Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PARITY PACKAGING CORPORATION, Petitioner,	**CTA Case No. 9318**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson*, **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 2 0 2018 10:15 a.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review[1] filed by petitioner Parity Packaging Corporation (Parity), prays for the nullification of respondent's assessment on deficiency income tax (IT), value-added tax (VAT) and withholding tax on compensation (WTC) for calendar year (CY) 2011 in the aggregate amount of ₱11,218,897.63, inclusive of interest, broken down as follows:

Tax Type	Tax Due	Interest	Total Amount Due
Income Tax	₱2,268,054.09	₱1,795,283.88	₱4,063,337.97
Value-Added Tax	3,453,924.41	3,578,507.46	7,032,431.87
Withholding Tax Compensation	60,230.10	62,897.69	123,127.79
Total	**₱5,782,208.60**	**₱5,436,689.03**	**₱11,218,897.63**

[1] Docket (Vol. I), pp. 10-28.

Petitioner is a domestic corporation registered with the Securities and Exchange Commission (SEC)[2] with office address at SMI 24 Fortune Avenue, Brgy. Fortune, Marikina City.[3] It is engaged in the business of manufacturing, preparing, buying, selling and generally deal in at wholesale all kinds of printing, publishing, binding and engraving works, and designs, books, papers, catalogues, and stationery supplies, printing supplies, pads and stamps and to carry on a general business in monotyping, linotyping, electrotyping, color-typing, stencil press service, typesetting, composition, dies and advertising services; and to engage in and carry on the service as a commercial printer, bookbinders, engravers, photographic printers, stereotypers, electrotypers, lithographers and to undertake a general printing, engraving, lithographing business under specific contract or job orders from client.[4] Petitioner is registered with the Bureau of Internal Revenue (BIR) as a Large Taxpayer with Taxpayer Identification No. (TIN) 004-464-749.[5]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City, where he may be served summons and other processes.[6]

On April 12, 2013, petitioner received Letter of Authority (LOA) NO. LOA-116-2013-00000060[7] authorizing Revenue Officers Ma. Theresa Espino, William Sundiam, Miguel Sulit, Allan Maniego, Joel Aguila and Group Supervisor Wilfredo Reyes (collectively referred to as examiners) of LT Regular Audit Division I to conduct an examination of its books of accounts and other accounting records for all internal revenue taxes for CY 2011.

On September 17, 2014, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (NIRC), giving respondent until March 31, 2015 within which to assess the former.[8]

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[2] Exhibits "P-3" and "P-3-1".
[3] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. II), p. 730.
[4] Exhibit "P-3-1".
[5] Exhibit "P-4".
[6] Par. 3, Admitted Facts, JSFI, Docket (Vol. II) p. 731.
[7] Exhibit "R-1".
[8] Exhibit "R-5".

On March 13, 2015, petitioner received Preliminary Assessment Notice (PAN) together with the Details of Discrepancies.[9]

On March 31, 2015, petitioner received respondent's Formal Letter of Demand (FLD), together with the Details of Discrepancies and Assessment Notice Demand Nos. IT-116-LOA-00000060-11-15-1573, VT-116-LOA-00000060-11-15-1574, WE-116-LOA-00000060-11-15-1575, WC-116-LOA-00000060-11-15-1576, assessing the former for deficiency taxes, interest and compromise penalty totaling to P23,366,419.69 for taxable year 2011.[10]

On April 29, 2015, petitioner filed its protest requesting for a reconsideration of the assessment.[11]

On March 1, 2016, petitioner received respondent's Final Decision on Disputed Assessment (FDDA), together with Details of Discrepancies and Audit Result/Assessment Notice Nos. IT-116-LOA-00000060-11-15-1573, VT-116-LOA-00000060-11-15-1574, WE-116-LOA-00000060-11-15-1575, WC-116-LOA-00000060-11-15-1576, assessing the former for deficiency taxes, interest and compromise penalty in the amount of ₱11,218,897.63 for taxable year 2011.

Thus, on March 31, 2016, petitioner filed the instant Petition for Review before this Court.

On June 27, 2016, respondent filed his Answer[12] to the Petition for Review and interposed the following arguments:

"SPECIAL AND AFFIRMATIVE DEFENSES

xxx xxx xxx

8. Petitioner is liable to pay its deficiency Income Tax, Value Added Tax (VAT) and Withholding Tax on Compensation in the aggregate amount of P11,218,897.63, based on the foregoing to wit:

Undeclared Sales per cash analysis, P5,881,234.85

[9] Exhibits "R-7" and "P-6-7".
[10] Exhibit "R-9".
[11] Exhibit "P-8".
[12] Docket (Vol. I), pp. 426 to 436.

Verification disclosed that petitioner failed to substantiate with documentary evidence advances of P30,000,000.00 to dispute the negative balance in your cash accounts.

On the issue of undeclared sales per Cash Analysis P5,881,234.85, which was derived from negative balance from the cash account for the month of January 2011. Excerpts from the Cash account disclosed the following data, to wit:

Period	Debit	Credit	Balance
Beginning Balance	17,880,042.87		17,880,042.87
January	963,077.46	24,724,355.18	(5,881,234.85)

CASH

Petitioner argued that the negative balance in the Cash account does not immediately translate into undeclared sales. The General Ledger for Cash Account is presumably the source document from which BIR based their allegation and such analysis of the entries found on the said book is erroneous. Petitioner even cited that there are two books, the General Journal, the Book of Original Entry, and General Ledger, the Book of Final Entry.

To validate petitioner's argument, it presented a General Ledger that for the month of January petitioner have a running balance of P24,118,765.15 due to an insertion of a debit entry of P30,000,000.00.

Petitioner's arguments lacks *(sic)* basis. T-Accounts which was the basis of the assessment was the exact document petitioner submitted on May 16, 2013. Such T-accounts was a summary of all the transactions and is therefore considered the General Ledger or the Books of Final Entry. Petitioner's failure to show an entry of P30,000,000.00 in the General Ledger is a mistake not acceptable and questionable for the following reasons;

1) Petitioner failed to submit the source documents to justify such entry;
2) To make it appear that the balance at the end of the year is ₱17,017,886.78, you make a credit entry of ₱30,000,000.00 in December 2011

without again providing respondent the source documents.

3) It was also disclosed that the ₱30,000,000.00 was an advances as shown in your submitted general journal, however you failed to substantiate this proper documentation. Also, for a company about to close down, how could you justify such advances?

Respondent would like to point out that the assessments were based on facts as presented in general ledger petitioner submitted.

On the issue of Sales Not Subject to Income Tax in the amount ₱7,949,517.65 which was derived from discrepancy between the Certificate of Income Tax Withheld at Source (BIR Form 2307) as against Sales per Income Tax Return.

Petitioner argued that they have no undeclared sales for taxable year 2011 and that the Certificate of Creditable Tax Withheld (BIR From 2307) serves as evidence that income payment was made and corresponding tax was withheld but it does not mean that the said income payment represents sale for the current period.

To validate petitioner's argument, it presented in a table form the composition of income payment subjected to Expanded Withholding claimed by Parity for the year 2011, as follows:

Particulars	**Sales for the current year 2011**	**Sales of Prior year**	**Sales of Machineries to Packageworld Inc.**	**Certificate of Creditable Tax Withheld at Source**
Tanduay	6,984,198.29	1,333,984.71		8,318,183.00
PMFTC	7,194,656.68	3,214,945.28		10,409,601.96
Packageworld Inc.				3,805,587.69
Sales of Machinery and Equipt			3,805,587.69	
TOTALS	**14,178,854.97**	**4,548,929.99**	**3,805,587.69**	**22,533,372.65**

Although the Certificate of Creditable Income Tax Withheld (BIR Form 2307) issued by Tanduay Distillers Inc. and PMFTC Inc. contains all the information including the period such income payments pertains but if it is indeed income from prior years, then your arguments may be valid. However, the corresponding creditable withholding tax of such income pertaining to prior year as [illustrated] will be deducted from your allowable tax credits.

On the issue of Sales not subjected to Value-Added Tax per Account Receivable Analysis in the amount of ₱20,251,715.60 pursuant to Sec. 106 (A) and 108 (A) of the NIRC.

Petitioner argued that the alleged sales not subjected to Value-Added Tax has no legal and factual bases. As stated in the Notes to Financial Statements, revenue is recognized to the extent that it is probable that the economic benefits will flow to the Company and the revenue can be measured reliably. For the year 2011, the total revenue of Parity is composed of Sales of Goods amounting to ₱6,984,198.00 and Sale of Services in the amount of ₱7,194,657.00. Petitioner further argued that the recognition of VAT liabilities for the sale of services and sale of goods is different as provided for by Sec. 108 and 106 of the NIRC. For the sale of goods or properties, the 12% VAT is imposed upon the gross selling price as defined under Sec. 106 (A) of the NIRC which means that the VAT on sale of goods or properties accrues upon the consummation of sales, regardless of whether or not the consideration therefore (sic) was actually received. With regards to the sale of services accrues upon actual or constructive receipt of the consideration irrespective of whether or not the service has been rendered.

There is no arguments as to when VAT was imposed with regards sales of goods or properties and on sales of service. *(sic)* However, based on the documents submitted more particularly on the sales invoices issued to Tanduay Distillers Inc., it appears that what was being sold to Tanduay are posters, barcode stickers, labels and the like, printed by petitioner. Thus, it is very clear that petitioner are *(sic)* actually providing services and should not be mistaken as sale of goods. There was no sale of goods as what petitioner are *(sic)* implying but was, in fact sales of services. Therefore, the account receivable account should not be distinguish as derived from sales of goods and services but could be all attributed to sale of services only.

xxx xxx xxx.

On the issue of excessive Direct Labor in the amount of ₱9,050,878.32 pursuant to Sec. 34(A)(1)(a)(i) and (b) of the NIRC and discrepancy in the salaries and wages per GL as against taxable compensation per petitioner's monthly remittance return (BIR Form 1601C) amounting to ₱455,578.96 taking into consideration the benefits subjected to Fringe Benefits Tax under Sec. 33 of the NIRC and Revenue Regulation 3-98

Petitioner pointed out that respondent was remiss in its duty in not considering the Alphabetical List of Employees from whom taxes were withheld and reported a Total Gross Compensation of ₱14,464,314.58.

Respondent disagrees. Verification disclosed that respondent have no records of alphalist of employees submitted and petitioner even failed to provide respondent with a copy of such during the audit.

Based on your Alphalist of Employees as part of the annexes in petitioner's protest letter, out of Gross Compensation Income of ₱14,464,314.58, the non-taxable compensation amounts to ₱9,830,923.18 and taxable compensation amounts to ₱9,211,326.00 which was paid in December 2011.

Analysis of salaries and wages accounts showing the taxable and non-taxable compensation income thereby resulting to discrepancy of ₱200,767.01 which were not subjected to withholding tax, to wit:

Total Salaries and Wages		14,682,951.94
Separation Pay	9,211,326.60	
Employees comp contr	4,280.00	
13th month pay	244,242.39	
Pag-ibig fund	14,825.00	
Maternity & Sick Leave	27,196.15	
Vacation Leave	146,568.39	
SSS Premium contribution	162,180.00	
Medicare premium	38,175.00	
Total Non-Taxable Compensation		9,848,793.53
Taxable Compensation Income per audit		4,834,158.41
Total Taxable Compensation per Alphalist		4,633,391.40
Amount still subject to withholding tax		**20,767.01**

On the issue of Unsupported Credited Withholding Tax amounting to ₱8,089.00 which is the difference between the submitted Certificate of Creditable Income Tax Withheld at Source (BIR Form 2307) and the tax credit claimed in the Income Tax Return pursuant to Sec. 58(B) of the National Internal Revenue Code.

Petitioner argued that respondent failed to provide the facts from which respondent based its allegation that the submitted photocopies of Certificate of Creditable Income Tax Withheld (BIR Form 2307) amounted to ₱1,621,928.00, hence the assessment should be cancelled for lack of factual basis.

Again respondent disagrees, the disallowance have factual basis. Shown below is the summary of creditable withholding tax supported with BIR Form 2307, to wit:

TIN	NAME OF PAYORS	PERIOD COVERED	INCOME PAYMENT	RATE	TAX WITHHELD
000-086-108	Tanduay Distillers, Inc.	02/01/11-02/28/11	8,318,183.00	1%	83,181.83
007-515-588	PMFTC, Inc.	01/01/11-03/31/11	3,713,954.60	15%	557,093.19
007-515-588	PMFTC, Inc.	07/01/11-09/30/11	2,482,220.94	15%	372,333.14
005-241-455	Packageworld Incorporation	07/01/11-09/30/11	407,741.54	1%	4,077.42
005-241-455	Packageworld Incorporation	04/01/11-04/30/11	3,397,846.15	1%	33,978.46
007-515-588	PMFTC Inc.	04/01/11-06/30/11	3,589,710.67	15%	538,456.60
007-515-588	PMFTC Inc.	04/01/11-06/30/11	218,715.75	15%	32,807.36
			22,128,372.65		**1,621,928.00**

As previously discussed, BIR Form that pertains to prior period will be disallowed.

ON THE ISSUE OF PRESCRIPTION

Petitioner alleged that deficiency Value-Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation is barred by prescription citing the provision of Sec. 203 of the NIRC of 1977.

Respondent disagrees. A valid waiver was executed on September 17, 2014 therefore it suspended the running of prescriptive period until March 31, 2015. Also, with regard to withholding tax on compensation, adjustment on the computation of withholding tax due to each employees were made at end of the calendar year. Also, the separation pay granted to its employees were made on December 2011.

In view of the foregoing, shown under are the summary of deficiency taxes still due after evaluation, to wit:

I. INCOME TAX

			Regular Income Tax
I. NET TAXABLE INCOME PER RETURN		P	-
ADD ADJUSTMENTS			
UNDECLARED SALES			5,881,234.85
TAXABLE INCOME			P 5,881,234.85
TAX DUE			P 1,764,370.46
PRIOR YEAR'S EXCESS TAX CREDIT		P 27,468,608.88	
TAX CREDIT CLAIMED DURING THE YEAR		1,630,017.00	
TOTAL		P 29,098,625.88	
LESS: DISALLOWED CWT-UNSUPPORTED	P 8,089.00		
DISALLOWED CWT-PRIOR YEARS	495,581.64	503,670.64	
ALLOWABLE TAX CREDIT		P 28,594,955.24	
LESS TAX CREDIT CARRIED OVER SUCC. QTR.		29,098,638.87	503,683.63
DEFICIENCY INCOME TAX			P 2,268,054.09
ADD INTEREST AS OF 3/31/16			1,795,283.88
TOTAL AMOUNT DUE			**P 4,063,337.97**

II. VALUE-ADDED TAX

TAXABLE SALES PER VAT RETURN		P 21,199,387.80
ADD OTHER INCOME		
SALES NOT SUBJECTED TO VAT BASED ON A/R ANALYSIS	P 20,251,715.60	
UNDECLARED SALES	5,881,234.85	26,132,950.45
TAXABLE SALES		P 47,332,338.25
OUTPUT TAX DUE		5,679,880.59
LESS TAX CREDIT/TAX PAID		
INPUT TAX CARRIED OVER FROM PREV. QTR.	P -	
INPUT TAX CLAIMED DURING THE YEAR	268,878.06	
VAT PAID	1,959,197.30	
TOTAL	P 2,228,075.36	
LESS: EXCES INPUT TAX	2,119.18	
INPUT TAX PER AUDIT		2,225,956.18
DEFICIENCY VALUE-ADDED TAX		P 3,453,924.41
AD (sic) INTEREST AS OF 3/31/16		3,578,507.46
TOTAL AMOUNT DUE, INCLUDING INCREMENTS		**P 7,032,431.87**

III. WITHHOLDING TAX-COMPENSATION

TAXABLE BASIS	P 200,767.01
BASIC TAX DUE	60,230.10
ADD: INTEREST AS OF 3/31/16	62,897.69
TOTAL AMOUNT DUE	**P 123,127.80**

9. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments (Sy Po vs. Court of tax *(sic)* Appeals, 164 SCRA 524). Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices.

Petitioner submitted its Pre-Trial Brief[13] on August 1, 2016, while respondent submitted his Pre-Trial Brief[14] on August 26, 2016. On September 1, 2016, the Pre-Trial Conference[15] was held and the Court ordered the parties to submit their Joint Stipulation of Facts and Issues (JSFI) within fifteen (15) days.

On September 16, 2016, the parties filed their Joint Stipulation of Facts and Issues.[16] The Court then issued a Pre-Trial Order on September 26, 2016.[17]

Petitioner availed of the services of a court-commissioned Independent Certified Public Accountant (ICPA).[18] Mr. Joel C. Romano was appointed by the Court on October 5, 2016.[19]

Petitioner presented Ms. Evita M. Pantaleon[20] and Mr. Joel C. Romano[21] as its witnesses.

The Formal Offer of Evidence For The Petitioner[22] was filed on January 3, 2017, without comment from respondent, per Records Verification[23] dated February 2, 2017. In the Resolution[24] dated February 27, 2017, the Court admitted all of petitioner's exhibits, except for "P-16" and "P-16-1".

Respondent, on the other hand, presented Revenue Officer Ma. Theresa L. Espiño[25] on February 27, 2017. On March 8, 2017, respondent's Formal Offer of Evidence[26] was filed offering Exhibits "R-1 to "R-13-A", which were all admitted in a Resolution[27] dated April 6, 2017.

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[13] Docket (Vol. I), pp. 450-457.
[14] Docket (Vol. II), pp. 689-692.
[15] Minutes of the Hearing, Docket (Vol. II), p. 708.
[16] Docket (Vol. II), pp. 730-739.
[17] Docket (Vol. II), pp. 741-747.
[18] Motion to Allow the Engagement of an Independent Certified Public Accountant, Docket (Vol. II), pp. 712-713.
[19] Minutes of the Hearing dated October 5, 2016, Docket (Vol. II), p. 759.
[20] Minutes of the Hearing dated November 16, 2016, Docket (Vol. II), p. 776.
[21] Minutes of the Hearing dated December 12, 2016, Docket (Vol. II), p. 806.
[22] Docket (Vol. II), pp. 808-824.
[23] Docket (Vol. II), p. 950.
[24] Resolution dated February 27, 2017, Docket (Vol. II), pp. 951-952.
[25] Minutes of Hearing dated February 27, 2017, Docket (Vol. II), p. 953.
[26] Docket (Vol. II), pp. 957-963
[27] Docket (Vol. III), pp. 971-972.

On May 30, 2017, petitioner filed its Memorandum[28], while respondent filed his Memorandum[29] on June 20, 2017.

The case was then submitted for decision[30] on June 27, 2017.

The lone issue[31] to be resolved, as defined by the Court, is:

> Whether petitioner is liable to pay the assessed deficiency Income Tax, Value-Added and Withholding Tax on Compensation in the aggregate amount of ₱11,218,897.63, all for calendar year 2011, plus 25% surcharge and 20% deficiency and delinquency interest for late payment until fully paid pursuant to Sections 248 and 249 of the 1997 NIRC.

Pursuant to Section 3, Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals (CTA), as amended, the CTA has jurisdiction over the following:

> "SEC. 3. Cases within the jurisdiction of the Court in Divisions. – The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (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;
>
> xxx xxx xxx"

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[28] Docket (Vol. III), pp. 984-1006.
[29] Docket (Vol. III), pp. 1014-1022.
[30] Resolution, Docket (Vol. III), p. 1023.
[31] JSFI, Docket (Vol. II), p. 732.

Section 228 of the NIRC of 1997, as amended[32], and Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended, provide for the 30-day period to appeal before the CTA reckoned from the receipt of the decision of the Commissioner, or from the expiration of the one hundred eighty (180)-day period to decide, otherwise the decision shall become final, executory and demandable.

Considering that the petitioner received the copy of the FDDA on March 1, 2016, petitioner has 30 days or until March 31, 2016 within which to file an appeal before this Court. Consequently, the Petition for Review was timely filed on March 31, 2016.

The Court shall now determine whether petitioner is liable to pay the deficiency taxes assessed by respondent.

Section 203 of the NIRC of 1997, as amended provides for the period of limitation of actions for the assessment and collection of taxes, i.e. within three (3) years after the last day prescribed for the filing of the return.[33]

The Court notes that the FLD was only issued and received by petitioner on March 31, 2015,[34] which is already beyond the 3-year prescriptive period for respondent to assess petitioner. However, due to petitioner's execution of the Waiver of the Defense of Prescription under the Statute of Limitation of the NIRC (Waiver) on September 17, 2014, which was accepted by respondent on September 24, 2014, the prescriptive period was extended until March 31, 2015, in accordance with Section 222(b) of the NIRC of 1997, as amended, which provides:

> "SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

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[32] Section 228. Protesting of Assessment. –

xxx xxx xxx

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.

[33] 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.

[34] Exhibits "P-7" to "P-7-6".

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.

xxx xxx xxx"

Yet, based on the records of the case, there were returns filed by petitioner wherein respondent's right to assess had already prescribed even before the Waiver was executed on September 17, 2014. These returns comprise of the 1st to 2nd Quarterly VAT Returns for CY 2011 and WTC Returns from January to August 2011.

An analysis of the prescriptive periods for each return is presented below:

Exhibit Nos.	Returns	Due Date for Filing	Actual Filing Date	3-Yr Prescriptive Period	Remarks
P-14-1	Income Tax Return[35]	4/16/2012[36]	7/20/2012	7/20/2015	Not prescribed
	VAT Returns:[37]				
P-19-1	1st Qtr.	4/25/2011	4/11/2011	4/25/2014	Prescribed
P-19-2	2nd Qtr.	7/25/2011	7/11/2011	7/25/2014	Prescribed
P-19-3	3rd Qtr.	10/25/2011	10/17/2011	10/27/2014[38]	Not prescribed
P-19-4	4th Qtr.	1/25/2012	2/29/2012[39]	3/2/2015[40]	Not prescribed
	WTC Returns:[41]				
P-18-1	January 2011	2/11/2011	2/9/2011	2/11/2014	Prescribed
P-18-2	February 2011	3/11/2011	3/8/2011	3/11/2014	Prescribed
P-18-3	March 2011	4/11/2011	4/6/2011	4/11/2014	Prescribed
P-18-4	April 2011	5/11/2011	5/7/2011	5/12/2014[42]	Prescribed

[35] Docket (Vol. II), pp. 839 to 842.
[36] April 15, 2012 being a Sunday.
[37] Docket (Vol. II), pp. 924 to 945.
[38] October 25, 2014 fell on a Saturday.
[39] Amended Quarterly VAT Return, BIR Records, pp. 155-157.
[40] March 1, 2015 fell on a Sunday.
[41] Docket (Vol. II), pp. 879 to 922.
[42] May 11, 2014 fell on a Sunday.

P-18-5	May 2011	6/13/2011[43]	6/10/2011	6/13/2014	Prescribed
P-18-6	June 2011	7/11/2011	7/9/2011	7/11/2014	Prescribed
P-18-7	July 2011	8/11/2011	8/10/2011	8/11/2014	Prescribed
P-18-8	August 2011	9/12/2011[44]	9/7/2011	9/12/2014	Prescribed
P-18-9	September 2011	10/11/2011	10/6/2011	10/13/2014[45]	Not prescribed
P-18-10	October 2011	11/11/2011	11/3/2011	11/11/2014	Not prescribed
P-18-11	November 2011	12/12/2011[46]	12/7/2011	12/12/2014	Not prescribed
P-18-12	December 2011	1/11/2012	1/10/2012	1/12/2015[47]	Not prescribed

Considering the above, only the income tax return (ITR) and 3rd to 4th Quarterly VAT Returns for CY 2011, as well as the WTC Returns from September to December 2011 may be validly assessed by respondent.

