REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BENCHMARK MARKETING CORP., *Petitioner,*	**CTA Case No. 9224**
-versus-	Members:
	CASTAÑEDA, JR., *Chairperson,* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 17 2018 10:40 a.m

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DECISION

MANAHAN, *J.*:

This involves a Petition for Review filed on December 28, 2015 by Benchmark Marketing Corp., as petitioner, against the Commissioner of Internal Revenue, as respondent, before the Court in Division.

Petitioner seeks the cancellation and withdrawal of the deficiency income tax (IT), value-added tax (VAT), Expanded Withholding Tax (EWT) and Fringe Benefit Tax (FBT) assessments issued by respondent for taxable year 2010.

THE PARTIES

Petitioner is a domestic corporation organized and existing under the laws of the Philippines with Securities and Exchange Commission (SEC) Company Registration No.AS-091-194060. It holds office at Dona Natividad Bldg., 10 Quezon Avenue, Quezon City. It is duly registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. 000-078-211-000.[1]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), head of the Bureau of Internal Revenue (BIR) who is vested with the powers and duties, among others, to assess and collect all national internal revenue taxes and to decide, approve and grant tax protests. He holds office at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

Petitioner received Letter of Authority (LOA) No. LOA-116-2011-00000096 with SN: eLA201100003002 with First Notice of Requirements[2], both dated September 23, 2011.[3]

Sometime in February of 2013, petitioner received a letter from respondent dated February 26, 2013 with attached Memorandum of Assignment (MOA) No. LOA-116-2013-0229 dated February 13, 2013.[4]

On different dates, petitioner executed several Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code ("waiver" for brevity), with the following details:

WAIVER	Exh. No.	DATE OF EXECUTION	EXPIRY DATE TO ASSESS	DATE ACCEPTED BY BIR	DATE RECEIVED BY TAXPAYER
1st	R-7[5]	July 16, 2013	December 31, 2013	July 25, 2013	August 15
2nd	R-8[6]	September 16, 2013	June 30, 2014	October 2, 2013	October 22, 2013
3rd	R-9[7]	March 7, 2014	December 31, 2014	March 14, 2014	May 6, 2014
4th	R-11[8]	October 8, 2014	June 30, 2015	October 27, 2014	December 11, 2014

[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Court Docket, Volume II, page 495; Exhibit "P-2", Court Docket, Volume I, page 270.
[2] Exhibit "P-3", docket, vol. I. p. 271; Exhibits "R-3" and "R-4", BIR Records, Folder 1, pp. 1-4.
[3] Par. 2, Admitted Facts, JSFI, docket, vol. II, p. 495.
[4] Par. 3, Admitted Facts, JSFI, docket, vol. II, p. 495; Exhibit "P-16", docket, vol. I, pp. 414-415; Exhibits "R-1" and "R-2", BIR Records, Folder 1, p. 49 and p. 47, respectively.
[5] BIR Records, Folder 1, p. 44.
[6] BIR Records, Folder 1, p. 48.
[7] BIR Records, Folder 1, p. 299.
[8] BIR Records, Folder 1, p. 397.

5th	R-13[9]	March 27, 2015	December 31, 2015	April 20, 2015	April 28, 2015

On March 27, 2015, a Preliminary Assessment Notice (PAN) dated March 26, 2015[10], together with the Details of Discrepancies[11], was received by petitioner from the BIR.[12]

On April 28, 2015, petitioner received from respondent a Formal Letter of Demand (FLD), with Details of Discrepancies[13] and Assessment Notice Nos. IT-116-LOA-00000096-10-15-1626[14], VT-116-LOA-00000096-10-15-1627[15], WE-116-LOA-00000096-10-15-1628[16] and WR-116-LOA-00000096-10-15-1629[17], wherein the latter assessed the former deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), and fringe benefit tax (FBT), in the total amount of ₱65,382,168.85, inclusive of surcharges, interests and compromise penalties for calendar year (CY) 2010,[18] detailed as follows:

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
Income Tax	₱ 18,983,815.16	-	₱ 15,353,485.57	₱ 50,000.00	₱ 34,387,300.73
VAT	16,204,904.66	-	13,853,346.96	50,000.00	30,108,251.62
EWT (WE)	357,795.39	-	307,802.06	16,000.00	681,597.45
FBT (WR)	93,654.97	₱ 23,413.74	75,950.34	12,000.00	205,019.05
Total	₱ 35,640,170.18	₱ 23,413.74	₱ 29,590,584.93	₱ 128,000.00	**₱65,382,168.85**

Petitioner filed its administrative protest (request for reconsideration)[19] on May 28, 2015, with list of annexes[20].

[9] BIR Records, Folder 1, p. 462.
[10] The PAN is actually dated March 20, 2015.
[11] Exhibits "P-22" and "P-22-A", docket, vol. I, pp. 421-427; Exhibit "R-12", BIR Records, Folder 1, pp. 423-430.
[12] Par. 4, Admitted Facts, JSFI, docket, vol. II, p. 496.
[13] Exhibits "P-23" and "P-23-A", docket, vol. I, pp. 428-441; Exhibit "R-15", BIR Records, Folder 1, pp. 468-475.
[14] Exhibit "P-23-B", docket, vol. I, p. 442; Exhibit "R-16-c", BIR Records, Folder 1, p. 467.
[15] Exhibit "P-23-C", docket, vol. I, p. 443; Exhibit "R-16-b", BIR Records, Folder 1, p. 466.
[16] Exhibit "P-23-D", docket, vol. I, p. 444; Exhibit "R-16-a", BIR Records, Folder 1, p. 465.
[17] Exhibit "P-23-E", docket, vol. I, p. 445; Exhibit "R-16", BIR Records, Folder 1, p. 464.
[18] Par. 5, Admitted Facts, JSFI, docket, vol. II, p. 496.
[19] Exhibit "P-24", docket, vol. I, pp. 446-460.
[20] Exhibit "P-24-A", docket, vol. I, pp. 461-462.

Respondent failed to act on petitioner's protest within the 180-day period prescribed by law, prompting the petitioner to file the instant Petition for Review.

Respondent filed his Answer to the Petition for Review on March 28, 2016.[21]

A Notice of Pre-Trial Conference[22] was issued by the Court, setting the case for pre-trial conference on April 28, 2016. Accordingly, Respondent's Pre-Trial Brief[23] was filed on April 21, 2016; while the Pre-Trial Brief for the Petitioner[24] was filed on April 22, 2016.

The pre-trial conference was conducted as scheduled.[25] Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[26] on May 12, 2016. Accordingly, the Court issued a Pre-Trial Order[27] on June 7, 2016 and the pre-trial was deemed terminated.

Meanwhile, on May 12, 2016, upon petitioner's motion[28], this Court commissioned Mr. Rendon P. Gammag as Independent Certified Public Accountant (ICPA) for the case.[29]

During trial, petitioner presented (1) Ms. Sarah Ecija Lacra [30], petitioner's accountant; and (2) Mr. Rendon P. Gammag[31], the ICPA, as its witnesses.

The Formal Offer of Evidence for the Petitioner[32] was filed on August 11, 2016. All exhibits were admitted by this Court,

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21 Docket, vol. I, pp. 144-160.
22 Docket, vol. I, pp. 162-163.
23 Docket, vol. I, pp. 183-191.
24 Docket, vol. I, pp. 198-205.
25 Minutes of the Hearing dated April 28, 2016, docket, vol. I, p. 465.
26 Docket, vol. II, pp. 495-504.
27 Docket, vol. II, pp. 517-522.
28 Motion to Allow the Engagement of an Independent Certified Public Accountant filed on April 22, 2016, docket, vol. I, pp. 206-208.
29 Minutes of the Hearing dated May 12, 2016, docket, vol. II, p. 493.
30 Minutes of the Hearing dated June 27, 2016, docket, vol. II, p. 536; Exhibit "P-25", docket, vol. I, pp. 211-242.
31 Minutes of the Hearing dated July 20, 2016, docket, vol. II, p. 566; Exhibit "P-29", docket, vol. II, pp. 540-563.
32 Docket, vol. II, pp. 571-592.

except for Exhibits "P-15-A" and "P-15-D", pursuant to the Resolution[33] dated October 13, 2016.

On the other hand, respondent presented Revenue Officer (RO) Felina B. Guimbao[34] as his lone witness.

Thereafter, the Respondent's Formal Offer of Evidence[35] was filed on November 24, 2016; while Respondent's Amended Formal Offer of Evidence[36] was filed on January 30, 2017. All exhibits were admitted by this Court, pursuant to the Resolutions dated January 13, 2017[37] and August 23, 2017[38].

The case was deemed submitted for decision on November 28, 2017[39], after the petitioner and respondent submitted their Memorandum on November 10, 2017 and November 16, 2017, respectively.

THE ISSUES

The parties submitted the following issues[40] for the Court's resolution:

a. Whether petitioner is liable to pay the total amount of ₱65,382,168.85 for deficiency IT, VAT, EWT and FBT, including surcharge, interests and compromise penalties, for taxable year 2010;

b. Whether respondent's imposition of deficiency IT against petitioner, amounting to ₱34,387,300.73, has factual and legal bases;

c. Whether respondent's imposition of deficiency VAT against petitioner, amounting to ₱30,108,251.62, has factual and legal bases;

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[33] Docket, vol. II, pp. 693-695.
[34] Minutes of the Hearing dated November 7, 2016, docket, vol. II, p. 697; Exhibit "R-18", docket, vol. I, pp. 170-182.
[35] Docket, vol. II, pp. 703-712.
[36] Docket, vol. II, pp. 732-741.
[37] Docket, vol. II, pp. 722-723.
[38] Docket, vol. II, pp. 748-750.
[39] Docket, vol. II, p. 828.
[40] Issues, JSFI, docket, vol. II, pp. 496-497.

d. Whether respondent's imposition of deficiency EWT against petitioner, amounting to ₱681,597.45, has factual and legal bases;

e. Whether respondent's imposition of deficiency FBT against petitioner, amounting to ₱205,019.05, has factual and legal bases; and

f. Whether respondent's imposition of surcharge, interests and compromise penalties against petitioner, has factual and legal bases.

Petitioner's Arguments

Petitioner initially attacks the validity of the Final Assessment Notices (FANs) for being issued without providing the law and the facts on which said assessments were made, in clear violation of Section 228 of the 1997 National Internal Revenue Code (NIRC). Petitioner asserts that the law as well as its implementing regulations require that the assessment state the facts, the law, rules and regulations and jurisprudence to support the findings of the BIR, otherwise the assessment is void. Further, petitioner maintains that assessments should also be substantiated by sufficient evidence and cannot be based on mere presumptions. Petitioner theorizes that the presumption of validity of assessments is proper only if the assessment is founded on facts and not on mere inferences.

With these criteria as a gauge of their validity, petitioner argues that the assessments issued for taxable year 2010 is void for failure of respondent to present the certifications from third party sources for the IT and VAT assessments. Petitioner alleges that respondent relied on unverified information, supposedly coming from said third party sources.

Petitioner also raises the issue of prescription of respondent's right to assess the VAT and EWT liabilities for taxable year 2010, as will be discussed in detail later.

Finally, petitioner challenges the factual bases of respondent's IT, VAT, EWT and FBT assessments for taxable year 2010 which will also be discussed in detail in the latter portion of this Decision.

Respondent's Counter-arguments

In its Answer filed on March 28, 2016, respondent interposed Special and Affirmative defenses, alleging, among others, that the assessment has bases both in fact and in law, to wit:

(1) That petitioner is liable for deficiency IT and VAT in the total amount of ₱34,387,300.73 and ₱30,108,251.62, respectively, based on the following findings of the revenue examiners: (a) Undeclared income amounting to ₱1,992,397.90, (b) Unsupported sales returns and discounts in the amount of ₱38,893,472.37 and the corresponding deficiency IT for disallowed losses amounting to ₱340,578.80, (c) Unaccounted income from undeclared purchases from affiliates in the amount of ₱2,295,600.83 and undeclared domestic purchase of services in the amount of ₱1,657,244.46, (d) For the deficiency IT- disallowed cost/expenses for non-withholding of the proper tax in the amount of ₱17,810,519.93, (e) For deficiency IT – prior excess credits carried over to succeeding period in the amount of ₱427,028.47, and (f) For deficiency VAT - disallowed input tax for non-compliance with invoicing requirements in the amount of ₱3,809,409.02;

(2) That petitioner is liable for deficiency EWT due to income payments not subjected to proper withholding tax in the amount of ₱17,810,519.93;

(3) That petitioner is liable for deficiency FBT due to benefits given to petitioner's officer not subjected to FBT in the amount of ₱199,016.82; and,

(4) That petitioner is liable for the corresponding surcharge, interests, and compromise penalties.

Moreover, respondent alleges that the LOA, the PAN, and the FLD were issued in accordance with law, rules and jurisprudence.

THE RULING OF THE COURT

Jurisdiction of the Court of Tax Appeals au

Before we delve into the substantive issues raised by both parties in this case, this Court finds it proper to discuss the jurisdiction of this Court to take cognizance of the instant petition.

As a court of special or limited jurisdiction, the CTA can only take cognizance of matters that are within its jurisdiction as provided by Republic Act (R.A.) 1125 as amended by R.A. 9282, thus:

> "Section 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;"
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> xxx xxx xxx

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.[41]

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx

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[41] *Team Pacific Corporation vs. Daza*, G.R. No. 167732, July 11, 2012.

> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

In this case, the FLD with Details of Discrepancies and Assessment Notices was received by petitioner on April 28, 2015 and petitioner filed its administrative protest on May 28, 2015 or within the thirty-day period prescribed under Section 228 of the 1997 NIRC, as amended.

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

In relation thereto, Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides, in part:

> "For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term **"relevant supporting documents"** refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting

> documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.
>
> xxx xxx xxx
>
> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment."(*Emphasis supplied*)

From the foregoing, in case of a request for reconsideration, the counting of the 180-day period for respondent to act on the protest is from the date of the filing of the protest. The 60-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. On the other hand, in case of a request for reinvestigation, the counting of the 180-day period is from the date of submission of the required documents within the 60-day period. If the taxpayer fails to submit the documents within the 60-day period, the assessment becomes final.

In the instant case, petitioner filed an administrative protest in the form of a request for reconsideration[42] and submitted supporting documents[43] together with its protest. Hence, counting 180 days from the filing of the administrative protest on May 28, 2015, respondent had until November 24, 2015 to decide on the protest. There being no action on the protest, petitioner had 30 days from November 24, 2015 or until December 24, 2015 within which to file an appeal before this Court. However, December 24, 2015 fell on a holiday, thus, petitioner had until December 28, 2015, or the next working day, to file its appeal. Hence, petitioner timely filed the instant Petition for Review with this Court on December 28, 2015.

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[42] Exhibit "P-24", docket, vol. I, pp. 446-460.
[43] Exhibit "P-24-A", docket, vol. I, pp. 461-462.

Apart from the timely filing of the administrative and judicial appeals as discussed above, this Court will also tackle the issue of prescription on the respondent's right to assess the deficiency VAT and EWT as this was likewise raised by petitioner in its memorandum.

Section 203 of the 1997 NIRC, as amended, mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for filing of the tax return or the actual date of filing, whichever comes later, thus:

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

In relation thereto, Section 114(A)[44] of the 1997 NIRC, as amended, and Section 4.114-1(A)[45] of Revenue Regulations (RR) No. 16-2005 provide that Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter.

On the other hand, Section 2.58(A)(2)(a)[46] of RR No. 2-98, as amended by RR No. 17-03, requires the filing of the EWT

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

[45] SEC. 4.114-1. *Filing of Return and Payment of VAT.* –
(A) *Filing of Return.* – Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty-five (25) days following the close of taxable quarter using the latest version of Quarterly VAT Return. xxx

[46] SEC. 2.58. *Returns and Payment of Taxes Withheld at Source.* –
(A) Monthly return and payment of taxes withheld at source. –
xxx
(2) WHEN TO FILE –
(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; xxx

returns within ten (10) days after the end of each month for the months of January to November, while the EWT return for the month of December shall be filed on or before January 15 of the following year.

Below is the summary of the dates of filing of petitioner's relevant returns and the corresponding dates within which respondent should assess petitioner for deficiency VAT and EWT for taxable year 2010:

VAT RETURNS (BIR FORM NO. 2550Q)			
Quarter	Date Filed	Last Day to File Return	Last Day to Assess
1st Quarter of 2010	April 20, 2010[47]	April 26, 2010[48]	April 26, 2013
2nd Quarter of 2010	July 26, 2010[49]	July 26, 2010[50]	July 26, 2013
3rd Quarter of 2010	October 26, 2010[51]	October 26, 2010[52]	October 26, 2013
4th Quarter of 2010	January 25, 2011[53]	January 25, 2011	January 25, 2014

EWT Returns (BIR Form No. 1601-E)			
Period	Date Filed	Last Day to File Return	Last Day to Assess
January 2010	February 10, 2010[54]	February 10, 2010	February 10, 2013
February 2010	March 10, 2010[55]	March 10, 2010	March 10, 2013
March 2010	April 8, 2010[56]	April 12, 2010[57]	April 12, 2013
April 2010	May 7, 2010[58]	May 10, 2010	May 10, 2013
May 2010	June 10, 2010[59]	June 10, 2010	June 10, 2013
June 2010	July 9, 2010[60]	July 12, 2010[61]	July 12, 2013
July 2010	August 10, 2010[62]	August 10, 2010	August 10, 2013

47 Exhibit "P-13-C", docket, vol. I, p. 363.
48 April 25, 2010 fell on a Sunday.
49 Exhibit "P-13-F", docket, vol. I, p. 367.
50 July 25, 2010 fell on a Sunday.
51 Exhibit "P-13-I", docket, vol. I, p. 370.
52 October 25, 2010 was declared a special non-working holiday.
53 Exhibit "P-13-L", docket, vol. I, p. 373.
54 Exhibit "P-7-A", docket, vol. I, p. 280.
55 Exhibit "P-7-B", docket, vol. I, p. 283.
56 Exhibit "P-7-C", docket, vol. I, p. 286.
57 April 10, 2010 fell on a Saturday.
58 Exhibit "P-7-D", docket, vol. I, p. 289.
59 Exhibit "P-7-E", docket, vol. I, p. 292.
60 Exhibit "P-7-F", docket, vol. I, p. 295.
61 July 10, 2010 fell on a Saturday.
62 Exhibit "P-7-G", docket, vol. I, p. 298.

August 2010	September 9, 2010[63]	September 10, 2010	September 10, 2013
September 2010	October 11, 2010[64]	October 11, 2010[65]	October 11, 2013
October 2010	November 10, 2010[66]	November 10, 2010	November 10, 2013
November 2010	December 10, 2010[67]	December 10, 2010	December 10, 2013
December 2010	January 10, 2011[68]	January 17, 2011[69]	January 17, 2014

In this case, the FLD and the FANs were both dated April 28, 2015 and received by petitioner on the same day. Based on the above table, it would seem that the FLD and the FANs were issued beyond the three-year prescriptive period to assess.

However, Section 222(b) of the NIRC of 1997, as amended, provides for an exception to the three-year prescriptive period to assess, to wit:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement **made before the expiration of the period previously agreed upon."** (emphasis supplied)

From the foregoing, the above provision authorizes the extension of the original three-year prescriptive period by the execution of a valid waiver, where the taxpayer and the CIR may stipulate to extend the period of assessment. This waiver must be executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon.[70]

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63 Exhibit "P-7-H", docket, vol. I, p. 301.
64 Exhibit "P-7-I", docket, vol. I, p. 304.
65 October 10, 2010 fell on a Sunday.
66 Exhibit "P-7-J", docket, vol. I, p. 307.
67 Exhibit "P-7-K", docket, vol. I, p. 310.
68 Exhibit "P-7-L", docket, vol. I, p. 313.
69 January 15, 2011 fell on a Saturday.
70 *Commissioner of Internal Revenue vs. Standard Chartered Bank,* G.R. No. 192173, July 29, 2015.

As mentioned earlier, petitioner executed several waivers that extended the period to assess petitioner's tax liabilities for taxable year 2010.

The first waiver was executed by petitioner on July 16, 2013 and accepted by the BIR on July 25, 2013.

Pursuant to Section 222(b) of the NIRC of 1997, as amended, the waiver must be executed prior to the lapse of the period prescribed by law for the assessment of the tax. In relation thereto, Revenue Memorandum Order (RMO) No. 20-90[71] provides that both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription.

Applying the foregoing, it is clear that respondent's right to assess petitioner for deficiency VAT for the 1st quarter of TY 2010 (last day to assess was on April 26, 2013) as well as for deficiency EWT for the months of January 2010 to June 2010 (last day to assess was on July 12, 2013) had prescribed when the first waiver was executed on July 16, 2013 and accepted by the BIR on July 25, 2013. Considering that the waiver was executed and accepted *after* the expiration of the period of prescription, then, there was nothing to extend. Thus, respondent's right to assess petitioner for deficiency VAT for the 1st quarter of taxable year 2010 and deficiency EWT for the months of January 2010 to June 2010 was already barred by prescription. Consequently, the tax assessments for these periods are deemed invalid.

As a corollary, the deficiency VAT assessment for the 2nd to 4th quarters of TY 2010 and the deficiency EWT assessment for the months of July 2010 to December 2010 were issued within the extended period to assess under Section 222(b) in relation to Section 203 of the NIRC of 1997, as amended, by virtue of the waivers executed by petitioner. Correspondingly, the assessments for these periods are considered as timely issued.

Notwithstanding the Court's finding that there are certain periods which have prescribed, petitioner did not show which

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[71] Subject: Proper Execution of the Waiver of the Statute of Limitations Under the National Internal Revenue Code, April 4, 1990.

portion of the assessments pertain to the prescribed period. It must be recalled that VAT assessments in question pertain to the entire taxable year of 2010, so petitioner should have apprised the Court of the amounts pertaining to the VAT assessments which should have been excluded due to prescription. In light of the doctrine that all presumptions are in favor of the correctness of tax assessments,[72] this Court is constrained to treat all of the subject tax assessments as referring to the unprescribed portions.

We now delve into the merits of each of the items of the assessments issued by respondent.

I. Deficiency Income Tax (IT)

Respondent assessed petitioner of deficiency income tax for taxable year 2010 amounting to ₱34,387,300.73, inclusive of increments, computed as follows:[73]

TAXABLE INCOME PER ITR		₱ 1,155,001.93
ADJUSTMENTS:		
Undeclared Income - Line by line matching - SLS vs AITEID data vs CWT (Schedule 1)		1,992,397.90
Unsupported Sales Returns and Discounts		38,893,472.37
Disallowed Losses		340,578.80
Unaccounted Income due to Undeclared Purchases from Affiliates/Purchase of Services (Schedule 2 & 3)		3,952,845.29
Disallowed Income Payments for Non-withholding (Schedule 4)		17,810,519.93
TOTAL TAXABLE INCOME		₱ 64,144,816.22
TAX RATE		30%
INCOME TAX DUE		₱ 19,243,444.87
LESS: TAX CREDITS/PAYMENTS		
Prior Years Excess Credits	₱ 86,870.87	
Tax Payments	460,010.99	
Creditable Tax Withheld - Form 2307	226,647.19	
TOTAL	₱ 773,529.05	
Less: Unsupported Prior Years Excess Credits	86,870.87	

[72] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007; *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

[73] Exhibit "P-23", docket, vol. I, p. 428.

Excess MCIT	427,028.47	259,629.71
BASIC DEFICIENCY INCOME TAX		₱ 18,983,815.16
20% Interest Per Annum (4/16/11 - 4/30/15)		15,353,485.57
Compromise Penalty		50,000.00
TOTAL AMOUNT DUE		**₱34,387,300.73**

The Court shall determine the validity of the assessment by looking into the propriety of the following items of adjustments imputed and disallowed by respondent:

A. Undeclared Income due to Discrepancy of Sales - SLS vs. AITEID vs. SAWT	₱ 1,992,397.90
B.i. Unsupported Sales Returns and Discounts	38,893,472.37
B.ii. Disallowed Losses	340,578.80
C. Unaccounted Income due to Undeclared Purchases from Affiliates and Purchase of Services	3,952,845.29
D. Disallowed Income Payments due to Non-Withholding of Tax	17,810,519.93
E. Unsupported Prior Year's Excess Credits	86,870.87
F. Excess MCIT Carried-Over to Succeeding Period	427,028.47

A. Undeclared Income due to Discrepancy of Sales - SLS vs. AITEID vs. SAWT (₱1,992,397.90)

According to respondent, a comparison between the Summary List of Sales (SLS), which was an attachment to the VAT returns, as against the Audit Information, Tax Exemption and Incentives Division (AITEID) data and the Summary Alphabetical List of Withholding Tax (SAWT) showed an undeclared income amounting to ₱1,992,397.90. This was assessed for income tax purposes pursuant to Section 32 of the NIRC of 1997, as amended, *viz:*

SCHEDULE 1 - SLS vs AITEID DATA vs CWT				
REGISTERED NAME	PER SLS	AITEID DATA	SAWT	DIFFERENCE
Aberin Gerald Orzales		₱ 1,357,353.25		₱ 1,357,353.25
Alro Construction and Dev Corp		10,361.83		10,361.83
And Hung Concepcion Inc		703,532.08		703,532.08
Bens Baker Corp		62,266.92		62,266.92
Biggs Inc.	₱ 278,433.43		₱ 273,737.00	
Bituon Beach Resort Corp		5,821.42		5,821.42

Central MetroTrade Distributors Inc.	2,216,084.47		2,165,629.47	
Cheery Land and Bakeshop Inc		31,592.92		31,592.9
Department of Agriculture	41,678.57		41,678.57	
Digibine Corporation		31,301.92		31,301.9
Dy Henson Co		10,153,250.58		10,153,250.5
Fornix Corp		152,664.25		152,664.2
Graceland Food Industries Inc	630,888.00		630,888.00	
Joy Daraga Supermarket Corp		3,280.33		3,280.3
Jy Legazpi Mktg Corp		7,567.83		7,567.8
Kho Suzette Oblina		16,473.25		16,473.2
Lasala Rogelio Tiu		4,119,426.83		4,119,426.8
LCC Liberty Commercial Center Inc	2,079,672.56		2,224,042.56	144,370.0
LCC Shopmore Coml Corp	70,918.75		536,464.83	465,546.0
Lion Commercial Corp	3,057,828.03		3,093,619.09	35,791.0
Lucky Best Enterprises			51,746.43	51,746.4
Magdaraog Rennie Ching		5,224.08		5,224.0
Malangit Reynato Conche		12,713.42		12,713.4
Master Square Supermart	1,812,088.29		1,811,732.10	
Metro Legazpi Devt Corp	1,226,756.40		1,258,509.00	31,752.6
Nagaland Development Corporation	10,982.15		10,982.15	
Nunez Ma. Susan Ferred		149,238.58		149,238.5
Ongjoco Anita Yap		193,919.50		193,919.5
Panganiban Melchor Edaugal		17,392.83		17,392.8
Philippine Fil Studios Inc		1,242,482.67		1,242,482.6
Po Jr Jacinto Tan		62,803.58		62,803.5
Provincial Government of Camarines Sur			269,976.34	269,976.3
Rada Ricardo		38,129.50		38,129.5
Ranola Nnie		375,160.67		375,160.6
Reyes Andres		277,676.42		277,676.4
Roberte Lee Obiedo	1,421,457.90		1,425,493.61	4,035.7
Sampaguita Chains Corp		89,921.58		89,921.5
Santelices Dante Magno		16,487.50		16,487.5
South Star Drug	7,279,579.20	3,071,560.33	7,274,876.00	
Southern Nature Craft Co		1,288,266.08		1,288,266.0
Tabaco Liberty Commercial Center Inc	824,738.11		827,702.40	2,964.2
Tycnagco Merli Cresini		128,169.58		128,169.5
Virac Fortune Ent	768,689.78		767,669.78	
Total	[₱21,719,795.64][74]	₱23,624,039.75	₱22,664,747.33	
Undeclared Sales				₱21,558,661.93
Gross Profit Rate				9%
Undeclared Income				₱ 1,992,397.90
PER ITR				
SALES	₱418,497,010.34			
COST OF SALES	379,820,557.75	91%		
GROSS INCOME	₱ 38,676,452.59	9%		

[74] The total should be ₱21,719,795.64 but the total indicated in the Details of Discrepancies is ₱418,481,385.32, see Exhibit "P-23-A", docket, vol. I, p. 432.

In the determination of the alleged undeclared gross income, the alleged undeclared sales that resulted from the matching was grossed up using petitioner's gross profit ratio for the year, as shown above.

Petitioner argues that the matching procedure performed by respondent using the data reported by petitioner in its SLS and comparing it with the BIR's AITEID and SAWT data of petitioner's customers will not have the same outcome, considering that petitioner and its various customers may not adopt the same accounting method in keeping their Books of Accounts which may result in a timing difference.

Petitioner further asserts that respondent's resort to the ratio method in making the assessment is not justified because as provided for under Title XIII(G)(A)(2) of Revenue Audit Memorandum Order No. 01-00, reconstruction of income using a petitioner's Gross Profit Ratio or Gross Margin Percentage is generally employed where the taxpayer keeps no records or its records are inadequate, or where there is strong suspicion that the taxpayer has received income from undisclosed sources. Such is not the case for petitioner because it submitted documents to respondent on many occasions negating the idea that it has inadequate records, or that it has no records or that it received income from undisclosed sources.

In its attempt to reconcile the findings of respondent, petitioner performed a line-by-line evaluation of the matching made by respondent and arrived at the following:

Table 1: PER RESPONDENT:				
	PER SLS	AITEID DATA	SAWT	DIFFERENCE
1. Discrepancy in Trade Name/TIN		₱ 2,173,577.07		₱ 2,173,577.07
2. SLS vs. SAWT - Timing Difference	₱ 8,681,371.75		₱ 9,687,554.26	1,006,182.51
3. Sales to Juridical Entities		10,848.16		10,848.16
4. Sales to Service Oriented Entities		1,383,827.68		1,383,827.68
5. Sales to Individuals		16,984,226.49		16,984,226.49
Total	₱ 8,681,371.75	₱20,552,479.40	₱9,687,554.26	₱21,558,661.91

Table 2: PER PETITIONER:				
	PER SLS	AITEID DATA	SAWT	DIFFERENCE
1. Discrepancy in Trade Name/TIN	₱ 5,687,205.81	₱ 2,173,577.07		₱ (3,513,628.74)
2. SLS vs. SAWT - Timing Difference	8,681,371.75		₱ 9,687,554.26	1,006,182.51

3. Sales to Juridical Entities		10,848.16		10,848.16
4. Sales to Service Oriented Entities		1,383,827.68		1,383,827.68
5. Sales to Individuals		16,984,226.49		16,984,226.49
Total	₱14,368,577.56	₱20,552,479.40	₱9,687,554.26	₱15,871,456.10

Petitioner explains that item No. 1 of Table 2 or "Discrepancy in Trade Name/TIN" means that respondent failed to pick up the sales of petitioner per SLS because there were trade names or tax identification numbers which were differently identified or reported by petitioner and its customers, although pertaining to the same entities or customers. The amount not picked up by respondent is ₱5,687,205.81 which is actually higher than its assessment per SLS vs. AITEID data of ₱2,173,577.07.[75]

As to items 3, 4 and 5 of Table 2, allegedly there were no sales reported per petitioner's SLS but based on AITEID data, petitioner's customers reported purchases from the former. However, no certifications or other proofs were given by respondent in making this assessment based on AITEID data; thus, petitioner could not respond intelligently.[76]

Lastly, as regards reconciling item no. 2 which pertains to the purported discrepancy in the amount of sales reported per petitioner's SLS as against its SAWT, petitioner posits that respondent failed to consider the possibility that there must be timing difference in the reporting per SLS, which primarily is for VAT reporting purposes, and SAWT, which relates primarily to withholding taxes on income payments. There may be a timing difference as the requirement for reporting of gross sales for VAT purposes is different from reporting of taxes withheld on income taxes per SAWT.[77]

The Court finds that the deficiency assessment pertaining to items no. 1, 3, 4, and 5 should be cancelled considering that the figures lifted by respondent from its AITEID data were not verified with externally sourced data to check their veracity. Neither did respondent secure the required certifications or confirmation from the alleged third-party sources to support the integrity of the amounts per AITEID data.

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[75] Exhibit "P-25", docket, vol. I, p. 227.
[76] *Ibid.*
[77] Exhibit "P-25", docket, vol. I, p. 228.

In the cross-examination of respondent's witness during the hearing held on November 7, 2016,[78] RO Felina B. Guimbao, made the following statements:

ATTY. BARAOIDAN:
Yes Your Honors.

Q Were this information, what is the nature of such data which you compared to the SLS of the petitioner and CWT?

ATTY. VICENTE:
The question is vague Your Honors.

ATTY. BARAOIDAN:
Q What is the nature, what are these data, because you mentioned AITEID data, what are these data, are they sales, purchases?

JUSTICE CASTAÑEDA, JR.:
Q What do these data pertain to?

MS. GUIMBAO:
A This pertains to sales Your Honors.

JUSTICE CASTAÑEDA, JR.:
Q This pertains to sales?

MS. GUIMBAO:
A Yes Your Honors, that's why the comparison is the SLS, the AITEID data and the CWT, which is the Creditable Withholding Tax Your Honors.

ATTY. BARAOIDAN:
Q From whom are these data retrieved from?

MS. GUIMBAO:
A The same are submitted by the taxpayer, the creditable withholding tax also is stated in the ITR as claims, as tax credits and payments ma'am.

ATTY. BARAOIDAN:
Q And the AITEID?

MS. GUIMBAO:

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[78] TSN, November 7, 2016 hearing, pp. 8-10, 12 and 18.

A The AITEID data is from the Audit Incentives Division which we assumed it as Third Party Information ma'am.

xxx xxx xxx

ATTY. BARAOIDAN:
Q Whose responsibility is it, to verify the accuracy of the data coming from AITEID?

MS. GUIMBAO:
A The taxpayer ma'am.

ATTY. BARAOIDAN:
Q But the information came from the division of the Bureau of Internal Revenue, how can the petitioner now have access on such information and verify the accuracy of the same?

MS. GUIMBAO:
A The documents are from the AITEID and we assumed that it is really reliable ma'am.

xxx xxx xxx

ATTY. BARAOIDAN:
Q Isn't it the responsibility of the BIR to go over all the third party alleged customers for you to verify if such purchases were actually made and to request them for certifications and showed it to the taxpayers for them to contradict or admit the same?

MS. GUIMBAO:
A No ma'am, it would take time for me to make a confirmation for customer. So, I must have to think of another audit technique that I can report because it takes time for me if I will make a confirmation.

xxx xxx xxx

ATTY. BARAOIDAN:
Q Yes Your Honors. However, the main issue Your Honors is that there were no certifications coming from the third-party sources. That is why, we are asking the witness if there was even an attempt on their end to at least get or verify the information coming from this third party sources based AITEID they got.

MS. GUIMBAO: *ar*

A I didn't really make any information ma'am.

From the foregoing testimony of RO Guimbao, she merely assumed the reliability of the AITEID data. As admitted, there were no confirmations made from the third-party sources, neither did she attempt, to at least get, or verify the information coming from the purported third-party sources per AITEID. The lack of supporting certification or confirmation from the purported customers of petitioners should have been secured to verify the correctness of the amounts.

It is worth stating that under RMO No. 04-03[79], the BIR recognizes the need to verify the amounts reflected in the quarterly report with other externally sourced data in ascertaining the taxpayer's under-declaration of revenues or overstatement of costs and expenses, if any. The pertinent portions of RMO No. 04-03 are quoted thus:

> "The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) system.
>
> The RELIEF system was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayer's Summary List of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.
>
> The RELIEF system shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. The consolidation and matching of information with other externally sourced data will detect underdeclaration of revenues/overdeclaration of cost and expenses, thus, resulting to greater tax potential."

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[79] SUBJECT: Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002.

Likewise, in the case of *G & W Architects, Engineers and Project Consultants Co. vs Commissioner of Internal Revenue*[80], this Court held that while there is no showing from the guidelines provided under RMO Nos. 32-07[81] and 46-04[82] that the sworn statements from the third-party information sources are indispensable and mandatory, the fact remains that the amounts of undeclared purchases (undeclared income in this case) found by respondent were admittedly unverified. Thus, the same casts doubts as to the reliability and correctness of the findings of deficiency taxes assessed by respondent.

True, tax assessments by tax examiners are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[83]

However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.,* without any foundation character, the determination of the tax due is without rational basis.[84] As held in the case *of Collector of Internal Revenue vs. Benipayo,*[85] the assessment must be based on actual facts.

As regards item no. 2, as can be gleaned from the above-provided Schedule 1, the discrepancy of ₱1,006,182.51 is derived from the following:

REGISTERED NAME	PER SLS	SAWT	DIFFERENCE
LCC Liberty Commercial Center Inc	₱ 2,079,672.56	₱ 2,224,042.56	₱ 144,370.00
LCC Shopmore Coml Corp	70,918.75	536,464.83	465,546.08
Lion Commerical Corp	3,057,828.03	3,093,619.09	35,791.06
Lucky Best Enterprises		51,746.43	51,746.43

[80] CTA Case No. 8604, August 16, 2016.

[81] SUBJECT: Prescribing Guidelines and Procedures in Handling 2006 Letter Notices Generated Thru Reconciliation of Listing for Enforcement System (RELIEF) and Third Party Matching-Bureau of Customs (TPM-BOC) Data Program.

[82] SUBJECT: Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

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

[84] *Commission of Internal Revenue vs. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.

[85] G.R. No. L-13656, January 31, 1962.

Metro Legazpi Devt Corp	1,226,756.40	1,258,509.00	31,752.60
Provincial Government of Camarines Sur		269,976.34	269,976.34
Roberte Lee Obiedo	1,421,457.90	1,425,493.61	4,035.71
Tabaco Liberty Commercial Center Inc	824,738.11	827,702.40	2,964.29
Total	₱8,681,371.75	₱9,687,554.26	₱1,006,182.51

Petitioner attributes the discrepancy of ₱1,006,182.51 to timing difference. However, petitioner failed to present evidence to show that, indeed, the difference merely arose from the timing difference in its recognition of income as declared in its VAT returns vis-à-vis the income reported in the SAWT of its customers. Neither did petitioner prove that the subject discrepancy was reported as income and accordingly subjected to income tax in any other taxable year.

Failure on the part of petitioner to present proof as to the allegations made is self-serving and does not prove anything. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[86]

Consequently, respondent's deficiency income tax assessment on the undeclared income of ₱92,988.88, as computed below, shall be sustained:

Undeclared Sales	₱1,006,182.51
x Gross Profit Rate (₱38,676,452.59/₱418,497,010.34)	0.092417512
Undeclared Income	₱ 92,988.88

B. Unsupported Sales Returns and Discounts (₱38,893,472.37) and Disallowed Losses (₱340,578.80)

Respondent disallowed the sales returns and discounts in the amount of ₱38,893,472.37 and the losses claimed per income tax return amounting to ₱340,578.80 for lack of the substantiation requirements for deductibility as required under Section 34(A)(1)(b) of the 1997 NIRC, as amended.

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[86] *Real vs. Belo*, G.R. No. 146224, January 26, 2007.

i. Unsupported Sales Returns and Discounts

Petitioner argues that the inferences of respondent from its findings of fact are manifestly mistaken and there is no citation of specific evidence on which they are based. Respondent did not even mention that there was a failure on the part of petitioner to substantiate the said sales returns and discount. Further, there appears no justification on how respondent concluded that these "sales returns and discounts" are the same as "deductible business expenses" under Section 34(A)(1)(a) of the 1997 NIRC, as amended, when it disallowed the same and relied on Section 34(A)(1)(b) of the same law.[87]

We do not agree.

Contrary to the allegation of petitioner, respondent did mention the basis of his assessment. As clearly indicated in the FLD, the disallowance is described as "Unsupported sales returns and discounts". Also, in the Details of Discrepancies attached to the FLD, respondent explained that the disallowance "represents unsupported sales returns and discounts". Verily, the disallowance is due to petitioner's failure to comply with the substantiation requirement of deductibility as required under Section 34(A)(1)(b) of the 1997 NIRC, as amended.

Section 34(A)(1)(b) of the 1997 NIRC, as amended, provides for the disallowance of the ordinary and necessary expenses as deduction from gross income upon failure of the taxpayer to substantiate the same with sufficient evidence. By the nature of returns and discounts, the same are indeed not ordinary and necessary expenses contemplated under the said section. Be that as it may, the Court has the power to determine a question of law – that is, the correct application of law or jurisprudence to a certain set of facts.

Section 27(A) of the 1997 NIRC, as amended, defines the term "gross income" as that equivalent to gross sales less sales returns, discounts and allowances and cost of goods sold. In the case of *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*[88], the High Court discussed the nature of sales discounts as follows:

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[87] Exhibit "P-24", docket, vol. I, p. 452.
[88] G.R. No. 159647, April 15, 2005.

> "Based on this discussion, we find that the nature of a *sales discount* is peculiar. Applying generally accepted accounting principles (GAAP) in the country, this type of discount is reflected in the *income statement* as a line item deducted -- along with returns, allowances, rebates and other similar expenses -- from *gross sales* to arrive at *net sales*. This type of presentation is resorted to, because the *accounts receivable* and *sales* figures that arise from *sales discounts*, -- as well as from *quantity, volume* or *bulk discounts* -- are recorded in the manual and computerized *books of accounts* and reflected in the financial statements at the gross amounts of the invoices. This manner of recording credit sales -- known as the *gross method* -- is most widely used, because it is simple, more convenient to apply than the *net method*, and produces no material errors over time.
>
> However, under the *net method* used in recording *trade, chain* or *functional discounts*, only the net amounts of the invoices -- after the discounts have been deducted -- are recorded in the *books of accounts* and reflected in the financial statements. A separate line item cannot be shown, because the transactions themselves involving both *accounts receivable* and *sales* have already been entered into, net of the said discounts.
>
> The term *sales discounts* is not expressly defined in the Tax Code, but one provision adverts to amounts whose sum -- along with *sales returns, allowances* and *cost of goods sold* -- is deducted from *gross sales* to come up with the *gross income, profit* or *margin* derived from business. In another provision therein, *sales discounts* that are granted and indicated in the invoices at the time of sale-- and that do not depend upon the happening of any future event -- may be excluded from the *gross sales* within the same quarter they were given. While determinative only of the VAT, the latter provision also appears as a suitable reference point for income tax purposes already embraced in the former. After all, these two provisions affirm that *sales discounts* are amounts that are always deductible from *gross sales*."

Essentially, sales returns and discounts, being deductions from gross sales to come up with the gross income, ultimately reduce the taxable net income of a taxpayer, hence, partake the nature of tax exemptions. Exemption from taxation is not favored, and exemptions in tax statutes are never presumed. Exemptions from taxation are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[89] As such, proper substantiation is an essential requirement before it can be allowed as a deduction from gross income.

In other words, deductions for income tax purposes partake of the nature of tax exemptions; hence, if tax exemptions are strictly construed, then deductions must also be strictly construed.[90] To be entitled to claim a tax deduction, the taxpayer must competently establish the factual and documentary bases of its claim.[91]

Nevertheless, in order to further dispute this assessment, petitioner avers that as of December 31, 2010, it reported in its Audited Financial Statements [92] a total sales of ₱418,497,010.00 and as stated in the Notes to the Financial Statements, revenue comprises the fair value of the consideration received or receivable for the sale of goods in the ordinary course of business activities; that revenue is shown net of sales, value-added tax, returns, rebates and discounts.

Petitioner alleges that on November 8, 2011, a copy of its 2010 Worksheet was submitted to respondent which contains the total Monthly Debits and Credits of its Sales Account, which became the source of BIR's assessment. As shown below, the amount of ₱38,893,472.00 under the Debit column pertains to the sales returns and discounts which were disallowed by the respondent, while the amount of ₱418,497,010.00 under the Credit column corresponds to the Total Sales for year 2010 of petitioner:

	Sales	
	DR	CR
Balance - 01/31		
January	₱ 1,130,342	₱ 24,994,896
February	3,351,519	31,963,381
March	1,893,638	45,234,485
April	8,751,630	45,128,702
May	8,868,688	58,292,974

[89] *Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs*, G.R. No. L-21841, October 28, 1966.
[90] *Commissioner of Internal Revenue vs. General Foods, (Phils.) Inc.*, G.R. No. 143672, April 24, 2003.
[91] *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 173373, July 29, 2013.
[92] Exhibit "P-15-B", docket, vol. I, pp. 390-409 (but was identified by Sarah Ecija Lacra as Exhibit "P-15-A", docket, vol. I, p. 218; as noted in the Resolution dated October 13, 2016, docket, vol. II, p. 694).

June	1,825,533	47,271,399
July	1,542,139	31,852,733
August	1,416,670	34,063,785
September	1,315,054	31,511,699
October	1,497,647	34,685,325
November	1,181,888	32,835,313
December	6,118,725	39,555,789
Total	₱ 38,893,472	₱ 457,390,483
Balance - 12/31		₱ 418,497,011

Petitioner posits that the Debit and Credit entries found in the Sales Account of a taxpayer usually represent the following transactions:

DEBITS:

1. To record Sales Returns, Discounts and Rebates;
2. Correction of Erroneous Credit Entry; and
3. Adjusting Journal Entry/ies.

CREDITS:

1. To record Sales;
2. Correction of Erroneous Debit Entry; and
3. Adjusting Journal Entry/ies.[93]

As correctly pointed out by petitioner, the sales account should be presented net of sales returns, allowances and discounts. However, as mentioned earlier, proper substantiation is an essential requirement before it can be allowed as a deduction from gross income.

As ascertained by the Court-commissioned ICPA, Mr. Rendon P. Gammag[94], out of the total sales returns and discounts of ₱38,893,472.37, petitioner was able to present documents to support the amount of ₱35,221,267.56. As borne by the records, petitioner had recorded sales discounts in the total amount of ₱34,590,566.49 and sales returns in the amount of ₱630,701.07 from its four (4) sales offices, to wit:

Sales Office	Gross Sales	Discounts	Returns	Net Sales	Exhibit No. of Schedule	Exhibit No. of Supporting Invoices

[93] Exhibit "P-24", docket, vol. I, p. 453.
[94] Exhibit "P-28".

					of Sales Returns and Discounts	
Legazpi	₱ 58,425,748.61	₱ 6,412,894.09	₱ 13,049.40	₱ 51,999,805.12	P-27-A	P-27-A-1-1 to P-27-A-11-552; Box Nos. 1-5
Masbate	87,404,734.08	9,243,426.21	165,855.00	77,995,452.87	P-27-B	P-27-B-1-1 to P-27-B-12-3967; Box Nos. 6-16
Naga-Daet	141,229,184.16	16,032,265.79	413,606.67	124,783,311.70	P-27-C	P-27-C-1-1 to P-27-C-12-6270; Box Nos. 28-50
Sorsogon	32,092,921.50	2,901,980.40	38,190.00	29,152,751.10	P-27-D	P-27-D-1-1 to P-27-D-11-1985; Box Nos. 16-27
Total	₱319,152,588.35	₱34,590,566.49	₱630,701.07	₱283,931,320.79		

Upon scrutiny of the ICPA report together with the supporting documents submitted by petitioner, the Court finds the above findings proper. The sales invoices clearly indicated the amount of discounts and/or returns as deductions to come up with the total net sales. Thus, the sales returns and discounts amounting to ₱35,221,267.56 may be validly deducted from petitioner's total sales.

However, the remaining claimed sales returns and discounts of ₱3,672,204.81 (₱38,893,472.37 minus ₱35,221,267.56) should be disallowed for being unsupported. Consequently, the assessment thereon should be sustained.

ii. Disallowed (Unsupported) Losses

Petitioner contends that Section 34(D)(1)(a) governs the deductibility of Losses and not Section 34(A)(1)(b) of the 1997 NIRC, as amended. The said provision of law allows losses to be deducted from gross income if the same were incurred in relation to the trade, profession or business of the taxpayer and that it was actually sustained during the taxable year and not compensated for by insurance or other forms of indemnity.[95]

Relative thereto, petitioner alleges that the losses it claimed amounting to ₱340,578.80 represent breakages, missing products and returnable containers during load out

[95] Exhibit "P-24", docket, vol. I, pp. 453-454.

and load in of stocks and during the transfer of stocks from petitioner's main office to its various warehouses, then to customers and vice-versa. It added that most of the products that it is handling are contained in breakable containers.

Despite petitioner's foregoing explanation, it never presented any proof to support its claimed losses; hence, the assessment thereon should be sustained.

C. Unaccounted Income due to Undeclared Purchases from Affiliates (₱2,295,600.83) and Purchase of Services (₱1,657,244.46)

Respondent's verification disclosed that the total purchases made by petitioner from its alleged affiliates, Asia Brewery and Interbev, amounted to ₱366,553,008.38 (₱171,734,252.61 + ₱194,818,755.77). However, per petitioner's reconciliation of Cost of Sales, actual purchases from affiliates amounted only to ₱344,009,152.13 or a discrepancy of ₱22,543,856.25.

Respondent also found that petitioner claimed as cost/expenses from gross income the expenses in the total amount of ₱61,257,061.07 but per VAT returns, domestic purchase of services amounted only to ₱44,982,158.00 or a discrepancy of ₱16,274,903.07.

Respondent considered both discrepancies as unaccounted purchases and using the gross profit ratio, found that there was an under declaration of sales resulting in a total undeclared income of ₱3,952,845.29. This was thus assessed and added back as taxable income for income tax purposes pursuant to Section 32 of the NIRC, as amended.

The unaccounted income due to discrepancy of purchases from affiliates and unsupported purchases of domestic services was computed in the Details of Discrepancies[96], as follows:

SCHEDULE 2 - UNACCOUNTED INCOME DUE TO DISCREPANCY OF PURCHASES FROM AFFILIATES		
Month	ASIA BREWERY	INTERBEV

[96] Exhibit "P-23-A", docket, vol. I, pp. 432-433 and 436.

	Tax Base	Input Tax	Tax Base	Input Tax
Jan	₱ 8,230,185.82	₱ 987,622.30	₱ 14,856,973.21	₱ 1,782,836.79
Feb	12,764,573.21	1,531,748.79	11,402,968.75	1,368,356.25
Mar	17,408,608.93	2,089,033.07	22,198,160.71	2,663,779.29
Apr	16,189,670.38	1,942,760.45	15,663,956.66	1,879,674.80
May	20,641,149.11	2,476,937.89	23,960,933.04	2,875,311.96
Jun	17,702,574.10	2,124,308.89	27,420,410.71	3,290,449.29
Jul	9,721,548.22	1,166,585.79	11,530,892.86	1,383,707.14
Aug	13,066,181.25	1,567,941.75	11,681,821.43	1,401,818.57
Sep	11,435,890.18	1,372,306.82	16,167,714.29	1,940,125.71
Oct	12,258,426.78	1,471,011.21	15,240,290.18	1,828,834.82
Nov	13,750,688.38	1,650,082.61	13,367,370.54	1,604,084.46
Dec	18,564,756.25	2,227,770.75	11,327,263.39	1,359,271.61
	₱ 171,734,252.61	₱ 20,608,110.31	₱ 194,818,755.77	₱ 23,378,250.69
				Over claimed Input Tax
Total Purchase of Goods from Affiliates per SLP			₱ 366,553,008.38	
Less: Net Purchases per Cost of Sales			344,009,152.13	
Variance			₱ 22,543,856.25	₱ 2,705,262.75
Undeclared Sales			₱ 24,839,457.08	
UNDECLARED INCOME			₱ 2,295,600.83	
Gross Profit Rate:				
Sales			418,497,010.34	100%
Cost of Sales			379,820,557.75	91%
Gross Income			38,676,452.59	9%
PER TP RECONCILIATION:				
Beg. Inventory			₱ 19,496,689.47	
Add: Purchases			₱ 366,841,522.32	
Purchases Returns			(288,513.93)	
Purchases Discounts - NV			(18,300,158.94)	
Complimentaries - Charged to advertising			(4,243,697.32)	
Net Purchases - Excluding Freight			₱ 344,009,152.13	
Freight			46,719,926.57	
Net Purchases			₱ 390,729,078.70	
TGAS			₱ 410,225,768.17	
Less: Ending Inventories			30,405,210.42	

Cost of Sales	₱ 379,820,557.75
SCHEDULE 3 - UNSUPPORTED PURCHASES OF DOMESTIC SERVICES	
PER ITR	
Freight In	₱ 46,719,927.00
Professional Fees	39,100.00
Other Outside Services	5,900,140.46
Advertising	6,483,182.49
Repairs and Maintenance - Labor	1,257,578.84
Research and Development	104,553.36
Insurance	22,559.57
Comm, Light and Water	730,019.35
Total - Purchase of Services per ITR	₱ 61,257,061.07
Less: Purchase of Services per VAT Returns	44,982,158.00
Unexplained Purchases	₱ 16,274,903.07
Undeclared Sales	17,932,147.53
UNDECLARED INCOME	₱ 1,657,244.46

Petitioner contends that respondent's allegations have no factual support as he failed to take into consideration that not all of the transactions of a taxpayer are subject to VAT. To strengthen its stand, petitioner made a reconciliation of the alleged undeclared purchases showing that it has no undeclared income[97], to wit:

PURCHASES FROM ABI & IPI	ABI	IPI	Total
Purchases per SLP	₱171,734,252.61	₱194,818,755.77	₱366,553,008.38
Less:			
Purchase Discounts (Not Subject to VAT)	8,573,832.56	9,726,326.38	18,300,158.94
Charged to Complimentaries (Advertising Account)	3,446,103.57	797,593.75	4,243,697.32
Total Deductions	12,019,936.13	10,523,920.13	22,543,856.26
Net Purchases as Computed (Purchases per SLP)	₱159,714,316.48	₱184,294,835.64	₱344,009,152.12
Net Purchases per Cost of Sales			344,009,152.13
Variance			₱ (0.01)
PURCHASES OF SERVICES			
Freight	₱ 46,719,927.00		
Professional Fee	39,100.00		
Other Outside Services	5,900,140.46		
Advertising			
Complimentaries	4,243,697.32		
Promotion	2,239,485.17		

[97] Exhibit "P-24", docket, vol. I, p. 456.

Repairs and Maintenance	1,257,578.84
Research and Development	104,553.36
Insurance	22,559.57
Communication, Light and Water	730,019.35
Purchases of Services per ITR (BIR)	₱ 61,257,061.07
Less:	
Purchase of Goods - Advertising	6,483,182.49
Purchase of Services from Non-VAT Suppliers	9,791,719.75
Total	16,274,902.24
Purchase of Services subject to VAT per Books	₱ 44,982,158.83
Purchase of Services per VAT Returns	44,982,158.83
VARIANCE	0.00

With regard to the unaccounted income due to undeclared purchases from affiliates, the ICPA subscribed to the above reconciliation. As ascertained by the ICPA, the variance of ₱22,543,856.26 that is subject of respondent's assessment allegedly pertains to purchase discounts/credit memos from suppliers, purchase returns and complimentaries and such are supported by relevant documents, to wit:

Net Purchases per Petitioner's Reconciliation		₱ 344,009,152.13
Net Purchases per ICPA Examination		
Purchases from Asia Brewery Inc. *(P-27-E1)*	₱ 172,002,803.57	
Purchases from Interbev Philippines, Inc. *(P-27-E1)*	194,834,861.61	
Less: Purchase Discounts/Credit Memos *(P-27-E2)*	(18,300,158.94)	
Purchase Returns *(P-27-E2)*	(284,656.79)	
Complimentaries *(P-27-E3)*	(4,243,699.32)	344,009,150.13
Noted Discrepancy		₱ 2.00

Upon examination of the ICPA report together with the documents that pertain to the alleged purchase discounts, returns and complimentaries, the Court finds that only the invoices supporting the purchases from Asia Brewery, Inc. and Interbev Philippines, Inc., as well as the documents supporting the complimentaries are found in the records. The purported evidence supporting the alleged purchase discounts/credit memos and purchase returns are not in Box No. 8, as indicated in the List of Source Documents[98] provided by the ICPA. Needless to say, petitioner failed to discharge its burden in proving that the amounts of ₱18,300,158.94 and ₱284,656.79 refer to purchase discounts/credit memos and purchase

[98] Exhibit "P-28-C", docket, vol. II, p. 676.

returns, respectively, thus, may be considered as undeclared purchases.

Be that as it may, respondent's presumption that the undeclared purchases automatically resulted in undeclared income subject to income tax is incorrect. Moreover, let it be noted that the three elements in 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.[99]

Income tax is assessed on income received from any property, activity or service that produces the income.[100] 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, not when there is an under-declaration of purchases.[101]

In this case, said elements are not present. Respondent merely presumed that the alleged discrepancy/under-declared purchases constitute an undeclared income. Hence, respondent's assessment was not based on undeclared income actually received by petitioner.

It is important to note that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[102]

Thus, even when there is under-declaration of purchases, the same is not prohibited by law. Accordingly, mere reliance on the fact that there were under-declared purchases is not enough basis for the Court to uphold respondent's assessment

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[99] *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[100] *Ibid.*
[101] *Philippine Daily Inquirer, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7853, February 16, 2012.
[102] *The Commissioner of Internal Revenue vs. Phoenix Assurance Co., Ltd.*, G.R. No. L-19727, May 20, 1965.

of the subject deficiency income tax. Consequently, respondent's deficiency income tax on the alleged additional taxable income on the undeclared purchases from ABI and Interbev should be cancelled.

As regards the discrepancy of ₱16,274,903.07, the Court finds that respondent's imposition of income tax thereto does not hold water as he simply relied on presumption that there was unaccounted purchases of services. To reiterate, findings that there are unaccounted purchases would automatically result in an undeclared income which would in turn increase petitioner's income tax liability is not based on actual facts and thus, is a mere presumption.

At this juncture, it must be pointed out that in order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. Assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[103]

Thus, for lack of factual basis, the deficiency income tax assessment pertaining to the alleged unaccounted purchases of ₱16,274,903.07 is likewise cancelled.

D. Disallowed Income Payments due to Non-Withholding of Tax (₱17,810,519.93)

After matching of data per ITR/FS against EWT alphabetical list, respondent found that certain payments were not subjected to EWT as required under RR Nos. 2-98, 17-2003 and 30-2003, and as such, cannot be claimed as deduction from gross income pursuant to Section 34(K) of the NIRC of 1997, as amended.

In the Details of Discrepancies[104], the disallowed income payments of ₱17,810,519.93 is determined as follows:

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[103] *Collector of Internal Revenue vs. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962; *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, September 11, 1987.

[104] Exhibit "P-23-A", docket, vol. I, p. 437.

SCHEDULE 4 - DISALLOWED INCOME PAYMENTS FOR NON-WITHHOLDING

CY 2010		INCOME PAYMENTS SUBJECT TO EWT				
		CONTRACTORS	CONTRACTORS	RENTAL	PROFESSIONAL	
		1%	2%	5%	15%	
INCOME PAYMENTS SUBJECTED TO EWT						
Purchases	₱366,841,522.32	₱366,841,522.32				
Freight	46,719,926.57		₱46,719,926.57			
Rental	186,674.58			₱186,674.58		
Professional Fees	39,100.00				₱ 39,100.00	
Security Services	442,857.15		442,857.15			
Other Outside Services	5,900,140.46		5,900,140.46			
Advertising	6,483,182.49		6,483,182.49			
Repairs & Maintenance - Labor	1,257,578.84		1,257,578.84			
Research & Development	104,553.36		104,553.36			
Office Supplies	128,059.48	128,059.48				
Insurance	22,559.57		22,559.57			
Representation & Entertainment	69,134.03		69,134.03			
Transpo and Travel	894,179.63		894,179.63			
Fuel and Oil	4,908,214.80	4,908,214.80				
Comm Light and Water	730,019.35		730,019.35			
INCREASE IN PPE						
Transportation & Equipment	1,652.00					
Office Furniture & Equipment	63,130.00					
Others	7,658.00					
	72,440.00	72,440.00				
TOTAL		₱371,950,236.60	62,624,131.45	186,674.58	39,100.00	₱62,849,906.03
NON - LT - PER LETTER DATED 12/29/10		(371,950,236.60)	-	-	-	
Multiply by EWT Rate		1%	2%	5%	15%	
EWT per Audit	1,267,681.36	-	1,252,482.63	9,333.73	5,865.00	
Less: EWT Remitted per Monthly Returns	909,885.97		897,328.89	6,692.08	5,865.00	
Deficiency EWT, Basic	357,795.39		[355,153.74][105]	[2,641.65][106]	[-][107]	
20% Interest per Annum	307,802.06					
Compromise Penalty	16,000.00					
TOTAL AMOUNT DUE	681,597.45		44,866,444.50	133,841.60	39,100.00	45,039,386.10
INCOME PAYMENTS NOT SUBJECTED TO EWT						₱17,810,519.93

Petitioner argues that it had properly subjected all its income payments to withholding tax for taxable year 2010. The alleged non-withholding of tax based on the reconciliation made by respondent is not accurate because not all operational

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105 In the Details of Discrepancies, the "EWT Remitted per Monthly Returns" was erroneously added to "EWT per Audit" instead of deducted, thus, "Deficiency EWT, Basic" for Contractors (2%), Rental (5%) and Professional (15%) were erroneously shown as ₱2,149,811.52, ₱16,025.81, and ₱11730.00, respectively.

106 *Ibid.*

107 *Ibid.*

expenses of petitioner are covered by the Expanded Withholding Tax System under RR No. 2-98, as amended.

To further disprove respondent's assessment, petitioner made the following reconciliation:

Summary of Income Payments Subject to WE - BIR				
Account Titles	Suppliers at 1%	Contractors at 2%	Rental at 5%	Professionals at 15%
Freight	-	₱ 46,719,926.57	-	-
Rental	-	-	₱ 186,674.58	-
Professional Fees	-	-	-	₱ 39,100.00
Security Services	-	442,857.15	-	-
Other Outside Services	-	5,900,140.46	-	-
Advertising	-	6,483,182.49	-	-
Repairs and Maintenance	-	1,257,578.84	-	-
Research and Development	-	104,553.36	-	-
Insurance	-	22,559.57	-	-
Representation and Entertainment	-	69,134.03	-	-
Transportation and Travel	-	894,179.63	-	-
Communication, Light and Power	-	730,019.35	-	-
Total	-	₱62,624,131.45	₱186,674.58	₱ 39,100.00

Summary of Income Payments Subject to WE - Benchmark				
Account Titles	Suppliers @ 1%	Contractors @ 2%	Rental @ 5%	Professionals @ 15%
Freight	-	₱ 46,719,926.57	-	-
Rental	-	-	₱ 186,674.58	-
Professional Fees	-	-	-	₱ 39,100.00
Security Services	-	442,857.15	-	-
Other Outside Services	-	5,900,140.46	-	-
Advertising				
Complimentaries	₱4,243,697.32	-	-	-
Promotions	2,239,485.17	-	-	-
Repairs and Maintenance	-	1,257,578.84	-	-
Research and Development	-	104,553.36	-	-
Insurance	-	22,559.57	-	-
Representation and Entertainment	69,134.03	-	-	-
Transportation and Travel	-	894,179.63	-	-
Communication, Light and Power	-	730,019.35	-	-
Less: Non-Large Taxpayer Per Letter Dated 12/19/10	6,552,316.52	-	-	-
Cash Purchases, PCF, Reimbursements	-	11,337,459.95	-	-
Total Income Payments Subjected to EWT	-	₱ 44,734,354.98	₱ 186,674.58	₱ 39,100.00
Total Income Payments Per Alphalist/BIR-1604E	-	44,734,354.98	186,674.58	39,100.00
Variance	-	-	-	-

Based on the foregoing reconciliation, petitioner alleges that respondent subjected the Advertising and Representation Accounts to 2% withholding tax applicable to Contractors which were recorded in the Books of Account as Supplier of Services. Since it was notified that they have been classified as a Large Taxpayer only on December 29, 2010[108], therefore as of the year ending December 31, 2010, all income payments of petitioner to its regular suppliers have not been subjected to withholding tax.

Further, petitioner alleges that respondent failed to consider the income payment it made that is beyond the coverage of RR No. 2-98 totaling to ₱11,337,459.95, which represents Casual Purchases, Petty Cash Disbursements incurred by Salesman and Sales Office (such as, but not limited to, meals, representation and entertainment, gasoline, out-of-town fieldwork expenses and supplies); and/or expenses that were paid in cash and reimbursed to various employees (such as, but not limited to, prepaid cellphone loads, registered mails transmitted to customers and the like).[109]

Moreover, petitioner submits that assuming that certain expenses were not subjected to withholding taxes, respondent cannot simply disallow the expenses claimed as deduction from gross income for failure by the taxpayer to subject them to withholding taxes. If there is a deficiency in the payment of the withholding tax, respondent should, at the very least, assess it for deficiency in withholding taxes and not disallow the expense altogether.[110]

We rule against petitioner.

As regards the claimed advertising expense of ₱6,483,182.49, it must be noted that respondent's assessment thereon was based on Section 2.57.2(E) of RR No. 2-98, as amended, stating that income payments to certain contractors, whether individual or corporate, is subject to 2% withholding tax, irrespective of whether or not it was notified as one of the top 20,000 corporation. Thus, petitioner's contention that since it was notified as a Large Taxpayer only on December 29, 2010, is of no consequence. By the very nature of the expense, the same should be subjected to EWT at the rate of 2%.

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[108] Exhibit "P-21", docket, vol. I, p. 420.
[109] Exhibit "P-24", docket, vol. I, pp. 456-457.
[110] Exhibit "P-24", docket, vol. I, p. 458.

Likewise, based on its reconciliation, petitioner claims that the amount of ₱69,134.03 pertains to payment to supplier of goods and is not subject to 2% EWT, but rather to 1% as a consequence of it being classified as one of the top 20,000 corporation. However, we cannot ascertain whether the said income payments being subjected by respondent to 2% EWT are indeed not involving payments for services rendered by its suppliers subject to EWT under Section 2.57.2(E) of RR No. 2-98, as amended, in the absence of documents to support petitioner's claim.

Further, petitioner claims that the amount of ₱11,337,459.95 represents payments for casual purchases, petty cash disbursement incurred by salesman and sales office, and/or expenses that were paid in cash and reimbursed to various employees which are beyond the coverage of RR No. 2-98. However, petitioner failed to properly substantiate the same with documentary evidence in order for the Court to verify the actual nature of its payment and to ascertain whether the said income payments of ₱11,337,459.95 are indeed not subject to withholding tax. Thus, we cannot rule in favor of petitioner.

As to petitioner's contention that respondent cannot simply disallow the expenses claimed as deduction from gross income for failure by the taxpayer to subject them to withholding taxes, Section 34(K) of the NIRC of 1997, as amended, is instructive, to wit:

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

The foregoing provision clearly states that any amount paid or payable taken into account in computing the gross income shall be allowed as deduction only if it is shown that the withholding tax required therefrom was paid to the BIR. Hence, respondent's disallowance of said expenses as not subjected to withholding tax is proper. *cm*

It is to be noted, however, that based on records, the income payments subjected to EWT per Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E[111] actually amounted to ₱44,960,129.56, as shown below:

TY 2010	Contractor/Subcontractor (WC 120)		Rental (WI 100)		Rental (WC100)		Professionals (WI 011)/ Juridical (WC 011)		TOTAL	
	Income Payment (Php)	Tax Withheld (Php)	Income Payment (Php)	Tax Withheld (Php)	Income Payment (Php)	Tax Withheld (Php)	Income Payment (Php)	Tax Withheld (Php)	Income Payment (Php)	Tax Withheld (Php)
January	2,439,816.75	48,796.35	2,105.26	105.26		-		-	2,441,922.01	48,901.61
February	2,047,365.18	40,947.31	5,500.00	275.00		-		-	2,052,865.18	41,222.31
March	4,166,509.79	83,330.21	37,430.26	1,871.52		-		-	4,203,940.05	85,201.73
April	2,647,355.73	52,947.12	13,105.26	655.26	18,000.00	900.00		-	2,678,460.99	54,502.38
May	1,605,488.44	32,109.77	8,662.50	433.13		-	39,100.00	5,865.00	1,653,250.94	38,407.90
June	6,570,796.85	131,415.96	14,162.50	708.13		-		-	6,584,959.35	132,124.09
July	7,458,253.83	149,165.13	7,605.26	380.26		-		-	7,465,859.09	149,545.39
August	2,584,710.90	51,694.22		-		-		-	2,584,710.90	51,694.22
September	3,441,566.09	68,831.33	2,105.26	105.26	18,000.00	900.00		-	3,461,671.35	69,836.59
October	4,875,185.43	97,503.71	2,105.26	105.26		-		-	4,877,290.69	97,608.97
November	4,485,645.51	89,712.90	14,162.50	708.13		-		-	4,499,808.01	90,421.03
December	2,411,660.48	48,233.23	13,730.52	686.52	30,000.00	1,500.00		-	2,455,391.00	50,419.75
TOTAL	44,734,354.98	894,687.23	120,674.58	6,033.73	66,000.00	3,300.00	39,100.00	5,865.00	44,960,129.56	909,885.97

As such, the disallowed income payments due to non-withholding of tax thereon amounts to ₱17,889,776.47, as computed below:

Total income payments subject to EWT	₱ 62,849,906.03
Less: Subjected per alphabetical list	44,960,129.56
Income payments not subjected to EWT	₱17,889,776.47

E. Unsupported Prior Year's Excess Credits (₱86,870.87)

As reflected in the FLD, respondent disallowed the excess tax credit from prior years amounting to ₱86,870.87 which was carried over in the subject taxable year 2010 for being unsupported.

The disallowance is proper since records of the case reveal that petitioner failed to present the corresponding Certificates

[111] Exhibits "P-7-A" to "P-7-L", docket, vol. I, pp. 280-315.

of Creditable Taxes Withheld at Source (BIR Form No. 2307) to substantiate the same.

F. Excess MCIT Carried-Over to Succeeding Period (₱427,028.47)

As reflected in the FLD, the amount of ₱427,028.47 representing excess MCIT was deducted by respondent from the total allowable tax credits considering that the said amount has been forwarded to the succeeding year, pursuant to Section 2.58.3 of RR No. 2-98.

A careful examination of petitioner's Annual ITR[112] for taxable year 2010 reveals that the amount of ₱427,028.47 disallowed by respondent represents the excess of the MCIT (₱773,529.05) over the regular or normal income tax (₱346,500.58) which is carried forward and credited against the regular corporate income tax (RCIT) for the three (3) immediately succeeding taxable years, pursuant to Section 27(E)(1) and (2) of the NIRC of 1997, as amended, to wit:

> SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> xxx xxx xxx
>
> (E) *Minimum Corporate Income Tax on Domestic Corporations.* –
>
> (1) *Imposition of Tax.* – A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.
>
> (2) *Carry Forward of Excess Minimum Tax.* – Any excess of the minimum corporate income tax over the normal income tax as computed under Subsection (A) of this Section shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years."

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112 Exhibit P-15", docket, vol. I, pp. 386-388.

Implementing the above provision is Section 2.27(E) of RR No. 09-98, as amended by RR No. 12-07, which states:

> Sec. 2.27(E) *Minimum Corporate Income Tax (MCIT) on Domestic Corporations.* –
>
> (1) *Imposition of the Tax.* – A minimum corporate income tax (MCIT) of two percent (2%) of the gross income as of the end of the taxable year (whether calendar or fiscal year, depending on the accounting period employed) is hereby imposed upon any domestic corporation beginning on the fourth (4th) taxable year immediately following the taxable year in which such corporation commenced its business operations. The MCIT shall be imposed whenever such corporation has zero or negative taxable income or whenever the amount of minimum corporate income tax is greater than the normal income tax due from such corporation.
>
> xxx xxx xxx
>
> The taxpayer shall pay the MCIT whenever it is greater than the regular or normal corporate income tax which is imposed under Sec. 27(A) and Sec. 28(A)(1) of the Code. The final comparison between the normal income tax payable by the corporation and the MCIT shall be made at the end of the taxable year and the payable or excess payment in the Annual Income Tax Return shall be computed taking into consideration corporate income tax payment made at the time of filing of quarterly corporate income tax returns whether this be MCIT or normal income tax." xxx

It is clear from the foregoing provisions that the 2% MCIT on gross income shall be imposed whenever the taxpayer-corporation has zero or negative taxable income or whenever the amount of MCIT is greater than the RCIT due from such taxpayer-corporation. In other words, it is imposed in lieu of the normal or regular corporate income tax of 30%.

Considering that petitioner's MCIT is greater than its RCIT due as reflected in its Annual ITR for 2010, the MCIT applies. Considering further that the MCIT will be credited against the RCIT for the three (3) immediately succeeding taxable years, pursuant to Section 27(E)(2) of the NIRC of 1997, as amended, its benefit will redound in the succeeding years. Thus, it is inappropriate to disallow the same for such is beyond the scope of the present assessment.

In view of the foregoing discussion, the Court finds petitioner liable to pay the basic deficiency income tax of ₱6,258,507.09 for taxable year 2010, computed as follows:

Taxable Income per ITR		₱ 1,155,001.93
Adjustments:		
Undeclared Income - SLS vs SAWT		92,988.88
Unsupported Sales Returns and Discounts		3,672,204.81
Disallowed Losses		340,578.80
Disallowed Income Payments due to Non-withholding		17,889,776.47
Total Taxable Income		₱ 23,150,550.89
Tax Rate		30%
Income Tax Due		₱ 6,945,165.27
Less: Tax Credits/Payments		
Prior Years Excess Credits	₱ 86,870.87	
Tax Payments	460,010.99	
Creditable Tax Wtihheld - Form 2307	226,647.19	
Total	773,529.05	
Less: Unsupported Prior Years Excess Credits	86,870.87	686,658.18
BASIC DEFICIENCY INCOME TAX		₱ 6,258,507.09

II. Deficiency Value-Added Tax (VAT)

Respondent assessed petitioner of deficiency value-added tax for taxable year 2010 amounting to ₱30,108,251.62, inclusive of increments, as follows:

TAXABLE SALES PER VAT RETURNS		₱ 418,497,010.33
ADJUSTMENTS:		
Undeclared Sales not subjected to VAT - see Income Tax	₱ 64,330,266.54	
Undeclared Sales Returns and Discounts	38,893,472.37	103,223,738.91
TAXABLE INCOME PER AUDIT		₱ 521,720,749.24
OUTPUT TAX		₱ 62,606,489.91
LESS: CREDITABLE INPUT TAX		
Input Tax Claimed per VAT Returns	₱ 50,048,275.73	
Less: Disallowed Input Tax	3,809,409.02	
Input Tax Carry Over	149,654.30	46,089,212.41

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VAT PAYABLE		₱ 16,517,277.50
LESS: VAT PAYMENTS/CREDITS (320,626.98[113] + 342.86)		321,019.84
BASIC DEFICIENCY VAT		₱ 16,196,257.66
ADD: UNREMITTED VAT - (Schedule 5.1)		8,647.00
TOTAL BASIC DEFICIENCY VAT		₱ 16,204,904.66
20% Interest Per Annum (1/20/2011 - 4/30/2015)		13,853,346.96
Compromise Penalty		50,000.00
TOTAL AMOUNT DUE		₱ 30,108,251.62

Based on the foregoing, the deficiency VAT mainly arose from the following:

A. Undeclared Sales not Subjected to VAT	₱ 64,330,266.54
B. Undeclared Sales Returns and Discounts	38,893,472.37
C. Disallowed Input Tax	3,809,409.02
D. Input Tax Carry Over	149,654.30
E. Unremitted VAT	8,647.00

A. Undeclared Sales not subjected to VAT (₱64,330,266.54)

The amount of ₱64,330,266.54 is related to the previously discussed discrepancies under deficiency Income Tax. To reiterate, said amount arose from the following:

Discrepancy of Sales - SLS vs. AITEID vs. SAWT	₱ 21,558,661.93
Undeclared Purchases from Affiliates	24,839,457.08
Undeclared Purchase of Services	17,932,147.53
Total	₱64,330,266.54

As earlier discussed, out of the alleged undeclared sales of ₱21,558,661.93, only the amount of ₱1,006,182.51 shall be considered undeclared sales for petitioner's failure to prove that the same merely arose from the timing difference in its recognition of income as declared in its VAT returns vis-à-vis as

113 Should be ₱320,676.98, see Exhibits "P13-B" to "P-13-E" (Monthly VAT Declaration for the months of February and May 2010), docket, vol. I, pp. 361 and 365.

contained in the SAWT of its customers. Consequently, the same shall be subjected to deficiency VAT.

With regard to the undeclared sales due to undeclared purchases from affiliates and undeclared purchase of services in the amounts of ₱24,839,457.08 and ₱17,932,147.53, respectively, in line with the findings as earlier discussed, that respondent's presumption that the undeclared purchases automatically resulted in undeclared income is incorrect, the imposition of VAT thereon is likewise incorrect. As such, the deficiency VAT assessment pertaining thereto shall be cancelled.

B. Undeclared Sales Returns and Discounts (₱38,893,472.37)

As earlier discussed, out of the total amount of ₱38,893,472.37, petitioner was able to prove that only the amount of ₱35,221,267.56 pertains to sales returns and discounts. Thus, the remaining amount of ₱3,672,204.81 should be subjected to deficiency VAT.

C. Disallowed Input Tax (₱3,809,409.02)

Respondent's verification disclosed that the purchase invoices/official receipts evidencing the claimed input tax did not meet the invoicing requirements as set forth under Section 113 in relation to Sections 110 and 237 of the NIRC of 1997, as amended, hence, resulted in the disallowance of the total amount of ₱3,809,409.02[114], to wit:

Name of Supplier	Tax Base	Input Tax	Reasons for Disallowance
3 Kids Enterprises	₱ 378,502.32	₱ 40,553.82	INVALID/NO TIN
AGN Trucking and Trading	177,922.80	19,063.16	INVALID/NO TIN
Antonio Ikeda Movers Inc	113,151.40	12,123.37	INVALID/NO TIN
Caltex San Isidro	6,400.00	685.70	INVALID/NO TIN
Car Access Auto Supply	13,905.00	1,489.80	INVALID/NO TIN
Caramoran Gas Station	7,350.00	787.50	INVALID/NO TIN

[114] Exhibit "P-23-A", docket, vol. I, pp. 438-439.

CMT Hauling Services	89,807.00	9,622.17	INVALID/NO TIN
Island Gasoline Station	35,300.00	3,782.11	INVALID/NO TIN
Jennifer S Kababayan Hotel Inc.	5,478.00	586.94	INVALID/NO TIN
Joedel Realty and Development Corp	4,800.00	514.27	INVALID/NO TIN
Lim Enterprises Inc.	17,140.00	1,836.46	INVALID/NO TIN
Masbate Electric Cooperative	122,684.64	13,144.75	INVALID/NO TIN
New Bicol Veterans Security Agency	55,000.00	5,892.85	INVALID/NO TIN
Regina Shipping Lines Inc	46,440.00	4,975.73	INVALID/NO TIN
Robertson Department Store and Supermarket	6,946.50	744.24	INVALID/NO TIN
Sorsogon Caltex Service Station	5,890.00	631.06	INVALID/NO TIN
Sorsogon IT Electric Cooperative	41,879.14	4,487.05	INVALID/NO TIN
Sorsogon Tire Sales and Service Center	10,788.00	1,155.85	INVALID/NO TIN
Sunny View Hotel	29,200.00	3,128.32	INVALID/NO TIN
Taurus Security Agency and Allied Services	147,000.00	15,750.00	INVALID/NO TIN
Virac Gasoline Station	23,356.00	2,502.39	INVALID/NO TIN
Ace Hardware Philippines	11,698.50	1,253.41	INVALID/NO TIN
All Electronics Enterprises	14,999.00	1,607.03	INVALID/NO TIN
Alpha Construction Supply	6,141.00	657.97	INVALID/NO TIN
Beth Trading	6,300.00	675.00	INVALID/NO TIN
BGC Marine and Industrial Machine	88,165.96	9,446.35	INVALID/NO TIN
Bicol Premium Steel Corporation	12,196.89	1,306.81	INVALID/NO TIN
Bitshop Bicol Sale Center	20,945.00	2,244.11	INVALID/NO TIN
Business Royale Services Inc	30,869.50	3,307.45	INVALID/NO TIN
Camarines Norte Electric Cooperative	33,412.19	3,579.89	INVALID/NO TIN
Coby Electronics Corp	7,950.00	851.79	INVALID/NO TIN
Contegeo Cargo Solutions	2,036,780.70	218,226.52	INVALID/NO TIN
Coslor Enterprises	25,460.88	2,727.96	INVALID/NO TIN
D and T General Mdse	7,010.00	751.08	INVALID/NO TIN
Daraga Isurplus Center	68,395.00	7,328.01	INVALID/NO TIN
Dugan Trucking	108,885.91	11,666.34	INVALID/NO TIN

Ella Auto Repair Shop	33,975.00	3,640.17	INVALID/NO TIN
Fortona Department Store	12,600.00	1,350.00	INVALID/NO TIN
G Malijan Trucking	1,935,780.80	207,405.07	INVALID/NO TIN
Gapan Motors	12,118.00	1,298.36	INVALID/NO TIN
Good Deal Hauling Services	51,531.40	5,521.21	INVALID/NO TIN
Hizon Transport Services and Trading	3,338,702.52	357,718.12	INVALID/NO TIN
Hotrod Detective and Protective Agency	84,000.00	9,000.00	INVALID/NO TIN
Hypertech Computers	5,715.00	612.32	INVALID/NO TIN
Iriga Joe Hardware Auto Supply	13,301.25	1,425.13	INVALID/NO TIN
Jellys Trucking Services	65,358.50	7,002.70	INVALID/NO TIN
Jocelle S Garden and Tourist Inn	44,413.00	4,758.53	INVALID/NO TIN
JRS Express	7,395.00	792.28	INVALID/NO TIN
Justin Auto Parts	7,628.00	817.27	INVALID/NO TIN
JYL Auto Supply and General Merchandise	8,811.00	944.03	INVALID/NO TIN
JZ Valenzia Enterprises	215,315.60	23,069.53	INVALID/NO TIN
KR Carrier	245,043.36	26,254.65	INVALID/NO TIN
LBC Express Sel Inc	10,600.00	1,135.84	INVALID/NO TIN
Lee and Sons Printing Corp	8,250.00	883.93	INVALID/NO TIN
Legazpi Champion Auto Supply	71,895.00	7,703.05	INVALID/NO TIN
Legazpi Isuzu Center	5,200.00	557.14	INVALID/NO TIN
LFH Venture Merchandising Corp	9,566,604.98	1,024,993.38	INVALID/NO TIN
Lolo S Music Bar	10,000.00	1,071.43	INVALID/NO TIN
Luzonian Machine Shop	9,460.00	1,013.57	INVALID/NO TIN
Mannbo Enterprises	10,000.00	1,071.43	INVALID/NO TIN
Marissas Trucking and Hauling Services	46,685.69	5,002.05	INVALID/NO TIN
Masbate Consolidated Arrastre Inc	186,793.72	20,013.61	INVALID/NO TIN
Masbate New Life Marketing and Merchandise	37,258.00	3,991.93	INVALID/NO TIN
Master Square Supermarket	10,604.00	1,136.12	INVALID/NO TIN
Montenegro Shipping Lines	4,693.00	502.83	INVALID/NO TIN
MRTC Trucking Services Corporation	991,531.66	106,235.55	INVALID/NO TIN

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Mudbugs Sports Bar and Café	101,739.00	10,900.61	INVALID/NO TIN
Naga A and M Mahusay Trading	19,163.00	2,053.18	INVALID/NO TIN
Naga Sony Auto Parts Center	28,714.00	3,076.48	INVALID/NO TIN
Neptune Auto Supply	90,895.00	9,738.76	INVALID/NO TIN
New Camarines Lumber Co	11,118.00	1,191.22	INVALID/NO TIN
North West Enterprises	22,768.19	2,439.45	INVALID/NO TIN
Our Beverly Village Trucking Corp	2,179,638.32	233,532.65	INVALID/NO TIN
Overland Motors	359,664.00	38,535.43	INVALID/NO TIN
Philippine Airlines Legaspi	11,746.00	1,258.50	INVALID/NO TIN
Platon Trucking	1,193,413.46	127,865.72	INVALID/NO TIN
Power Plus Store	6,399.85	685.70	INVALID/NO TIN
Refaircon Commercial Services	23,105.00	2,475.54	INVALID/NO TIN
Renz Trucking Services	25,405.00	2,721.96	INVALID/NO TIN
Robertson Mall	6,892.00	738.42	INVALID/NO TIN
Rufino A Manzano	39,200.00	4,200.00	INVALID/NO TIN
SCI Construction and Gen Merchandise	1,108,767.80	118,796.52	INVALID/NO TIN
Shimmery Enterprises	13,540.00	1,450.72	INVALID/NO TIN
Sincere Staff Management Services	91,242.25	9,775.96	INVALID/NO TIN
SJ Computer Center	18,850.00	2,019.64	INVALID/NO TIN
Sorsogon D Best Store	6,235.00	668.03	INVALID/NO TIN
Tigon Security Investigation	210,000.00	22,500.00	INVALID/NO TIN
Tuiza Trucking Services	3,042,649.26	325,998.14	INVALID/NO TIN
Uniphil Marketing Corporation	5,735.00	614.46	INVALID/NO TIN
Value Care Health Systems Inc	13,373.13	1,432.83	INVALID/NO TIN
VJ Tec Trucking Services	34,828.00	3,731.57	INVALID/NO TIN
Weathermaker	19,465.00	2,085.53	INVALID/NO TIN
Wide Area Network Transport Service	5,994,025.82	642,217.08	INVALID/NO TIN
Winston Enterprises	6,500.00	696.43	INVALID/NO TIN
Total	₱35,554,487.89	₱3,809,409.02	

Petitioner argues that the reason stated in justifying the disallowance of the input taxes is due to "INVALID/NO TIN" without indication as to which purchase invoices/official receipts are subject to disallowances and that there was no specification as to whose tax identification numbers have "Invalid/No TIN".

Further, petitioner posits that it should not be faulted for the mistake of its suppliers issuing the purchase invoices/official receipts. Also, petitioner argues that nothing in the cited provisions of the 1997 NIRC, as amended, specifically Sections 110, 113 and 237, was there a statement that failure to indicate the TIN of either the seller or the buyer on an otherwise valid purchase invoice or official receipt would result in the disallowance of input tax credits. Petitioner further contends that Section 113(B) of the 1997 NIRC, as amended, provides for the "information contained in the VAT invoice or VAT official receipt", without any provision as to the disallowance of any input tax for failure to provide any of the enumerated information. The portion of Section 113 which provides for the consequence of disallowance of creditable input taxes is found under Section 113(D), which is imposed for issuing erroneous VAT invoice or VAT official receipt and the consequence of which is on the "issuer-seller", which is not the petitioner in the present case.

Petitioner's arguments have no merit.

Section 113(B)(4) of the NIRC of 1997, as amended, provides as follows:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> xxx xxx xxx
>
> (4) In the case of sales in the amount of one thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer's Identification Number (TIN) of the purchaser, customer or client."(*Emphasis supplied*)

Based on the foregoing, it is indispensable that the sales invoice and official receipts supporting a claim for input tax shall bear the needed information, such as the TIN of the purchaser as in this case, before the same can be applied against petitioner's output tax. Without such vital information, the invoices or official receipts cannot be allowed as proper support for an input tax credit. This is so because compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[115]

As to petitioner's reasoning that the consequence of the disallowance of the input VAT should be on the "issuer-seller", this Court sitting *En Banc* made the following declarations in the case of *Deutsche Knowledge Services, Pte. Ltd. vs. Commissioner of Internal Revenue*[116]:

> "While it may be true that the said VAT invoices or official receipts were issued without its participation and control, Deutsche Knowledge, to whom the burden of proof rests claiming tax refunds, must be vigilant to require its suppliers of goods and services to issue pertinent VAT invoice or official receipt, as the case may be, which bear all the information required by law and revenue regulations. In other words, having been charge with the burden to prove its claim for refund, Deutsche Knowledge must have been watchful in ensuring that its every purchase of goods and services is supported by a legally compliant VAT official receipt or invoice, as the case may be."

Petitioner should have been vigilant in ensuring that the invoices and official receipts issued against it are compliant with the invoicing requirements provided by laws and regulations. Since petitioner claimed the same as creditable input tax, it has the burden to prove such entitlement.

Further, petitioner cannot question which purchases are subject of the disallowances as it can easily identify the pertinent supporting documents issued by the above-mentioned suppliers. Since petitioner had in its possession the supporting invoices and/or official receipts, it could have presented the same before this Court to disprove respondent's assessment.

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[115] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[116] CTA EB Nos. 1374 and 1383, December 15, 2017.

As such, the findings of respondent pertaining thereto shall be sustained.

D. Input Tax Carry-Over (₱149,654.30)

In arriving at petitioner's alleged deficiency VAT liability for the year 2010, respondent disallowed the excess tax credits of ₱149,654.30 reflected in petitioner's Quarterly VAT Return for the fourth quarter of 2010[117]. Respondent, however, did not explain the basis of the disallowance of the said excess input tax, thus, pursuant to Section 228 of the 1997 NIRC, as amended, this item of assessment shall be considered void.

E. Unremitted VAT (₱8,647.00)

In the Details of Discrepancies (Schedule 5.1)[118], respondent computed the alleged unremitted VAT of ₱8,647.00, as follows:

Per FS Note No. 13	
Output Taxes, Beg.	₱4,278,193.00
Input Taxes, Beg.	4,269,546.00
VAT Payable	₱ 8,647.00

Petitioner argues that respondent failed to provide explanation in adding the same in the computation of the alleged deficiency VAT.

The Court finds that although respondent did not elaborate the reason for the addendum of the amount of ₱8,647.00, still petitioner is apprised on what constitute the same, *i.e.*, by providing the above computation, the data of which were sourced from petitioner's Audited Financial Statements (AFS).

Nonetheless, the Court finds the assessment erroneous.

It is noted that the alleged unremitted VAT pertains only to the beginning balances, *i.e.,* as of January 1, 2010, of output

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[117] Exhibit "P-13-L", docket, vol. I, p. 373.

[118] Exhibit "P-23-A", docket, vol. I, p. 439.

and input VAT in the amounts of ₱4,278,193.00 and ₱4,269,546.00, respectively. Respondent disregarded the fact that during the year 2010, petitioner incurred and/or paid input taxes from purchases of goods and services and output taxes from its VATable sales. As evidenced by the Monthly and Quarterly VAT Returns for taxable year 2010[119], said output taxes have been settled by crediting against the same the cash payments [120], creditable VAT withheld [121] and input taxes incurred and paid by petitioner. Had respondent only took into account the details of Note 13 [122] of petitioner's Audited Financial Statements, he would find that petitioner has no VAT liability as of December 31, 2010, to wit:

	Tax Base	Tax Due
Output taxes for the year		
Beginning balance, 2010		₱ 4,278,193
Sales	₱ 418,497,010	50,219,641
		₱ 54,497,834
Input taxes		
Beginning balance, 2010		₱ 4,269,546
Capital goods	₱ 59,939	7,193
Goods other than capital goods	372,026,866	44,643,224
Purchase of services	44,982,159	5,397,859
	₱ 417,068,964	₱ 54,317,822
VAT payable		₱ 180,012
Creditable VAT		(343)
VAT payments during the year		(329,324)
Balance as of December 31, 2010		₱ (149,655)

Thus, the assessment on the amount of ₱8,647.00 should be cancelled.

In view of the foregoing discussion, the Court finds petitioner liable to pay the amount of ₱4,221,161.17, representing basic deficiency VAT for taxable year 2010, computed as follows:

119 Exhibits "P13-A" to "P-13-L", docket, vol. I, pp. 360-373.
120 Exhibits "P13-B" to "P-13-E" (Monthly VAT Declaration for the months of February and May 2010), docket, vol. I, pp. 361 and 365.
121 Exhibit "P-13-L" (Quarterly VAT Return for the Fourth Quarter of CY 2010), docket, vol. I, p. 373.
122 Exhibit "P-15-B", docket, vol. I, p. 407.

Taxable sales per VAT Returns		₱ 418,497,010.33
Add: Adjustments		
Undeclared Sales - discrepancy of sales SLS vs. SAWT	₱ 1,006,182.51	
Undeclared Sales - Unsupported Returns and Discounts	3,672,204.81	4,678,387.32
Adjusted Taxable Sales		₱ 423,175,397.65
Output Tax		50,781,047.72
Less: Allowable Input Tax		
Input Tax Claimed per VAT Returns	₱ 50,048,275.73	
Less: Disallowed Input Tax	3,809,409.02	46,238,866.71
VAT Payable		4,542,181.01
Less: VAT Payments/Credits		321,019.84
BASIC DEFICIENCY VAT		₱ 4,221,161.17

III. Deficiency Expanded Withholding Tax

The assessed deficiency expanded withholding tax for taxable year 2010 amounting to ₱681,597.45, inclusive of increments, was computed as follows:

BASIC DEFICIENCY EXPANDED WITHHOLDING TAX (Schedule 6)	₱ 357,795.39
20% Interest Per Annum (1/16/11 - 3/31/15)	307,802.06
Compromise Penalty	16,000.00
TOTAL AMOUNT DUE	₱ 681,597.45

The basic deficiency EWT relates to the disallowed income payments in the amount of ₱17,889,776.47 due to non-withholding of EWT. As discussed, petitioner failed to prove that the said income payments have been properly subjected to EWT; hence, the deficiency EWT assessment should likewise be sustained. Accordingly, petitioner is liable to pay the basic deficiency EWT of ₱357,795.39 for taxable year 2010, computed as follows:

Income Payment Subject to Withholding Tax	Income Payments Subject to Withholding Tax	Withholding Tax Due	Income Payments Subjected to Withholding Tax	Tax Withheld	Difference	
					Income Payments not Subjected to Withholding Tax	Withholding Tax Still Due
Payment to Contractor	₱ 62,624,131.45	₱ 1,252,482.63	₱ 44,734,354.98	₱ 894,687.24	₱ 17,889,776.47	₱ 357,795.39
Rental	186,674.58	9,333.73	186,674.58	9,333.73	-	-
Professional	39,100.00	5,865.00	39,100.00	5,865.00	-	-
Total	₱ 62,849,906.03	₱1,267,681.36	₱ 44,960,129.56	₱909,885.97	₱ 17,889,776.47	₱357,795.39

IV. Deficiency Fringe Benefit Tax

Respondent assessed petitioner of deficiency fringe benefit tax for taxable year 2010 amounting to ₱205,019.05, inclusive of increments, as follows:

BASIC DEFICIENCY FRINGE BENEFIT TAX (Schedule 7)	₱ 93,654.97
Surcharge	23,413.74
20% Interest Per Annum (4/16/11 - 3/31/15)	75,950.34
Compromise Penalty	12,000.00
TOTAL AMOUNT DUE	₱ 205,019.05

As stated in the Details of Discrepancies, respondent found that petitioner failed to pay the fringe benefit tax on the benefits granted to its officers in violation to Section 2.33(B) of RR No. 3-98, determined as follows:

Fringe Benefits per ITR	₱ 199,016.82
Gross-up Monetary Value	292,671.79
Fringe Benefits Tax	93,654.97
Less: Tax Paid	-
Deficiency WR, Basic	₱93,654.97

Petitioner submits that the amount represents expenses incurred for various Team Building Activities such as excursions, sports activities, seminars (*i.e.*, family planning), and costs incurred during the company's Christmas party. The said amount does not represent a fringe benefit that is taxable under the NIRC and RR No. 3-98.

In petitioner's Memorandum, it alleges that it had submitted to respondent various documents such as Reconciliation of Salaries and Allowances per ITR vs. AFS, Reconciliation of Taxable Salaries and Allowances per Annual Alphabetical List vs. BIR 1601-C, and Schedule of Fringe Benefits not subject to FBT on December 12, 2013, to prove that the same are not fringe benefits subject to FBT.[123] Petitioner, however, did not present the alleged documents before this Court.

It is a basic rule in civil cases that he who alleges a fact has the burden of proving it by a preponderance of evidence. It is incumbent upon the party claiming affirmative relief from the court to convincingly prove its claim. Bare allegations, unsubstantiated by evidence, are not equivalent to proof; in short, mere allegations are not evidence.[124]

Hence, for failure of petitioner to present relevant documents, the deficiency FBT shall remain.

IV. Compromise Penalty

Respondent imposed compromise penalties on the foregoing deficiency taxes in the total amount of ₱128,000.00, to wit:

TAX TYPE	COMPROMISE PENALTY
Income Tax	₱ 50,000.00
Value-added Tax	50,000.00
Expanded Withholding Tax	16,000.00
Fringe Benefit Tax	12,000.00
TOTAL	₱ 128,000.00

Under RMO No. 01-90, as amended by RMO No. 19-07, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very

[123] Docket, vol. II, pp. 808-809.
[124] *Ermelinda C. Manaloto, et al. vs. Ismael Veloso III,* G.R. No. 171365, October 6, 2010.

nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[125] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[126]

In the present case, there is nothing in the records which would show that petitioner consented to the compromise penalty. Thus, the imposition of which in the deficiency income tax, VAT, EWT, and FBT in the total amount of ₱128,000.00 cannot be sustained.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** The compromise penalties in the total amount of ₱128,000.00 imposed by respondent against petitioner for taxable year 2010 are **CANCELLED.** However, the assessments issued by respondent against petitioner for taxable year 2010 covering deficiency income tax, VAT, EWT and FBT are **PARTIALLY UPHELD**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of ₱40,704,439.00, representing basic deficiency IT, VAT, EWT and FBT and twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Sections 249(B) and (C) of the same Code, respectively, computed until December 31, 2017, as determined below:

	IT	VAT	EWT	FBT	TOTAL
Basic	₱ 6,258,507.09	₱ 4,221,161.17	₱ 357,795.39	₱ 93,654.97	₱ 10,931,118.62
Surcharge (25%)	1,564,626.77	1,055,290.29	89,448.85	23,413.74	2,732,779.65
Deficiency Interest (20%) until April 30, 2015					
IT - 4/16/2011 to 4/30/2015 (₱6,258,507.09 x 20% x 1,476 days/365 days)	5,061,674.78				
VAT - 1/26/2011 to 4/30/2015 (₱4,221,161.17 x 20% x 1,556 days/365 days)		3,598,973.58			
EWT - 1/16/2011 to 4/30/2015 (₱357,795.39 x 20% x 1,566 days/365 days)			307,017.85		
FBT - 1/11/2011 to 4/30/2015				80,620.25	9,048,286.46

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

126 *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. 35266, January 21, 1991.

(₱93,654.97 x 20% x 1,571 days/365 days)					
Total Amount Due, April 30, 2015	₱12,884,808.64	₱ 8,875,425.04	₱ 754,262.09	₱197,688.96	₱22,712,184.73
Deficiency Interest (20%) from May 1, 2015 until December 31, 2017					
IT - 5/1/2015 to 12/31/2017 (₱6,258,507.09 x 20% x 976 days/365 days)	3,347,015.30				
VAT - 5/1/2015 to 12/31/2017 (₱4,221,161.17 x 20% x 976 days/365 days)		2,257,453.86			
EWT - 5/1/2015 to 12/31/2017 (₱357,795.39 x 20% x 976 days/365 days)			191,347.01		
FBT - 5/1/2015 to 12/31/2017 (₱93,654.97 x 20% x 976 days/365 days)				50,086.16	5,845,902.33
Delinquency Interest (20%) from May 1, 2015 until December 31, 2017					
IT - 5/1/2015 to 12/31/2017 (₱12,884,808.64 x 20% x 976 days/365 days)	6,890,725.06				
VAT - 5/1/2015 to 12/31/2017 (₱8,875,425.04 x 20% x 976 days/365 days)		4,746,528.68			
EWT - 5/1/2015 to 12/31/2017 (₱754,262.09 x 20% x 976 days/365 days)			403,375.23		
FBT - 5/1/2015 to 12/31/2017 (₱197,688.96 x 20% x 976 days/365 days)				105,722.97	12,146,351.94
Total Amount Due as of December 31, 2017	₱23,122,549.00	₱15,879,407.58	₱1,348,984.33	₱353,498.09	₱40,704,439.00

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) on the total unpaid amount of ₱22,712,184.73 as of April 30, 2015, as determined above, 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 the Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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