443,221.84	
2. Gross Income (per book vs ITR)	A.1.2	5,566,488.79	205,009,710.63
B. Sales returns and allowances	A.2		8,550,666.00
C. Disallowed expenses	A.3		
1. Advertising	A.3.1	6,351,858.62	
2. Depreciation	A.3.2	21,372,846.00	
D. Not subjected to EWT	A.4	10,373,770.33	38,098,474.95
Taxable Income per Audit			308,815,728.58
Rate			30%
Tax due per audit			92,644,718.57
Less: Unexpired excess of prior year's MCIT over RCIT		16,397,961.00	
Payment for the 1st 3 quarters		1,401,663.00	
CWT per audit		1,230,976.00	
Total per return		19,030,600.00	
Less: Unsupported CWT	A.5	(20,593.49)	
CWT carried over to the next quarter		(1,883,527.00)	17,126,479.51
Deficiency income tax			75,518,239.06
Add: Interest (from 04/16/2011 to 9/30/2015)		69,703,334.66	
Compromise penalty		50,000.00	69,753,334.66
TOTAL AMOUNT DUE			P145,271,573.72

We look into the propriety of the assailed assessments issued against petitioner.

Income Tax

A.1 Under-declaration of sales - ₱205,009,710.63

A.1.1 Gross Profit on undeclared sales arising from undeclared purchases - ₱199,443,221.84

In the FDDA, respondent found petitioner has undeclared sales pursuant to Revenue Memorandum Order (RMO) No. 42-2003 and the same was subjected to income tax pursuant to Section 32 of the National Internal Revenue Code (NIRC), as amended. As a result, respondent derived the assessed amount from the following computation:[55]

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[55] Exhibit "P-6" and Exhibit "R-14", BIR Records – Vol. 1, pp. 797 to 808.

Amount of over claimed purchases per FLD	₱344,886,509.34
Less: with supporting documents	32,936,854.66
Difference on purchases per SLP vs AITEID	**₱311,949,654.68**

Sales (P311,949,654.68/61%)	₱511,392,876.52
Cost of sales (difference)	311,949,654.68
Gross profit on Undeclared sales (Local)	**₱199,443,221.84**

Petitioner argues that it has no under-declaration of sales and questions the legality and propriety of the tax assessment.

According to petitioner, the Computer-Assisted Audit Tools (CAATs) extraction data under RMO No. 14-2011 are not evidence in themselves to support a tax assessment. Allegedly, the BIR failed to comply with the procedures laid down in Revenue Memorandum Order (RMO) No. 46-2004. Under said rules, the BIR must secure a Sworn Declaration of the third party, or in this case, the specific clients/customers of the Company that the amounts were indeed sales by the Company to petitioner. Thus, the deficiency assessments resulting from the comparison of the supposed third-party information, which is the Summary List of Sales (SLS) and the petitioner's report or the Summary List of Purchases (SLP) or any other information are mere naked assessment that has no leg to stand on absence of the sworn statements/ declarations from the said third-party sources.

This assessment must be cancelled.

After thorough examination and verification of the evidence presented in this case, the Court agrees with the findings of the ICPA.

Shown hereinbelow is the schedule of comparison made by respondent between Third Party Information (TPI) derived from Audit Information Tax Exemption and Incentives Division (AITEID) against purchases declared in petitioner's Summary List of Purchases (SLP) supporting their findings for ₱311,949,653.07 allegedly as overstated purchases, to wit:

Seq. No.	Supplier Name	Per SLS of Third Party	Per SMC's SLP	TPI's SLS > SMC's SLP	Less: BIR Adjustment (Submitted Documents & Purchases Allowed	Over-claimed
1	VS MARKETING CORPORATION	P121,338,835.26	P146,547,119.92	P25,208,284.66	P-	P25,208,284.66
2	BIG BOX TRADING HOUSE INCORPORATED	34,936,739.50	49,142,721.41	14,205,981.91	-	14,205,981.91
3	GOLDEN ASTIPLAZ MARKETING INC	6,395,761.54	10,422,057.43	4,026,295.89	-	4,026,295.89
4	TARGET GROUP PHILIPPINES INCORPORATED Total	3,637,372.83	3,516,065.09	-121,307.74	-	-121,307.74
5	MUCH PROSPERITY TRADING Total	742,805.36	-62.5	-742,867.86	-	-742,867.86
6	S A INTERNATIONAL SALES INC	-	141,876,904.82	141,876,904.82	-	141,876,904.82
7	ADVANI APPAREL INC	-	83,915,910.57	83,915,910.57	-	83,915,910.57
8	HOMME PLUS MARKETING COMPANY	-	62,701,586.82	62,701,586.82	-	62,701,586.82
9	PRIME VALUE ENTERPRISES INCORPORATED	-	30,549,627.41	30,549,627.41	-	30,549,627.41
10	TWINLUCK GENERAL MERCHANDISINGBRANCH	-	8,161,632.41	8,161,632.41	-	8,161,632.41
11	RAERONDSTARR MARKETING	-	7,776,991.84	7,776,991.84	-	7,776,991.84
12	FIRST LINEN COMMERCIAL	-	5,944,469.08	5,944,469.08	-	5,944,469.08
13	STRATAPRO COMPANY INC	-	3,812,068.83	3,812,068.83	-	3,812,068.83
14	STRATAPRO COMPANY INC	-	3,640,352.76	3,640,352.76	-	3,640,352.76
15	OBRA EXPRESS TRADING SYSTEMS INC	-	3,491,999.00	3,491,999.00	-	3,491,999.00
16	RESURGE MANUFACTURING COMPANY INC	-	3,324,642.83	3,324,642.83	-	3,324,642.83
17	MADRAS CROWNPHIL INCORPORATED	-	3,271,004.59	3,271,004.59	-	3,271,004.59
18	PARK TRADE CENTER	-	3,073,955.49	3,073,955.49	-	3,073,955.49
19	EUROPLAST INDUSTRIES INC	-	2,941,080.00	2,941,080.00	-	2,941,080.00
20	KINAH GARMENTS ENTERPRISES	-	1,934,460.16	1,934,460.16	-	1,934,460.16
21	SELF GMT TRADING COMPANY	-	1,694,579.66	1,694,579.66	-	1,694,579.66
22	EQUESTRIAN TRADING	-	1,687,500.00	1,687,500.00	-	1,687,500.00
23	ASIATIQUE TRADING	-	1,606,250.00	1,606,250.00	-	1,606,250.00
24	MULTI GROVE GENERAL MERCHANDISE	-	1,420,535.75	1,420,535.75	-	1,420,535.75
25	BELLA TRADING AND SERVICES	-	829,813.24	829,813.24	-	829,813.24
26	RENZ MATTHEW INTERNATIONAL TRADING CORPORATION	-	811,595.93	811,595.93	-	811,595.93
27	TRISECT GENERAL MERCHANDISE	-	771,428.58	771,428.58	-	771,428.58
28	ARIECE ENTERPRISE	-	769,155.35	769,155.35	-	769,155.35
29	TWIST ENTERPRISE	-	766,071.42	766,071.42	-	766,071.42
30	VISIONVIEW MARKETING INCORPORATED	-	707,142.83	707,142.83	-	707,142.83
31	ASG SUNLIGHT TRADING COMPANY	-	698,437.00	698,437.00	-	698,437.00
32	CASART TRADING	-	669,642.83	669,642.83	-	669,642.83
33	NORTHERN-WEST ASIA TRADING INCORPORATED	-	664,285.75	664,285.75	-	664,285.75
34	KENOMAX GREAT ENTERPRISES INCORPORATED	-	635,714.25	635,714.25	-	635,714.25
35	BEACH RUBBER CO INC	-	520,746.58	520,746.58	-	520,746.58
36	ANGBARO CO	-	441,232.50	441,232.50	-	441,232.50
37	FUN SERVICES INC	-	305,747.84	305,747.84	-	305,747.84
38	WAMRUS TRADING INC	-	288,289.58	288,289.58	-	288,289.58
39	BETTERWAY GENERAL MERCHANDISE	-	284,826.58	284,826.58	-	284,826.58
40	INDUREX CLOTHING	-	249,134.00	249,134.00	-	249,134.00
41	FIRST A TRADING	-	155,357.42	155,357.42	-	155,357.42

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42	HOLYMOON ENTERPRISES	-	-79,965.82	-79,965.82	-	-79,965.82
SubTotal - Trade Suppliers		**P167,051,514.49**	**P591,942,109.23**	**P424,890,594.74**	**P0.00**	**P424,890,594.74**

Seq. No.	Supplier Name	Per SLS of Third Party	Per SMC's SLP	TPI's SLS > SMC's SLP	Less: BIR Adjustment (Submitted Documents & Purchases Allowed	Over-claimed
43	WPP MARKETING COMMUNICATIONS INC	P29,115.72	P117,474.41	P88,358.69	P-	P88,358.69
44	PRUDENTIAL GUARANTEE AND ASSURANCE INC	376,163.96	438,882.34	62,718.38	-	62,718.38
45	DIMENSIONAL SERVICE CORPORATION	3,161.37	62,948.34	59,786.97	-	59,786.97
46	ACCURATE PRINTING INC	8,035.71	60,268.25	52,232.54	-	52,232.54
47	DIVERSEY PHILIPPINES INC	30,509.82	58,821.50	28,311.68	-	28,311.68
48	SPACE WORLD CORPORATION	77,678.57	101,500.08	23,821.51	-	23,821.51
49	PERFORMANCE MARKETING INCORPORATED	14,821.43	33,125.08	18,303.65	-	18,303.65
50	RIGHT EIGHT SECURITY AGENCY INC	18,934.12	24,380.43	5,446.31	-	5,446.31
51	VICAN INVESTIGATION AND SECURITY AGENCY INC	890.03	5,979.42	5,089.39	-	5,089.39
52	JOHNSONDIVERSEY PHILIPPINES INCORPORATED	55,926.60	60,767.83	4,841.23	-	4,841.23
53	ARMAK TAPE CORPORATION Total	160.71	-	-160.71	-	-160.71
54	SCANWELL GRAPHICS CORPORATION	9,035.59	8,679.08	-356.51	-	-356.51
55	MERCURY INTERNATIONAL SECURITY PRINTING CORP. Total	2,745.54	-	-2,745.54	-	-2,745.54
56	A V PAULE CONSTRUCTION CO INC Total	2,863.52	-	-2,863.52	-	-2,863.52
57	UNISPORT MARKETING CORPORATION Total	5,903.58	-	-5,903.58	-	-5,903.58
58	YU LINCOLN CO Total	13,977.23	-	-13,977.23	-	-13,977.23
59	MALLORCA ANTONIO FUENTESPINA Total	20,945.09	-	-20,945.09	-	-20,945.09
60	MICRO-D INTERNATIONAL INC Total	26,785.71	-	-26,785.71	-	-26,785.71
61	Jobstreet com Philippnes Inc Total	30,000.00	-	-30,000.00	-	-30,000.00
62	DATRIMA PACKAGING INDUSTRIAL CORP Total	99,514.28	51,300.16	-48,214.12	-	-48,214.12
63	NG ISABELLE PE Total	59,892.86	-	-59,892.86	-	-59,892.86
64	SALES EDWIN C Total	73,660.71	-	-73,660.71	-	-73,660.71
65	PRIMA PLASTIC MANUFACTURING CORPORATION Total	2,046,383.94	1,966,696.75	-79,687.19	-	-79,687.19
66	SYMMETRIC GLASS CORPORATION Total	107,142.86	4,250.00	-102,892.86	-	-102,892.86
67	ADVANCE ELECTRONICS CORPORATION Total	200,000.01	28,571.50	-171,428.51	-	-171,428.51
68	IRVINE CONSTRUCTION CORPORATION Total	2,080,267.87	1,579,375.16	-500,892.71	-	-500,892.71
69	PUNONGBAYAN ARAULLO Total	571,861.98	320,931.00	-250,930.98	571,861.98	-822,792.96
70	GENERALI PILIPINAS INSURANCE CO INC Total	1,151,125.35	94,335.17	-1,056,790.18	-	-1,056,790.18
71	SHOPPING CENTER MANAGEMENT CORP - BACOLOD	446,165.59	700,771.74	254,606.15	-	254,606.15
72	FIRST ASIA REALTY DEVELOPMENT CORP.	14,633,687.31	14,640,317.83	6,630.52	-	6,630.52
73	PILIPINAS MAKRO INC. Total	2,873.17	-	-2,873.17	-	-2,873.17
74	STANFIELD INTERNATIONAL CORPORATION	277,563.39	274,457.32	-3,106.07	-	-3,106.07
75	MARKETING CONVERGENCE INC	448,001.84	354,580.08	-93,421.76	-	-93,421.76
76	SHOEMART INC Total	1,756,390.03	742,423.65	-1,013,966.38	-	-1,013,966.38
77	SM LAND INC	1,831,384.02	7,208,745.34	5,377,361.32	7,181,893.88	-1,804,532.56
78	SM INVESTMENTS CORPRENTAL	3,319,782.93	2,637,595.01	-682,187.92	2,617,081.98	-3,299,269.90
79	PREMIER CENTRAL INC	3,599,011.78	4,894,563.41	1,295,551.63	4,914,546.70	-3,618,995.07

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80	PREMIER SOUTHERN CORPORATION	6,592,975.92	8,941,251.67	2,348,275.75	8,959,243.01	-6,610,967.26
81	SM RETAIL INC Total	12,490,905.76	10,037,756.75	-2,453,149.01	9,922,035.37	-12,375,184.38
82	SM PRIME HOLDINGS INC	103,119,074.82	103,412,391.16	293,316.34	103,127,031.58	-102,833,715.24
83	LUMISPEC INDUSTRIAL SALES	-	2,556,500.58	2,556,500.58	-	2,556,500.58
84	ARCENAL SYSTEMS ENGINEERING	-	1,632,143.00	1,632,143.00	-	1,632,143.00
85	ZENSHIN SYSTEMS CORPORATION	-	1,284,019.40	1,284,019.40	-	1,284,019.40
86	PHILIPPINE DAILY INQUIRER INC	-	1,257,460.74	1,257,460.74	-	1,257,460.74
87	PHILSTAR DAILY INC	-	1,166,427.08	1,166,427.08	-	1,166,427.08
88	SUMMIT PUBLISHING CO INC	-	599,331.00	599,331.00	-	599,331.00
89	BESTILE CORPORATION	-	542,934.00	542,934.00	-	542,934.00
90	VALUE CARE HEALTH SYSTEMS INC	-	537,493.92	537,493.92	-	537,493.92
91	ADFOLIO ADVERTISING	-	533,695.83	533,695.83	-	533,695.83
92	PLDT	-	503,846.82	503,846.82	-	503,846.82
93	MILLIMETER DESIGN STRATEGIES INC	-	465,428.67	465,428.67	-	465,428.67
94	ABSCBN PUBLISHING INC	-	450,816.75	450,816.75	-	450,816.75
95	SUPERIOR MAINTENANCE SERVICES INC	-	444,792.34	444,792.34	-	444,792.34
96	AMIGO CLUB ENTERTAINMENT INC	-	373,493.25	373,493.25	-	373,493.25
97	ANGEL INTERIORS CONSTRUCTION CORP	-	352,433.25	352,433.25	-	352,433.25
98	VICTORIA VISUAL INTERNATIONAL CORP	-	347,321.59	347,321.59	-	347,321.59
99	EQUICOM INC	-	333,991.83	333,991.83	-	333,991.83
100	IDEAL PEOPLE MODEL MANAGEMENT CO	-	329,897.42	329,897.42	-	329,897.42
101	STINGER SECURITY SERVICES INC	-	290,202.82	290,202.82	-	290,202.82
102	MANILA ELECTRIC COMPANY	-	281,856.76	281,856.76	-	281,856.76
103	TE LATRIZ INTERIORS	-	257,034.42	257,034.42	-	257,034.42
104	AIRFREIGHT 2100 INCORPORATED	-	251,977.74	251,977.74	-	251,977.74
105	WHEEL BENISON MOTORIST SQUARE	-	246,163.16	246,163.16	-	246,163.16
106	HARD WORK CONSTRUCTION PAINTING CONTRACTOR CO	-	227,232.17	227,232.17	-	227,232.17
107	SUPRA MULTISERVICES INC	-	226,919.25	226,919.25	-	226,919.25
108	PC LIVE	-	206,785.67	206,785.67	-	206,785.67
109	DJA SECURITY SERVICES INC	-	185,986.90	185,986.90	-	185,986.90
110	CONTINUUM TECHNOLOGY CORPORATION	-	176,785.75	176,785.75	-	176,785.75
111	CAPCON ALUMINUM SPECIALIST INSTALLER	-	153,817.91	153,817.91	-	153,817.91
112	COMBINED BLUE DRAGON SEC SERVICES INC	-	152,801.50	152,801.50	-	152,801.50
113	SAN FERNANDO ELECTRIC LIGHT POWER CO INC	-	142,092.08	142,092.08	-	142,092.08
114	INTEGRATED COMPUTER SYSTEMS INC	-	135,290.25	135,290.25	-	135,290.25
115	ELINE BUILDERS	-	130,043.00	130,043.00	-	130,043.00
116	LEC STEEL MANUFACTURING CORPORATION	-	116,056.83	116,056.83	-	116,056.83
117	HYPERVOLT CONTRACTOR CORPORATION	-	115,595.41	115,595.41	-	115,595.41
118	KARISSA APPAREL INC	-	113,678.66	113,678.66	-	113,678.66
119	ADVANCE MICROSYSTEMS CORP	-	107,670.59	107,670.59	-	107,670.59
120	JRS BUSINESS CORPORATION	-	106,294.32	106,294.32	-	106,294.32

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121	PHILIPPINE AIRLINES INC	-	105,209.66	105,209.66	-	105,209.66
122	MARKFIVE INC	-	96,257.50	96,257.50	-	96,257.50
123	FEDERAL MANAGEMENT AND MAINTENANCE INC	-	93,636.34	93,636.34	-	93,636.34
124	RECO MODELING AGENCY	-	92,783.75	92,783.75	-	92,783.75
125	JOB CLEAN MANPOWER GENERAL SERVICES	-	86,634.16	86,634.16	-	86,634.16
126	FELPORT INTERNATIONAL MARKETING	-	84,821.50	84,821.50	-	84,821.50
127	MANSOR SECURITY AND GENERAL SERVICES	-	83,351.92	83,351.92	-	83,351.92
128	RAPID RADIO COMMUNICATIONS INC	-	83,169.67	83,169.67	-	83,169.67
129	GLASSTECH CORPORATION	-	82,906.75	82,906.75	-	82,906.75
130	FOUR CORNERS TECHNOLOGIES 4CT INC	-	80,357.25	80,357.25	-	80,357.25
131	EDGE OF LIGHT INCORPORATED	-	78,680.00	78,680.00	-	78,680.00
132	MERCATOR MODEL MANAGEMENT INC	-	76,288.83	76,288.83	-	76,288.83
133	SALES DISPLAY CENTER	-	73,660.75	73,660.75	-	73,660.75
134	KIKOMO CAPS	-	72,297.41	72,297.41	-	72,297.41
135	PALADIN PROTECTIVE SECURITY SERVICES INC	-	71,790.17	71,790.17	-	71,790.17
136	JLC CONSTRUCTION	-	71,428.58	71,428.58	-	71,428.58
137	MAXANDREA HOTEL	-	69,517.92	69,517.92	-	69,517.92
138	NET PACIFIC INC	-	62,651.83	62,651.83	-	62,651.83
139	CARPETWORLD MANUFACTURING CORPORATION	-	61,778.67	61,778.67	-	61,778.67
140	TRIPLE 7 MANPOWER SERVICES INC	-	61,746.01	61,746.01	-	61,746.01
141	LM CAMUS ENGINEERING CORPORATION	-	58,066.50	58,066.50	-	58,066.50
142	MEGA CORINTHIANS INTEGRATED SECURITY INC	-	56,030.08	56,030.08	-	56,030.08
143	KENTUCKY FRIED CHICKEN	-	54,446.42	54,446.42	-	54,446.42
144	TARGET DISPLAY CO INC	-	52,487.42	52,487.42	-	52,487.42
145	LAMINWOOD DECO CORPORATION	-	51,128.92	51,128.92	-	51,128.92
146	YATAI INTERNATIONAL CORPORATION	-	51,071.67	51,071.67	-	51,071.67
147	INNOVE COMMUNICATIONS INC	-	50,925.33	50,925.33	-	50,925.33
148	MICROGENESIS BUSINESS SYSTEM	-	50,890.00	50,890.00	-	50,890.00
149	SIMPLY SUMPTUOUS INC	-	49,652.49	49,652.49	-	49,652.49
150	AHENSIYA MODELO INC	-	49,484.68	49,484.68	-	49,484.68
151	CMP FEDERAL SECURITY AGENCY INC	-	48,287.49	48,287.49	-	48,287.49
152	JMD INTERNATIONAL CORPORATION	-	47,142.99	47,142.99	-	47,142.99
153	BLUEFISH DIGITAL MEDIA TECH CORP	-	46,188.51	46,188.51	-	46,188.51
154	GLOBE TELECOM INC	-	45,149.33	45,149.33	-	45,149.33
155	POWER MASTER INC	-	44,867.16	44,867.16	-	44,867.16
156	REMORE CORPORATION	-	44,598.42	44,598.42	-	44,598.42
157	PHILIPPINE GENERAL INSURANCE CORPORATION	-	44,147.42	44,147.42	-	44,147.42
158	CORINTHIANS INTEGRATED SECURITY INC	-	43,908.33	43,908.33	-	43,908.33
159	ENVIRONMENT GENERAL SERVICE INC	-	42,527.00	42,527.00	-	42,527.00
160	LAMBDAN SECURITY AND DETECTIVE AGENCY INC	-	41,922.08	41,922.08	-	41,922.08
161	LYNX SECURITY AND INVESTIGATION AGENCY	-	41,505.25	41,505.25	-	41,505.25

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162	DEFENSE SPECIALIST CORPORATION	-	41,363.83	41,363.83	-	41,363.83
163	ALL AROUND SERVICES AND MERCHANDISING CORP	-	41,081.00	41,081.00	-	41,081.00
164	CARLSON TRADING	-	40,178.74	40,178.74	-	40,178.74
165	ROYAL SECURITY AGENCY INC	-	37,462.91	37,462.91	-	37,462.91
166	FIRESTAR SECURITY AGENCY	-	36,266.33	36,266.33	-	36,266.33
167	DK P MARKETING CORPORATION	-	34,919.82	34,919.82	-	34,919.82
168	STARFORCE SECURITY AND ALLIED SERVICES INC	-	34,823.58	34,823.58	-	34,823.58
169	UYB PRINTING CORPORATION	-	33,928.58	33,928.58	-	33,928.58
170	CEBU PACIFIC AIR	-	33,302.75	33,302.75	-	33,302.75
171	SHELLSOFT TECHNOLOGY CORPORATION	-	31,967.91	31,967.91	-	31,967.91
172	ROYAL MANDAYA HOTEL CORPORATION	-	30,544.84	30,544.84	-	30,544.84
173	PRINCE KURL JUNIOR CORP	-	30,053.66	30,053.66	-	30,053.66
174	ERWIN V BARLETA	-	29,505.67	29,505.67	-	29,505.67
175	3 S INTERNATIONAL FABRICATION CORPORATION	-	28,464.33	28,464.33	-	28,464.33
176	MICA SECURITY AGENCY INC	-	28,184.42	28,184.42	-	28,184.42
177	LOLLIPOP SAFETY BALLOONS CENTER	-	27,196.59	27,196.59	-	27,196.59
178	LEGEND HOTELS INTL CORP	-	27,058.08	27,058.08	-	27,058.08
179	RJC SECURITY AND INVESTIGATION AGENCY INC	-	24,403.17	24,403.17	-	24,403.17
180	ADVANCED DESIGNS PHILIPPINES INC	-	22,875.25	22,875.25	-	22,875.25
181	TOP GLASS AND ALUMINUM CONTRACTOR CORP	-	22,232.33	22,232.33	-	22,232.33
182	LION INTEGRATED SERVICES INC	-	21,722.58	21,722.58	-	21,722.58
183	BEAGLE INVESTIGATIVE DETECTIVE AGENCY INC	-	21,644.66	21,644.66	-	21,644.66
184	DAVAO JANITORIAL ALLIED SERVICES	-	21,270.99	21,270.99	-	21,270.99
185	EDWIN CALINGASAN	-	21,250.17	21,250.17	-	21,250.17
186	KATHERINE L MAGSANOC	-	21,008.42	21,008.42	-	21,008.42
187	MILLGOS SECURITY AGENCY	-	20,894.24	20,894.24	-	20,894.24
188	PLAGATA SECURITY SERVICES AGENCY INC	-	20,698.90	20,698.90	-	20,698.90
189	JBL HYDRAULIC ENTERPRISES	-	20,535.75	20,535.75	-	20,535.75
190	MARSDAN SECURITY AGENCY CORP	-	20,116.58	20,116.58	-	20,116.58
191	CHERUBIM SECURITY PROTECTIVE DETECTIVE AGENCY	-	19,986.07	19,986.07	-	19,986.07
192	PHILCOM CORP	-	19,669.74	19,669.74	-	19,669.74
193	ENGELBERT PHILS INC	-	19,384.08	19,384.08	-	19,384.08
194	DAVAO SECURITY INVESTIGATION AGENCY INC	-	18,811.15	18,811.15	-	18,811.15
195	PACUBAS GENERAL SERVICES	-	18,084.73	18,084.73	-	18,084.73
196	LY ENTERPRISES	-	17,924.16	17,924.16	-	17,924.16
197	BDO1500019222	-	17,857.17	17,857.17	-	17,857.17
198	PRIMER PRINTING INDUSTRIAL SALES	-	16,857.32	16,857.32	-	16,857.32
199	JOLLIBEE FOODS CORP	-	16,322.99	16,322.99	-	16,322.99
200	CEC INDUSTRIES INCORPORATED	-	16,125.33	16,125.33	-	16,125.33
201	NEW DIRECTION INC	-	15,966.92	15,966.92	-	15,966.92
202	ASALUS CORPORATION	-	15,845.58	15,845.58	-	15,845.58

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203	LAMBDAN SECURITY AGENCY INC	-	15,439.75	15,439.75	-	15,439.75
204	STARFORCE SECURITY SERVICES INC	-	15,013.68	15,013.68	-	15,013.68
205	CMP FEDERAL SECURITY AGENCYINC	-	14,704.75	14,704.75	-	14,704.75
206	LEE SONS PRINTING CORP	-	13,750.00	13,750.00	-	13,750.00
207	LA MAJA RICA HOTEL	-	13,637.67	13,637.67	-	13,637.67
208	MEDICARD PHILIPPINES INC	-	12,595.42	12,595.42	-	12,595.42
209	PROTECTION TECHNOLOGY INC	-	12,500.09	12,500.09	-	12,500.09
210	ACTIVE TRAVEL TOURS INC	-	11,942.09	11,942.09	-	11,942.09
211	DMB FIRE SAFETY ENTERPRISES	-	11,795.50	11,795.50	-	11,795.50
212	NEW MABUHAY INTERNATIONAL SECURITY AGENCY GENERA	-	11,652.42	11,652.42	-	11,652.42
213	SF ALLIED INDUSTRIAL PRODUCTS	-	11,294.75	11,294.75	-	11,294.75
214	RTL INDL SALES	-	11,209.83	11,209.83	-	11,209.83
215	BDO INSURANCE BROKERS INC	-	10,800.00	10,800.00	-	10,800.00
216	DEXTERTON CORPORATION	-	10,767.91	10,767.91	-	10,767.91
217	THE SYLVIA MANOR SS	-	10,612.75	10,612.75	-	10,612.75
218	LABELLINE ENTERPRISES	-	10,312.59	10,312.59	-	10,312.59
219	LUNA PROMOTIONS AND TALENTS MANAGEMENT SERVICES	-	10,000.00	10,000.00	-	10,000.00
220	EAGLEMATRIX SECURITY AGENCY INC	-	9,975.08	9,975.08	-	9,975.08
221	FORMS INTERNATIONAL ENTERPRISES CORP	-	9,732.17	9,732.17	-	9,732.17
222	AD STYLE SIGNAGES MARKETING	-	9,696.50	9,696.50	-	9,696.50
223	DEFENSE SPECIALIST CORPORATION	-	9,616.16	9,616.16	-	9,616.16
224	SHERCON BUILDERS	-	8,929.08	8,929.08	-	8,929.08
225	SAGITTARIUS SECURITY AGENCY	-	8,412.67	8,412.67	-	8,412.67
226	NATIONAL BOOK STORE	-	8,024.51	8,024.51	-	8,024.51
227	ROBUST SECURITY CORPORATION	-	7,990.17	7,990.17	-	7,990.17
228	TRITONICS COMPUTER SERVICES	-	7,611.66	7,611.66	-	7,611.66
229	RIBBONAIRE ENTERPRISES	-	7,351.82	7,351.82	-	7,351.82
230	AC HOTEL CORPORATION	-	7,312.50	7,312.50	-	7,312.50
231	BJK ALUMINUM TRADING SERVICES	-	7,155.58	7,155.58	-	7,155.58
232	VALUE PLUS BUSINESS INNOVATION	-	7,143.00	7,143.00	-	7,143.00
233	FIRETRON SAFETY SYSTEM	-	6,482.34	6,482.34	-	6,482.34
234	SUPERVALUE INC FAO L O ARGANDA	-	6,401.00	6,401.00	-	6,401.00
235	HOTEL GRACELANE	-	6,112.49	6,112.49	-	6,112.49
236	UNICOM COMPUTER STORE	-	6,026.83	6,026.83	-	6,026.83
237	EM ZALAMEA ACTUARIAL SERVICES INC	-	6,000.00	6,000.00	-	6,000.00
238	AVESCO MARKETING CORPORATION	-	5,915.25	5,915.25	-	5,915.25
239	GAMMA DESIGN CENTER	-	5,500.09	5,500.09	-	5,500.09
240	VENIZ HOTEL CORPORATION	-	5,480.42	5,480.42	-	5,480.42
241	RKJ GENERAL SERVICES SALES INC	-	5,382.09	5,382.09	-	5,382.09
242	KINGS ROYAL HOTEL AND LEISURE PARK CORP	-	5,357.17	5,357.17	-	5,357.17
243	SEAGULL ENTERPRISES	-	5,271.58	5,271.58	-	5,271.58

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Seq. No.	Supplier Name	Per SLS of Third Party	Per SMC's SLP	TPI's SLS > SMC's SLP	Less: BIR Adjustment (Submitted Documents & Purchases Allowed	Over-claimed
244	OASIS HOTEL	-	5,107.16	5,107.16	-	5,107.16
245	BORCEL TRANSPORT SERVICES	-	4,980.33	4,980.33	-	4,980.33
246	HERMACO COMMERCIAL	-	4,812.50	4,812.50	-	4,812.50
247	CHANG JIN PHILS INC	-	4,596.08	4,596.08	-	4,596.08
248	LIPA CITY TOURIST DEVELOPMENT CORP	-	4,553.66	4,553.66	-	4,553.66
249	HARBORTOWN HOTEL MGT CORPORATION	-	4,303.58	4,303.58	-	4,303.58
250	EVERGREEN MANUFACTURING CORPORATION	-	4,285.75	4,285.75	-	4,285.75
251	HAPPY HOME REPUBLIC RETAILERS INC	-	4,071.50	4,071.50	-	4,071.50
252	JAMC MARKETING INC	-	4,018.00	4,018.00	-	4,018.00
253	ANTENOR SIGNS SERVICES	-	4,017.92	4,017.92	-	4,017.92
254	BATANGAS CITY REAL HOTEL CORPORATION	-	3,928.67	3,928.67	-	3,928.67
255	ACRE AIRCONDITIONING SPECIALISTS INC	-	3,873.25	3,873.25	-	3,873.25
256	EL CIELITO INN BAGUIO	-	3,675.00	3,675.00	-	3,675.00
257	BUSINESS INN	-	3,629.58	3,629.58	-	3,629.58
258	PERMAR INDUSTRIES	-	3,535.74	3,535.74	-	3,535.74
259	ROBERT C SAQUIAN	-	3,526.83	3,526.83	-	3,526.83
260	SPARK LINES SERVICES INCORPORATED	-	3,453.92	3,453.92	-	3,453.92
261	LBC PRINTING PRESS	-	3,186.42	3,186.42	-	3,186.42
262	THE WORLDWIDE LIFESTYLE TIMEPIECES INC	-	2,982.17	2,982.17	-	2,982.17
263	SIMPLY SUMPTOUS INC	-	2,952.67	2,952.67	-	2,952.67
264	LOCKHEART MANAGEMENT DEVELOPMENT	-	2,857.17	2,857.17	-	2,857.17
265	SYSTEM PRODUCTS AND INDUSTRIAL	-	2,857.17	2,857.17	-	2,857.17
266	OCANA HOLDINGS INCORPORATED	-	2,767.92	2,767.92	-	2,767.92
267	FUMACO INC	-	2,742.92	2,742.92	-	2,742.92
268	SPARK GRAPHICS INC	-	2,489.83	2,489.83	-	2,489.83
269	LUISITA CENTRAL PARK HOTEL INC	-	2,464.33	2,464.33	-	2,464.33
270	SHEENA LEIGH G MANALESE	-	2,258.00	2,258.00	-	2,258.00
271	ABUEME GENERAL MERCHANDISE	-	2,232.17	2,232.17	-	2,232.17
272	GRACIOUS HOTEL ANGELI	-	2,142.92	2,142.92	-	2,142.92
273	DC SALONGA INTERIORS CONSTRUCTION	-	1,964.33	1,964.33	-	1,964.33
274	PURITAN INDUSTRIAL SECURITY AGENCY CORP	-	1,963.83	1,963.83	-	1,963.83
275	CEASEFIRE INDUSTRIAL SALES AND SERVICES	-	1,785.75	1,785.75	-	1,785.75
276	HOLLAND BLOOM FLOWER SHOP	-	1,785.75	1,785.75	-	1,785.75
277	NATIONAL ELECTRICAL SUPPLY HARDWARE	-	1,722.16	1,722.16	-	1,722.16
278	PURITY PAPER INC	-	1,714.33	1,714.33	-	1,714.33
279	CHAIN MARKETING CORP	-	1,651.83	1,651.83	-	1,651.83
280	MANG INASAL RESTAURANT	-	1,650.00	1,650.00	-	1,650.00
281	ILOILO BUSINESS HOTEL	-	1,428.58	1,428.58	-	1,428.58
282	ALAS SECURITY SERVICES INC	-	1,231.42	1,231.42	-	1,231.42
283	SELECTIVE SECURITY SERVICES INC	-	1,229.25	1,229.25	-	1,229.25
284	MP ANALYSIS AND LABORATORY INC	-	1,178.58	1,178.58	-	1,178.58

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Seq. No.	Supplier Name	Per SLS of Third Party	Per SMC's SLP	TPI's SLS > SMC's SLP	Less: BIR Adjustment (Submitted Documents & Purchases Allowed	Over-claimed
285	PHILAM INSURANCE COMPANY INC	-	1,156.00	1,156.00	-	1,156.00
286	ALPA ASIA HOTELS RESORTS INC	-	982.17	982.17	-	982.17
287	MRJJ ENTERPRISES INC	-	982.17	982.17	-	982.17
288	BOUNTY AGRO VENTURES INC	-	798.25	798.25	-	798.25
289	HTM LUNCHEONETTE	-	750	750	-	750
290	JAX LIGHTING INDUSTRIES COMPANY	-	625	625	-	625
291	MEGATRADE INDUSTRIAL CONSTRUCTION SUPPLY	-	607.17	607.17	-	607.17
292	TIMES TRADING COMPANY INCORPORATED	-	589.33	589.33	-	589.33
293	ADVANCE MICROSYSTEMS CORP	-	586.58	586.58	-	586.58
294	TPT FOOD UNLIMITED	-	557.16	557.16	-	557.16
295	CEDAR SCIENTIFIC CLINICAL LABORATORY	-	535.75	535.75	-	535.75
296	BPIMS INSURANCE CORP	-	449.66	449.66	-	449.66
297	JAPAN HOMES INC	-	392.83	392.83	-	392.83
298	GLASS TECH COMPANY	-	308.92	308.92	-	308.92
299	FSR SECURITY GENERAL SERVICES	-	227	227	-	227
300	NS OCANA INC	-	207.75	207.75	-	207.75
301	FEDERAL PHOENIX ASSURANCE CO INC	-	127.42	127.42	-	127.42
302	INNOVATRONIX INC	-	116.08	116.08	-	116.08
303	CITIHARDWARE GENSAN INC	-	97.75	97.75	-	97.75
304	PHILIPPINE SEVERAL CORP	-	58	58	-	58
305	HEAVENLY STITCHIN MOMENT CO	-	44.67	44.67	-	44.67
306	ILOILO INTERNATIONAL BOOKS MAGAZINE	-	42.5	42.5	-	42.5
307	EXPRESSION STATIONERY SHOP INC	-	36.17	36.17	-	36.17
308	MERCURY DRUG	-	23.42	23.42	-	23.42
309	PHILCOPY CORPORATION	-	8.92	8.92	-	8.92
310	DC SALONGA INTERIORS CONSTRUCTION	-	1,522,173.00	1,522,173.00	1,522,173.00	-
311	VISUAL COLOR INC	-	-0.5	-0.5	-	-0.5
312	PRIMELINE PRODUCTS PHILIPPINES INCORPORATED	-	-23.25	-23.25	-	-23.25
313	FUNTASTIC INTERNATIONAL INCORPORATED	-	-52.75	-52.75	-	-52.75
314	RAINBOW WORLD FASHION SQUARE CORP	-	-67.92	-67.92	-	-67.92
315	WILSON ENTERPRISES	-	-75	-75	-	-75
316	KSJ INTERNATIONAL INCORPORATED	-	-178.58	-178.58	-	-178.58
317	PLANET CLASSIC CORPORATION	-	-187.5	-187.5	-	-187.5
318	GOLDEN KITE MARKETING	-	-257.17	-257.17	-	-257.17
319	ROYAL SPIRIT MKTG	-	-276.83	-276.83	-	-276.83
320	EAST LIFE TRADING Total	-	-286.67	-286.67	-	-286.67
321	UNCLE COTTAGE INDUSTRIES	-	-300.92	-300.92	-	-300.92
322	4R EXPORTIMPORT Total	-	-495.58	-495.58	-	-495.58
323	JC FASHION INC	-	-750.08	-750.08	-	-750.08
324	JAKE COMMERCIAL INCORPORATED	-	-1,063.51	-1,063.51	-	-1,063.51
325	SOURCES FUND - C/O MRS ORA	-	-1,125.08	-1,125.08	-	-1,125.08
326	NATANIA ENTERPRISES INCORPORATED	-	-2,071.67	-2,071.67	-	-2,071.67
327	CITIMODA TRADING CORPORATION Total	-	-2,178.75	-2,178.75	-	-2,178.75

Seq. No.	Supplier Name	Per SLS of Third Party	Per SMC's SLP	TPI's SLS > SMC's SLP	Less: BIR Adjustment (Submitted Documents & Purchases Allowed	Over-claimed
328	ROMCO ENTERPRISES	-	-3,714.50	-3,714.50	-	-3,714.50
329	CK FASHION COLLECTION CORP Total	-	-4,678.76	-4,678.76	-	-4,678.76
330	WILBORO MARKETING	-	-5,299.41	-5,299.41	-	-5,299.41
331	BAVRAM TRADING INTERNATIONAL INCORPORATED Total	-	-8,103.00	-8,103.00	-	-8,103.00
332	FOREVER 21 PHILIPPINES INC	-	-13,199.50	-13,199.50	-	-13,199.50
333	NOVELTY SPECIALIST INC Total	-	-13,964.33	-13,964.33	-	-13,964.33
334	FRENS CAR CARE SALES CENTER	-	-20,267.84	-20,267.84	-	-20,267.84
335	RAMCOLE INC	-	-45,473.99	-45,473.99	-	-45,473.99
336	AVANTGARD SHOPPING CORP Total	-	-47,652.85	-47,652.85	-	-47,652.85
337	ACE HARDWARE PHILIPPINES INC	-	401,389.74	401,389.74	-	401,389.74
338	MAJOR SHOPPING MANAGEMENT CORP	-	222,789.66	222,789.66	-	222,789.66
339	SODEXHO PASS INC	-	156,992.74	156,992.74	-	156,992.74
340	STAR APPLIANCE CENTER INC -BACOLOD -PCF	-	133,936.83	133,936.83	-	133,936.83
341	MERIDIEN BUSINESS LEADER INC	-	95,247.83	95,247.83	-	95,247.83
342	MARKET STRATEGIC FIRM INC SUCAT	-	82,710.51	82,710.51	-	82,710.51
343	MANDURRIAO STAR INC SM BICUTAN	-	64,024.24	64,024.24	-	64,024.24
344	MAINSTREAM BUSINESS INC SM BACOLOD	-	58,831.85	58,831.85	-	58,831.85
345	MANDURRIAO STAR INC SAN LAZARO	-	58,628.41	58,628.41	-	58,628.41
346	MADISON SHOPPING PLAZA INC SM TAYTAY	-	49,716.08	49,716.08	-	49,716.08
347	MANILA SOUTHERN ASSOCIATES INC MARILAO	-	40,535.60	40,535.60	-	40,535.60
348	MADISON SHOPPING PLAZA INC SM CAGAYAN DE ORO	-	35,147.16	35,147.16	-	35,147.16
349	METRO MAIN STAR ASIA CORP SM BAY CITY	-	32,105.09	32,105.09	-	32,105.09
350	SUPER VALUE INC	-	25,490.57	25,490.57	-	25,490.57
351	MANDURRIAO STAR INC SM MARIKINA	-	22,318.09	22,318.09	-	22,318.09
352	METRO MANILA SHOPPING MECCA CORPSTA ROSA	-	19,166.50	19,166.50	-	19,166.50
353	SUPER SHOPPING MARKET INC	-	6,637.59	6,637.59	-	6,637.59
354	MERCANTILE STORES GROUP INC DASMARINAS	-	5,649.67	5,649.67	-	5,649.67
355	INTERNATIONAL TOYWORLD INC	-	2,267.92	2,267.92	-	2,267.92
356	MERCANTILE STORES GROUP INC SM CLARK	-	2,177.15	2,177.15	-	2,177.15
357	WATSONS PERSONAL CARE STORES PHIL I	-	2,161.25	2,161.25	-	2,161.25
358	SUPER SHOPPING MARKET INC	-	1,872.51	1,872.51	-	1,872.51
359	SHOPPING CENTER MGT CORP	-	1,441.66	1,441.66	-	1,441.66
360	MAINSTREAM BUSINESS INC BAGUIO	-	849.42	849.42	-	849.42
361	MINDANAO SHOPPING DESTINATION CORP	-	788.08	788.08	-	788.08
362	SURPLUS MARKETING CORPORATION	-	604.17	604.17	-	604.17
363	MARKET STRATEGIC FIRM INC	-	128.17	128.17	-	128.17
Sub-total – Non-trade Suppliers		155,635,320.72	183,227,505.15	27,592,184.43	138,815,867.50	-111,223,683.07
Grand Total		P322,686,835.21	P775,169,614.38	P452,482,779.17	P138,815,867.50	P313,666,911.67
Less: adjustment from BIR						-1,717,258.60
Grand Total		**P322,686,835.21**	**P775,169,614.38**	**P452,482,779.17**	**P138,815,867.50**	**P311,949,653.07**

We uphold the findings of the ICPA that only 45 out of the 363 suppliers or 12.40% in percentage, of the total number of petitioner's suppliers were captured in the TPI data of the BIR. With respect to the other 318 suppliers, representing 87.60% of the total, there is no showing that the same were reported or have available TPI data. In this case, respondent's assessment arose from a presumption that the discrepancy were all inexistent purchases.

The three (3) elements for the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.[56] Income tax is assessed on income received from any property, activity or service.[57] Such being the case, in the imposition or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer.

Accordingly, the Court finds that the assessment was based merely on an unverified, undeclared purchases of petitioner. The records of the case are bereft of any showing that respondent verified or confirmed the amounts from the purported third-party information. Without such confirmation or any other satisfactory supporting documents, the subject undeclared purchases data is doubtful, inconclusive and unreliable.

Contrary to respondent's stance, petitioner was able to obtain confirmation certificates,[58] as well as invoices, official receipts and other documents[59] issued by its suppliers confirming their sale of goods or services to petitioner for TY 2010, which further supports petitioner's claim of legitimacy of its recorded purchases.

Upon review and verification of the purchases reflected in petitioner's SLP for the TY 2010, petitioner's purchase transactions are actual and are duly supported by pertinent documents. Thus, the Court finds that the assessment of deficiency income tax amounting to ₱199,443,221.84 arising from the alleged undeclared purchases is unwarranted.

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[56] *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[57] Supra.
[58] Exhibits "P-46" to "P-46-15".
[59] Exhibits "P-47" to "P-47-308.18.

A.1.2 Gross income per book vs. Income Tax Return (ITR) - ₱5,566,488.79.

Anent this item, the alleged difference arose between a comparison made by respondent of the sales in petitioner's SLS vis-à-vis the sales and other income per petitioner's ITR in the amount of ₱5,566,488.79, consisting of the following:

Discount Fees (a)	₱5,566,318.00
Excess of sales per book over sales per VAT returns (b)	170.79
Total difference	₱5,566,488.79

With regard to ***(a) Discount Fees***, petitioner alleges that discount fees amounting to ₱5,566,318.00 represent discounts given by the petitioner to credit card companies for the latter's payment or settlement of credit card transactions of their cardholders; That discounts were not granted and not indicated in the tape receipts at the time of sale but were deducted from the credit card company's credit card settlement payments; That for income tax purposes the said discounts fees are valid deductible business expense but are not deductible for VAT purposes.

Petitioner's argument deserves scant consideration.

To refute the assessment, petitioner submitted documents such as Merchant Agreement, Memorandum of Agreement, Promotion Announcement[60] and Schedule of sales discount generated from the general ledger[61]. The Court finds that the said documents are not sufficient for the Court to ascertain and confirm, if indeed, discounts were actually granted to its customers. Thus, this assessment shall remain.

With respect to ***(b) Excess of sales per book over sales per VAT returns***, the noted difference of ₱170.79 constitutes undeclared sales by the petitioner and thus, should be subjected to income tax.

A.2 Disallowed Sales Returns and Allowances - ₱8,550,666.00

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[60] Exhibits "P-48" to "P-48.6"
[61] Exhibits "P-51-2"; "P-51-2.1" to "P-51-2.12"

Respondent's verification of petitioner's documents disclosed that the amount claimed for sales return and allowances amounting to ₱8,550,666.00 was not properly documented. Hence, must allegedly be disallowed pursuant to Section 34 (A) (1) b of the NIRC, as amended, which states that "No deduction from gross income shall be allowed unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records."

The composition of the sales returns and discounts is as follows:

Description	Amount
Discount fees (a)	₱5,566,318.00
Sales Discount (b)	2,984,349.00
Total	**₱8,550,667.00**

With respect to ***(a) Discount Fees***, petitioner reiterates that these represent discounts given to credit card companies for the latter's payment or settlement of credit card transactions of their cardholders; That said discounts are not granted and indicated in the tape receipts at the time of sale; That said discount fees are valid deduction for income tax purposes, however, is non-deductible for purposes of computing the 12% VAT sales.

As per petitioner's books of accounts, separate general ledger codes/ accounts, it appears that Discount Fees have been reflected with total amount of ₱5,566,318.00, briefly summarized as follows:

GL Number	Description	Amount
4030100	Discount Fees – Bankcard	₱ 3,882,996.00
4030200	Discount Fees - SM (In-House Card)	177,395.00
4030300	Discount Fees – SMAC	1,256,112.00
4030400	Discount Fees – Sodexho	236,562.00
4030500	Discount Fees – Others	(33.00)
4033010	Gift Card - MCI	13,284.00
Total		**₱ 5,566,318.00**

In the schedule of sales discount generated from the General Ledger (GL)[62], the Court finds that the above GL account numbers representing discount fees cannot be traced in the submitted extracted general ledger. Hence, the Court cannot determine whether such discount fees were granted to its customers. Thus, this assessment shall remain.

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[62] Exhibits "P-51-2"; "P-51-2.1" to "P-51-2.12"

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On the other hand, petitioner alleges that ***(b) sales discount*** amounting to ₱2,984,349.00, represents discounts given to the customers which have been given at the time of sale and property indicated in the sales invoice; That these are valid deduction in the computation of the sales for ITR purposes, as well as, vatable base in conformity with Sec. 106 of the NIRC of 1997, as amended.

Upon verification of petitioner's books of accounts, separate general ledger accounts, it appears that Sales Discounts have been reflected with a total amount of ₱2,984,349.00, broken down as follows:

GL Number	Description	Amount
4031110	Sales Discount - Outright Promo	₱1,882,794.00
4031120	Sales Discount - Outright Non-Promo	278,653.00
4131140	Sales Discount - Outright Wholesale	822,233.00
4032100	Sales Returns – Outright	669.00
Total		**₱2,984,349.00**

Further perusal of petitioner's schedule of sales discount generated from the general ledger[63], the Court finds that the above-listed accounts are traceable to the extracted general ledger, thereby validly supporting petitioner's claim. Therefore, this assessment must be cancelled.

A.3 Disallowed Expenses - ₱27,724,704.62

In the FDDA, respondent found petitioner liable for disallowed expenses in the total amount of ₱27,724,704.62 noting that some expenses were not supported. Thus, the said amount was disallowed as deductible expense for income tax purposes. Below is the list of these expenses and the amount of transaction:

Nature of expense	Amount
Advertising expense (a)	₱6,351,858.62
Depreciation (b)	21,372,846.00
Total	**₱27,724,704.62**

Petitioner contests the above assessment and argues that the expenses should not be disallowed because these are valid expenses and are duly supported by official receipts and/or sales invoices.

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63 Exhibits "P-51-1" to "P-51-1.1".

With regard to ***(a) Advertising Expenses***, records show that the advertising expense incurred or paid by petitioner pertains to the various display expenses, namely: the indoor and outdoor signages, stickers for the package counter, tarpaulins and billboards for the promotion of new and sale product and merchandise. Below is the breakdown of the said advertising expenses with its corresponding suppliers:

Supplier	Amount	Exhibit
Philippine Daily Inquirer	1,150,384.57	"P-47-212"
Philstar Daily	1,060,466.58	"P-47-213"
Mad888	820,564.30	"P-47-163"
Summit Publishing	573,264.25	"P-47-264"
Adfolio Advertising	524,424.76	"P-47-9"
ABS-CBN Publishing	450,816.80	"P-47-3"
Printing Excellence	347,357.72	"P-47-220"
Shutterbug	259,523.78	"P-47-248"
Ideal People Model	239,175.17	"P-47-122"
WPP Marketing	119,487.21	"P-47-295"
Markfive Inc.	96,257.29	"P-47-178"
Innomark Distributors	94,812.54	"P-47-125"
Color Commercial	73,269.63	"P-47-57"
SM Mart Inc.	54,789.60	"P-47-251"
Michael De Guzman	47,058.82	"P-47-193"
Erwin Barleta	46,588.23	"P-47-89"
Bluefish Digital	46,188.04	"P-47-40"
Reco Modelling Agency	46,048.06	"P-47-228"
Katherine Magsanoc	44,537.81	"P-47-143"
Mercator Model Management	43,298.96	"P-47-187"
Chameleon Medelling Agency	35,294.12	"P-47-51"
Lollipop Safety Balloons	27,196.41	"P-47-158"
Cherry Anne Uy	20,588.22	"P-47-52"
Mellimeter Design	19,000.00	"P-47-196"
New Directions Inc.	15,966.78	"P-47-200"
Space World Corporation	14,499.99	"P-47-256"
Prime Spots Inc.	13,392.83	"P-47-217"
Label Line Enterprises	9,821.41	"P-47-147"
Accurate Printing	9,486.60	"P-47-4"
ECL Make up Industry	7,023.81	
Prince Kurl Junior Corp	5,428.57	
Victoriano Gozano	5,294.11	"P-47-288"
First Asia Realty	250.00	"P-47-301"
Others	30,301.64	
Total	**6,351,858.62**	

However, upon verification and scrutiny of the above transactions, it appears that only advertising expenses amounting to

₱4,462,081.47 are duly supported by proper documents, while there is a difference of ₱1,889,777.15 that must be disallowed for the following reasons, to wit:

Supplier	Amount	Exhibit
Philippine Daily Inquirer	676,327.87	"P-47-212.1 - 8"
Philstar Daily	806,797.13	"P-47-213.1 - 9"
Mad888	820,564.30	"P-47-163.1 - 55"
Summit Publishing	573,264.25	"P-47-264.1 - 7"
Adfolio Advertising	304,144.20	"P-47-9.1 - 19"
ABS-CBN Publishing	285,884.00	"P-47-3.1 - 4"
Printing Excellence	347,357.72	"P-47-220.1 - 33"
Shutterbug	242,857.14	"P-47-248.1 - 6"
Ideal People Model	Supported by Billing Invoice	"P-47-122.1 - 9"
WPP Marketing	119,487.21	"P-47-295.1 - 24"
Markfive Inc.	32,989.69	"P-47-178.1"
Innomark Distributors	2,169.64	"P-47-125.1 - 2"
Color Commercial	67,562.50	"P-47-57,1 - 3"
SM Mart Inc.	Supported by Statement of Account	"P-47-251.1 - 8"
Michael De Guzman	dSupported by Billing Invoice	"P-47-193.1 - 2"
Erwin Barleta	Supported by Statement of Account	"P-47-89.1 - 3"
Bluefish Digital	35,308.85	"P-47-40.1 - 9"
Reco Modelling Agency	Supported by Billing Invoice	"P-47-228.1 - 3"
Katherine Magsanoc	Supported by Billing Statement	"P-47-143.1"
Mercator Model Management	72,000.00	"P-47-187.1 - 3"
Chameleon Medelling Agency	Supported by Billing Statement	"P-47-51.1 - 2"
Lollipop Safety Balloons	27,196.43	"P-47-158.1 - 3"
Cherry Anne Uy	Supported by Billing Statement	"P-47-52.1 - 2"
Mellimeter Design	19,000.00	"P-47-196.3"
New Directions Inc.	Supported by Billing Invoice	"P-47-200.1"
Space World Corporation	Invoice without signature	"P-47-256.1 - 2"
Prime Spots Inc.	8,928.58	"P-47-217.1 - 2"
Label Line Enterprises	14,300.00	"P-47-147.1 - 4"
Accurate Printing	5,691.96	"P-47-4.1 - 3"
ECL Make up Industry	Without Documents	
Prince Kurl Junior Corp	Without Documents	
Victoriano Gozano		"P-47-288.1"
First Asia Realty	250.00	"P-47-301"
Others	Without Documents	
Total	**4,462,081.47**	

Therefore, the Court finds that this assessment item must be cancelled partially. The disallowed advertising expenses shall be modified and reduced to **₱1,889,777.15** (₱6,351,858.62 less ₱4,462,081.47), which shall remain.

With respect to ***(b) Depreciation expenses*** in the amount of ₱21,372,846.00, the Court finds that petitioner was able to establish the validity and reasonableness of the claimed depreciation expenses by presenting Lapsing Schedule of Property and Equipment as well as the Lapsing Schedule of Fixed Assets Acquired Year 2010[64] which was reconciled with the Audited Financial Statements of the petitioner for the year 2010.[65] Hence, this assessment shall be cancelled.

A.4 Disallowed Expenses for Non-withholding of Tax - ₱10,373,770.33

In the FLD, respondent made a comparison of the purchase of goods and services reported in petitioner's ITR and Financial Statement (FS) against the income payments reflected in the alphalist per 1604E, which resulted to an alleged difference of ₱10,373,770.33. The said difference was construed as purchases not subject to EWT by petitioner, thus, disallowed as deductible expense for IT purpose and was assessed deficiency 30% IT, details of which are as follows:

Account	Per ITR/FS	Per 1604E	Difference
(A) Purchases	628,676,516.93	627,223,616.00	1,452,900.93
(B)Contractors	77,408,462.75	69,048,317.50	8,360,145.25
(C)Rent Expense	109,135,101.00	108,901,376.40	233,724.60
(D)Management Fees	10,790,329.14	10,463,329.59	326,999.55
TOTAL	**826,010,409.62**	**815,636,639.49**	**10,373,770.13**

A. *Purchases subject to 1% EWT – ₱1,452,900.93*

Allegedly, the following purchases were not subjected to 1% EWT :

Purchases of materials per vat returns **(a.1)**	₱619,735,428.50
Fuel and Oil	292,694.00
Office supplies	3,679,448.00
Addition to PPE 9Note 7 f/s)-465	
Leasehold Improvement	1,096,872.75
Data Processing Equipment	1,162,056.00

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[64] Exhibit "P-53".
[65] Exhibit "P-55".

Furniture and Fixtures	766,332.00
Store and Office Equipment	1,274,781.00
Repairs and Maintenance	668,905.00
TOTAL	628,676,517.25
Less: Income payments subjected to 1% EWT	627,223,616.00
DISCREPANCY	**₱1,452,901.25**

a.1 Purchases of Materials – ₱619,735,428.50

The above alleged purchases of materials used by petitioner are composed of the following:

Per VAT return:	
1st quarter[66]	₱142,194,459.84
2nd quarter[67]	126,084,490.84
3rd quarter[68]	136,112,237.83
4th quarter[69]	215,344,240.25
Total	**₱619,735,428.76**

Petitioner contends that respondent considered the total amount of purchase of goods per VAT return. It should be taken into consideration that the purchases per VAT returns reflect all the purchases incurred by the company for the taxable year including fuel and oil and office supplies, which were separately assumed in the assessment.

After careful examination, records reveal that the correct amount of net purchases of goods related to cost of sales should be ₱618,282,527.84 based on the data reflected in petitioner's audited financial statements, as follows:

Cost of Sales[70]	₱602,440,285.84
Add: Ending Inventory[71]	176,912,736.00
Goods available for sale	779,353,021.84
Less: Beginning Inventory[72]	161,070,494.00
Purchases	**₱618,282,527.84**

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[66] Exhibit "P-56-1".
[67] Exhibit "P-56-2".
[68] Exhibit "P-56-3".
[69] Exhibit "P-56-4".
[70] Exhibit "P-55", Statement of Comprehensive Income.
[71] Exhibit "P-55", Statement of Financial Position 2010.
[72] Exhibit "P-55", Statement of Financial Position 2009.

From the foregoing, petitioner had properly withheld 1% EWT from all of its purchases of goods. Hence, the assessment will be cancelled, with details as follows:

Purchase of materials per F/S **(a.1)**	₱618,282,587.84
Fuel and Oil	292,694.00
Office Supplies	3,679,448.00
Addition to PPE (Note 7 FS)	
Leasehold Improvement	1,096,873.00
Data Processing Equipment	1,162,056.00
Furnitures and Fixtures	766,332.00
Store and Office Equipment	1,274,781.00
Repairs and Maintenance	668,905.00
TOTAL	627,223,676.84
Less: Income payments subjected to 1% EWT	627,223,616.00
DISCREPANCY	**₱60.84**[73]

B. *Contractors subject to 2% EWT - ₱8,360,145.00*

With regard to this item, the following are the income payments to contractors that were allegedly not subjected to 2% EWT, to wit:

Interest expense/Finance charge **(b.1)**	₱3,106,651.00
Janitorial and messengerial services	1,599,757.00
Outside Services	2,130,640.00
Advertising and promotions **(b.2)**	6,010,851.86
Communication, light and travel	43,445,324.00
Miscellaneous	92,713.00
Handling and delivery charges	2,916,777.00
Other charges **(b.3)**	1,948,288.00
Repairs and maintenance	2,330,535.32
Security services	1,014,538.12
Insurance expense	818,012.00
Representation expense **(b.4)**	1,033,958.00
Transportation expense **(b.5)**	1,818,028.00
Leasehold Improvement	9,142,389.00
Total	77,408,463.00
Less: Income payment per 1604E	69,048,317.00
Difference	**₱8,360,145.00**

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[73] The discrepancy of ₱60.84 is immaterial and will not affect the assessment.

b.1) Interest Expense/Finance Charge – ₱3,106,651.00

Anent this item, the Court finds that this assessment must remain because no documents were presented to refute this assessment.

b.2) Advertising and Promotions – ₱6,010,851.86

Petitioner argues that the advertising expenses reflected in its FS or ITR include not only income payment that are subject to 2% EWT but also items which are subject to 15% EWT and exempt from EWT, with details as follows:

Description	Amount	Exempt	2%
Marketing – Display	₱140,666.53		₱140,666.53
Marketing – Publicity	250,587.35		250,587.35
Marketing – Newspaper	1,235,782.28	1,235,782.28	-
Marketing – Others	4,897,333.44		4,221,457.30
Less: subject to 15%	-675,876.14		-
Marketing – Recruitment	125,370.00		125,370.00
Marketing TV Ads - Production Cost	13,787.98		13,787.98
Marketing - GWP, PWP AND Giveaways	23,201.21		23,201.21
Total	**₱6,010,851.86**	**₱1,235,782.25**	**₱4,775,070.37**

Furthermore, petitioner contends that the advertising expense of ₱1,235,782.28 represents payment to Media for advertisement in newspaper of general circulation which is exempt from EWT pursuant to Section 2.57.2 of Revenue Regulations (RR) No. 2-98.[74]

A perusal of the records show that petitioner only submitted a schedule of Marketing-Newspaper account[75] and not the actual general ledger with account number 6009090 or documents such as invoices/official receipts. Mere schedule is not sufficient to refute the assessment. Hence the assessment must be sustained.

As to Marketing-Others account amounting to ₱675,876.14, petitioner claims that the same was already subjected to 15% EWT under Professional Fees account. However, petitioner failed to provide documents to prove the same. Thus, the assessment on

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[74] "SECTION. 2.57.2 – *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* –

xxx xxx xxx

(E) Income payments to certain contractors – xxx

(4) Other contractors –

xxx xxx xxx

(h) Advertising agencies, exclusive of gross payments to media;

[75]Exhibit "P-57".

NO

Advertising and Promotions amounting to ₱6,010,851.86 must remain.

b.3) Other Charges – ₱1,948,288.00

Petitioner alleges that the Interest Expense/Finance Charge that was reflected in its audited FS amounting to ₱3,106,651.00[76] already includes the Other Charges of ₱1,948,288.00. However, a perusal of petitioner's 2010 Statement of Comprehensive Income and Notes to Financial Statements No. 8,[77] show that it is not indicated therein, whether "Other Charges of ₱1,948,288.00" was included in the Finance Charges account. Hence, the assessment shall remain.

b.4) Representation Expense – ₱1,033,958.00

Petitioner contends that the representation expense of ₱1,033,958.00 refers to the reimbursement of various expenses made to its employees which were incurred in pursuit of its business, and that reimbursement-of-cost are not considered as income payment and hence, not subject to EWT.

However, the Court finds that petitioner did not submit supporting documents for the Court to validate whether these expenses are indeed representation expenses, not subject to 2% EWT. Hence, this assessment shall remain.

b.5) Transportation and Travel – ₱1,818,028.00

On this item, petitioner contends that the transportation expense of ₱1,818,028.00, which was assessed by respondent as subject to 2%, includes income payments which are exempt from EWT amounting to ₱202,319.09, which represents Per Diem Allowance account, to wit:

Description	Amount	Exempt	2%
T and T Local – Airfare	P164,087.86	-	P164,087.86
T and T Local - Hotel Accommodation	271,202.94	-	271,202.94
T and T Local - Per Diem Allowance	202,319.09	202,319.09	-
T and T Local – Others	627,729.33	-	627,729.33

[76] Exhibit "P-55", 2010 Statement of Comprehensive Income.
[77] Exhibit "P-55".

Transportation and Travel - Corp.	552,689.26	-	552,689.26
Total	**P1,818,028.48**	**P202,319.09**	**P1,615,709.39**

Records show that petitioner only submitted its Policy of Per Diem Allowance[78] which the Court finds as insufficient proof that Per Diem Allowance was given to its employees. Hence, must be sustained.

C. *Rent expense subject to 5% EWT - ₱233,724.60*

Anent this item, the Court finds that the difference of rent expense amounting to ₱233,724.60 is a valid assessment upon examination of rent expense account per Financial Statement and BIR Form 1604-E, to wit:

Rent expense per FS[79]	₱109,135,101.00
Less: Income payment per BIR Form 1604-E[80]	108,901,376.40
Difference	**₱233,724.60**

D. *Professional fees- 15% amounting to ₱326,999.55*

Respondent found petitioner liable for professional fees not subjected to 15% EWT with details as follows:

Professional Fees **(d.1)**	₱333,000.00
Management and Consultancy Fee	9,781,453.00
Re class: part of advertising expense **(d.2)**	675,876.14
Total	10,790,329.14
Less: Income payment per 1604E	10,463,329.59
Difference	**₱326,999.55**

d.1) Professional Fees- ₱333,000.00

Upon verification of the records, the composition of assessed professional fees is as follows:

GL Code	Account	Amount
6016100	Prof Fees-Audit	₱158,000.00
6016600	Prof Fees- Others	175,000.00
Total		**₱333,000.00**

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78 Exhibit "P-59".
79 Exhibit "P-55", Notes to Financial Statements No. 11.1.
80 Exhibit "P-45".

The above composition of professional fees includes accounts which are exempted from EWT specifically the professional fees – audit amounting to ₱158,000.00 and some of the other professional fees amounting to ₱169,000.00. These represents income payments made to a General Professional Partnership (GPP) which is exempted from expanded withholding taxes pursuant to RR No. 2-98,[81] as amended by RR No. 14-02,[82] which provides as follows:

> "SECTION 2.57.5. *Exemption from Withholding.* – The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> xxx xxx xxx
>
> (4) General professional partnerships."

However, upon perusal of the records, the Court finds that the professional fees are supported only by billing statements[83] instead of official receipts. Petitioner also submitted documents such as BIR Certificate of Registration[84] and Articles of Partnership[85], but these documents are not sufficient to prove that professional fees have been paid to the general professional partnership. Hence, the assessment shall remain.

d.2) Other Fees subjected to 15% EWT- ₱675,876.14

Petitioner alleges that income payments made to individual professionals amounting to ₱675,876.14 were properly subjected to 15% EWT, but were reflected under the FS account of Marketing-Others.

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[81] Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended Relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

[82] Subject: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as amended.

[83] Exhibit "P-62", "P-47-83.1", "P-47-222.1" to "P-47-222.10".

[84] Exhibit "P-61".

[85] Exhibit "P-61".

We cannot sustain petitioner's argument.

In this item, petitioner failed to provide the general ledger reclass entry to verify whether it was properly recorded and subjected to 15% EWT. Hence, the assessment on this item shall remain.

In light of the foregoing examination/reconciliation pertaining to the ***Disallowed Expenses for Non-withholding of Tax in the total amount of ₱10,373,770.33,*** the same shall be reduced to ₱8,920,869.20, broken down as follows:

Purchases	-
Contractors	₱8,360,145.25
Rent	233,724.60
Management Fees	326,999.55
TOTAL	₱8,920,869.20

A.5 Disallowed creditable tax withheld – ₱20,593.49

Respondent alleges that petitioner has unsupported creditable withholding taxes (CWT) computed as follows:

Tax withheld per ITR	₱1,230,976.00
CWT	1,210,382.51
Difference	**₱20,593.49**

Petitioner refutes this assessment and argues that tax credits claimed in its ITR were fully supported by BIR form 2307. In addition, respondent did not include in the FAN how the alleged CWT amounting to ₱1,210,382.51 was calculated. Thus, this item of assessment should allegedly be considered null and void.

Upon review and verification of the Summary of Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax at Source (SAWT)[86] and the BIR Form 2307[87] presented, the total amount of tax withheld with supporting documents is ₱1,217,469.77. The amount of ₱13,506.23 should be disallowed as tax credit as this is not duly supported by valid documents, to wit:

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[86] Exhibit "P-63".
[87] Exhibits "P-63-1" to "P-63-893".

CWT Claimed per BIR	₱1,230,976.00
Less: Verified and validated CWT	1,217,469.77
Unsupported CWT	**₱13,506.23**

In summary, We find petitioner liable for deficiency Income Tax in the reduced basic amount of ₱6,596,532.27, computed as follows:

Taxable Income Per Return		57,156,877.00
Add: Adjustments		
A. Under- Declaration of Sales		
1. Gross Profit on Local Purchases	-	
2. Gross Income (Per Books vs. ITR)	5,566,488.79	
B. Sales Returns and Allowances	5,566,318.00	
C. Disallowed Expenses		
1. Advertising	1,889,777.15	
2. Depreciation	-	
D. Not Subjected to EWT	8,920,869.20	21,943,453.14
Taxable Income Per Audit		79,100,330.14
Income Tax Rate		30%
Tax Due Per Audit		23,730,099.04
Less:		
Unexpired Excess of Prior Year's MCIT	16,397,961.00	
Payment (1st to 3rd Quarters)	1,401,663.00	
CWT per Audit	1,230,976.00	
Total Per Return	19,030,600.00	
Less:		
Unsupported CWT	13,506.23	
CWT carried over to the next quarter	1,883,527.00	17,133,566.77
Deficiency Income Tax		6,596,532.27

IMPROPERLY ACCUMULATED EARNINGS TAX

In the FDDA, petitioner was assessed for deficiency Improperly Accumulated Earnings Tax (IAET) in the aggregate amount of ₱19,510,137.27, computed as follows:

Taxable income 2010		₱57,166,877.00
Add: Income subjected to final tax	2,808,153.00	
NOLCO	8,041,195.00	10,849,348.00
Total		68,016,225.00
Less: Income tax paid		2,632,629.00
Total		65,383,596.00
Add: Retained earnings from prior years **(A)**		124,285,696.00

nb

Accumulated earnings as of December 31, 2010		189,669,292.00
Less: Amount that may be retained		
100% of Paid Up Capital	50,000,000.00	
Dividends paid on 2011	50,000,000.00	(100,000,000.00)
Amount subject to improperly accumulated earnings tax		89,669,292.00
Rate of Tax		10%
Deficiency IAET		8,966,929.20
Add: Surcharge (25%)	2,241,732.33	
Interest (from 01/11/11 to 9/30/2015)	8,276,475.74	
Compromise penalty	25,000.00	10,543,208.07
TOTAL AMOUNT DUE		**₱19,510,137.27**

Respondent claims that there was indication that petitioner accumulated the earnings and profits instead of distributing said earnings through dividends declaration. Hence, petitioner is liable for deficiency improperly accumulated earnings tax pursuant to RMC No. 35-2011, in relation to Section 29 of the Tax Code.

Petitioner counter-argues that only ₱24,285,696.00 representing un-appropriated retained earnings should be considered in the IAET computation and that the previous years' appropriation of ₱100,000,000.00 should have been deducted from the beginning balance of Retained Earnings to determine if petitioner has improperly accumulated earnings. Further, the ₱100,000,000.00 was reserved for its future business expansion.

The assessment must be cancelled.

Section 29 of the NIRC of 1997, as amended, and implemented by Section 3 of RR 2-2001[88], reads as follows:

> "SEC. 29. *Imposition of Improperly Accumulated Earnings Tax.* –
>
> (A) *In General.* – In addition to other taxes imposed by this Title, there is hereby imposed for each taxable year on the improperly accumulated taxable income of each corporation described in Subsection B hereof, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income.

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[88] Subject: Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997.

(B) *Tax on Corporations Subject to Improperly Accumulated Earnings Tax.* –

(1) *In General.* – The improperly accumulated earnings tax imposed in the preceding Section shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings, and profits to accumulate instead of being divided or distributed.

xxx xxx xxx

(C) *Evidence of Purpose to Avoid Income Tax.* –

xxx xxx xxx

(2) *Evidence Determinative of Purpose.* – The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members unless the corporation, by the clear preponderance of evidence, shall prove to the contrary.

xxx xxx xxx

(E) *Reasonable Needs of the Business.* – For purposes of this Section, the term 'reasonable needs of the business' includes the reasonably anticipated needs of the business."

Based on the foregoing, the IAET equivalent to 10% of the improperly accumulated earnings shall be imposed on a corporation that permits its earnings and profits to accumulate beyond the reasonable needs of the business, instead of being distributed as dividends to its shareholders or members, unless the corporation, by clear preponderance of evidence, shall prove to the contrary.

Pertinent thereto, Section 3 of RR No. 2-2001 enumerates what constitutes accumulation of earnings for the reasonable needs of the business, to wit:

"SECTION 3. *Determinative of Reasonable Needs of the Business.* – xxx

xxx xxx xxx

For purposes of these Regulations, the following constitute accumulation of earnings for the reasonable needs of the business:

a) Allowance for the increase in the accumulation of earnings up to 100% of the paid-up capital of the corporation as of Balance Sheet date, inclusive of accumulations taken from other years;

b) **Earnings reserved for definite corporate expansion projects or programs requiring considerable capital expenditure as approved by the Board of Directors or equivalent body;**

c) Earnings reserved for building, plants or equipment acquisition as approved by the Board of Directors or equivalent body;

d) Earnings reserved for compliance with any loan covenant or pre-existing obligation established under a legitimate business agreement;

e) Earnings required by law or applicable regulations to be retained by the corporation or in respect of which there is legal prohibition against its distribution;

f) In the case of subsidiaries of foreign corporations in the Philippines, all undistributed earnings intended or reserved for investments within the Philippines as can be proven by corporate records and/or relevant documentary evidence." (Emphasis Supplied)

Based on the foregoing, the computation of improperly accumulated earnings under Section 29 of the NIRC of 1997, as amended and implemented by Section 3 of RR 2-2001, excludes the earnings and profits of a corporation set aside for the reasonable needs of the business.

In this case, petitioner alleges that the reasonable needs of the business fall under Section 3(b) of RR No. 2-2001. To show that retained earnings were appropriated by petitioner, the latter submitted copies of Secretary's Certificate for the appropriations of retained earnings for future expansion amounting to ₱60,000,000.00[89] and ₱40,000,000.00[90] were made in December 1, 2004 and December 22, 2006, respectively.

Records also show the utilization of appropriated retained earnings of ₱100,000,000.00 according to its business expansion, in a summary of its business expansions from the year 2005 to 2012[91]:

Table 19

BRANCH	BRANCH REGISTRATION DATE	OPENING DATE	FIXED ASSETS	INITIAL INVENTORY INVESTMENT	TOTAL INVESTMENT
0229 (SM City - San Lazaro 1)	9 May 05	14 Jul 05	5,135,367.72	4,081,667.47	9,217,035.19
0242 (SM City - Sta. Rosa 1)	2 Jan 06	16 Feb 06	5,609,040.16	5,093,550.26	10,702,590.42
0272 (SM City - Clark 2)	21 Feb 06	11 May 06	4,773,683.19	4,581,688.96	9,355,372.15
0244 (SM Mall of Asia 2)	3 Jan 06	20 May 06	4,910,969.70	10,256,025.41	15,166,995.11
0287 (SM City - Lipa 1)	1 Jun 06	21 Sep 06	3,193,193.57	4,791,630.90	7,984,824.47
0294 (SM City - Bacolod 2)	18 Jan 07	1 Mar 07	4,967,181.44	4,681,152.41	9,648,333.85
0399 (SM City-Taytay 1)	12 Jun 07	8 Nov 07	3,494,199.34	4,582,584.59	8,076,783.93
0443 (SM City-Marikina 1)	25 Jan 08	13 Sep 08	2,944,160.75	5,142,410.83	8,086,571.58
0472 (SM City - Tarlac 1)	15 Jun 10	29 Jul 10	3,356,154.58	3,150,116.12	6,506,270.70
0848 (SM City - Masinag 1)	22 Feb 11	5 May 11	3,057,851.57	3,002,875.65	6,060,727.22
0863 (Cubao Mall 1)	20 Oct 11	2 Dec 11	3,094,751.88	3,433,351.47	6,528,103.35
0316 (SM City - General Santos 1)	11 Jul 12	9 Aug 12	4,803,209.04	3,477,674.34	8,280,883.38
TOTAL INVESTMENT			49,339,762.94	56,274,728.41	105,614,491.35

Furthermore, on October 3, 2011, petitioner's Board of Directors approved the declaration of cash dividends amounting to ₱50,000,000.00, an amount that was previously allocated as appropriated retained earnings.[92] Thus, the allegation of respondent that petitioner accumulated profits instead of dividend distribution is not correct.

The Court also considered the findings below of the ICPA, that in computing the IAET, the retained earnings from prior years amounting to ₱124,285,696.00[93] as computed by respondent includes the appropriated retained earnings amounting to ₱100,000,000.00[94]. The ₱100,000,000.00 should have been deducted from the beginning balance of retained earnings in the

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[89] Exhibit "P-64-2".
[90] Exhibit "P-64-1".
[91] Exhibit "P-75", ICPA Report.
[92] Exhibit "P-64-3".
[93] Exhibit "P-55", Statement of Changes in Equity.
[94] Exhibit "P-55", Statement of Changes in Equity.

computation of IAET. The computation of retained earnings available for dividend declaration after excluding the appropriated retained earnings, is as follows:

Total Retained Earnings, January 1, 2010			P124,285,696.00
Less: Appropriated Retained Earnings as at January 1, 2010			100,000,000.00
Unappropriated Retained Earnings, January 1, 2010			24,285,696.00
Add: Adjustments			
Taxable income 2010		57,166,877.00	
Add: Income subjected to final tax	2,808,153.00		
NOLCO	8,041,195.00	10,849,348.00	
Total		68,016,225.00	
Less: Income tax paid		2,632,629.00	
Total		65,383,596.00	65,383,596.00
Unappropriated Retained Earnings, December 31, 2010			89,669,292.00
Less: Amount that may be retained			
100% of Paid Up Capital	50,000,000.00		
Dividends paid in 2011	50,000,000.00	100,000,000.00	100,000,000.00
Amount subject to improperly accumulated earnings tax			(10,330,708.00)
Rate of tax			10%
Deficiency IAET			**P-**

In sum, the assessment on Improperly Accumulated Earnings Tax must be cancelled.

VALUE ADDED TAX

In the FDDA, petitioner was assessed for deficiency Value-Added Tax in the total amount of ₱229,470,890.49, computed as follows:

Taxable sales per vat returns			₱1,004,248,112.85
Add (Deduct) Adjustments:			
A. Undeclared income			
Gross profit on undeclared purchases	(1)		408,654,047.59
Total taxable sales			1,412,902,160.44
VAT Rate			12%
VAT Due thereon			169,548,259.25
Less: Input tax/payments/credits			
Input tax per return		98,260,443.17	
Less: Input tax failing invoicing requirements	(2)	69,280,694.50	28,979,748.67
VAT Payable per audit			140,568,510.58
Less: VAT payment			22,249,330.34
Net VAT payable due thereon			118,319,180.24

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Add: Interest (from 1/26/11 to 9/30/2015)		111,101,710.25	
Compromise penalty		50,000.00	111,151,710.25
TOTAL AMOUNT DUE			**₱229,470,890.49**

(1) Undeclared income amounting to ₱408,654,047.59.

In the FDDA, respondent found petitioner has undeclared sales pursuant to RMO No. 42-2003 and the same should allegedly be subjected to VAT pursuant to Section 106, 107, 108 of the NIRC, as amended. As a result, respondent arrived at the assessed amount based on the following computation:

Overclaimed of purchases	₱311,949,654.65
Add: Mark up (100-61%)	
(31% x 311,949,654)	96,704,392.94
Amount subject to VAT	**₱408,654,047.59**

Petitioner reiterates its argument that just like the Income Tax assessment, the VAT assessment is also without factual or legal bases. Petitioner asserts that respondent failed to present the required Certifications/Sworn Statements required under RMO 42-2003 and RMO 46-2004.

The assessment on this item must be cancelled.

In view of the findings of the Court on the assessed deficiency income tax, no deficiency VAT assessment should arise from undeclared sales. As discussed, respondent's assessment arose from a presumption that the discrepancy were all inexistent purchases, and therefore the imposition of VAT thereon is likewise incorrect. As such the imposition of VAT assessment pertaining thereto shall be cancelled.

(2) Disallowed input tax for failure to comply with invoicing requirement – ₱69,280,694.50.

In the FDDA, respondent's findings disclosed that input tax claimed per VAT returns failed to comply with the invoicing requirements pursuant to Section 113 of the NIRC, as amended, and thus, must be disallowed. The breakdown is as follows:

No address of buyer	₱14,719,516.83
Invalid TIN	17,771,967.51
No TIN of buyer	36,789,210.20
TOTAL	**₱69,280,694.54**

A perusal of the records show that respondent failed to provide details of the alleged disallowances which supposedly violated invoicing requirements pursuant to Section 113 of the NIRC, as amended. Hence, the Court agrees with the results of the examination made by the ICPA, to wit:

	Input VAT	W/out TIN & Address	W/out TIN	W/out Address	Total	Exhibit
2nd Generation Garment	1,863,426.97	108,912.88	5,271.44	-	114,184.32	"P-66-1"
Advani Apparel	7,040,426.55	1,678,907.43	85,090.76	-	1,763,998.19	"P-66-2"
Asiatique Trading	192,750.00	-	-	-	-	
Big Box Trading	4,612,078.13	212,357.28	459,468.48	967,105.07	1,638,930.83	"P-66-3"
Equestrian Trading	202,500.00	-	-	-	-	
FGU Builders	183,214.29	183,214.29	-	-	183,214.29	"P-66-4"
First Asia Realty	1,290,503.08	-	-	-	-	
Golden Astiplaz	589,897.80	88,670.11	12,846.87	-	101,516.98	"P-66-5"
Homme Plus Marketing	4,012,189.21	170,785.83	13,628.58	-	184,414.41	"P-66-6"
Prime Value	2,570,187.01	265,434.79	20,163.22	-	285,598.01	"P-66-7"
Raerondstarr Marketing	651,449.54	121,225.81	3,055.72	-	124,281.53	"P-66-8"
Resurge Manufacturing	398,957.14	-	-	-	-	
S @ A International	11,058,490.76	210,779.02	45,413.60	-	256,192.62	"P-66-9"
SM Mart Inc.	52,316.89	-	4,820.85	-	4,820.85	"P-66-10"
SM Prime Holdings	9,541,906.45	-	-	-	-	
SM Retail Inc.	57,623.40	-	-	-	-	
Stratpro Company	457,448.26	-	-	-	-	
Twinluck General	794,320.75	99,694.35	126,894.18	-	226,588.53	"P-66-11"
VS Marketing	9,366,957.46	247,995.11	121,552.54	-	369,547.65	"P-66-12"
	54,936,643.69	3,387,976.90	898,206.24	967,105.07	5,253,288.21	

Upon examination of supplier's invoices, the Court finds that the invoices/official receipts presented by petitioner are generally compliant with invoicing requirements except for some invoices/official receipts with total equivalent input VAT of ₱5,253,288.21 that are found to be not in compliance with invoicing requirement.

Furthermore, considering that the examination of the ICPA only covered 79.295% of the supplier's invoices subject to the disallowed input VAT, an extrapolation of the estimated input VAT to be allowed due to failure to comply with invoicing requirements was made as follows:

Actual disallowed input VAT per review and verification		5,253,288.21
Add: Prorated disallowed input VAT		
Disallowed input VAT by BIR	69,280,694.50	
Less: Total input VAT verified vs. supplier's invoice	54,936,643.69	
Input VAT without supplier's invoice available on file	14,344,050.81	
Multiply by: (5,253,288.21/54,936,643.69)	9.56%	1,371,642.46
Total disallowed estimated input VAT for failure to comply with invoicing requirements		6,624,930.67

The Court finds that the disallowed input tax for non-compliance with invoicing requirements assessed by respondent amounting to ₱69,280,694.50 should be reduced to ₱6,624,930.67.

In summary, petitioner is liable for basic deficiency VAT in the amount of ₱6,624,930.70, computed as follows:

Taxable Sales per VAT Returns		1,004,248,112.85
Add: Adjustments		
Undeclared Income:		
Gross Profit on Undeclared Purchases		-
Total Taxable Sales		1,004,248,112.85
VAT Rate		12%
VAT Due		120,509,773.54
Less: Input Tax Payments/Credits		
Input Tax Per Return	98,260,443.17	
Less: Input Tax failing Invoicing Requirements	6,624,930.67	91,635,512.50
VAT Payable Per Audit		28,874,261.04
Less: VAT Payments		22,249,330.34
Net VAT Payable		**6,624,930.70**

EXPANDED WITHHOLDING TAX

Respondent assessed petitioner of deficiency Expanded Withholding Tax in the total amount of ₱739,029.64. broken down as follows: *MO*

A. Disallowed expenses due to non-withholding of EWT	(1)		₱242,468.08
B. Purchases not subjected to EWT	(2)		130,035.60
Deficiency expanded withholding tax			372,503.68
Add: Interest (01.16.11 to 9.30.15)		350,525.96	
Compromise		16,000.00	366,525.96
TOTAL AMOUNT DUE			**₱739,029.64**

(1) Disallowed expenses due to non-withholding of EWT - ₱242,468.08.

The above alleged purchases not subjected to EWT were computed by respondent, with details as follows:

Account	Per ITR/FS	Per 1604E	Difference	EWT Due
(a) Purchases - 1%	628,676,516.93	627,223,616.00	1,452,900.93	14,529.01
(b) Contractors - 2%	77,408,462.75	69,048,317.50	8,360,145.25	167,202.91
(c) Rent expense -5%	109,135,101.00	108,901,376.40	233,724.60	11,686.23
(d) Management Fees -15%	10,790,329.14	10,463,329.59	326,999.55	49,049.93
Total	**826,010,409.62**	**815,636,639.49**	**10,373,770.13**	**242,468.07**

As already discussed in the portion of income tax assessment, only the transactions on purchases not subjected to 1% EWT will be cancelled in the amount of ₱1,452,900.93 with the corresponding EWT of ₱14,529.01. The remaining amount of ₱8,920,869.40 and its corresponding EWT of ₱227,939.07 shall remain, to wit:

Account	Difference	EWT Due
Purchases - 1%	-	-
Contractors - 2%	8,360,145.25	167,202.91
Rent Expense - 5%	233,724.60	11,686.23
Management Fee - 15%	326,999.55	49,049.93
TOTAL	8,920,869.40	227,939.07

(2) Purchases not subjected to EWT per SLP vs AITIED - ₱130,035.60.

The alleged deficiency EWT amounting to ₱130,035.60 arising from the comparison of the purchases reported in petitioner's SLP as against the AITIED or SLS of its supplier can be broken down as follows:

1. Related Party Suppliers	₱ 80,908.23
2. Unrelated Suppliers	49,127.37
TOTAL	₱130,035.60

1. *<u>Transactions with related-party suppliers- ₱80,908.23</u>*

The Court finds that petitioner submitted a Confirmation Certificate[95] from the related party suppliers. Hence, the alleged deficiency EWT of ₱80,908.23 should be reduced to ₱21,401.95, computed bellow:

Difference per BIR Matching		₱4,248,704.31
Less: Adjustment as a result of independent review		
Difference per BIR Matching		
SM INVESTMENTS CORPRENTAL	682,187.92	
SM RETAIL INC	2,453,149.01	
	3,135,336.93	
Less: Difference per ICPA review		
SM INVESTMENTS CORPRENTAL	5,836.39	
SM RETAIL INC	(115,721.36)	
	(109,884.97)	3,245,221.90
Net difference		1,003,482.41
Deficiency EWT (using EWT Rate of 5%, 2% and 1%)		₱21,401.95

2. *<u>Transactions with unrelated suppliers – ₱49,127.37.</u>*

For this particular item, the Court cannot ascertain this transaction. As found by ICPA, there is no data obtained from the SLS of petitioner's unrelated suppliers and no documents were presented to verify the remaining ₱49,127.37 alleged deficiency EWT assessed by respondent. Thus, this assessment must be upheld.

Hence, the assessment on purchases not subjected to EWT should be reduced to ₱70,529.32 (₱21,401.95 plus ₱49,127.37).

In summary, petitioner is liable for basic deficiency EWT amounting to ₱298,468.39, broken down as follows:

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[95] Exhibits "P-46-1" to "P-46-15".

Disallowed Expenses due to Non-Withholding of EWT	227,939.07
Purchases Not Subjected to EWT	70,529.32
TOTAL	298,468.39

WITHHOLDING TAX ON COMPENSATION

In the FDDA, respondent assessed petitioner for deficiency withholding tax on compensation in the total amount of ₱5,921,671.78, computed as follows:

Salaries per FS	1		₱75,099,717.95
Less: Gross compensation per alphalist	2		65,606,106.75
Amount not subjected to WT			9,493,611.20
Multiply by: Rate	3		32%
Basic deficiency tax			3,037,955.584
Add: Interest (from 1/15/2011 to 9/30/15)		2,858,716.20	
Compromise - over-withholding		25,000.00	2,883,716.20
TOTAL AMOUNT DUE			₱5,921,671.78

Petitioner argues that respondent was not able to capture the correct amount of salaries and wages and employees benefits reported in the company's FS/ITR. The total amount of salaries and wages should be ₱94,792,411.00 and not ₱75,099,717.95 which respondent used in their assessment, details of which are as follows:

Salaries and Wages	₱74,836,913.80
SSS, Philhealth, Medicare	6,332,864.53
OEB - 13th Month	5,945,218.22
OEB - Leave Conversion (A)	1,814,221.55
OEB - Others (B)	3,718,029.77
Retirement Benefit Expenses (C)	2,145,163.06
Total	**₱94,792,410.93**

Upon examination of the records, the Court finds that the correct amount of Salaries and Wages is indeed ₱94,792,411.00 per Notes to Financial Statements No. 11.1.[96]

Furthermore, a reconciliation was made on the salaries, wages and employee benefits reflected in audited FS and the gross

[96] Exhibit "P-55".

compensation reported in the Alphalist of Employees (1604-CF)[97] as shown below:

Salaries, wages and employee benefits per AFS		₱94,792,411.00
Less: Part of the salaries expense excluded in alphalist of employees		
(a) Employer share of SSS,PHIC& PAG-IBIG	₱6,332,864.53	
(b) OEB-leave Conversion	1,814,221.55	
(c) Other Employee Benefits	3,718,029.77	
(d) Retirement benefits expense	2,145,163.06	14,010,278.91
Salaries, wages and employee benefits, net of exclusive items		80,782,132.09
Less: Gross compensation per alphalist		80,624,974.52
Difference or excess of gross compensation per FS against alphalist of employees		₱157,157.57

(a) <u>Employer share of SSS, PHIC & PAG-IBIG</u>

The Court finds that the SSS, PHIC & PAG-IBIG totaling to ₱6,332,864.53 represent employer's share of mandatory statutory contributions. However, a perusal of the Alphalist on Compensation[98] reveals that only ₱3,771.012.26 were reported, to wit:

Resigned Employees for 2010[99]	₱803,232.95
Employees with No Previous Employers[100]	1,479,834.47
Minimum Wage Earners[101]	1,487,944.84
Total	₱3,771,012.26

Thus, the difference of ₱2,561,852.27 (₱6,332,864.53 less ₱3,771,012.26) shall be subjected to withholding tax on compensation.

(b) <u>OEB-leave Conversion</u>

Anent this item, the OEB-leave Conversion amounting to ₱1,814,221.55 per GL represent monetized value of unused vacation leave credits which were not subjected to withholding

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[97] Exhibit "P-67".
[98] Exhibit "P-67".
[99] Exhibit "P-67", page 6.
[100] Exhibit "P-67", page 12.
[101] Exhibit "P-67", page 21. MO

taxes, and as such were not reflected in the alphalist of employees by the Petitioner.

We find that petitioner failed to present details of OEB-leave Conversion amounting to ₱1,814,221.55 claimed as exempt from Withholding Tax on Compensation. Hence, this shall not be excluded from the computation of Withholding Tax on Compensation deficiency.

(c) *Other employee benefits*

With respect to *Others Employee Benefits* amounting to ₱3,718,029.77, petitioner contends that these expenses pertain to the medical cash allowance, achievement awards, Christmas gifts, and other privileges/benefits of relatively small value which are considered as *de minimis* benefits given to the petitioner's employees which are not subject to withholding tax, and as such not reflected in the alphalist of employees of petitioner.

Pursuant to Section 2.78.1 of RR No. 2-98, *De minimis* benefits are facilities or privileges furnished or offered by an employer to his employees that are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees. The same provides that *de minimis* benefits and certain income payments are not subject to withholding tax, to wit:

> "SECTION 2.78.1. *Withholding of Income Tax on Compensation Income.* –
>
> (A) *Compensation Income Defined.* – x x x
>
> xxx xxx xxx
>
> (3) *Facilities and privileges of a relatively small value.* – Ordinarily, facilities and privileges (such as entertainment, medical services, or so called 'courtesy discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as compensation subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment or efficiency of his employees."

In the instant case, upon verification only the amount of ₱470,214.13 are supported with documents, as follows:

	Amount	Exhibit
Asalus Corporation	3,582.19	"P-47-23.2"
Association of CPA	7,000.00	"P-47-26.1"
Besthealth Medical	360.00	"P-47-35.2"
Besthealth Medical	540.00	"P-47-35.1"
Drugcheck Phils	720.00	"P-47-76.1"
D-Tech Laboratory	540.00	"P-47-77.1"
Global Health	640.00	"P-47-108.1"
Jed Diagnostic	560.00	"P-47-134.1"
Lakambini Diagnostic	2,520.00	"P-47-148.3"
Medhaus Medical	2,010.00	"P-47-181.1"
South Super Medical	540.00	"P-47-255.1"
Value Care	1,012.00	"P-47-284.22"
Value Care	618.75	"P-47-284.3"
Value Care	27,104.91	"P-47-284.4"
Value Care	13,200.00	"P-47-284.5"
Value Care	409,266.28	"P-47-284.6"
TOTAL	470,214.13	

Therefore, unsupported *de minimis* benefits amounting ₱3,247,815.64 (₱3,718,029.77 less ₱470,214.13) shall be subjected to withholding tax on compensation.

(d) <u>Retirement benefits expense</u>

Petitioner claims that the amount of ₱2,145,163.06 pertains to net retirement benefit expense as reflected in its FS in relation to its retirement plan which are valid deductions from gross income as provided by the Tax Code are exempt from withholding tax.

The Court finds that this assessment must be cancelled.

Section 32 (B) (6) (a) of the NIRC of 1997, as amended, provides:

"SEC. 32. *Gross Income.* –

> *xxx* *xxx* *xxx*
>
> (B) *Exclusions from Gross Income* – The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> *xxx* *xxx* *xxx*
>
> (6) *Retirement Benefits, Pensions, Gratuities, etc.* –
>
> (a) Retirement benefits received under Republic Act No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: *Provided,* That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: *Provided, further,* That the benefits granted under this subparagraph shall be availed of by an official or employee only once xxx"

Based on the foregoing, retirement benefits received by officials and employees of a private firm under a pension plan that has been qualified by the CIR, shall not be included in the gross income and shall be exempt from income tax and consequently from withholding tax prescribed in Section 79(A) of the NIRC of 1997, as amended.

In this case, We agree with the findings of the ICPA that the retirement benefits amounting to ₱2,145,163.06 represent current service cost reflected in the 2010 actuarial valuation which is under a BIR registered retirement plan, wherein retirement benefits are paid to all regular full-time employees exempted from withholding of tax on compensation. Records show that petitioner submitted the certification issued by BIR related to retirement plan and the 2010 actuarial valuation[102] and 2010 actuarial valuation[103] in order to show petitioner's retirement benefits plan. Finding the same sufficient, the assessment must be cancelled.

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[102] Exhibit "P-70".
[103] Exhibit "P-71". ᴹᴿ

In summary, petitioner is liable for basic deficiency withholding tax on compensation in the amount of ₱563,347.80, as presented below:

Difference of Gross Compensation pe FS against Alphalist	157,157.50
Disallowed Salaries and Wages (SSS,PHIC&PAG-IBIG)	2,561,852.27
Disallowed Salaries and Wages (OEB-Leave Conversion)	1,814,221.55
Disallowed Salaries and Wages (Others)	3,247,815.64
Total	7,781,046.96
Multiply by the Estimated Average Withholding Tax Rate	7.24%
Basic Deficiency Withholding Tax on Compensation	563,347.80

The estimated average withholding tax rate is computed as follows:

Total Withholding Tax on Compensation Remitted		3,372,902.07
Divide by: Taxable Compensation per Alphalist		
Resigned Employees	14,418,620.95	
No Previous Employers	31,895,968.81	
Minimum Wage Earners	224,624.51	46,539,214.27
Estimated Average Withholding Tax Rate		7.24%

DOCUMENTARY STAMP TAX

Respondent assessed petitioner for alleged deficiency documentary stamp tax (DST) for the lease contracts entered into by the company, computation of which is shown below:

Lease Contracts (Note 14 f/s)- 458	P109,134,100.00	
	2,000.00	
	109,136,100.00	
Rate (Section 194) (3+.001)	0.001	109,136.10
Total DST		109,136.10
Less: Payment		69
Deficiency DST		**109,067.10**
Add: Interest (from 1/16/2011 to 9/30/15)	102,632.14	
Compromise	12,000.00	114,632.14
TOTAL AMOUNT DUE		**P223,699.24**

Petitioner contends that the DST due on all rental payments under existing lease contracts are being remitted to the BIR by the lessor.

The Court partially upholds the assessment.

The findings of the ICPA is that documentary stamp taxes on rental were being paid by lessors and are being included in the lessors' Billing or Statement of Account to petitioner for reimbursement. Investigation showed that the total DST paid by petitioner to the lessor verified against statement of accounts available on file amounted to ₱81,403.00[104] only or 75% of the assessed amount.

However, this Court cannot assume that all the DST due on all rental payments under the existing lease contracts are being remitted to the BIR by the lessor in behalf of petitioner and correspondingly being paid by petitioner. Although, a certificate from SM Prime Holdings,[105] one of the petitioner's lessor, was also submitted confirming its remittance of DST on leased properties, this is not sufficient to prove that all of the DST due were paid.

Therefore, the deficiency DST assessment amounting to ₱27,664.10(₱109,067.10 less ₱81,403.00) will be assessed to petitioner.

COMPROMISE PENALTY

In the FDDA, respondent assessed petitioner of compromise penalty in the total amount of ₱178,000.00, broken down as follows:

Income Tax	₱50,000.00
IAET	25,000.00
VAT	50,000.00
EWT	16,000.00
WTC	25,000.00
DST	12,000.00
TOTAL	₱178,000.00

Pursuant to Revenue Memorandum Order No. 19-07,[106] compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court cannot compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual

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[104] Exhibit "P-73".
[105] Exhibit "P-72".
[106] Subject: The Consolidated Revised Schedule of Compromise Penalties for Violations of National Internal Revenue Code.

NO

agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[107]

Absent a showing that petitioner consented to the subject compromise penalties, as it was in fact, assailing the tax impositions herein, the imposition of the said compromise penalties should be deleted. Simply put, the imposition of the compromise penalty without the taxpayer's conformity is illegal and unauthorized.[108]

Hence, the compromise penalties imposed by respondent in the total amount of ₱178,000.00 for petitioner's alleged deficiency must likewise be cancelled.

IMPOSITION OF THE DEFICIENCY AND DELINQUENCY INTERESTS

When the subject tax assessments were made, the imposition of deficiency and delinquency interests were governed by Section 249 of the NIRC of 1997, as amended, to wit :

"SEC. 249. *Interest.* –

(A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty (20%) *per annum*, or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for its payment until the amount is fully paid.

(B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the fill payment thereof.

(C) *Delinquency Interest.* – In case of failure to pay:

xxx xxx xxx

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[107] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.

[108] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."

However, with the advent of Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion" (TRAIN Law), which took effect on January 1, 2018, Section 249 was amended as follows:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, **interest at the rate of double the legal interest for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid:** *Provided,* **That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof be imposed simultaneously.**
>
> (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.
>
> (C) *Delinquency Interest.* – *xxx xxx xxx.*" (*Emphasis supplied)*

Based on the foregoing, the following amendments to the imposition of interests are noted:

1. The interest rate is reduced to "double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas."

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> Currently, the legal interest rate is 6%,[109] hence the interest rate to be applied on any unpaid amount of tax shall be 12% which is lower than the twenty (20%) interest imposed under Section 249 of the NIRC of 1997.
>
> 2. In no case shall the deficiency interest and delinquency interest be imposed simultaneously. As such, the overlapping of interest penalties under the NIRC of 1997 has been effectively eliminated.
>
> 3. The period for the application of deficiency interest is modified to run from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the CIR, whichever comes earlier. Hence, under the TRAIN law, the running of the period for the computation of the deficiency interest may be interrupted by the issuance of a notice and demand by respondent.

It bears noting that under the NIRC of 1997, the deficiency interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof and is not interrupted by the issuance of a notice or demand from respondent.

The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[110] There being no clear legislative intent to retroactively apply the provisions of the TRAIN law, the same should only be applied prospectively, *i.e.,* beginning from January 1, 2018.

Furthermore, it bears emphasis that tax burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports, tax statutes being construed *strictissimi juris* against the government. Any doubt on whether a person, article or activity is taxable is generally resolved against taxation.[111]

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[109] BSP MB Circular No. 799, Series 2013 which took effect on July 1, 2013.
[110] *BPI Leasing Corporation vs. Court of Appeals, et. al.,* G.R. No. 127624, November 18, 2003.
[111] *Dizon vs. Court of Tax Appeals*, et. al., G.R. No. 140944, April 30, 2008.
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Considering the foregoing principles, the effects of the amendments under the TRAIN Law, particularly the imposition of interests, shall be applied to this case.

Thus, as of January 1, 2018, the interests to be imposed must already be at 12%, and there must no longer be a simultaneous imposition of deficiency and delinquency interests.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessment issued by respondent against petitioner for the calendar year ending December 31, 2010, covering deficiency Improperly Accumulated Earnings Tax is **CANCELLED and SET ASIDE.**

On the other hand, the deficiency Income Tax, VAT, EWT, WTC and DST assessments are **AFFIRMED** with MODIFICATION. Accordingly, petitioner is ordered to pay respondent the total amount of **₱50,627,809.49** representing basic deficiency, 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, computed until December 31, 2017, as determined below:

	Income	VAT	EWT	WTC	DST	TOTAL
Basic Tax Due	6,596,532.77	6,624,930.70	298,468.39	563,347.80	27,664.10	14,110,943.76
25% Surcharge	1,649,133.19	1,656,232.68	74,617.10	140,836.95	6,916.03	3,527,735.94
Sub-Total	8,245,665.96	8,281,163.38	373,085.49	704,184.75	34,580.13	17,638,679.70
20% Deficiency Interest:						
16-Apr-11 to 30-Sep-15						
(6,596,532.77 x 20% x 1629/365)	5,888,083.22					5,888,083.22
26-Jan-11 to 30-Sep-15						
(6,624,930.70 x 20% x1694/365)		6,149,387.73				6,149,387.73
16-Jan-11 to 30-Sep-15						
(298,468.39 x 20% x 1704/365)			278,679.53			278,679.53
15-Jan-11 to 30-Sep-15						
(563,347.80 x 20% x 1705/365)				526,305.75		526,305.75
16-Jan-11 to 30-Sep-15						
(27,664.10 x 20% x 1704/365)					25,829.93	25,829.93

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Total Amount Due, Sep. 30, 2015[112]	**14,133,749.19**	**14,430,551.10**	**651,765.01**	**1,230,490.50**	**60,410.06**	**30,506,965.86**
20% Deficiency Interest:						
01-Oct-15 to 31-Dec-17						
(6,596,532.77 x 20% x 823/365)	2,974,765.19					2,974,765.19
01-Oct-15 to 31-Dec-17						
(6,624,930.70 x 20% x823/365)		2,987,571.49				2,987,571.49
01-Oct-15 to 31-Dec-17						
(298,468.39 x 20% x 823/365)			134,596.98			134,596.98
01-Oct-15 to 31-Dec-17						
(563,347.80 x 20% x 823/365)				254,046.71		254,046.71
01-Oct-15 to 31-Dec-17						
(27,664.10 x 20% x 823/365)					12,475.37	12,475.37
20% Delinquency Interest:						
01-Oct-15 to 31-Dec-17						
(14,133,749.19 x 20% x 823/365)	6,373,740.04					6,373,740.04
01-Oct-15 to 31-Dec-17						
(14,430,551.10 x 20% x 823/365)		6,507,585.51				6,507,585.51
01-Oct-15 to 31-Dec-17						
(651,765.01 x 20% x 823/365)			293,919.24			293,919.24
01-Oct-15 to 31-Dec-17						
(1,230,490.50 x 20% x 823/365)				554,900.65		554,900.65
01-Oct-15 to 31-Dec-17						
(60,410.06 x 20% x 823/365)					27,242.45	27,242.45
Total Amount Due, Dec. 31, 2017	**23,482,254.42**	**23,925,708.10**	**1,080,281.23**	**2,039,437.86**	**100,127.88**	**50,627,809.49**

In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the unpaid amount as of September 30, 2015, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts:

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[112] Exhibit "P-40", Due date reflected in the Assessment Notices.

Income Tax	₱14,133,749.19
Value Added Tax	14,430,551.10
Expanded Withholding Tax	651,765.01
Withholding Tax on Compensation	1,230,490.50
Documentary Stamp Tax	60,410.06

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the 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