Nevertheless, petitioner was unable to determine which portion of the deficiency tax assessments pertain to the prescribed quarters/months. Thus, the court shall consider the whole amount of the assessed item as referring to the unprescribed portion of CY 2011.

I. Deficiency Income Tax - ₱4,063,337.97

Respondent assessed petitioner of deficiency income tax amounting to ₱4,063,337.97, inclusive of interest, computed as follows:[48]

Net Taxable Income per Return			
Add: Adjustments			
Undeclared Sales			₱ 5,881,234.85
Taxable Income			₱ 5,881,234.85
Tax Due			₱ 1,764,370.46
Prior year's excess tax credit		₱27,468,608.88	
Tax credit claimed during the year		1,630,017.00	
Total		₱29,098,625.88	
Less: Disallowed CWT-unsupported	₱ 8,089.00		
Disallowed CWT-prior years	495,581.64	503,670.64	

[43] June 11, 2011 fell on a Saturday.
[44] September 11, 2011 fell on a Sunday.
[45] October 11, 2014 fell on a Saturday.
[46] December 11, 2011 fell on a Sunday.
[47] January 11, 2015 fell on a Sunday.
[48] Exhibit "P-1".

Allowable Tax Credit		₱28,594,955.24	
Less: Tax credit carried over succ. qtr.		29,098,638.87	503,683.63
Deficiency Income Tax			₱ 2,268,054.09
Add: Interest as of 3/31/2016			1,795,283.88
Total Amount Due			**₱4,063,337.97**

The following items of assessment were disputed by petitioner:

A. Undeclared sales	₱ 5,881,234.85
B. Disallowed CWTs	503,670.64
C. Disallowed tax credits carried over to succeeding quarter	29,098,638.87

A. Undeclared sales - ₱5,881,234.85

Respondent's verification disclosed that petitioner had a negative cash balance of ₱5,881,234.85 for the month of January 2011 which the former construed as undeclared sales subject to income tax at 30% pursuant to Section 32(A) of the NIRC of 1997, as amended.

An excerpt of the cash account[49] in petitioner's General Ledger is presented as follows:

		DEBIT	CREDIT	BALANCE
Beginning Bal.				₱ 17,880,042.87
January	CDR		₱ 24,724,355.18	(6,844,312.31)
January	ORR	₱ 963,077.46		**(5,881,234.85)**
January	GJ	30,000,000.00		24,118,765.15

According to respondent, petitioner failed to substantiate with documentary evidence the advances of ₱30,000,000.00 to dispute the negative balance in the latter's cash accounts. Petitioner's failure to record such advances is a mistake not acceptable and requires further verification and validation.[50]

Petitioner disputed said findings asserting that a negative balance, as in this case, does not necessarily equate to undeclared sales. It explained that it maintains the following Books of Accounts:[51]

1) General Journal (GJ);

[49] Exhibits "P-10-1"; "P-26-020".
[50] Details of Discrepancies, FDDA, Exhibit "P-1-1".
[51] Exhibit "P-26-022".

2) General Ledger (GL);
3) Cash Disbursement Register (CDR);
4) Official Receipts Register (ORR);
5) Sales Journal; and,
6) Purchases Journal

As a matter of practice, at month end, petitioner posts all monthly totals of the recorded transactions entered in its Books of Original Entry (CDR, ORR and GJ) to the Book of Final Entry in the following sequence:

1) Total debits and credits per CDR;
2) Total debits and credits per ORR; and,
3) Total debits and credits per GJ.[52]

Entries from the General Journal or "GJ" and Special Journals in the foregoing General Ledger for cash can be seen. Official Receipt Register or "ORR" is where the collections or cash sales are recorded. The Cash Disbursement Records or "CDR" is where expenses and disbursements are recorded. The month-end totals of these special journals are the ones posted in the General Ledger as shown above. On the other hand, the General Journal is where non-routinary transactions are recorded. The transactions therein are, likewise, posted in the General Ledger.[53]

The truth about the negative balance was actually a result of the first entry for January 2011 in the amount of ₱24,724,355.18 which came from the Cash Disbursement Register or CDR; thus, where the beginning balance for "Cash" was only ₱17,880,042.87, a credit entry of ₱24,724,355.18 from CDR would render a negative balance of ₱6,844,312.31; to be corrected somewhat by a debit entry of ₱963,077.46. Thus, an interim negative balance for the Cash Account up to that point in the amount of ₱5,881,234.85.[54]

In fact, looking down further in the General Ledger for Cash, the negative balance was easily corrected. It was actually in the next line in the General Ledger where it was shown that the balance has become positive again after a Debit Entry from the General Journal in the

[52] Pars. 18 to 19, Petition for Review, Docket (Vol. I), p. 15.
[53] Par. 16, Memorandum for the Petitioner, Docket (Vol. III), p. 989.
[54] Par. 18, *ibid.*, pp. 989-990.

amount of ₱30,000,000.00 was posted, bringing the balance of Cash to a positive ₱24,118,765.15.[55]

There is no hard and fast rule in the sequence a bookkeeper would post in the General Ledger the balances coming from the General Journal and the Special Journals *(i.e., CDR and ORR)*. Truly whichever will be posted first or last, the ending balance would still be the same. This fact is shown below if the entry coming from the General Journal in the amount of ₱30,000,000.00 was posted in the General Ledger ahead of the entry coming from the Cash Disbursement Record (CDR) in the amount of ₱24,118,765.15.[56]

Nonetheless, if the examiners shifted their focus not on the negative balance of ₱5,881,234.85 but on the cause which gave rise to the negative balance, they would examine the CDR entries and would determine that there were separation payments made to redundant employees which payments necessitated the advance of ₱30,000,000.00 to avoid a cash over-draft; and, with the improvement of its cash position in December 2011, the original advances of ₱30,000,000.00 was paid.[57]

On another note, petitioner bewails the fact that it was not fully informed as to why a negative balance in the running balance for Cash in the General Ledger for the month of January 2011 was treated as sales subject to income tax. No basis was provided as to why this should be treated as income subject to tax which is a clear violation of Section 228 of the NIRC, specifically, the requirement that 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."[58]

We find for petitioner.

It must be noted that the negative cash balance found by respondent amounting to ₱5,881,234.85 was assessed as "undeclared sales". However, the Court finds no logical relationship between a negative cash balance and treating the same as sales subject to tax.

[55] Par. 20, *ibid.*, p. 990.
[56] Par. 22, *ibid.*
[57] Par. 28, Petition for Review, *supra*, p. 8.
[58] Par. 23, Petitioner's Memorandum, *supra*, p. 991.

When a cash account shows a negative balance, it only means that there had been more cash disbursements as compared to cash receipts for a certain period. Cash disbursements are made to pay off purchases and other expenditures, while cash is received when sales, among others, have been made. Logically, then, an enterprise does not disburse cash to earn revenue or sales.

Assuming that respondent had proper basis to doubt the veracity of the ₱30,000,000.00 advances in January 2011, the Court finds that it had been properly disposed of by petitioner when it submitted documents to support the same as legitimate transactions for the said period.

Among the documents presented is the Secretary's Certificate dated December 14, 2010 attesting to the fact that the Board of Directors of petitioner held a meeting on December 7, 2010 and resolved to pass and approve the infusion of cash advance by petitioner's stockholders up to the amount of ₱30,000,000.00 to abridge the liquidity problem of petitioner.[59] This was further supported by Certifications dated January 6, 2011 issued by petitioner to its stockholders acknowledging the receipt of the advances totaling ₱30,000,000.00 pursuant to the Board Resolution.[60] The aggregate total was reflected in the GJ Register under Seq. No. 4[61], which was then forwarded to petitioner's Cash GL.[62]

Respondent should not have just relied on the T-Accounts[63] submitted by petitioner during the audit period, since the same was merely a summarization of all the T-Accounts of petitioner's books of accounts. This summary cannot be controlling over the source documents and actual records in the books of original entry.

The tracing of the questioned transaction from source documents to books of accounts effectively disposed respondent's basis in denying petitioner's reconsideration of assessment. Through the pieces of evidence submitted by petitioner, the doubtful transaction had already been verified and validated. Thus, there is no more reason to sustain the assessment.

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[59] Exhibit "P-26-017".
[60] Exhibits "P-26-015" to "P-26-015C".
[61] Exhibit "P-26-018".
[62] Exhibit "P-26-020".
[63] BIR Records, p. 256.

More so, we stress that respondent's assessment had no logical basis to start with, rendering the same whimsical and arbitrary, hence warrants nullification.

It is a legal truism that as a general rule, assessments are prima facie presumed correct and made in good faith; that the taxpayer has the duty of proving otherwise; and, in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.[64]

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.[65] In order to withstand 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.[66]

In the case of *Fax n Parcel, Incorporated v. Commissioner of Internal Revenue*[67], as affirmed by the CTA *En Banc* in the case involving the same parties and issues[68], this Court ruled that although tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be. This was also highlighted in the case of *Commissioner of Internal Revenue v. Hantex Trading*[69], to wit:

> "We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favour of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of taxpayer is made. If a taxpayer files a petition

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[64] *Interprovincial Autobus Co., Inc. vs. CIR*, G.R. No. L-6741, January 31, 1956; *Sy Po vs. Court of Tax Appeals, et al.*, G.R. No. 81446, August 18, 1988; *Dayrit et al. vs. Cruz, et al.*, G.R. No. L-39910, Sept. 26, 1988.

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

[66] *Collector of Internal Revenue v. Benipayo*, G.R. No. 13656, January 31, 1962.

[67] CTA Case No. 7415, November 22, 2011.

[68] CTA EB No. 883, February 14, 2013.

[69] G.R. No. 136975, March 31, 2005.

for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.

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. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence."

As such, finding that petitioner had undeclared sales cannot be enforced against petitioner otherwise, the Court stands to tax petitioner arbitrarily. Accordingly, the deficiency income tax assessment on the alleged undeclared sales per cash analysis in the amount of ₱5,881,234.85 should be cancelled and withdrawn.

B. Disallowed CWTs - ₱503,670.64

The disallowed CWTs amounting to ₱503,670.64 pertain to the following:

i.	Unsupported	₱ 8,089.00
ii.	From prior year/s	495,581.64
	Total	**₱ 503,670.64**

i. <u>Unsupported CWTs - ₱8,089.00</u>

Respondent's verification disclosed that the submitted photocopies of Certificates of Creditable Income Tax Withheld (BIR Forms No. 2307) only amounts to ₱1,621,928.00, resulting to a difference of ₱8,089.00. Thus, disallowed pursuant to Section 58(B) of the NIRC of 1997, as amended.[70]

Petitioner maintains that, as verified by the Court-commissioned ICPA Mr. Joel C. Romano, said amount had been properly supported with the corresponding BIR Forms 2307.

In its Annual Income Tax Return (AITR) for CY 2011,[71] petitioner claimed creditable withholding taxes (CWTs) of ₱1,630,027.99, broken down as follows:

AITR Line No.	Description	Amount
33F	Creditable Tax Withheld from Previous Quarter/s	₱ 1,621,928.00
33H	Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	8,099.99[72]
	Total	**₱ 1,630,027.99**

In support thereof, petitioner submitted BIR Forms No. 2307[73] which were duly examined by the ICPA and by this Court, and, were found to be in order. Thus, there were no unsupported CWTs contrary to respondent's assessment.

i. From prior year - ₱495,581.64

This disallowance originated from the "Sales not subject to income tax" amounting to ₱7,949,517.65 which was assessed by respondent as per FLD.[74] This arose from the discrepancy found between the income per BIR Form 2307 amounting to ₱22,128,372.65 as against the Sales per Income Tax Return of ₱14,178,855.00.

This discrepancy was accordingly accounted for by petitioner in its Protest Letter[75] to the FLD explaining therein that BIR Form 2307 serves as evidence that income payment was made and the corresponding tax was withheld, but it does not mean that the said

[70] Exhibit "P-1-1", *supra*.
[71] Exhibit "P-14-1".
[72] Differs with the amount disallowed by respondent by ₱10.99.
[73] Exhibits "P-27-034" to "P-27-042".
[74] Exhibit "P-7-1", *supra*.
[75] Exhibit "P-8", *supra*.

income payment represents sale for the current period. To validate its argument, petitioner presented the composition of the income payments subjected to EWT which it claimed for the CY 2011, to wit:

Particulars	Sales for the Current Year 20113	Sales of Prior Years	Sales of Machineries to Packageworld Inc.	Certificate of Creditable Tax Withheld At Source
Tanduay	₱ 6,984,198.29	₱ 1,333,984.71	₱ -	₱ 8,318,183.00
PMFTC	7,194,656.68	3,214,945.28		10,409,601.96
Packageworld Inc.				-
Sale of Machinery and Equipment			3,805,587.69	3,805,587.69
TOTALS	**₱14,178,854.97**	**₱4,548,929.99**	**₱ 3,805,587.69**	**₱22,533,372.65**

Respondent gave merit to petitioner's arguments and cancelled the assessment. However, the CWTs of ₱495,581.64, as computed below, related to sales from prior years which were disallowed as tax credit for 2011:

Name of Payors	Income Payment - Sales from Prior Year	Tax Rate	Tax Withheld
PMFTC Inc.	₱ 3,214,945.28	15%	₱ 482,241.79
Tanduay Distillers, Inc.	1,333,984.71	1%	13,339.85
Total	**₱ 4,548,929.99**		**₱ 495,581.64**

In the FDDA, respondent ruled in this regard:

> "Although the Certificate of Creditable Income Tax Withheld (BIR Form 2307) issued by Tanduay Distillers Inc. and PMFTC Inc. contains all the information including the period such income payments pertains but if it is indeed income from prior years, then your arguments may be valid. **However, the corresponding creditable withholding tax of such income pertaining to prior year illustrated will be deducted from your allowable tax credits.**"[76] (*Emphasis supplied*)

The Court finds respondent's assessment meritorious.

[76] Exhibit "P-1".

Petitioner's official receipts and invoices (submitted with the Protest Letter which support petitioner's alleged prior year sales) show that the corresponding withholding taxes withheld by the payees, Tanduay Distillers, Inc. (at 1%) and PMFTC, Inc. (at 15%) in the respective total amounts of ₱13,339.85 and ₱482,241.79.[77] The following are the ORs and invoices duly examined by the Court:

Tanduay Distillers Inc.					
OR No.	*OR Date*	*Amount (Net of VAT)*	*Invoice No.*	*Invoice Date*	*Withholding Tax*
179	12/23/2011	₱ 231,120.54	2454	8/7/2009	₱ 2,311.21
178	12/23/2011	14,285.71	2444	8/7/2009	142.86
177	12/23/2011	32,142.86	2438	7/30/2009	321.43
176	12/23/2011	461,607.14	2425	7/20/2009	4,616.07
175	12/23/2011	2,142.86	2434	7/20/2009	21.43
174	12/23/2011	374,505.75	2427	7/20/2009	3,745.06
173	12/23/2011	217,857.14	2421	7/11/2009	2,178.57
172	12/23/2011	240.36	2411	7/2/2009	2.40
Totals		**₱ 1,333,902.36**			**₱ 13,339.03**[78]
PMFTC Inc.					
OR No.	*OR Date*	*Amount (Net of VAT)*	*Description*	*Invoice Date*	*EWT*
47	4/7/2011	₱ 447,707.88	Billing for Service Agreement - Dec2010	1/19/2011	₱ 67,156.18
44	3/18/2011	1,774,374.04	Billing for Service Agreement - Dec2010	1/19/2011	266,156.11
43	1/21/2011	992,863.36	Billing for Service Agreement - Nov2010	1/19/2011	148,929.50
Totals		**₱ 3,214,945.28**			**₱ 482,241.79**
Grand Total		**₱ 4,548,847.64**			**₱ 495,580.82**

Petitioner earned the income from Tanduay Distillers, Inc. in the year 2009 while the income from PMFTC Inc. was earned in the year 2010, for which the corresponding withholding taxes were credited by petitioner only when payment was collected in year 2011.

Under Section 2.58.3 of RR No. 2-98, a claim for tax credit of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income.

[77] BIR Records, pp. 526 to 547.
[78] Differs with the amount disallowed by respondent ₱0.82.

In this case, however, no proof was provided to show that indeed the supposed income payments upon which taxes were withheld have been declared as part of the gross income for taxable years 2009 and 2010. Needless to say, the infirmity of evidence on this aspect is fatal to its cause.

While the BIR Form No. 2307 satisfies the fact of withholding as stated in Section 2.58.3 of RR No. 2-98, the official receipts and sales invoices, however, are not sufficient to prove that the income arising from such withholding was recorded and reported as income in prior years. Petitioner did not furnish this Court its GL, audited financial statements (AFS), and AITR for CYs 2009 and 2010 to ascertain that indeed the income payments upon which the taxes were withheld had been declared as part of the gross income in the said years.

Considering the foregoing, respondent's disallowance of petitioner's claimed tax credit amounting to ₱495,581.64 is upheld.

C. Disallowed tax credits carried over to succeeding quarters - ₱29,098,638.87

Respondent deducted the amount of ₱29,098,638.87[79] from the available tax credits of petitioner which effectively disallows the same. This was lifted from Line 34B of the amended AITR,[80] or the tax overpayment for CY 2011 which is to be carried over to the next period. However, respondent failed to provide legal and factual bases in disallowing the same in the FLD or FDDA. This renders the disallowance null and void for not being compliant with Section 228 of the NIRC of 1997, as amended.

Based on the foregoing findings, considering that petitioner is in a net loss position, petitioner would not be held liable for any deficiency income tax, as shown below:

Sales		₱ 6,984,198.28
Less: Cost of Sales		22,023,698.02
Income from Operation		₱ (15,039,499.74)
Add: Other Taxable Income not Subjected to Final Tax		7,194,656.52
Total Gross Income		₱ (7,844,843.22)
Less: Allowable Deductions		8,313,430.70
Net Taxable Income		₱ (16,158,273.92)

[79] Actual amount per AITR is ₱29,098,636.87 resulting to insignificant discrepancy of ₱2.00.
[80] Exhibit "P-14-1".

Tax Due		₱ -
Less: Tax Credits/Payments		
Prior year's excess tax credit	₱ 27,468,608.88	
Tax credit claimed during the year	1,630,017.00	
Total	₱ 29,098,625.88	
Less: Disallowed CWT-prior years	495,581.64	28,603,044.24
Excess Tax Credits/Overpayment		**₱ (28,603,044.24)**

II. Deficiency Value-Added Tax (VAT) - ₱7,032,431.87

Respondent assessed petitioner of deficiency VAT amounting to ₱7,032,431.87, computed as follows:

Taxable Sales per VAT Return		₱ 21,199,387.80
Add: Other Income		
Sales Not Subjected to VAT Based on A/R Analysis	₱ 20,251,715.60	
Undeclared Sales	5,881,234.85	26,132,950.45
Taxable Sales per VAT Return		₱ 47,332,338.25
Output Tax Due		₱ 5,679,880.59
Less: Tax Credit/Tax Paid		
Input Tax Carried Over from Previous Quarter	₱ -	
Input Tax Claimed During the Year	268,878.06	
VAT Paid	1,959,197.30	
Total	₱ 2,228,075.36	
Less: Excess Input Tax	2,119.18	
Input Tax per Audit		2,225,956.18
Deficiency Value-Added Tax		₱ 3,453,924.41
Add: Interest as of 3/31/2016		3,578,507.46
Total Amount Due, Including Increments		**₱ 7,032,431.87**

The following items from the above assessment were disputed by petitioner:

A. Sales not subjected to VAT based on A/R analysis	₱ 20,251,715.60
B. Undeclared sales	5,881,234.85
C. Disallowed excess input tax	2,119.18

A. Sales not subjected to VAT per A/R analysis - ₱20,251,715.60

Respondent's verification disclosed that based on petitioner's accounts receivables account, the latter's collection for the year subject to VAT at 12% amounts to ₱37,645,515.71. However, only ₱17,393,800.10 was subjected to VAT. It appears that the amount of ₱21,199,387.80 as shown in petitioner's VAT returns includes sale of fixed assets in the amount of ₱3,805,587.69. Thus, the difference of ₱20,251,715.60 which pertains to sale of goods and services were not subjected to 12% VAT, pursuant to Sec. 106(A) and 108(A) of the NIRC.[81]

Respondent's detailed analysis is hereunder presented, to wit:[82]

Accounts Receivable, Beginning		₱ 84,680,318.00
Add: Sales	₱ 6,984,198.00	
Service Income	7,194,657.00	
Total	₱ 14,178,855.00	
Add: 12% VAT	1,701,462.60	15,880,317.60
Total Receivables During the Year		₱ 100,560,635.60
Less: Accounts Receivable, Ending		58,397,658.00
Total Amount Collected		₱ 42,162,977.60
Taxable Sales per Audit		
Amount Collected, Net of VAT		₱ 37,645,515.71
Sale of Fixed Assets		3,805,587.69
Total Amount Subject to VAT		₱ 41,451,103.40
Taxable Sales per VAT Return		21,199,387.80
Sales Not Subject to VAT		**₱ 20,251,715.60**

Petitioner argues that the alleged sales not subjected to VAT per respondent's A/R analysis has no legal and factual bases. Petitioner asserts that based on the Notes to Financial Statements, revenue is recognized to the extent that it is probable that the economic benefits will flow to the company and the revenue can be measured reliably.

For the year 2011, petitioner's total revenue is composed of sale of goods amounting to ₱6,984,198.00 and sale of services in the amount of ₱7,194,657.00. Petitioner further argues that the recognition of VAT liabilities for the sale of services and sale of goods is different as provided by Sections 108 and 106 of the NIRC of 1997, as amended.

For the sale of goods or properties, the 12% VAT is imposed upon the gross selling price, which is defined under Section 106(A) of the NIRC of 1997, as amended, which means the VAT accrues upon

[81] Details of Discrepancy, FLD, Exhibit "P-7-1".
[82] Exhibit "P-1".

the consummation of sale, regardless of whether or not the consideration therefor was actually received. On the other hand, for the sale of services, the 12% VAT is computed based on gross receipts, as provided under Section 108(A) of the NIRC of 1997, as amended, which means the VAT accrues upon actual or constructive receipt of the consideration irrespective of whether or not the service has been rendered.

To bolster its argument, petitioner provided the following reconciliations/computations:

Accounts Receivable, Beginning	₱ 3,214,945.28
Add: Service Revenue during the Year	7,194,657.00
Total	₱ 10,409,602.28
Less: Accounts Receivable, End	-
Gross Receipts - Service	**₱ 10,409,602.28**

VAT Tax Base

Sale of Goods	₱ 6,984,198.00
Sale of Service - Gross Receipts Based on Computation	10,409,602.28
Sale of Fixed Asset	3,805,587.69
Total	**₱ 21,199,387.97**
VAT Return	**₱ 21,199,387.97**

Details/Breakdown of Accounts Receivable Beginning Balances:

GOODS		
Tanduay Distillers, Inc.	₱ 75,732,205.27	
Papercon (Phils) Inc.	5,347,274.40	₱ 81,079,479.67
SERVICE		
PMFTC		3,600,738.71
Total		**₱ 84,680,218.38**

Details/Breakdown of Accounts Receivable Ending Balances:

GOODS	
Tanduay Distillers, Inc.	₱ 57,434,365.41
SERVICE	
PMFTC	963,192.64
Total	**₱ 58,397,558.05**

Respondent agrees with petitioner as to when VAT should be imposed on the sale of goods or properties, as well as, on sale of services. However, respondent posits that based on the documents submitted, more particularly on the sales invoices issued to Tanduay Distillers, Inc., it appears that what was being sold to Tanduay are posters, barcode stickers, labels and the like, printed by petitioner. Thus, should be considered as sales of services. Therefore, the components of Accounts Receivable account pertains to sales of services only. Consequently, all the collections derived during the year should be subject to 12% VAT pursuant to Section 108 of the NIRC of 1997, as amended.

We shall sustain the assessment.

Records show that petitioner's registered line of business/industry is as a manufacturer of containers, boxes of paper, paperboard.[83] The same was reflected in the Quarterly VAT Returns for 2011.[84] Moreover, petitioner's primary purpose as a corporation, as stated in its Amended Articles of Incorporation, is as follows:[85]

> "To manufacture, prepare, buy, sell, and generally deal in at wholesale, all kinds of printing, publishing, binding, and engraving works and designs, books, papers, catalogues, and stationery supplies, printing supplies, pads and stamps; and to carry on a general business in monotyping, linotyping, electrotyping, color-typing, stencil press service, typesetting, composition, dies and advertising services; to engage in and carry on service as a commercial printer, bookbinder, engravers, photographic printers, stereotypers, electrotypers, lithographers and to **undertake a general printing, engraving, lithographing business under specific contract or job orders from clientele.**" *(Emphasis supplied)*

Clearly, from the foregoing, petitioner is an entity primarily engaged in printing services. The goods delivered are merely finished products or outputs of the completed printing service rendered to the client, Tanduay in this case. Hence, petitioner's sales to Tanduay is VATable on gross receipts under Section 108 of the NIRC of 1997, as amended.[86]

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[83] Exhibit "P-4".
[84] Line 9, BIR Forms No. 2550Q, Exhibits "P-19-1" to "P-19-4".
[85] Exhibit "P-3-1".
[86] **SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties. -*

Despite petitioner's erroneous interpretation of the nature of sales transactions it had with Tanduay, which formed part of the beginning balance of Accounts Receivable account, it cannot be discounted that the corresponding VAT may have been remitted, *albeit* in advance, or upon the delivery of the purported goods in the years 2008 and 2009 pursuant to a printing service performed by the former, following its ratiocination that the said sales are sales of goods.

However, the general ledgers, journal entries and registers[87] presented by petitioner are insufficient to prove that the corresponding output VAT on the said sales made to Tanduay was indeed remitted in 2008 and 2009. Petitioner should have presented the related VAT Returns and summary lists of sales and other documents in which the remittance of the subject output VAT can be traced or verified.

It is noteworthy of emphasis that mere allegations without adducing evidence are not sufficient. Allegation is not synonymous with proof.[88] It must be remembered that tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of tax assessments.[89] In other words, the taxpayer contesting the validity or correctness of an assessment must prove not only that the CIR is wrong but the taxpayer is right, otherwise, the presumption in favor of the correctness of tax assessment stands.[90]

As such, respondent's assessment finding the amount of ₱20,251,715.60 subject to VAT shall be sustained.

B. Undeclared sales - ₱5,881,234.85

(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties. x x x

xx xx xx

The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

[87] Exhibits P-28-043" to "P-28-093".

[88] *Ernesto Martin vs. Hon. Court of Appeals and Manila Electric Company*, G.R. No. 82248, January 30, 1992.

[89] *Collector of Internal Revenue vs. Bohol Land Transportation Co.*, G.R. Nos. L-13099 and L-13462, April 29, 1960, *as cited* in the case of *Sy Po vs. Court of Tax Appeals, supra*; *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007.

[90] *Sy Po vs. Court of Tax Appeals*, ibid.

As discussed in item *I.A* above, the Court finds that petitioner had no undeclared sales. Consequently, the imposition of VAT thereon is without basis. Thus, the deficiency VAT assessment should be cancelled and withdrawn.

C. Disallowed excess input tax carried over to succeeding quarters - ₱2,119.18

In arriving at petitioner's alleged deficiency VAT liability for the year 2011, respondent disallowed the excess tax credits of ₱2,119.18 reflected in petitioner's amended Quarterly VAT Return for the fourth quarter of 2011.[91] However, he did not explain the basis of the disallowance of the said excess input tax. Thus, following Section 228 of the NIRC of 1997, as amended, this item of assessment should be considered void.

In view of the foregoing, petitioner is liable to pay the deficiency VAT in the amount of ₱2,428,086.68, computed as follows:

Taxable Sales per VAT Return		₱ 21,199,387.80
Add: Sales Not Subjected to VAT per A/R Analysis		20,251,715.60
Taxable Sales per VAT Return		₱ 41,451,103.40
Output Tax Due		₱ 4,974,132.41
Less: Tax Credit/Tax Paid		
Input Tax Claimed During the Year	₱ 268,878.06	
VAT Paid	2,277,167.67*	2,546,045.73
Basic Deficiency Value-Added Tax		**₱ 2,428,086.68**

**Schedule of Total VAT Payments:*

	Date of Payment	Amount
January 2011	2/23/2011	₱ 629,305.15
February 2011	3/21/2011	306,328.87
First Quarter 2011	4/13/2011	317,600.43
April 2011	5/24/2011	180,012.47
May 2011	6/16/2011	509,596.58
Second Quarter 2011	7/21/2011	381.93
July 2011	8/23/2011	298,946.90
August 2011	9/15/2011	34,995.34
Total Payments		**₱2,277,167.67**

[91] BIR Records, pp. 155-157.

III. Deficiency Withholding Tax on Compensation (WTC) - ₱123,127.79

The deficiency withholding tax on compensation amounting to ₱123,127.80 shows the following details:

Taxable Basis	₱	200,767.01
Basic Tax Due	₱	60,230.10
Add: Interest as of 3/31/16		62,897.69
Total Amount Due	**₱**	**123,127.79**

Taking into consideration the benefits subjected to Fringe Benefits Tax under Section 33 of the NIRC of 1997, as amended, and RR No. 3-98, respondent's verification disclosed a discrepancy in taxable salaries and wages per GL as against taxable compensation per petitioner's Monthly Remittance Return (BIR Form 1601C) amounting to ₱455,578.96. The aforesaid discrepancy resulted to under remittance of ₱136,673.69 in violation of Section 80 of the NIRC of 1997, as amended, in relation to Section 2.80(A) of RR No. 2-98, as amended.

The salaries and wages allegedly not subjected to withholding tax amounting to ₱455,578.96 was computed as follows:

Salaries and Wages per GL	**Taxable**	**Non Taxable**	**Total**
Payroll	₱ 4,834,981.74		₱ 4,834,981.74
Vacation Leave		₱ 146,568.40	146,568.40
SSS		238,680.00	238,680.00
Medicare		76,350.00	76,350.00
Employee Compensation		4,280.00	4,280.00
HDMF		59,775.00	59,775.00
Sick & Maternity Leave		27,196.15	27,196.15
13th Month Pay		244,242.39	244,242.39
	₱ 4,834,981.74	**₱ 797,091.94**	5,632,073.68
Direct Labor per GL			14,682,952.00
Discrepancy			**₱ (9,050,878.32)**
Taxable Compensation per Books			₱ 4,834,981.74
Taxable Compensation per BIR Form 1601C			4,379,402.78
Amount Not Subjected to Withholding Tax			**₱ 455,578.96**

Petitioner posits that it properly subjected the salaries and wages of its employees to withholding tax.

Petitioner assents that it reported the amount of ₱14,682,951.94 representing Direct Labor in the AFS as substantiated by the entries found in the general ledger, general journal and cash disbursement register. However, petitioner contends that the BIR was remiss and failed to consider that per alphalist of employees from whom taxes were withheld, it reported a total gross compensation of ₱14,464,314.58. Such amount includes taxable and non-taxable compensation and excludes its statutory contributions remitted to the Social Security System (SSS), Philippine Health Insurance Corporation (PHIC) and Home Development Mutual Fund (HDMF) in the amount of ₱219,460.00 which was debited to the Direct Labor Account in December 2011.

Respondent counters that petitioner did not submit its or provide respondent records of alphalist of employees or provide respondent copy of such document during audit.

Nevertheless, based on the alphalist of employees annexed by petitioner in its Protest Letter, respondent maintains that out of the gross compensation income of ₱14,464,314.58, the non-taxable compensation amounts to ₱4,633,391.40. The bulk of the non-taxable compensation income is separation pay of petitioner's employees amounting to ₱9,211,326.60, which was paid in December 2011.

An analysis of salaries and wages account showing the taxable and non-taxable compensation income resulted to a discrepancy of ₱200,767.01 which were not subjected to withholding tax, to wit:[92]

Total salaries and wages		₱ 14,682,951.94
Separation pay	₱ 9,211,326.60	
Employees comp contribution	4,280.00	
13th month pay	244,242.39	
Pagibig fund	14,825.00	
Maternity & sick leave	27,196.15	
Vacation leave	146,568.39	
SSS premium contribution	162,180.00	
Medicare premium	38,175.00	
Total non-taxable compensation		9,848,793.53
Taxable compensation per audit		₱ 4,834,158.41

[92] Exhibit "P-1".

Total taxable compensation per Alphalist		4,633,391.40
Amount still subject to withholding tax		**₱ 200,767.01**

The foregoing amounts used by the BIR in its computation were lifted from petitioner's T-Accounts submitted during audit.[93]

Upon reconciliation of these seeming disparity, the ICPA showed that there is in fact an over-withholding in compensation payment by ₱822.64, to wit:[94]

Total salaries and wages		₱ 14,682,951.94
Non-taxable items (per Alphalist):		
Separation pay	₱ 9,211,326.60	
13th Month	257,242.39	
De minimis benefits	202,729.19	
HDMF	14,825.00	
ECOM	4,280.00	
SSS	162,180.00	
Medicare	38,175.00	
SSS, HDMF, PHIC	159,625.00	
Total nontaxable compensation		10,050,383.18
Taxable compensation		₱ 4,632,568.76
Total taxable compensation per Alphalist		4,633,391.40
Total taxable compensation per Alphalist where there is overwithholding		**₱ (822.64)**

Based on respondent's computation and petitioner's reconciliation, the assessment mainly arose from the difference in the computation of the nontaxable compensation. A comparison of the computation of the two parties shows the following differences:

	BIR Computation	**Petitioner's Reconciliation as per Alphalist**	**Difference**
Separation pay	₱ 9,211,326.60	₱ 9,211,326.60	₱ -
Employees compensation contribution – ER share	4,280.00	4,280.00	-
13th month pay	244,242.39	257,242.39	(13,000.00)
Pagibig fund – ER share	14,825.00	14,825.00	-
Maternity & sick leave	27,196.15	-	27,196.15
Vacation leave	146,568.39	-	146,568.39
SSS premium contribution – ER share	162,180.00	162,180.00	-

[93] BIR Records, pp. 251 to 252.
[94] P. 9, ICPA Report, Exhibit "P-23".

Medicare premium – ER share	38,175.00	38,175.00	-
De minimis benefits	-	202,729.19	(202,729.19)
SSS, HDMF, PHIC	-	159,625.00	(159,625.00)
Total	**₱ 9,848,793.53**	**₱ 10,050,383.18**	**₱ (201,589.65)**

The foregoing leads us to the following findings:

1) The ECC, SSS, Medicare premiums and Pagibig fund considered by the BIR amounting to ₱4,280.00, ₱162,180, ₱38,175.00, and ₱14,825.00, respectively, as reflected in the T-Accounts pertain only to the employer's share. BIR failed to consider the employee's share on SSS, Medicare and PHIC contributions totaling ₱159,625.00. Both amounts can be traced to the Payment Vouchers and proof of remittances to said agencies.[95] The employee's share should have been considered in computing the non-taxable compensation.

2) The 13th month pay reflected in the T-Accounts amounted to ₱244,242.39 whereas the amount reflected in the Alphalist[96] is ₱257,242.39. The difference of ₱13,000.00 was unaccounted by petitioner, hence must be disregarded.

3) The *de minimis* benefits amounting to ₱202,729.19 were not supported by clear and convincing evidence to substantiate the same, thus, shall not be considered in computing the non-taxable compensation.

Considering the foregoing, the non-taxable compensation amounts to ₱10,008,418.53. As such, the amount of compensation which petitioner failed to subject to WTC is thus decreased to ₱41,142.01, as determined below:

Total salaries and wages		₱ 14,682,951.94
Non-taxable items:		
Separation pay	₱ 9,211,326.60	
13th Month	244,242.39	
Maternity & sick leave	27,196.15	
Vacation leave	146,568.39	
HDMF - ER share	14,825.00	
ECOM - ER share	4,280.00	

[95] Exhibits "P-29-098" to "P-29-157".
[96] Exhibits "P-29-164" to "P-29-167".

SSS - ER share	162,180.00	
Medicare – ER share	38,175.00	
SSS, HDMF, PHIC - EE share	159,625.00	
Total nontaxable compensation		10,008,418.53
Taxable compensation		₱ 4,674,533.41
Total taxable compensation per Alphalist		4,633,391.40
Amount of compensation still subject to withholding tax		**₱ 41,142.01**

The above difference of ₱41,142.01 should be subjected to withholding tax on compensation based on the graduated tax rates of 5% to 32%. However, the employees to whom the compensation pertained to were not individually identified. Thus, the appropriate tax rate to be used should be the effective rate computed based on the total withholding tax on compensation paid divided by the total amount of taxable compensation reported during the CY 2011, as shown below:

Total withholding tax on compensation[97]	₱ 200,458.31	**4.33%**
Total taxable compensation[98]	₱ 4,633,391.40	

Therefore, petitioner shall be held liable to pay the basic deficiency WTC in the amount of ₱1,779.96, as computed below:

Amount of compensation still subject to withholding tax	₱ 41,142.01
Effective Tax Rate	4.33%
Basic Deficiency WTC	**₱ 1,779.96**

WHEREFORE, premises considered, the assessment issued by respondent against petitioner for CY 2011 covering deficiency income tax is **CANCELLED**, while the deficiency VAT and WTC assessments are **AFFIRMED** but with modifications. Accordingly, petitioner is **ORDERED TO PAY** the aggregate amount of **₱7,999,517.87** for the taxable year 2011, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and deficiency and delinquency interests imposed under Sections 249(B) and (C) of the NIRC of 1997, as amended, until December 31, 2017, computed as follows:

	VAT	**WTC**	**Total**
Basic Tax Due	₱ 2,428,086.68	₱ 1,779.96	₱ 2,429,866.64

[97] Amount lifted from the Alphalist of Employees, Exhibit "P-29-167".
[98] *Ibid.*

Surcharge (25%)	607,021.67	444.99	607,466.66
Subtotal	₱ 3,035,108.35	₱ 2,224.95	₱ 3,037,333.30
Deficiency Interest *(1-25-2012[99] / 1-11-2012[100] to 12-31-2017)*			
(₱2,428,086.68 x 20% x 2,167 days/365)	2,883,103.47		2,883,103.47
(₱1,779.96 x 20% x 2,181 days/365)		2,127.17	2,127.17
Subtotal	₱ 5,918,211.82	₱ 4,352.12	₱ 5,922,563.94
Delinquency Interest *(3-31-2016[101] to 12-31-2017)*			
(₱5,918,211.82 x 20% x 640 days/365)	2,075,427.71		2,075,427.71
(₱4,352.12 x 20% x 640 days/365)		1,526.22	1,526.22
TOTAL	**₱ 7,993,639.53**	**₱ 5,878.34**	**₱ 7,999,517.87**

In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the unpaid VAT of ₱3,035,108.35 and WTC of ₱2,224.95, representing basic deficiency tax and surcharge, 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 Tax Reform for Acceleration and Inclusion (TRAIN).[102]

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

[99] Section 4.114-1(A) of RR No. 16-05.
[100] Section 2 of RR No. 26-02.
[101] Exhibits "P-1-2" to "P-1-4".
[102] *Alpha 245, Inc., (formerly ARC Worldwide Philippines Co., Inc.) vs. Commissioner of Internal Revenue*, CTA Case No. 9225, April 6, 2018.

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, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice