REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

NESIC PHILIPPINES, INC., Petitioner,	**C.T.A. CASE NO. 7012**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 1 3 2009 11:12 a.m.

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DECISION

UY, J.:

Before the Court is a Petition for Review that seeks the cancellation of the assessments issued by respondent against petitioner for alleged deficiency value-added tax (VAT), expanded withholding tax (EWT), and fringe benefit tax (FBT), covering the fiscal year ending March 31, 1999 in the amount of P7,419,586.48, inclusive of increments.

THE FACTS

Petitioner, Nesic Philippines, Inc., is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 15th Floor, BPI Buendia Center, Sen. Gil Puyat Avenue, Makati City. Petitioner is primarily engaged in "the business of providing specialty and technical services, including consultation services availing local skills, technical competence and know-how in the process, and providing technology applications in respect of planning, management, procurement, construction, evaluation, estimation, supervision, inspection, maintenance and operation, including testing and supervising them for quality purposes and other activities related, connected or incidental thereto, offering and selling on wholesale basis completed and finished products for use and consumption in the international market other than the Philippines".[1]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers, pursuant to the provisions of the National Internal Revenue Code (NIRC). He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Quezon City.[2]

On August 29, 2003, petitioner received an undated Formal Letter of Demand covering the fiscal year ending March 31, 1999 for alleged deficiency VAT, EWT, and FBT, summarized as follows:[3]

		VAT		EWT		FBT		Total
Basic Tax	P	3,348,362.04	P	116,876.89	P	1,133,263.81	P	4,598,502.74
Interest		2,939,192.20		103,564.61		1,004,185.06		4,046,941.87
Compromise		25,000.00		16,000.00		25,000.00		66,000.00
Total	**P**	**6,312,554.24**	**P**	**236,441.50**	**P**	**2,162,448.87**	**P**	**8,711,444.61**

[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 113.
[2] Par. 2, Admitted Facts, JSFI, Docket, p. 114.
[3] Exhibit "B", Docket, pp. 315-317; Pars. 3 and 6, Admitted Facts, JSFI, Docket, pp. 114-116.

Petitioner accepted the validity of some of the disallowed items of the foregoing assessments and made partial payments on September 26, 2003 amounting to P1,291,858.13, including increments, detailed below:

		VAT[4]		EWT[5]		FBT[6]		Total
Basic Tax	P	323,044.90	P	64,355.26	P	273,145.94	P	660,546.10
Interest		285,872.61		57,478.94		243,960.48		587,312.03
Compromise		16,000.00		12,000.00		16,000.00		44,000.00
Total	**P**	**24,917.51**	**P**	**133,834.20**	**P**	**533,106.42**	**P**	**1,291,858.13**

On September 29, 2003, petitioner, through its tax consultant SGV & Company, filed with the BIR Large Taxpayers District Office-Makati City an administrative protest on the remaining assessments, on the ground that there was no factual and legal basis to support the same.[7] The remaining amount of P7,419,586.48 is broken down as follows:

		VAT		EWT		FBT		Total
Basic Tax	P	3,025,317.14	P	52,521.63	P	860,117.87	P	3,937,956.64
Interest		2,653,319.59		46,085.67		760,224.58		3,459,629.84
Compromise		9,000.00		4,000.00		9,000.00		22,000.00
Total	**P**	**5,687,636.73**	**P**	**102,607.30**	**P**	**1,629,342.45**	**P**	**7,419,586.48**

Based on the details of discrepancies attached to the Formal Letter of Demand, petitioner's input VAT credits in the amount of P3,348,362.04 were disallowed due to alleged violations of Section 110(A) (Creditable Input Tax) of the NIRC, in relation to Section 113 (Invoicing and Accounting requirements for VAT-registered persons) and Section 237 (Issuance of Receipts or Sales or Commercial Invoices) of the same Code, and Section

[4] Exhibits "F" and "F-1", Docket, pp. 331-332.
[5] Exhibits "H" and "H-1", Docket, pp. 335-336.
[6] Exhibits "G" and "G-1", Docket, pp. 333-334.
[7] Exhibit "C", Docket, pp. 321-328.

4.108-1 of Revenue Regulations No. 7-95[8]. Respondent disallowed the said input VAT credits on the following grounds:[9]

Reason for Disallowance	Payment Slip	Journal Slip	Total Amount
No Sales Invoice/OR	P 664,278.71	P 126,424.26	P 790,702.97
No address	860,535.39		860,535.39
No TIN per SI/OR	267,847.50	1,106,231.28	1,374,078.78
Purchase from Non-VAT	166,685.28	65,467.68	232,152.96
Stamped TIN	67,451.19		67,451.197
Unregistered invoice/OR	19,202.78		19,202.78
Exempt purchases	2,674.80		2,674.80
Not in taxpayer's name	1,402.42		1,402.42
No Supporting OR	160.75		160.75
TOTAL	**P 2,050,238.82**	**P 1,298,132.22**	**P 3,348,362.04**

While petitioner accepted the validity of the disallowance of some of the input VAT credits mentioned above, petitioner disputed the validity of the disallowance of the following input tax credits:[10]

Reason for Disallowance	Amount
No Sales Invoice/OR	P 790,702.97
No address	860,535.39
No TIN per SI/OR	1,374,078.78
Total - Protested VAT Assessment (Basic Tax)	**P 3,025,317.14**

Respondent alleged that the said input VAT credits may not be allowed for the reason that: (1) they are not supported by sales invoice/official receipts; (2) petitioner's address was not indicated in the invoices issued by petitioner's suppliers; and/or (3) the seller/s failed to indicate petitioner's tax identification number (TIN) in the supporting invoices/official receipts issued to petitioner.[11]

[8] Also known as Consolidated Value-Added Tax Regulations.
[9] Par. 11, Admitted Facts, JSFI, Docket, pp. 117-118.
[10] Par. 12, Admitted Facts, JSFI, Docket, p. 118.
[11] Par. 13, Admitted Facts, JSFI, Docket, p. 118.

With respect to the EWT assessments under the Formal Letter of Demand, petitioner accepted the validity of the assessment of deficiency EWT, except for three (3) items, namely:[12]

Account Title		EWT Due
Subcontractor's payroll-cash advance	P	23,499.40
Car rental		27,419.05
Seminar & other educational courses		1,603.17
Total	**P**	**52,521.62**

Lastly, as to the FBT assessments under the Formal Letter of Demand, petitioner accepted the validity of the assessment of deficiency FBT, except for five (5) items of alleged fringe benefits, particularly:[13]

Fringe Benefit				FBT Due
For the period April to December 1998:				
Car rental	P	341,483.58		
Playing rights		113,333.33		
Telephone expenses		117,340.99		
Plane tickets		50,813.31		
Visa/Immigration processing		11,276.67	P	634,247.88
For the period January to March 1999:				
Car rental		170,887.51		
Telephone expenses		43,756.57		
Visa/Immigration processing		11,225.91		225,869.99
Total			**P**	**860,117.87**

On November 28, 2003, petitioner submitted additional documents in support of its protest.[14]

[12] Par. 14, Admitted Facts, JSFI, Docket, p. 119.
[13] Par. 27, Admitted Facts, JSFI, Docket, p. 119.
[14] Exhibits "D" and "E", Docket, pp. 329-330.

Due to respondent's inaction and before it could be barred by prescription in accordance with Section 228 of the NIRC of 1997, petitioner filed a Petition for Review before this Court on June 25, 2004.

Respondent filed through registered mail an Answer on September 24, 2004,[15] duly received by this Court on October 7, 2004, raising the following Special and Affirmative Defenses:

> "6. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses
>
> 7. xxx.
>
> Considering the failure of petitioner to submit all relevant supporting documents within sixty (60) days from filing its protest, the assessments have already become final by operation of law.
>
> 8. Since the assessments have become final, this Honorable Court has no jurisdiction to act on the instant petition.
>
> 9. Assuming arguendo that this Honorable Court has jurisdiction to act on the instant petition, petitioner was assessed for deficiency VAT for the reason that it violates the provision of Section 110(A) of the NIRC (Creditable Input Tax) in relation to Section 113 (Invoicing and Accounting Requirements for VAT-registered persons) and Section 237 (Issuance of Receipts, Sales or Commercial Invoices) of the same Code, and Section 4.108-1 of Revenue Regulations No. 7-95, and other relevant provisions of the 1997 NIRC, hence, the disallowance of its claimed VAT input tax credits on purchases.
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> 10. Petitioner was assessed for deficiency Expanded Withholding Tax (EWT) for the reason that it failed to withhold taxes on income payments made to various suppliers in violation of Section 2.57.2 of Revenue Regulations No. 2-98, and other relevant provisions of the 1997 NIRC.
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> 11. Petitioner was assessed for deficiency Fringe Benefits Tax since it violates the provisions of Section 2.57.1 and 2.57.2 of Revenue Regulations No. 2-98 and Revenue

[15] Docket, pp. 70-72.

Regulations No. 3-98, and other relevant provisions of the 1997 NIRC.

12. The assessments issued against petitioner for deficiency value-added tax, expanded withholding tax and fringe benefit tax, for taxable year 1998, covered under the undated Assessment Notice Nos. LTDO-122-VT-1998-00002, LTDO-122-WE-1998-00003 and LTDO-122-WR-1998-000022, respectively, were made in accordance with law and regulations.

13. The deficiency tax assessment issued by the BIR to petitioner is presumed true, correct and made in good faith. The taxpayer has the burden of proof that the said assessments is (are) illegal or improper."

After the issues were joined, a pre-trial conference was held on February 4, 2005. During trial, both parties presented their documentary and testimonial evidence. And on March 17, 2008,[16] this case was deemed submitted for decision after petitioner filed its Memorandum on February 22, 2008, sans respondent's Memorandum.

Hence, this Decision.

THE ISSUES

The parties submitted the following factual and legal issues for this Court's consideration:

"1. Whether petitioner is liable for the alleged deficiency VAT which it continues to protest.

a. Whether petitioner's input VAT in the amount of P790,702.97 are duly supported by Sales Invoices and/or Official Receipts;
b. Whether the Sales Invoices and/or Official Receipts substantially comply with the requirements of law and pertinent regulation for the recognition of the respective input taxes; and
c. Whether the failure of sellers to indicate petitioner's address and/or TIN on the Sales Invoice(s) and/or

[16] Resolution, Docket, p. 868.

Official Receipts should result in the disallowance of the input tax credits on said transactions.

2. Whether petitioner is liable for the alleged deficiency EWT which it continues to protest.

   a. Whether petitioner is liable for EWT on payments made on its 'subcontractor's payroll cash advance';

      i. Whether said income payments were made to non-resident Filipino Citizens who reside abroad for the majority of the year;

      ii. Whether income payments to such non-resident Filipino Citizens is subject to EWT under Revenue Regulations No. 2-98.

   b. Whether petitioner is liable for EWT on car rental payments for transportation of passengers;

      i. Whether said income payments were for transportation of passengers;

      ii. Whether income payments for transportation of passengers is subject to EWT under Revenue Regulations No. 2-98.

   c. Whether petitioner is liable for EWT on payments made to individuals for seminars and other educational courses conducted for the training of petitioner's personnel under Revenue Regulations No. 2-98;

3. Whether petitioner is liable for the alleged deficiency FBT under Section 33 of the NIRC and Revenue Regulations No. 3-98, which it continues to protest.

   a. Whether petitioner is liable for FBT on payments made for car rentals;

      i. Whether petitioner has already paid FBT on the subject car rentals;

   b. Whether petitioner is liable for FBT on Playing Rights;

      i. Whether petitioner purchased proprietary shares and playing rights purchased in its own name;

ii. Whether the proprietary shares and playing rights are petitioner's assets and not a fringe benefit given to its employees;

iii. Whether the proprietary shares and playing rights are solely used by petitioner for entertaining its clients and thus a business expense rather than a fringe benefit subject to FBT.

c. Whether petitioner is liable for FBT on payments made for telephone expenses;

i. Whether the telephone lines were purchased, and are owned by, petitioner and not by any particular employee;

ii. Whether the telephone lines are for the convenience and advantage of petitioner and are not properly classified as fringe benefits subject to FBT;

d. Whether petitioner is liable for FBT on payments made for Airline Tickets;

i. Whether petitioner incurred air transportation expenses for the overseas business meetings of its expatriate employees;

ii. Whether petitioner's expatriate employees attended overseas business meetings on behalf of petitioner;

iii. Whether the air fare expenses are for the convenience and advantage of petitioner and are not properly classified as fringe benefits subject to FBT.

e. Whether petitioner is liable for FBT on payments made for Visa/Immigration processing;

i. Whether petitioner incurred expenses for the working visa and immigration processing/regulatory fees to enable their expatriate employees to legally enter and work in the Philippines;

ii. Whether the expenses for visa/immigration processing are for the convenience and advantage of petitioner and are not properly classified as fringe benefits subject to FBT.

4. Whether the assessments are invalid for failure of the respondent to state the factual and legal basis for the same."[17]

THIS COURT'S RULING

The Court will resolve the issues in *seriatim*.

Deficiency Value-added Tax

The deficiency VAT assessment of P5,687,636.73 arose from the disallowance of petitioner's input VAT credits in the amount of P3,025,317.14 due to the alleged violation of Section 110(A) of the NIRC of 1997, in relation to Sections 113 and 237 of the same Code, and Section 4.108-1 of Revenue Regulations (RR) No. 7-95. The disallowed input VAT credits are as follows:

Disallowed input VAT:		
1. No sales invoice/OR	P	790,702.97
2. No address		860,535.39
3. No TIN per SI/OR		1,374,078.78
Total	**P**	**3,025,317.14**

In its protest letter, petitioner wrote:[18]

"We note that the amount of P790,702.97 alleged by the examiner as having 'No Sales Invoice/OR' is in fact supported by invoices and official receipts except that the address or the TIN of NPI was not indicated by the seller in the said invoices or official receipts.

We submit that there is no legal basis, either in the NIRC or in any existing BIR regulations or jurisprudence, for the disallowance of the said input taxes on the ground that supporting invoices or official receipts issued to NPI failed to state NPI's address or NPI's TIN. There is no law providing for such a penalty against an omission or mistake, which, we take note, was not even committed by NPI. On the contrary, all that the law requires for a taxpayer to validly recognize input taxes from his purchases of goods and services is that a) the

[17] Factual and Legal Issues Submitted, Joint Stipulation of Facts and Issues, Docket, pp. 120-123.
[18] Exhibit "C", pp. 2-3, Docket, pp. 322-323.

supporting invoice/official receipt is VAT-registered with the BIR; b) that the TIN-V of the seller is indicated (pre-printed) on the invoice or receipt and c) that the VAT-registered invoice/receipt is issued in the purchaser's name or the one claiming the input tax.

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We reiterate that the failure to indicate the address of NPI or NPI's TIN in the supporting invoices was not even committed by NPI. Rather, it was an omission by the sellers of goods or services who issued the invoices to NPI. It is highly incredulous, if not anathema to the basic idea of justice and fair play, to penalize a taxpayer for an omission he did not commit. xxx."

Upon motion of petitioner, the Court commissioned the auditing firm of R.S. Bernaldo & Associates, through its Partner, Atty. Perfecto E. Mirador, Jr., as Independent Certified Public Accountant (ICPA), to verify the voluminous documents presented as evidence to support petitioner's protest to the tax assessments. As to the protested disallowed input taxes, the said firm summarized its findings as follows:[19]

Reason for Disallowance	Total Deficiency Protested	With Supporting Documents per Audit	Without Supporting Documents Per Audit
No sales invoice/OR	790,702.97	58,735.39	731,967.58
No address	860,535.39	859,127.21	1,408.18
No TIN per SI/OR	1,374,078.78	1,374,162.50	-
TOTAL	**3,025,317.14**	**2,292,025.10**	**733,375.76**

In view of the above findings that there were no supporting documents for the input taxes of P733,375.76, petitioner paid on December 14, 2005 through the BIR's Electronic Filing and Payment System (EFPS) the deficiency VAT assessment in the total amount of P1,727,861.36, inclusive of

[19] Annex "A" of Exhibit "S", Docket, p. 718.

increments,[20] which was acknowledged by the BIR in a Certification dated March 17, 2006.[21] Details of the payment are as follows:

Basic Tax	P	733,375.76
Interest		974,485.60
Compromise		20,000.00
Total	**P**	**1,727,861.36**

Thus, the remaining protested deficiency VAT assessment (basic tax) amounts only to P2,291,941.38, computed as follows:

Disallowed input VAT:		
1. No sales invoice/OR	P	58,735.39
2. No address		859,127.21
3. No TIN per SI/OR		1,374,078.78
Total Basic Deficiency VAT	**P**	**2,291,941.38**

Admittedly by petitioner, the invoices and/or official receipts covering the remaining protested deficiency VAT assessment in the amount of P2,291,941.38 do not bear petitioner's address and/or TIN. A perusal of the documents however reveals that although the input tax in the amount of P58,735.39 are actually supported by sales invoices and/or official receipts, the following exceptions were found:[22]

Exh.	Supplier		Input VAT
1.) Purchase of services supported by an undated OR			
T-12	CYO International	P	34,753.31
2.) Purchase of goods supported by documents other than an invoice			
T-29 to T-39	Jupiter Systems, Inc.		12,397.64
	TOTAL	**P**	**47,150.95**

With regard to the input VAT in the amounts of P859,127.21 and P1,374,078.78, the Court also found the following exceptions to disallow the computed amount of P255,403.88:[23]

[20] Exhibits "Y-4" to "Y-7", Docket, pp. 745-748.
[21] Exhibit "Z", Docket, p. 750.
[22] Exhibits "T-1" to "T-39".
[23] Exhibits "T-40" to "T-467".

Exh.	Invoice/OR Date	Supplier		Input VAT
1.) Purchase of services supported by documents other than an OR				
T-74	11/10/1998	Smart	P	170.97
2.) Purchase of services supported by an OR with TIN-V instead of TIN-VAT				
T-113	11/27/1998	Spartan Security Agency		1,951.36
T-147	11/24/1998	Wispy Trading		122.27
T-188	12/4/1998	Spartan Security Agency		1,951.36
		Subtotal	***P***	***4,195.96***
3.) Purchase of services supported by an OR with TAN instead of TIN-VAT				
T-254	8/14/1998	LBS Construction	P	7,636.36
T-261	8/21/1998	LBS Construction		21,818.18
4.) Purchase of services supported by an OR with stamped TIN only				
T-277	10/30/1998	LBS Construction		62,695.19
T-282	11/13/098	LBS Construction		50,694.65
T-292	11/20/1998	LBS Construction		10,909.09
T-306	11/20/1998	LBS Construction		56,542.19
T-296	12/4/1998	LBS Construction		22,237.92
T-309	12/11/1998	LBS Construction		18,674.34
		Subtotal	***P***	***251,207.92***
		TOTAL	**P**	**255,403.88**

Proceeding now to the issue as to whether or not petitioner was able to comply with the invoicing requirements relating to input tax credits, We quote the pertinent provisions of the NIRC of 1997, namely, Sections 110, 113, 237, and Section 4.108-1 of Revenue Regulation No. 7-95, to wit:

"SEC. 110. Tax Credits. —

(A) Creditable Input Tax. —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods;

(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For the use in trade or business for which deduction for depreciation or amortization is allowed

under this Code, except automobiles, aircraft and yachts.

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

(2) The input tax on domestic purchases of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

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"SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —

(A) Invoicing Requirements. — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax."

xxx xxx xxx"

"SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made for rentals, commissions, compensations or fees, **receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser**." *(Emphasis and underscoring supplied)*

"SECTION 4.108-1. Invoicing Requirements — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show: .

1. the name, TIN and address of seller;

2. date of transaction;

3. quantity, unit cost and description of merchandise or nature of service;

4. **the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;**

5. the word 'zero rated' imprinted on the invoice covering zero-rated sales; and

6. the invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records." *(Emphasis and underscoring supplied)*

Clearly specified in the foregoing legal provisions and regulations are the necessary requirements for the recognition of petitioner's creditable input VAT. Admittedly in the subject supporting invoices and/or official receipts issued by the seller of goods or services subject to VAT, petitioner-purchaser's address and TIN were not reflected to prove creditable input VAT. It thus becomes imperative to determine whether or not the said requirements are mandatory in nature.

We rule in the affirmative.

The Court notes that under Section 113 (A) of the NIRC of 1997, aside from making it mandatory for a VAT registered person to issue an invoice or receipt for every sale transaction, it also requires said person, in addition to the information required under Section 237 of the NIRC of 1997, to reflect the information that the seller is a VAT registered person, followed by his TIN and the total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

The information referred to under Section 237 pertain to the following: the name, business style, if any, and **address of the purchaser**, **customer or client, and where the purchaser is a VAT-registered person, in addition thereto, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.**

Similarly, Section 4.108-1 of Revenue Regulation 7-95 on Invoicing Requirements also requires that all VAT-registered persons **shall,** for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show the following information: the name, TIN and address of seller; date of transaction; quantity, unit cost and description of merchandise or nature of service; **the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client**; the word "zero rated" imprinted on the invoice covering zero-rated sales; and the invoice value or consideration.

Clearly from the tenor of the aforequoted legal provisions pertaining to VAT invoicing and accounting requirements, compliance thereto is mandatory as the word "**shall**" is used. The word "**shall**" is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning.[24] Thus, the purchaser-taxpayer, petitioner in this case, is duty bound to ensure full compliance with the aforementioned invoicing requirements. And petitioner's failure in this regard is thus fatal to its claim for the recognition of its input tax credits.

The sellers' failure to indicate petitioner-purchaser's address and/or TIN on the subject sales invoices and/or official receipts, although as petitioner claims, is an act attributable to the seller, the same is still within petitioner's power to ensure compliance thereon. Being remiss in this regard will correspondingly result in the disallowance of its input tax credits. Hence, the Court upholds respondent's assessment of petitioner's VAT deficiency in the total amount of P4,307,593.94, detailed as follows:

Disallowed input VAT:		
1. With sales invoice/OR but no address and/or TIN	P	58,735.39
2. No address		859,127.21
3. No TIN per SI/OR		1,374,078.78
Total Basic Deficiency VAT	P	2,291,941.38
Add: Interest (04/25/99 to 09/15/03)		2,015,652.56
Total Amount Due	**P**	**4,307,593.94**

Deficiency Expanded Withholding Tax

Respondent assessed petitioner of deficiency EWT for the fiscal year ending March 31, 1999 by reason of the latter's failure to withhold expanded withholding taxes on the following income payments in violation of Section 2.57.2 of Revenue Regulations (RR) No. 2-98:[25]

[24] Filipino vs. Macabuhay, 508 SCRA 50; Francsico vs. Court of Appeals, 243 SCRA 392.
[25] 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.

	Income Payments		EWT (1%)	
1. Subcontractors' payroll-CA	P	2,349,939.82	P	23,499.40
2. Car rental		2,741,905.29		27,419.05
3. Seminar & other educational courses		160,316.64		1,603.17
Total	**P**	**5,252,161.75**	**P**	**52,521.62**

Petitioner argues that the factual and legal bases of the disallowance of subcontractor's payroll in the amount of P2,349,939.82 were not stated in the Formal Assessment Notice (FAN) issued by respondent; that these payments should not be subjected to expanded withholding tax as they were paid to individual Filipinos who were not considered resident citizens for income tax purposes, in accordance with Section 22(E)(3) of the NIRC, as they were abroad for most part of the year. It is allegedly clear from Section 2.57.2 of RR No. 2-98 that creditable income tax shall be withheld for each class of payee from the enumerated items of income payments to "persons residing in the Philippines."[26]

Relative thereto, Myrna M. Diaz, General Manager of petitioner's Support Staff Group, testified that the payment for subcontractor's payroll cash advances cannot be made subject to EWT as said income payments were made to non-resident Filipino citizens, who reside abroad for most part of the year; and that Section 2.57.2 of RR. No. 2-98 provides that payments subject to creditable income tax are withheld only on income payments made to persons residing in the Philippines.[27] As part of her testimony, she identified petitioner's Monthly Remittance Returns of Income Taxes Withheld (BIR Form 1601, formerly Form 1743W)[28] for the fiscal year ending March 31,

[26] Exhibit "C", p. 3; docket, p. 323.
[27] Exhibit "R", pp. 6-7, Docket, pp. 703-704.
[28] Exhibits "I-1" to "I-12", Docket, pp. 337-506.

1999 to prove that petitioner correctly withheld and remitted income withholding taxes.

Furthermore, witness Ma. Margarita H. Tabat, petitioner's Senior Manager for Accounting and Treasury Department, elaborated in her Amended Sworn Statement dated March 14, 2006[29] which serves as her direct testimony, as follows:

> "80. Q: xxx Who are these subcontractors being referred to Ms. Witness?
>
> A: The subcontractors refer to Filipino engineers who are residing abroad for most of the year and are being paid by Nesic Singapore or Nesic Japan.
>
> 81. Q: What are being paid by Nesic-Japan or Nesic-Singapore to these subcontractors?
> A: Nesic-Japan and Nesic-Singapore pays the subcontractors cash advances in foreign currency. These are paid directly to the subcontractors. The remaining portion of the amounts payable to the subcontractors are remitted to Nesic-Philippines, the Petitioner, who pays these amounts to the subcontractors in the Philippines.
>
> 82. Q: What tax (was) withheld on the amount paid to the subcontractors?
>
> A: Nesic Philippines withheld 1% tax on the portion payable in the Philippines and not on the cash advances made abroad.
>
> 83. Q: What proof do you have, if any, to show that cash advances were paid in foreign currency to the subcontractors?
>
> A: We gave the independent CPA the payroll summaries of the subcontractors showing the payments made in foreign currency. The independent CPA included these in the Report and marked them as Exhibits U-567, U-569, U-571, U-578, U-580, U-581, U-586, U-588, U-592, U-593, U-594, U-596 and U-598. The independent CPA also examined two (2) promissory notes marked as Exhibits U-574 and U-583 showing that cash advances were made by

[29] Exhibit "Q", p. 14, Docket, p. 695.

> Nesic-Japan. Finally, we have the documents issued by Nesic-Japan or Nesic-Singapore showing payment of cash advances. These were marked as Exhibits U-575, U-576, U-577, U-582 and U-584."

This was verified by the ICPA, who noted:[30]

> "We were not able to examine the original contract executed between NPI and the individual subcontractors. However, based on the sample contract provided to us by NPI, said individuals were hired to render engineering or technical services for a specific project abroad. They were considered subcontractors of NPI as their services are based on a contractual agreement, i.e. for a period of five months but can be renewed depending on the exigencies of the projects. The subcontractors' fixed monthly payments were paid in the place/country where the project/service was located/rendered and a portion was paid in the Philippines.
>
> Our examination of the 'Subcontractors Payroll' shows that NPI withheld expanded withholding tax of 1% on the net pay only after deducting the cash advances or the portion paid in the Philippines. Thus, all cash advances made by the subcontractors have not been subjected to withholding tax."

As part of its documentary exhibits, petitioner submitted payment slips, payroll summaries, and other documents to prove that it contracted Filipino engineers to render engineering and technical services on projects overseas, who reside abroad for the most part of the year and are paid by petitioner's affiliates Nesic-Singapore or Nesic-Japan.[31] An examination of the foregoing documents readily shows that one percent (1%) EWT was withheld from the gross income of the subcontractors after deducting the cash advances.

However, the Court notes that the subcontractors are employees of petitioner; and their gross income should have been subjected not to the 1% EWT, but rather to the withholding tax on compensation. Considering that petitioner failed to establish that the subcontractors' cash advances of

[30] Exhibit "S", p. 6, Docket, pp. 714.
[31] Exhibits "U-564" to "U-598".

P2,349,939.82 were earned while they were abroad for most time of the year, the same should be subjected to withholding tax on compensation, and respondent should have assessed petitioner for deficiency withholding tax on compensation, instead of expanded withholding tax on the said cash advances.

Thus, for being erroneous, respondent's assessment for deficiency expanded withholding tax in the amount of P23,499.40 should be cancelled.

Anent the deficiency withholding tax assessment of P1,603.17 on seminar and other educational courses, as the factual and legal bases were not provided by respondent, petitioner assumed that this pertains to payments made to those who conducted trainings for petitioner's personnel. Petitioner argues that such payments are not included in the enumeration of income payments subject to creditable withholding tax under Section 2.57.2(A) and (B) of RR No. 2-98.[32]

Records disclose that out of the P1,603.17 deficiency EWT assessment, petitioner was able to present supporting documents only for the amount of P376.25. As no documents were presented to controvert the deficiency EWT assessment of P1,226.92, the same should be upheld.

With respect to the documents supporting the alleged deficiency EWT of P376.25 reveals that the related income payments were made to Mocom International for the Niponggo tutorial course in the amount of P37,625.00, detailed as follows:[33]

[32] Exhibit "R", p. 8, Docket, p. 705.
[33] Exhibits "U-599" to "U-606".

Period	PS/JS No.	Date	OR No.	Amount	Alleged EWT	Payee
04/02/98	24172	04/03/98	26	P 9,625.00	P 96.25	Mocom Int'l
07/01/98	25104	07/10/98	176	28,000.00	280.00	Mocom Int'l
				P 37,625.00	P 376.25	

Indeed, the income payment of P37,625.00 is **not** one of the enumerated income payments subject to creditable withholding tax under RR No. 2-98. Therefore, the deficiency EWT assessment of P376.25 should be cancelled for lack of legal basis.

As regards the deficiency expanded withholding tax assessment on car rentals amounting to P27,419.05, petitioner alleges that only payments to transportation contractors of **goods** are subject to 1% EWT in accordance with Section 2.57.2(E)(4)(e) of Revenue Regulations No. 2-98, which states:

> "(E) ***Income payments to certain contractors*** — On gross payments to the following contractors, whether individual or corporate — One percent (1%).
>
> xxx xxx xxx
>
> (4) Other contractors —
>
> xxx xxx xxx
>
> (e) Transportation contractors which include common carriers **for the carriage of goods and merchandise of whatever kind** by land, air or water, where the gross payments by the payor to the same payee amounts to at least two thousand pesos (P2,000) per month, regardless of the number of shipments during the month;" *(Emphasis supplied)*

Petitioner points out that the exclusion of car rental from those payments that are subject to 1% EWT is bolstered by the fact that had it been the intention of RR No. 2-98 to subject car rental to creditable withholding tax, it would have so easily stated as it did in Section 5.116(2) thereof, where it required government agencies to withhold 3% percentage withholding tax on gross payment to operators of cars for rent including those who transport passengers for hire, whether by land, air or water. Thus, petitioner submits that the undeniable intention of the regulation is to limit the application of EWT on transportation contractors of cargoes alone and this is supposedly clear from the *proviso* of the pertinent section of RR No. 2-98 with the phrase "regardless of the number of shipments," obviously referring to cargoes alone.

Furthermore, petitioner presented the following evidence to prove that the cars were indeed used to transport passengers, mostly petitioner's expatriate officers and employees, to wit: the ICPA's Report stating that the rented cars were used to transport petitioner's expatriate employees to attend meetings, and transport engineers to their respective project sites, and other employees to attend various business errands;[34] payment slips, invoices, official receipts, driver's time sheets,[35] time sheets of rent-a-car companies were likewise presented.[36]

Relative to petitioner's foregoing arguments and evidence presented, the issue is whether or not the car rental payments of P2,741,905.29 are subject to 1% expanded withholding tax.

We rule in the affirmative.

Section 2.57.2(E)(4)(e) of RR No. 2-98 speaks of "transportation contractors" in the general sense as an item subject to expanded withholding tax. The phrase "which include common carriers for the carriage of goods and merchandise of whatever kind" was added to expand the scope or

[34] Exhibit "S", p. 6, Docket, p. 714.
[35] Exhibits "U" to "U-563".
[36] Exhibits "P-1" to "P-31", Docket, pp. 648-678.

coverage of "transportation contractors" to ensure the inclusion of the contract of carriage of goods and merchandise of whatever kind.

As defined in Black's Law Dictionary, "**transportation**" is the movement of goods or persons from one place to another, by a carrier.[37] The word "**include**" is also explained therein as follows: "term may, according to context, express an enlargement and have the meaning *of and* or *in addition to,* or merely specify a particular thing already included within general words theretofore used. Including within a statute is interpreted as a word of enlargement or of illustrative application as well as a word of limitation."[38]

Clearly from the foregoing definition, transportation contract is not limited to the carriage or movement of goods, but also refers to movement of persons, from one place to another. In other words, the phrase "transportation contractors" is a generic term, while the phrase "which include" is a point of clarification. Correspondingly, the phrase "common carriers for the carriage of goods and merchandise" does not restrict, but expands, the meaning of "transportation contractors".

General words and phrases should ordinarily be accorded their natural and general significance; and there should be no distinction in the application of statute, or in this case Revenue Regulation, where none is indicated.[39]

Proceeding therefore, petitioner is liable for deficiency expanded withholding tax in the amount of P54,074.17, computed as follows:

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[37] Black's Law Dictionary (5th Edition, 1979), p. 1345.
[38] *Supra*, at p. 687.
[39] *Philippine British Assurance Co., Inc. vs. The Honorable Intermediate Appeallate Court, Sycwin Coating & Wires, Inc. and Dominador Cacpal, Chief Deputy Sheriff of Manila*, G.R. No. 72005, May 29, 1987.

		Income Payments		EWT (1%)
Car rental	P	2,741,905.29	P	27,419.05
Seminar & other educational courses		122,692.00		1,226.92
Total Basic Deficiency EWT			P	28,645.97
Add: Interest (04/10/99 to 09/15/03)				25,428.20
Total Amount Due			P	**54,074.17**

Deficiency Fringe Benefit Tax

In the Details of Discrepancy attached to respondent's Formal Letter of Demand, the fringe benefit tax deficiency was arrived at by deducting the FBT payments per Returns from the FBT due per audit findings. Petitioner subsequently protested the deficiency fringe benefit tax assessment on the following income payments:

April-December 1998:		Value of Benefit		FBT Due
1. Car rental	P	1,325,759.78	P	341,483.58
2. Playing rights		220,000.00		113,333.33
3. Telephone expenses		227,779.57		117,340.99
4. Plane tickets		98,637.60		50,813.31
5. Visa/immigration processing		21,890.00		11,276.67
January-March 1999:				
1. Car rental		693,906.87		170,887.51
2. Telephone expenses		88,839.10		43,756.57
3. Visa/immigration processing		22,792.00		11,225.91
Total	**P**	**2,699,604.92**	**P**	**860,117.87**

With respect to the verification of the deficiency fringe benefit tax, the ICPA found the amount of P101,382.20 to be unsubstantiated:[40]

Income Payment		Total Deficiency Protested		With Supporting Documents per Audit		Without Supporting Documents
Car rental:						
April to December 1998	P	341,483.58	P	244,130.07	P	97,353.51
January to March 1999		170,887.51		170,887.51		-
Playing rights		113,333.33		113,333.33		-
Telephone expense:						
April to December 1998		117,340.99		113,312.30		4,028.69
January to March 1999		43,756.57		47,565.70[41]		-
Plane tickets		50,813.31		50,813.31		-

[40] Annex "C" of Exhibit "S", Docket, p. 729.
[41] Documents to support the alleged deficiency FBT for Telephone expenses exceed the total amount of deficiency protested by P3,809.13.

Visa/immigration processing:			
April to December 1998	11,276.67	11,276.67	-
January to March 1999	11,225.91	11,225.91	-
TOTAL	**P 860,117.87**	**P 762,544.80**	**P 101,382.20**

Consequently, petitioner paid on December 14, 2005 through the BIR's EFPS the deficiency fringe benefit tax assessment in the total amount of P239,224.98, inclusive of increments,[42] which was acknowledged by the BIR in a Certification dated March 17, 2006.[43] Details of the payment are as follows:

Basic Tax	P	97,573.08 [44]
Interest		129,651.90
Compromise		12,000.00
Total	**P**	**239,224.98**

Thus, petitioner's remaining deficiency fringe benefit tax assessment (basic tax) amounts only to P758,735.67, detailed below:

April-Dec 1998:				
1. Car rental	P	244,130.07		
2. Playing rights		113,333.33		
3. Telephone expenses		113,312.30		
4. Plane tickets		50,813.31		
5. Visa/immigration processing		11,276.67	P	532,865.68
Jan-March 1999:				
1. Car rental	P	170,887.51		
2. Telephone expenses		43,756.57		
3. Visa/immigration processing		11,225.91		225,869.99
Total Basic Deficiency FBT			**P**	**758,735.67**

Petitioner avers that car rentals for the periods from April to December 1998, and from January to March 1999, have been properly subjected to

[42] Exhibits "Y" to "Y-3", Docket, pp. 741-744.
[43] Exhibit" Z", Docket, p. 750.
[44] Deficiency FBT without supporting docs per ICPA Report P101,382.20
Less: Excess docs for Telephone expenses 3,809.13
Deficiency FBT paid by petitioner P 97,573.07

fringe benefit tax and the same have been duly remitted to the BIR;[45] that the corresponding FBT Returns[46] have been submitted to respondent's examiners and payment slips with supporting documents were presented as proof of the foregoing allegation.[47]

Upon verification of the subject car rental payments, the ICPA reported as follows:[48]

> "xxx, NPI paid rental fees for the services rendered by various rent-a-car companies. The car rentals were used to transport expatriates to attend meetings, and transport engineers to their respective project sites, engineers from Head Office abroad and other employees regardless whether rank and file or managerial position who need a car service for business purposes. As an additional proof that the car is being used for business purposes or for NPI's projects, a job order is required whenever there is a requisition for the need of transportation."

An examination of the related contracts, billings/official receipts of rent-a-car companies, purchase order, purchase request and time sheets of drivers signed by petitioner's representatives shows that the car rental payments subject of the alleged deficiency FBT were incurred in relation to petitioner's projects or business.[49]

Section 33(a) of the NIRC of 1997 states that fringe benefits which are "required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer" are not subject to the fringe benefit tax. Thus, the deficiency FBT assessments for the periods from April to December 1998 and from

[45] Exhibit "C", p. 5, Docket, p. 325.
[46] BIR Records, pp. 237-253.
[47] Exhibits "V-1" to "V-418".
[48] Exhibit "S", p. 7, Docket, p. 715.
[49] Exhibits "V-1" to" V-418".

January to March 1999, in the respective amounts of P244,130.07 and P170,887.51, are erroneous and should be cancelled and withdrawn.

Regarding the deficiency FBT assessment on playing rights amounting to P113,333.33, petitioner explains that the playing rights are registered in its name and are being used by petitioner in entertaining prospective clients. Since these playing rights are purportedly necessary for the business of petitioner and are not benefits of any particular employee, the same should not be subjected to FBT. A sample contract between petitioner and the owner of the golf club, Sta. Elena Properties, Inc.,[50] payment slip and acknowledgement receipt[51] were presented as part of petitioner's documentary evidence.

An examination of the said documents discloses that the payment made on December 1, 1998 was for the continued assignment of playing rights at Sta. Elena Golf Club, Inc. for the period from December 12, 1998 to December 12, 1999. While the sample contract shows that the playing rights were registered in the name of petitioner, however, the said contract was valid for the period from July 16, 2003 to July 16, 2008, which is outside the period covered by the subject assessment, that is, from April 1, 1998 to March 31, 1999. Moreover, the said contract provides for the transferability of the rights to a third party.

Thus, even granting that the contract pertained to the fiscal year under assessment, this Court cannot determine whether the playing rights were

[50] Exhibit "X", Docket, pp. 738-740.
[51] Exhibits "V-419" to "V-420".

transferred to a third party or petitioner's employee. Hence, respondent's assessment shall stand.

Respondent likewise assessed deficiency fringe benefit tax on petitioner's telephone expenses in the aggregate amount of P157,068.87 (P113,312.30 plus P43,756.57) for the period ending March 31, 1999. Petitioner counters that the assessment is devoid of legal basis as the aforementioned expense is a legitimate business expense and not a facility or privilege provided to its managerial or supervisory employees. The fact that each telephone line is designated to a particular employee does not allegedly make it a facility or privilege subject to FBT.[52]

We note the ICPA's report on his verification of petitioner's telephone expenses, to wit:[53]

> "xxx Our examination of billing statements showed that these telecommunication expenses were billed to NPI by various telecommunication companies except for the two telephone lines registered under the name of Manila NEC System Int. & Construction Ltd. used by a certain Mr. Bong Yu, a consultant of NPI.
>
> We noted that the telecommunication expenses for these two lines with the total amount of P8,119.66 were reimbursed by Mr. Yu to NPI. Accordingly, NPI allows reimbursement of the said telecommunication expenses for the reason that the said telephone lines were used for business purposes or for the benefit of NPI such as dealing clients of NPI and other inter-office calls."

A scrutiny of the payment slips pertaining to the subject telephone expenses with attached supporting documents, such as monthly billing statements and official receipts or proofs of receipt of payment from the telecommunications companies, reveal that internet subscriptions were

[52] Exhibit "C", pp. 6-7, Docket, pp. 326-327.
[53] Exhibit "S", p. 8, Docket, pp. 716-717.

included in the expense account and they were in fact registered in the name of petitioner.[54] Statements of account or invoices and official receipts were issued in the name of petitioner as well, except for the following:

Exhibit	Payment Slip No.	Date	Payee		Amount
1. No supporting invoice/OR issued in the name of Petitioner					
V-438 to 439	24326	4/16/1998	PILTEL	P	880.50
V-440 to 442	24328	4/16/1998	PILTEL		1,405.36
			Sub-total	P	2,285.86
2. Supporting invoice & OR issued in the name of Petitioner's employee					
V-600 to 608	25166	7/6/1998	Infocom Technologies	P	960.00
			Sub-total	P	960.00
3. Billing Statement issued in the name of Manila NEC System Int'l & Const Ltd c/o Mr. Bong Yu					
V-771 to 772	27348	10/26/98		P	3,520.78
V-795 to 796	27429	09/26/98			4,598.88
			Sub-total	P	8,119.66
			Total	**P**	**11,365.52**

As testified to by petitioner's Senior Manager for Accounting and Treasury Department, Ms. Ma. Margarita H. Tabat, the subject telephone lines were assigned to petitioner's officers and/or employees for work-related use or to allow petitioner to easily stay in touch with such officers and/or employees, thus:[55]

"45. Q: What about the Telephone Expenses?

A: Nesic is likewise contesting the classification of this expense as subject to FBT because, like the playing rights, no particular benefit is given to any Nesic officer or employee.

46. Q: Why do you say that no particular benefit is given to any Nesic officer or employee?

A: Nesic is the registered subscriber of a number of telephone lines from various telephone companies. These lines are assigned to Nesic's officers and/or employees for work-related use or to allow Nesic to easily stay in touch with such officers and/or employees. All of the lines however, are

[54] Exhibits "V-421" to" V-819".
[55] Exhibit "Q", p. 8, Docket, p. 689.

in the name of Nesic Philippines, Inc., who pays all the charges for the said lines. Again, like the playing rights, this is solely for the convenience and advantage of Nesic and do not form part of the benefits or compensation of the individual officers or employees."

Clearly, the telephone expenses, which were duly receipted for and in the name of petitioner and which were used for business purposes and/or for the convenience and advantage of petitioner, are not subject to FBT as provided under Section 2.33(B)(2) of Revenue Regulations No. 3-98,[56] to wit:

"(2) *Expense account* —

(a) In general, expenses incurred by the employee but which are paid by his employer shall be treated as taxable fringe benefits, **except when the expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the employee.**

(b) Expenses paid for by the employee but reimbursed by his employer shall be treated as taxable benefits **except only when the expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the said employee.**

(c) Personal expenses of the employee (like purchases of groceries for the personal consumption of the employee and his family members) paid for or reimbursed by the employer to the employee shall be treated as taxable fringe benefits of the employee whether or not the same are duly receipted for in the name of the employer.

(d) Representation and transportation allowances which are fixed in amounts and are regularly received by the employees as part of their monthly compensation income shall not be treated as taxable fringe benefits but the same shall be considered as taxable compensation income subject to the tax imposed under Sec. 24 of the Code." *(Emphasis supplied)*

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[56] Implementing Section 33 of the National Internal Revenue Code, as Amended by Republic Act No. 8424 Relative to the Special Treatment of Fringe Benefits.

Therefore, respondent's assessment for this item should be cancelled except for the telephone expenses itemized above in the amount of P11,365.52. However, it is to be noted that the amount of P11,365.52 included telephone expenses in the amount of P8,119.66 reimbursed by petitioner to its alleged consultant, Mr. Bong Yu. Absent any documentary proof to show that Bong Yu is a consultant, and not an employee of petitioner, the telephone expenses of P8,119.66 shall be subjected to FBT. Thus, petitioner is liable to pay deficiency FBT in the amount of P5,854.96, computed as follows:

Total value of the benefit	P	11,365.52
Divided by		66%
Grossed-up value	P	17,220.48
FBT rate		34%
Fringe Benefit Tax due	**P**	**5,854.96**

As to the deficiency FBT assessment on plane ticket expenses, petitioner alleges that respondent's examiners failed to consider these to have been incurred in connection with the business of petitioner, as the cost of plane tickets was incurred for petitioner's expatriate employees to attend business meetings abroad.[57] In support of its argument, petitioner presented payment slips, invoices, official receipts, tickets, letters, and other supporting documents relating to the plane ticket expenses.[58]

The Court is not convinced.

The payment slips, official receipts issued by the travel agencies, and billing statements/request for official dispatch and allowances, did not coincide with the meetings scheduled in the notices issued to petitioner's President.

[57] Exhibit "C", p. 7, Docket, p. 327.
[58] Exhibits "V-820" to "V-830".

Further, petitioner failed to prove that the said business meetings actually occurred and that its officers indeed attended the meetings. A certificate of appearance or a certificate of participation issued by NEC-Japan would have sufficed.

Section 2.33(B)(7) of Revenue Regulation No. 3-98 states that:

> "(7) *Expenses for foreign travel* —
>
> (a) Reasonable business expenses which are paid for by the employer for the foreign travel of his employee **for the purpose of attending business meetings** or conventions shall not be treated as taxable fringe benefits. In this instance, inland travel expenses (such as expenses for food, beverages and local transportation) except lodging cost in a hotel (or similar establishments) amounting to an average of US$300.00 or less per day, shall not be subject to a fringe benefit tax. **The expenses should be supported by documents proving the actual occurrences of the meetings** or conventions.
>
> The cost of economy and business class airplane ticket shall not be subject to a fringe benefit tax. However, 30 percent of the cost of first class airplane ticket shall be subject to a fringe benefit tax.
>
> (b) In the absence of documentary evidence showing that the employee's travel abroad was in connection with business meetings or conventions, the entire cost of the ticket, including cost of hotel accommodations and other expenses incident thereto shouldered by the employer, shall be treated as taxable fringe benefits. **The business meetings shall be evidenced by official communications from business associates abroad indicating the purpose of the meetings.** Business conventions shall be evidenced by official invitations/communications from the host organization or entity abroad. Otherwise, the entire cost thereof shouldered by the employer shall be treated as taxable fringe benefits of the employee." *(Emphasis supplied)*

In light of the foregoing provisions, the assessment for fringe benefit tax on plane ticket expenses in the amount of P50,813.31 shall be sustained.

Concerning the deficiency fringe benefit tax assessment on its visa/immigration processing expenses, petitioner again argues that the said

NO

expense is not subject to FBT as it is necessary to its trade or business; that the working visa and immigration processing fees are governmental regulatory fees which have to be paid, otherwise petitioner's expatriate employees will not be able to legally enter and work in the Philippines.[59]

The ICPA found that petitioner's visa/immigration processing expenses pertained to its expatriate officers and engineers from head office abroad who visited and checked the status of petitioner's projects in the country. There were travel orders, copies of passport and working visas as proofs that the expenses were legitimate and necessary business expense of petitioner, except for the visas of Mr. Kitano and Mr. Nojou which were not found on file for examination.[60]

Petitioner submitted the payment slips, official receipts, copies of expatriate employees' visas, letters, and other documents examined by the ICPA.[61] Further examination of the BIR Records, in conjunction with the aforesaid evidence, reveals that respondent's original FBT assessment on visa/immigration expenses consisted of the following:

Reference	Month		Amount	Remarks
BIR Records pages 775 to 776	Apr-98	P	1,320.00	visa/immigration processing-Hashimoto
Exhibit V-831 to 842	Dec-98		43,260.00	visa/immigration processing-expats & family
Exhibit V-843 to 848	Mar-99		31,560.00	visa/immigration processing-expats & family
	TOTAL	**P**	**76,140.00**	

However, respondent subsequently excluded the amount of P31,458.00 and only P44,682.00 was subjected to FBT, as shown below:[62]

[59] Exhibit "C", p. 7, Docket, p. 327.
[60] Exhibit "S", p. 8, Docket, p. 716.
[61] Exhibits "V-831" to "V-848".
[62] Annex "A" of Exhibit" B", Docket, p. 320.

Period	Per PAN	Allowed	Expense Subject to FBT
April-December 1998	P 44,580.00	P 22,690.00	P 21,890.00
January-March 1999	31,560.00	8,768.00	22,792.00
TOTAL	**P 76,140.00**	**P 31,458.00**	**P 44,682.00**

The remaining deficiency FBT assessment pertains to the visa/immigration processing expenses for petitioner's expatriate employees' family.

In protesting the said deficiency FBT assessment on the visa/immigration processing expenses of P44,682.00, petitioner's Senior Manager for Accounting and Treasury Department, Ma. Margarita H. Tabat, testified as follows:[63]

> "54. Q: Finally, Ms. Witness, why is Nesic protesting the assessment of the BIR that the visa/immigration processing expenses of Nesic should be subject to FBT?
>
> A: Nesic employs a number of foreign employees. Among them are Messrs. Nagatsuna and Hashimoto, whom I mentioned earlier. In order to enable said persons to work for Nesic in the Philippines, a working visa is required by Philippine Law. Moreover, since these persons will be working here for a significant amount of time, expenses were required for the **immigration processing of themselves** and **their families**. Since all of these expenses were incurred by Nesic to enable such employees to perform work for the company, and not for any personal benefit of such employees, the expenses cannot be classified as fringe benefits under the NIRC." (*Emphasis supplied*)

Section 2.33(B) of RR No. 3-98 defined "fringe benefit" as follows:

> "(B) xxx any good, service, or other benefit furnished or granted by an employer in cash or in kind, in addition to basic salaries, to an individual employee (except rank and file employee as defined in these regulations) such as, but not limited to the following:
>
> (1) Housing;

[63] Docket, pp. 690-691.

(2) Expense account;
(3) Vehicle of any kind;
(4) Household personnel, such as maid, driver and others;
(5) Interest on loan at less than market rate to the extent of the difference between the market rate and actual rate granted;
(6) Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;
(7) Expenses for foreign travel;
(8) Holiday and vacation expenses;
(9) Educational assistance to the employee or his dependents; and
(10) Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows.

For this purpose, the guidelines for valuation of specific types of fringe benefits and the determination of the monetary value of the fringe benefits are given below. The taxable value shall be the grossed-up monetary value of the fringe benefit."

In relation to the above-quoted section, Section 2.33(C) of said regulations further provides:

"**(C)** ***Fringe Benefits Not Subject to Fringe Benefits Tax*** — In general, the fringe benefits tax shall not be imposed on the following fringe benefits:

(1) Fringe benefits which are authorized and exempted from income tax under the Code or under any special law;
(2) Contributions of the employer for the benefit of the employee to retirement, insurance and hospitalization benefit plans;
(3) Benefits given to the rank and file, whether granted under a collective bargaining agreement or not;
(4) De minimis benefits as defined in these Regulations;
(5) If the grant of fringe benefits to the employee is required by the nature of, or necessary to the trade, business or profession of the employer; or
(6) If the grant of the fringe benefit is for the convenience of the employer.

xxx xxx xxx"

Based on the foregoing, the immigration processing expenses of petitioner' employees shall be considered as fringe benefits not subject to FBT. However, with regard to the visa and immigration processing expenses of the expatriate employees' family, the same is taxable. Section 2.33(B)(2) of the same regulation provides:

> "**(2) *Expense account –***
>
> (a) **In general, expenses incurred by the employee but which are paid by his employer shall be treated as taxable fringe benefits, except when the expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the employee.**
>
> (b) **Expenses paid for by the employee but reimbursed by his employer shall be treated as taxable benefits** except only when the expenditures are duly receipted for and in the name of the employer **and the expenditures do not partake the nature of a personal expense attributable to the said employee.**
>
> (c) Personal expenses of the employee (like purchases of groceries for the personal consumption of the employee and his family members) paid for or reimbursed by the employer to the employee shall be treated as taxable fringe benefits of the employee whether or not the same are duly receipted for in the name of the employer" (*Underscoring and emphasis supplied).*

Although the visa and immigration processing expenses of the expatriate employees' family were duly receipted for and in the name of the employer, the same partake the nature of personal expenses attributable to the employees; hence, subject to FBT. Therefore, petitioner's total deficiency fringe benefit tax liability is computed as follows:

April-Dec 1998:	
Playing rights	P 113,333.33
Telephone expenses	5,854.96
Plane tickets	50,813.31
Visa/immigration processing	11,276.67

nv

Jan-March 1999:	
Visa/immigration processing	11,225.91
Total Basic Deficiency FBT	P 192,504.18
Add: Interest (04/10/99 to 09/15/03)	170,880.43
Total Deficiency FBT	**P363,384.61**

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED** to **PAY** deficiency value-added tax, expanded withholding tax, and fringe benefit tax in the sum of **FOUR MILLION SEVEN HUNDRED TWENTY FIVE THOUSAND FIFTY TWO and 72/100 PESOS (P4,725,052.72)**, computed as follows:

	VAT	EWT	FBT	Total
Basic Tax	2,291,941.38	28,645.97	192,504.18	2,513,091.53
Interest	2,015,652.56	25,428.20	170,880.43	2,211,961.19
Total	**P 4,307,593.94**	**P 54,074.17**	**P 363,384.61**	**P 4,725,052.72**

In addition, petitioner is hereby **ORDERED** to **PAY** twenty percent (20%) delinquency interest on the total amount of P4,725,052.72, counted from September 15, 2003 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice