REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MEDTEX CORPORATION *Petitioner,*	**CTA CASE NO. 8508**
-versus-	Members: **CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** and **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** SEP 01 2014 4:30 p.m.

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DECISION

COTANGCO-MANALASTAS, *J.*:

STATEMENT OF THE CASE

This Petition for Review filed by Medtex Corporation seeks to reverse and set aside the Final Decision on Disputed Assessment (FDDA) finding Medtex Corporation liable for deficiency taxes and compromise penalties in the aggregate amount of ₱548,149.00 for calendar year 2006.

STATEMENT OF FACTS

Petitioner Medtex Corporation is a corporation duly organized and existing under and by virtue of the laws of the Philippines[1] with principal office at 7th Street, Phase II, Bataan Processing Zone, Mariveles, Bataan.[2] Its primary purpose is to engage in, operate, conduct and maintain the business of developing, manufacturing, importing, exporting, buying, selling or otherwise dealing in, at wholesale, such goods as

[1] Exhibits "I", "J", "K", docket, pp. 1440-1449.
[2] Petition for Review, docket, p. 10.

textile, heavy fabric woven and knitted fabrics, other made-up articles of textile, medical and healthcare supplies, devices, equipment and related products and goods of similar nature and any and all technology, equipment, materials, supplies used or employed in or related to the manufacture of such finished products.[3]

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), the government agency charged with implementing the National Internal Revenue Code (NIRC) and collecting all internal revenue taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On March 1, 2007, petitioner filed its Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E).[4]

On August 18, 2011, respondent issued against petitioner the Preliminary Assessment Notice (PAN) with Details of Discrepancies,[5] which petitioner received on September 9, 2011, assessing the latter for deficiency income tax, expanded withholding tax (EWT) and final withholding tax (FWT) with compromise penalties for calendar year 2006, *viz*:

Net income per return			₱32,081,141.00
Add: Undeclared Income per Audit	₱ 755,779.23		
Deductions not allowed under RA No. 7916	3,682,008.74		4,437,787.97
Net Income per audit			36,518,928.97
Tax Due			1,825,946.45
Less: Tax paid			1,604,057.05
Balance of Tax Due			221,889.40
Interest			207,244.70
Total Deficiency Income Tax			429,134.10
Deficiency Expanded Withholding Taxes			
Income Payments	Amount	Tax Due	
Professional fees	73,333.32	7,333.33	
Rental	16,500.00	825.00	
Repairs	11,635.00	232.70	
Freight/handling	2,340,561.94	47,811.24	
Total Deficiency Expanded Withholding Tax		55,202.27	
Less: Remittances		54,797.27	

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[3] Exhibit "J", docket, p.1442.
[4] Exhibit "AA", docket, p. 2032.
[5] Exhibit "A", docket, p. 37; Par. I(b), Joint Stipulation of Facts and Issues (JSFI), docket, p. 737.

Deficiency Withholding Tax		405.00	
Add: Interest		398.52	
Total Deficiency Expanded Withholding Tax		803.52	803.52
Deficiency Final Withholding Tax			
Dividends paid	145,000,000.00		
Filipino Stockholders 60%	87,000,000.00	8,700,000.00	
Chinese/Taiwanese Stockholders 40%	58,000,000.00	11,600,000.00	
Final tax Due		20,300,000.00	
Add: Surcharge	5,075,000.00		
Interest	₱19,975,200.00	25,050,200.00	
Total Deficiency Final Withholding tax		45,350,200.00	45,350,200.00
Subtotal			45,780,137.62
Compromise Penalties			
For failure to Pay – income		25,000.00	
For failure to remit/pay – EWT		2,000.00	
For failure to remit/pay – Final Tax		₱ 25,000.00	52,000.00
TOTAL AMOUNT PAYABLE			₱45,832,137.62

Petitioner filed with respondent its Protest Letter[6] against the said Preliminary Assessment Notice on September 23, 2011.[7]

On February 22, 2012, respondent issued a revised Preliminary Assessment Notice with Details of Discrepancies after a reinvestigation,[8] which petitioner received on March 9, 2012. Petitioner was assessed for the following deficiency income tax, withholding tax and penalties for calendar year 2006:

Deficiency Income Tax		
Net Income per return		₱32,081,141.00
Add: Undeclared Income per Audit	₱ 755,779.23	
Deductions not allowed under RA No. 7916	3,682,008.74	4,437,787.97
Net Income per audit		36,518,928.97
Tax Due		1,825,946.45
Less: Tax paid		1,604,057.05
Balance of Tax Due		221,889.40
Interest		214,493.09
Total Deficiency Income Tax		436,382.48
Deficiency Expanded Withholding Taxes		
Income Payments	Tax Base	Tax Due
Professional fees (10%)	73,333.32	7,333.33
Rental	16,500.00	825.00
Repairs	11,635.00	232.70

[6] Exhibit "B", docket, p. 1411.
[7] Par. I(c) of JSFI, docket, p. 737.
[8] Exhibit "C", docket, p. 46; Par. I(d), JSFI, docket, pp. 737-738.

Freight/handling	2,340,561.94	46,811.24
Total Deficiency Expanded Withholding Tax	2,442,030.26	55,202.27
Less: Remittances		54,797.27
Deficiency Withholding Tax		405.00
Add: Interest		405.00
Total Deficiency Expanded Withholding Tax		810
Deficiency Final Withholding Tax		
Dividends paid to Individual		276,805.00
Final tax Due on Dividends		27,680.50
Less: Remittances		0
Deficiency Final Withholding Tax		27,680.50
Add: Surcharge		6,920.13
Interest		34,831,30
Total Deficiency Final Withholding tax		69,431.92
Compromise Penalties		
For failure to Pay – income	₱ 25,000.00	
For failure to remit/pay – EWT	2,000.00	
For failure to remit/pay – Final Tax	6,000.00	33,000.00
TOTAL AMOUNT PAYABLE		₱ 539,624.41

Consequently, petitioner submitted a Letter on March 23, 2012 to protest the revised PAN dated February 22, 2012.[9] However, on the same day, respondent issued the Formal Letter of Demand with Details of Discrepancies and Audit Results/Assessment Notices[10], assessing petitioner for deficiency taxes in the total amount of ₱548,194.32[11], detailed as follows:

Deficiency Income Tax		
Net Income per return		₱32,081,141.00
Add: Undeclared Income per Audit	₱ 755,779.23	
Deductions not allowed under RA No. 7916	3,682,008.74	4,437,787.97
Net Income per audit		36,518,928.97
Tax Due		1,825,946.45
Less: Tax paid		1,604,057.05
Balance of Tax Due		221,889.40
Interest (April 16, 2007 to April 16, 2012)		221,889.40
Total Deficiency Income Tax		443,778.80
Deficiency Expanded Withholding Taxes		
Income Payments	Tax Base	Tax Due
Professional fees (10%)	73,333.32	7,333.33
Rental	16,500.00	825.00
Repairs	11,635.00	232.70
Freight/handling	2,340,561.94	46,811.24
Total Deficiency Expanded Withholding Tax	2,442,030.26	55,202.27
Less: Remittances		54,797.27
Deficiency Withholding Tax		405.00
Add: Interest (January 21, 2007 to April 20, 2012)		425.25
Total Deficiency Expanded Withholding Tax		830.25

[9] Exhibit "D", docket, p.1420.
[10] Exhibit "E", docket, p. 55.
[11] Par. I(f), JSFI, docket, p. 738.

Deficiency Final Withholding Tax		
Dividends paid to Individual		276,805.00
Final tax Due on Dividends		27,680.50
Less: Remittances		0
Deficiency Final Withholding Tax		27,680.50
Add: Surcharge		6,920.13
Interest (Oct. 11, 2005 to Apr. 11, 2012)		35,984.65
Total Deficiency Final Withholding tax		70,585.28
Compromise Penalties		
For failure to Pay – income	₱ 25,000.00	
For failure to remit/pay – EWT	2,000.00	
For failure to remit/pay – Final tax	6,000.00	33,000.00
TOTAL AMOUNT PAYABLE		₱ 548,194.32

On April 24, 2012, respondent through her Regional Director issued a Letter[12] denying petitioner's request for cancellation of the assessment.[13] She likewise stated that the issues contained in petitioner's protest letter dated March 23, 2012 were also in the protest letter dated September 22, 2011, which was the basis for the re-investigation.

On May 3, 2012, petitioner protested the Formal Letter of Demand through a Letter dated May 2, 2012.[14]

Respondent issued her Final Decision on Disputed Assessment on May 17, 2012,[15] denying petitioner's Protest Letter dated May 2, 2012. The FDDA was received by petitioner on May 29, 2012.[16]

Consequently, petitioner filed the instant Petition for Review on June 27, 2012[17].

Respondent filed a Motion for Leave to File and Admit Attached Answer[18] on September 11, 2012. On the other hand, petitioner submitted its Motion to Declare Respondent in Default[19] on September 13, 2012. In the Resolution dated September 19, 2012, the Court granted respondent's motion and denied petitioner's motion.[20] As a result, respondent's Answer was admitted.

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[12] Exhibit "F", docket, 1432.
[13] Par. I(g), JSFI, docket, p. 738.
[14] BIR Records, p. 591.
[15] Exhibit "H", docket, p. 69.
[16] Exhibit "BB", page 8, docket, p. 2034.
[17] Docket, p. 6.
[18] Docket, pp. 676-690.
[19] Docket, pp. 691-692.
[20] Docket, p. 694.

In the Answer[21], respondent interposed the following special and affirmative defenses:

> "Respondent incorporates and repleads all the foregoing averments and in further support of the Specific Denials herein set forth, respondent CIR respectfully alleges as her defense that:
>
> 5. The Petition for Review filed by petitioner deserves scant consideration. Petitioner is liable to pay deficiency taxes for taxable year 2006 comprising of Income Tax, Expanded Withholding Tax, and Final Withholding Tax, plus Compromise Penalties, broken down as follows:

Income Tax	₱443,778.80
Expanded Withholding Tax	₱830.25
Final Withholding Tax	₱70,585.28
Compromise Penalties	P33,000.00
Total	**₱548,194.32**

> 6. To be sure, petitioner's tax liabilities were properly and legally assessed. Pursuant to Letter of Authority No. 00074164 dated 14 August 2007, petitioner's internal revenue tax liabilities were investigated by Revenue Officer Florentino R. Rubiano.
>
> 7. During investigation, petitioner was requested to produce certain documents needed in the audit examination of its books of accounts.
>
> 8. Upon submission of the preliminary report of investigation by RO Rubiano, petitioner through its representative was invited for an informal conference to inform it of the result of the investigation and to give it a chance to present other evidence to support its protest against the proposed assessment. It should be emphasized that petitioner through its representative was invited twice for an informal hearing to support its protest.

[21] Docket, pp. 682-690.

9. It bears stressing that petitioner was given considerable length of time to present documentary evidence to support its protest. Hence, it could never be argued that petitioner was denied due process.

10. Further, petitioner failed to dispute the final withholding tax assessment against it for failure to present documentary evidence that will support its protest.

11. A Preliminary Assessment Notice dated August 18, 2011 was issued against petitioner. A letter-protest dated September 23, 2011 was filed by petitioner through its Director with the Office of the Regional Director, Revenue Region 4, Pampanga, received by the latter on even date, and forwarded to the Revenue District Officer, Revenue District Office No. 20, Balanga, Bataan, for reconsideration.

12. On November 28, 2011, a discussion was made with the representatives of the corporation: Mr. Jerry Urdabe and Mr. Wilson Pastelero, Tax and Accounting Manager and Asst. Accounting Head, respectively.

13. It must be recalled that during said discussion, the subject tax deficiencies were explained to the representatives of the petitioner and they agreed to pay the same.

14. Contrariwise, respondent considered the documentary evidence presented by petitioner's representative, however, petitioner should not and cannot dictate that respondent honor the same if it was found insufficient to support petitioner's protest.

15. To exemplify, per report of Revenue Officer Sonny Apolonio dated 16 December 2011, petitioner's representatives have submitted the following documents to counter the findings for protest on their Final Withholding Tax liability:

a. Minutes and Secretary's Certificate
b. General Information Sheet
c. Articles of Incorporation-Medtecs Ltd.
d. Computation of Deficiency Taxes

16. As reported, upon verification of the Minutes of the Board of Directors and of the Secretary's Certificate, it was revealed that not all dividends were paid to corporations but includes individual stockholders. Hence, the assessment of 10% Final Withholding Tax.

17. As a result of reinvestigation, the tax liabilities of petitioner was reduced from ₱45,832,137.62 to ₱539,624.41, thus, the issuance of a Preliminary Assessment Notice dated February 22, 2012.

18. It must be stressed that the protest filed by petitioner (with regard the Revised Pan) is a mere rehash of its former protest, and which has already been settled even in the informal conference stage. To reiterate, petitioner failed to file documentary evidence that will support its protest when the case was referred back to the examiner for reinvestigation. In fact, the documents it presented even revealed that it is further liable for Final Withholding Tax, as the dividends paid to individual stockholders should be taxed at 10% Final Withholding Tax:

STOCKHOLDER	Amount Subscribed	Amount Paid
Medtecs International Corp. Limited	17,047,000.00	17,047,000.00
Chu Wen-Fu	19,900.00	19,900.00
Marinette B. Avera	7,500.00	7,500.00
Wang Wan-Fa	3,000.00	3,000.00
Richard Fook Hing Sze	600.00	600.00
Wilfrido C. Rodriguez	1,000.00	1,000.00
Huang Hung	400.00	400.00
Clement Yang	100.00	100.00
Paul Winston Poe	100.00	100.00

19. Hence, the issuance of the Formal Letter of Demand for tax deficiencies in the aggregate amount of ₱548,194.32 representing deficiency Income Tax, Expanded Withholding Tax, and Final Withholding Tax.

20. Respondent has disallowed the following expenses in the amount of ₱3,682,008.74, for simple reason that these expenses are not allowed deductions under PEZA Law. In **San Pablo Manufacturing Corporation vs. Commissioner of Internal Revenue, GR No. 147749, June 22, 2006**:

> 'Where the law enumerates the subject or condition upon which it applies, it is to be construed as excluding from its effects all those not expressly mentioned. *Expressio unius est exclusio alterius.* Anything that is not included in the enumeration is excluded therefrom and a meaning that does not appear nor is intended or reflected in the very language of the statute cannot be place therein. The rule proceeds from the premise that the legislature would not have made specific enumerations in a statute if it had the intention not to restrict its meaning and confine its terms to those expressly mentioned.
>
> The rule of *expressio unius est exclusio alterius* is a canon of restrictive interpretation.'

21. Further, the strength of BIR Ruling may only be used by the specific requestee of the Ruling. As the facts represented therein may only be true to the case subject of the Ruling.

22. To be sure, **Assessments are prima facie correct and made in good faith. It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. It is an elementary rule that 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 tax assessments. Verily, failure to present proof of error in the assessment will justify judicial affirmance of said assessment.

23. It is a fallacy to argue that the Assessment Notices are void for having no bases in fact and in law. Petitioner must have forgotten the fact that several informal conferences were called to discuss its tax deficiencies. Further, the Details of Discrepancies attached to the Assessment Notices clearly informed petitioner of the law and facts on which the assessment was based.

24. Verily, petitioner has been informed of the basis of its tax liabilities. The assessment issued against it is valid and based on facts and law.

25. Petitioner cannot and should not cry violation of due process when it was given several opportunities to present documentary evidence, has been invited for informal conferences, and its tax liabilities were reinvestigated.

26. Rudimentary, **the essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of**.

27. From the foregoing, one can hardly decipher when petitioner has been denied due process.

28. All told, there is due and demandable from petitioner the aggregate amount of *Five Hundred Forty Eight Thousand One Hundred Ninety Four Pesos and 32/100 (₱548,194.32)* for deficiency Income Tax, Expanded Withholding Tax, Final Withholding Tax, and Compromise Penalties."

Respondent's Pre-Trial Brief[22] was submitted on October 19, 2012; while the Pre-Trial Brief (For Petitioner)[23] was filed on October 17, 2012.

On December 6, 2012, the parties filed their Joint Stipulation of Facts and Issues[24]. Subsequently, the Court terminated the pre-trial and issued the Pre-Trial Order on December 12, 2012.[25]

During trial, both parties presented and formally offered their respective documentary evidence. Petitioner presented Wilson Pastelero and respondent presented Sonny Apolonio as their witnesses.

The instant case was submitted for decision on September 2, 2013,[26] considering petitioner's Memorandum[27] filed on July 24, 2013 and respondent's Memorandum[28] submitted through registered mail on August 23, 2013, which the Court received on August 29, 2013.

STATEMENT OF ISSUES

The parties interposed the following issues[29] for this Court's resolution:

> "A. WHETHER THE DEFICIENCY TAXES ASSESSMENT AGAINST THE PETITIONER SHOULD BE CANCELLED AND WITHDRAWN FOR FAILURE OF RESPONDENT TO COMPLY WITH THE DUE PROCESS REQUIREMENTS UNDER THE NATIONAL INTERNAL REVENUE CODE AND REVENUE REGULATION NO. 12-99;
>
> B. WHETHER PETITIONER IS LIABLE FOR THE AMOUNT OF ₱548,194.32 REPRESENTING DEFICIENCY TAXES FOR 2006 COMPRISING OF

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[22] Docket, pp. 697-700.
[23] Docket, pp. 702-711.
[24] Docket, pp. 737-739.
[25] Docket, pp. 1381 to 1386.
[26] Resolution dated September 2, 2013, docket, p. 2160.
[27] Docket, pp. 2106-2132.
[28] Docket, pp. 2139-2146.
[29] Docket, p. 738.

INCOME TAX, EXPANDED WITHHOLDING TAX, AND FINAL WITHHOLDING TAX, PLUS COMPROMISE PENALTIES."

RULING OF THE COURT

The Court will address first the timeliness of the filing of the instant Petition for Review.

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

> "SEC. 228. *Protesting 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:
>
> xxx xxx xxx
>
> 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."

Respondent issued the FDDA on May 17, 2012, which petitioner received on May 29, 2012.[30] As such, petitioner had until June 28, 2012, within which to appeal respondent's decision.

On June 27, 2012, petitioner filed this Petition for Review; thus, it is seasonably filed.

Petitioner contends that the deficiency tax assessment was void for failure of respondent to observe due process in the issuance of the said assessment. The Formal Letter of Demand was issued on March 23, 2013, which was the same day petitioner submitted its protest letter against the revised Preliminary Assessment Notice. Petitioner alleges that it was deprived of its right to respond to the PAN.

Respondent insists that petitioner was not denied of due process. Respondent points out that she reconsidered petitioner's Protest Letter filed on September 23, 2011 that resulted in the issuance of revised Preliminary Assessment Notice, reducing the deficiency tax assessment from ₱45,832,137.62 to ₱539,624.41.

The Court finds that the assessment is valid.

The 1987 Constitution of the Philippines expressly provides that no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.[31] In the case of *Commissioner of Internal Revenue vs. Steelasia Manufacturing Corporation*[32], the Court of Tax Appeals *En Banc* held:

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[30] Exhibit "H"
[31] Section 1, Article III, 1987 Philippines Constitution.
[32] CTA EB Nos. 631 and 632, December 22, 2011.

> "(S)uffice it to say that due process in our jurisdiction refers to the right of the taxpayer to be informed of the legal and factual findings of the BIR as regards its deficiency taxes, and the opportunity to be heard through protest.
>
> Note that a preliminary assessment notice preparatory to the issuance of a formal or final assessment notice is not, legally speaking, an assessment even if it contains a computation of the tax liabilities of a taxpayer and a demand for payment of the computed tax liabilities was made in such preliminary assessment notice. Section 228 of the NIRC of 1997 clearly refers to the Final Assessment Notice that should be formally protested to by SAMC; else, the same becomes final and executory."

The CTA *En Banc* has likewise pronounced that a protest against the PAN, unlike the protest against the FAN, is not indispensable. A preliminary assessment notice may or may not even be protested to by the taxpayer, and the fact of non-protest shall not in any way make the preliminary assessment notice final and unappealable. Thus, the issuance of the FAN before the lapse of the fifteen (15)-day period for the taxpayer to file its protest to the PAN, inflicts no prejudice on the taxpayer for as long as the latter is properly served a Formal Assessment Notice and that it was able to intelligently contest the FAN by filing a protest letter within the period provided by law. Moreover, this Court observed that petitioner was afforded the procedural due process required by law when it was fully apprised of the legal and factual bases of the assessment issued against it and that petitioner was given the opportunity to substantially protest or dispute the assailed assessments via its protest letter.[33]

Records revealed that petitioner successfully protested the Preliminary Assessment Notice dated August 18, 2011 assessing petitioner for deficiency taxes for calendar year 2006 in the amount of ₱45,832,137.62. As a result, respondent revised the Preliminary Assessment Notice on February 22, 2012, assessing petitioner for deficiency taxes in the reduced

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[33] *Oakwood Management Services (Philippines), Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7989, August 8, 2013.

amount of ₱539,624.41. Considering the foregoing, petitioner was clearly afforded due process.

The Court will now proceed to determine whether petitioner is liable for the total amount of ₱548,194.32, representing deficiency income tax, expanded withholding tax and final withholding tax, inclusive of increments, for calendar year 2006.

In the Formal Letter of Demand[34] dated March 23, 2012, respondent informed petitioner that after re-investigation, petitioner has been found liable for deficiency income tax, withholding tax and penalties for calendar year 2006, as shown below:

Deficiency Income Tax		
Net Income per return		₱ 32,081,141.00
Add: Undeclared Income per audit	₱ 755,779.23	
Deductions not allowed under RA 7916	3,682,008.74	4,437,787.97
Net Income per audit		36,518,928.97
Income tax due		1,825,946.45
Less: Tax paid		1,604,057.05
Deficiency Income Tax		221,889.40
Add: Interest (April 16, 2007 to April 16, 2012)		221,889.40
Total Deficiency Income Tax		**₱ 443,778.80**
Deficiency Expanded Withholding Tax		
Income Payments	**Tax Base**	**Tax Due**
Professional Fees (10%)	₱ 73,333.32	₱ 7,333.33
Rentals	16,500.00	825.00
Repairs	11,635.00	232.70
Freight/Handling	2,340,561.94	46,811.24
Total	2,442,030.26	55,202.27
Less: Remittances		54,797.27
Total Deficiency Expanded Withholding Tax		405.00
Add: Interest (January 21, 2007 to April 20, 2012)		425.25
Total Deficiency Final Withholding Tax		**₱ 830.25**
Deficiency Final Withholding Tax		
Dividends paid to Individuals		₱ 276,805.00
Final Tax Due on Dividends		27,680.50
Less: Remittances		-
Deficiency Expanded Withholding Tax		7,680.50
Add: Surcharge		6,920.13
Interest (Oct. 11, 2005 to Apr. 11, 2012)		35,984.65
Total Deficiency Final Withholding Tax		**₱ 70,585.28**

[34] Exhibit "E", docket, p. 55.

Compromise Penalties		
For failure to pay - Income Tax		25,000.00
For failure to withhold/remit/pay - EWT		2,000.00
For failure to withhold/remit/pay – Final Tax		6,000.00
Total Compromise Penalties		**₱ 33,000.00**
TOTAL AMOUNT PAYABLE		**₱ 548,194.32**

A. Deficiency Income Tax - ₱221,889.40

1. Undeclared Income – ₱755,779.23

Upon reconciliation of salaries and wages per Alphalist of employees[35] attached to the Annual Information Return of Income Taxes Withheld and Final Withholding Taxes or BIR Form No. 1604-CF and per Financial Statements (Schedule of Administrative and Selling Expense[36] and Statement of Cost of Goods Manufactured and Sold[37]),[38] respondent found that petitioner has unrecorded income in the amount of ₱755,779.23. The discrepancy of ₱755,779.23 was treated by respondent as undeclared income, computed as follows:[39]

Per Alphalist				
	Schedule 7.1	**Schedule 7.2**	**Schedule 7.3**	**Total**
Non-Taxable	₱ 272,487.80	-	₱ 376,269.71	₱ 648,757.51
SSS and Other Deductions	190,347.10	₱ 1,466.80	282,967.00	474,780.90
Taxable	3,267,538.58	27,292.73	4,859,930.13	8,154,761.44
Total	₱3,730,373.48	₱ 28,759.53	₱5,519,166.84	**₱9,278,299.85**
Per Financial Statement				
Salaries				₱ 642,176.73
Wages-Overtime				21,459.52
Holiday Pay				3,205.42
Other Employee Benefits				33,555.95
Direct Labor				7,822,123.00
Total				**₱8,522,520.62**
Discrepancy - Undeclared Expense /Income				**₱ 755,779.23**

Petitioner argues that the revenue examiner's conclusion is baseless and erroneous for the latter's computation failed to

[35] BIR Records, pp. 182-189.
[36] BIR Records, pp. 339 and 343.
[37] BIR Records, pp. 337 and 342.
[38] Exhibit "L", docket, p. 1458.
[39] BIR Records, pp. 471-472.

consider the following items in determining the amount of salaries per Financial Statement:

Per BIR Computation	**₱ 8,522,520.70**
Add:	
530100 FO - Salaries and Wages	1,164,593.89
520800 DL - Retirement Expense	379,223.28
530400 FO - Bonus and 13th Month Pay	137,025.64
530200 FO - Overtime Pay	92,213.77
601600 - 13th Month Pay	71,872.12
530300 FO - Holiday	33,888.16
Deduct:	
520900 DL - Other Employee Benefits	513,084.30
602900 - Other Employee Benefits	33,555.95
520500 DL - SSS	401,040.60
520600 DL - Pag-ibig	81,600.00
520550 DL - Medicare	76,900.30
Others	16,856.56
Total per Alphalist	**₱ 9,278,299.85**

Petitioner asserts the following:

1. Amounts included in the Salaries and Wages, Retirement Expense, Bonus and 13th Month Pay, Overtime Pay, 13th Month Pay and Holiday accounts were not considered by the BIR examiner in computing the compensation. These accounts were properly reported in the Alphalist.

2. Amounts lodged under Other Employee Benefits were erroneously included by the BIR examiner in computing the total compensation per Financial Statement. These amounts should not be included as these consist of *"de minimis"* benefits such as groceries for Christmas celebration, uniforms, birthday cakes, and gifts given to employees under the manufacturing departments. Section 2.33(C)(4) of Revenue Regulations (RR) No. 3-98 provides for the exemption of *de minimis* benefits.

3. The amounts lodged under DL-SSS, DL-Medicare, DL-Pag-ibig should not be included as these actually pertain to employer contributions and therefore not required to be reported in the Alphalist. Moreover, SSS, Medicare, and Pag-ibig are exempt from withholding tax

on compensation under Section 32(B)(7)(f) of the NIRC of 1997.

The Court finds respondent's assessment as to the alleged undeclared income bereft of merit.

Records show that respondent appears to have picked up the total amount of ₱8,522,520.70[40] based on the Schedule of Admin. and Selling Expense[41] and Statement of Cost of Goods Manufactured and Sold for the year ended December 31, 2006[42], which consist of the following:

Admin. and Selling Expenses		
Salaries	₱ 642,176.73	
Wages-Overtime	21,459.52	
Holiday Pay	3,205.42	
Other Employee Benefits	33,555.95	₱ 700,397.62
Cost of Goods Manufactured and Sold - Direct Labor		
Salaries and Wages	5,942,274.95	
Overtime Pay	518,858.08	
Holiday	210,871.86	
Bonus and 13th Month Pay	456,716.27	
SSS	401,040.60	
Medicare	76,900.30	
Pag-ibig	81,600.00	
Retirement	(379,223.28)	
Other Employee Benefit	513,084.30	7,822,123.08
Total per FS		**₱ 8,522,520.70**

However, as correctly pointed out by petitioner in its reconciliation, the employer contributions for SSS, Medicare (Philhealth) and Pag-ibig in the aggregate amount of ₱559,540.90 (₱401,040.60 + ₱76,900.30 + ₱81,600.00), as well as the provision for Retirement in the amount of ₱379,223.28 and other employee benefits (not exceeding ₱30,000.00 per employee) in the aggregate amount of ₱546,640.25 (₱33,555.95 plus ₱513,084.30), are not required to be reported in the Alphalist and apparently should be excluded from the computation of gross income per FS pursuant to Section 32 of the NIRC of 1997.

On the other hand, respondent should have included the payments to employees under the Factory Overhead Account,

[40] Court's actual computation is ₱8,522,520.62.
[41] BIR Records, p. 339.
[42] BIR Records, p. 337.

other than the Admin. and Selling Expense and Direct Labor Accounts, which are properly reported in the Alphalist as the same form part of the compensation of petitioner's employees, such as the following:

Factory Overhead		
Salaries and Wages	₱1,164,593.89	
Bonus and 13th month pay	137,025.64	
Overtime Pay	92,213.77	
Holiday	33,888.16	₱1,427,721.46
Admin. and Selling Expenses		
13th month pay		71,872.12
Total		**₱1,499,593.58**

From the foregoing, petitioner's salaries and wages as reported in its FS amounts to ₱9,295,156.41, computed as follows:

Admin. and Selling Expenses		
Salaries	₱ 642,176.73	
Wages-Overtime	21,459.52	
Holiday Pay	3,205.42	
13th month pay	71,872.12	₱ 738,713.79
Direct Labor		
Salaries and Wages	₱5,942,274.95	
Overtime Pay	518,858.08	
Holiday	210,871.86	
Bonus and 13th Month Pay	456,716.27	7,128,721.16
Factory Overhead		
Salaries and Wages	₱1,164,593.89	
Bonus and 13th month pay	137,025.64	
Overtime Pay	92,213.77	
Holiday	33,888.16	1,427,721.46
Total per FS		**₱9,295,156.41**

Thus, petitioner was able to reconcile the alleged discrepancy, except for the amount of ₱16,856.56, as shown below:

Per Alphalist	₱ 9,278,299.85

Per FS	9,295,156.41
Discrepancy	**₱ (16,856.56)**

Nevertheless, petitioner was able to prove that it has no undeclared income in its FS contrary to the findings of the BIR examiner.

2. Deductions not allowed under RA No. 7916 – ₱3,682,008.74

Respondent disallowed the following expenses as deductions from gross income for purposes of computing the five percent (5%) gross income tax, broken down as follows:

Forex Loss	₱ 1,745,974.25
Other Dues to Authorities	21,550.00
Insurance	121,319.22
Documents and Handling	42,240.00
Miscellaneous	1,419,972.79
Office Supplies	47,120.25
Tools and Spare parts	283,832.23
Total	**₱ 3,682,008.74**

The aforesaid expenses were disallowed for the simple reason that the same were not among the deductions allowable under Republic Act (RA) No. 7916 (PEZA Law), citing as basis the Supreme Court ruling in *San Pablo Manufacturing Corporation vs. Commissioner of Internal Revenue*[43], to wit:

> "Where the law enumerates the subject or condition upon which it applies, it is to be construed as excluding from its effects all those not expressly mentioned. *Expressio unius est exclusio alterius.* Anything that is not included in the enumeration is excluded therefrom and a meaning that does not appear nor is intended or reflected in the very language of the statute cannot be placed therein. The rule proceeds from the premise that the legislature would not have made specific enumerations in a statute if it had the intention not to restrict its meaning and confine its terms to those expressly mentioned.

[43] G.R. No. 147749, June 22, 2006.

> The rule of *expressio unius est exclusio alterius* is a canon of restrictive interpretation."

On the other hand, petitioner contends that the disallowance has no basis since the above disallowed expenses are chargeable to Cost of Good Manufactured. Accordingly, the same are deductible for the 5% gross income tax purposes. Petitioner refers to Section 7 of Revenue Regulations No. 2-2005, which provides for the deductible expenses for PEZA-registered entities, to wit:

> "REVENUE REGULATIONS NO. 2-2005
>
> SECTION 7. Gross income earned – xxx
>
> For purposes of computing the total five percent (5%) tax rate imposed by Republic Act No. 7227, Republic Act No. 7903, Republic Act No. 7922 and Republic Act No. 7916, the cost of sales or direct cost shall consist only of the following cost or expense items which shall be computed in accordance with the Generally Accepted Accounting Principles (GAAP):
>
> **For ECOZONES under RA No. 7916 –**
>
> **1. ECOZONE *Export Enterprises, Free Trade Enterprises and Domestic Market Enterprises:***
>
> - Direct Salaries, wages or labor expenses
> - Production supervision salaries
> - Raw materials used in the manufacture of products
> - Decrease in Goods in Process Account (intermediate goods)
> - Decrease in Finished Goods Account
> - Supplies and fuels used in production
> - Depreciation of machinery and equipment used in production
> - Financing charges associated with fixed assets used in production the amount of which were not previously capitalized"

Petitioner likewise cites BIR Ruling No. DA 080-2007 dated February 8, 2007, which provides that the following expenses incurred by a PEZA manufacturing company can be deducted in computing the gross income subject to the 5% final tax:

1. Agency fees akin to commission and service charges, which are paid to the agency that provides contractual workers to complement the regular workforce during peak season;
2. Transportation expenses (inbound) such as freight, transfer, handling, brokerage and insurance costs incurred in importing raw materials from various overseas vendors;
3. Remuneration of expatriates directly involved in production; and
4. Communication costs such as mobile phone/telephone charges, network/server charges, SAP charges, IT management and consultancy fees and internet connection which are incurred in the transmission of technical production data to be used to facilitate the production of its products.

Petitioner avers that it is clear from BIR Ruling No. DA 080-2007 that not only those expenses which have similar name as the expenses enumerated under RR No. 02-2005 are deductible expense in computing the 5% gross income tax, contrary to the interpretation of the revenue examiner. Applying the ruling in the case at bar, petitioner asserts that expenses related to the manufacture of its goods are clearly deductible expense for the purpose of computing the 5% gross income tax. The details of the disallowed expenses are as follows:

a) Forex Loss - ₱1,745,974.25

Petitioner alleges that its forex loss is an allowed deduction in computing the 5% gross income tax referring to PEZA Memorandum Circular No. 2005-032, which states:

> "The Tax treatment of foreign exchange gains shall depend on the activities from which there arise. Thus, if the forex gain is attributed to an activity with income tax incentive (Income Tax Holiday or 5% Gross Income Tax), said forex gain shall be covered by the same income tax incentive. On the other hand, if the forex gain is attributed to an activity without income tax incentive, said forex gain shall likewise without income tax incentive, *i.e.,* therefore, subject to normal corporate income tax."

Petitioner avers that while the said PEZA Memorandum pertains to forex gains, the same treatment should be applied to forex losses. Accordingly, forex loss arising from the registered activity shall be deductible from income arising from said registered activity.

b) Other Dues to Authorities - ₱21,550.00

Petitioner claims that this pertains to miscellaneous expenses incurred for import processing and chargeable to Cost of Goods Manufactured. This expense includes charges to petitioner's petty cash for which no supporting documents are available.

c) Insurance Expense - ₱121,319.22

Petitioner asserts that this consists of insurance premium paid to cover properties in the factory such as machinery and other assets against fire, typhoon and other risks. Insurance expense was also incurred for insuring the raw materials used in the production against fire and product liability risk. Thus, this expense is part of the Cost of Goods.

d) Documents and Handling - ₱42,240.00

Petitioner points out that these expenses are incurred in relation to import processing at hauling at Customs. In other words, these are actually part of cost of materials and chargeable to Cost of Goods Manufactured. In particular, these expenses include charges to petitioner's petty cash, hauling services, salary of contractual workers, import/export processing fee, etc.

e) Miscellaneous Expense - ₱1,419,972.79

Petitioner explains that this includes depreciation charges of factory building and machinery that are chargeable to Cost of Goods Manufactured. This account also includes medical supplies, janitorial supplies, security services, etc.

f) Office Supplies - ₱47,120.25

Petitioner maintains that these are office supplies consumed in the factory offices.

g) Tools and Spare Parts - ₱283,832.23

Petitioner argues that these are necessary expenses to keep the machinery running to produce goods. Accordingly, these expenses are chargeable to Cost of Goods Manufactured.

Pertinent to the present case is RR No. 11-2005 which revoked Section 7 of RR No. 02-2005. The significant portions of which are quoted hereunder:

> "REVENUE REGULATIONS NO. 11-2005
>
> SECTION 3. Gross income earned – For purposes of implementing the tax incentive of registered Special Economic Zone (ECOZONE) enterprises in Section 24 of Republic Act No. 7916, the term 'gross income earned' shall refer to gross sales or gross revenues derived from business activity within the ECOZONE, net of sales discounts, sales returns and disallowances and minus costs of sales or direct costs but before any deduction is made for administrative, marketing, selling and/or operating expenses or incidental losses during a given taxable period.
>
> For purposes of computing the total five percent (5%) tax rate imposed, **the following direct**

costs are included in the allowable deductions to arrive at gross income earned for specific types of enterprises:

1. **ECOZONE Export Enterprises, Free Trade Enterprises and Domestic Market Enterprises:**
   - Direct Salaries, wages or labor expenses
   - Production supervision salaries
   - Raw materials used in the manufacture of products
   - Decrease in Goods in Process Account (intermediate goods)
   - Decrease in Finished Goods Account
   - Supplies and fuels used in production
   - Depreciation of machinery and equipment used in production and of that portion of the building owned or constructed that is used exclusively in the production of goods
   - Rent and utility charges associated with building, equipment and warehouse used in production
   - Financing charges associated with fixed assets used in production the amount of which were not previously capitalized" *(Emphasis supplied)*

This Court, in *East Asia Utilities Corporation vs. Commissioner of Internal Revenue*[44], declared that the enumeration of direct costs under RR No. 11-05 is not exclusive or closed list of expenses that may be deducted by PEZA-registered enterprises from their gross sales for the purpose or computing the 5% gross income tax. Instead, the enumeration of direct costs is intended as a guide in determining the items that may be considered direct costs or costs of sales. It noted that RR No. 11-05 amended Section 7 of RR No. 02-05 by deleting the words "consist only" and restating the pertinent phrase to "the following direct costs are included in the allowable deductions xxx". This Court further ruled that:

[44] CTA Case No. 8179, May 21, 2014.

> "It is clear from the amendment made under RR No. 11-05 that the list is not meant to be all-inclusive but merely enumerates the expenses that can be considered as direct costs. PEZA-registered enterprises may be allowed to deduct expenses which are in the nature of direct costs even though the same are not included in the list.
>
> The criteria in determining whether the item of cost or expense should be part of direct cost is the direct relation of such item in the rendition of the PEZA-registered services. If the item of cost or expense can be directly attributed in providing the PEZA-registered services, then it should be treated as direct cost."

It is also noteworthy that Section 27(A) of the NIRC of 1997 defines the terms "gross income" and "cost of goods sold", in the following manner:

> "For purposes of this Section, the term **'gross income'** derived from business shall be equivalent to gross sales less sales returns, discounts and allowances and cost of goods sold. **'Cost of goods sold'** shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use.
>
> xxx xxx xxx
>
> For a manufacturing concern, **'cost of goods manufactured and sold'** shall include all costs of production of finished goods, such as raw materials used, direct labor and manufacturing overhead, freight cost, insurance premiums, and other costs incurred to bring the raw materials to the factory or warehouse." *(Emphasis supplied)*

Based on the foregoing, for purposes of computing the 5% preferential tax, gross sales/revenues may be reduced only by sales discounts, sales returns and allowances, cost of sales or direct costs or any of the enumerated allowable deductions under RR No. 11-2005. Corollary thereto, in determining whether an expense is part of direct cost, said expense must be directly attributed to the performance of the Company's PEZA-registered activity, *i.e.,* manufacturing of elastic bondage, garters and other garment products.

The Court will now determine whether the disallowed expenses are direct cost or cost of sales which can be considered as valid deductions from petitioner's gross income.

a) Forex Loss - ₱1,745,974.25

Petitioner's Schedule of Realized Foreign Exchange Loss[45] in the amount of ₱1,745,974.25 shows that forex loss arose from foreign currency payments, trade receipts, and restatement of foreign currency bank accounts. Petitioner also presented Journal Vouchers on the subject forex losses from January 2006 to December 2006.[46] However, a scrutiny of said Journal Vouchers reveals that they only refer to the restatement of foreign currency bank accounts.

Aside from the schedule and the Journal Vouchers, which are self-serving, petitioner did not present supporting documents to prove that its forex loss is directly connected with the conduct of its registered activity, *i.e.*, the manufacture of elastic bondage, garters, and other garment products.[47] Without supporting documents, the determination whether such forex loss is connected with the conduct of petitioner's registered business would be impossible. Hence, the disallowance should be sustained.

b) Other Dues to Authorities - ₱21,250.00

Petitioner failed to offer any documentary evidence to substantiate such expense other than the breakdown of this account.[48] Without the supporting documents to corroborate the schedule of payments, the Court cannot ascertain that indeed the amount can be attributed to petitioner's registered activity. Hence, the disallowance should be sustained.

c) Insurance - ₱121,319.22

[45] Exhibit "O", docket, pp. 1781-1782.
[46] Exhibits "P" to "P-9", docket, pp. 1783-1792.
[47] Petitioner's Memorandum, docket, pp. 2107-2108.
[48] Exhibit "Q", docket, p. 1793.

Petitioner's schedule of insurance[49] shows that the total amount of ₱121,319.22 represents the recordings of amortization of insurance and supported by various Journal Vouchers, Accounts Payable Vouchers and Invoices issued by insurance companies.[50] Upon examination of the supporting documents, the Court found that the said expense should be included in the deductions for the computation of its gross income.

d) Documents and Handling - ₱42,240.00

Petitioner's Schedule of Documents and Handling Expense[51] shows that the amount of ₱42,240.00 represents petty cash liquidation of import/export processing fees, payments of salaries of the contractual workers and hauling services and other petty expenses.

As verified by this Court, the amount of ₱27,285.00 is unsupported by documents; hence, the said amount should be disallowed outright.

Meanwhile, the remaining amount of ₱14,955.00 represents payment for the following:

PARTICULARS		PCV / APV	Amount
Import Processing Fees			
IEIRD No. 26788715	- Nylon Yarn, Poly Yarn	1355	₱ 250.00
IEIRD No. 26788925	- Velcro, Hook, Spandex Yarn	1357	250.00
IEIRD No. 26788681	- Velcro, Hook	1363	250.00
IEIRD No. 26788532	- Metal Strap	1358	250.00
IEIRD No. 26803584	- Spandex Yarn, Rubber Threads	1367	250.00
IEIRD No. 26803225	- Polybag	1369	250.00
IEIRD No. 26831497	- Machine spare parts	1373	250.00
IEIRD No. 26831472	- Rubber Thread	1373	250.00
IEIRD No. 26831551	- Velcro, Hook	1375	250.00
IEIRD No. 26831576	- Inner Box	1376	250.00
IEIRD No. 26831734	- Yarn	1379	250.00
IEIRD No. 26831743	- Machine spare parts	1380	250.00
IEIRD No. 26831874	- Velcro, Hook	1381	250.00
IEIRD No. 26851235	- Polyester Yarn	1384	250.00
IEIRD No. 26851287	- Liner Box, PVC Polybag	1388	250.00
IEIRD No. 26851366	- Polyurethane Spandex Yarn	1393	250.00

[49] Exhibit "Q", docket, p. 1793.
[50] Exhibit "R", docket, pp. 1795-1812.
[51] Exhibit "S", docket, p. 1814.

IEIRD No. 26851095 - Machine Spare Parts	1396	250.00
IEIRD No. 26851296 - Rubber Thread	1398	250.00
sub-total		***4,500.00***
Salary of Contractual Workers and Hauling Service		
March 16-31, 2006 - OR No. 1163	11447	1,200.00
April 16-30, 2006 - OR No. 1165	11612	900.00
May 16-31, 2006 - OR No. 1168	11788	1,300.00
June 16-30, 2006 - OR No. 1171	11984	2,395.00
August 16-31, 2006 - OR No. 1175	12359	1,800.00
November 1-15, 2006 - OR No. 1180	12851	400.00
sub-total		***7,995.00***
Cannot be ascertained the nature of the payments		
PEZA OR No. 4665420	1361	180.00
PEZA OR No. 4665299	1358	180.00
PEZA OR No. 4667723	1367	180.00
PEZA OR No. 4668632	1369	180.00
PEZA OR No. 4669089	1373	360.00
PEZA OR No. 4669904	1375	300.00
PEZA OR No. 4670436	1376	360.00
PEZA OR No. 4671486	1379	180.00
PEZA OR No. 4671870	1381	240.00
PEZA OR No. 4672799	1388	180.00
PEZA OR No. 4674195	1396	120.00
sub-total		***2,460.00***
TOTAL		**₱ 14,955.00**

Upon examination of the supporting documents, the Court found that the amount of ₱4,500.00 representing petitioner's payment of processing fees with the Customs for the importation of various raw materials necessary for the production of its finished goods should be included in the deductions for the computation of its gross income.

Anent the payments of salary of contractual workers and hauling services amounting to ₱7,995.00, the Court noticed that the documents submitted by petitioner are Accounts Payable Vouchers (APVs) of Universal Weavers Corporation (UWC), and official receipts issued by Nard's Enterprises and General Services (NEGS) to UWC, for which a portion of the payments made by UWC to NEGS were to be claimed by the former from petitioner for its share in the said services. However, there is no proof that said share in expenses has been billed and paid by petitioner and can be attributed to petitioner's registered activity.

Likewise, as to the amount of ₱2,460.00, though actually paid by petitioner, it cannot be ascertained whether such payment is directly related or essential to the rendition of its registered activity.

Therefore, the disallowance of documents and handling in as much as the amount of ₱37,740.00 (₱42,240.00 less ₱4,500.00) should be sustained.

e) Miscellaneous - ₱1,419,972.79

Petitioner indicated in its Schedule of Miscellaneous Expense[52] that a total amount of ₱51,390.00 is not supported by documents, while the remaining ₱1,368,582.79 arose from the following transactions:

Particulars	Exhibit	Amount
Space Rental on MICL Building	"V"	₱ 1,238,700.00
Share on Leasehold Improvements - Fence, Gates and Driveways		25,760.04
Purchases of Medical Supplies	"V-1"	5,312.75
Purchases of Janitorial Supplies		4,085.00
Payment of Security Services	"V-2"	94,725.00
Total		**₱ 1,368,582.79**

Based on the table above, the total amount of ₱1,264,460.04 (₱1,238,700.00 plus ₱25,760.04) represents petitioner's share in the space rental and leasehold improvements charged to it by Medtecs International Corporation Limited (MICL) for the year 2006. However, other than the billing statements purportedly issued by MICL, no other supporting documents, such as sales invoice and/or official receipts, were presented by petitioner by which the Court can ascertain that such expenses were paid by petitioner and are directly related to petitioner's registered activity; hence, the disallowance is proper. /

[52] Exhibit "U", docket, p. 1862.

With regard to purchases of Medical and Janitorial supplies, petitioner was able to prove that said expenses should be included in the deductions for the computation of gross income for the year 2006. Petitioner presented Accounts Payable Vouchers, Material Receiving Reports and Sales Invoices/Official Receipts in support thereto; thus, Medical Supplies and Janitorial Supplies in the amount of ₱5,312.75 and ₱4,085.00, respectively, should be included in the Cost of Goods Manufactured and Sold.

Anent the Security Services, documents reveal that the amount of ₱94,725.00 is a series of claims of Universal Weavers Corporation against petitioner for the months of January to December 2006. Petitioner presented Accounts Payable Vouchers of UWC, summary of accounts made by UWC (including an entry "Due from Medtecs"), and Triple E Security Agency Corporation's Official Receipts evidencing UWC payments. Unfortunately, there is no proof that said share in the Security Service has been billed to petitioner by UWC and the same has been paid by petitioner.

In fine, petitioner's Miscellaneous account should be disallowed in a reduced amount of ₱1,410,575.04, computed as follows:

Miscellaneous Expense	₱1,419,972.79
Less: Medical Supplies	5,312.75
Janitorial Supplies	4,085.00
Total Disallowed Miscellaneous Expense	**₱1,410,575.04**

f) Office Supplies - ₱47,120.25

Petitioner pointed out in its Schedule of Office Supplies[53] that out of the total amount of ₱47,120.25, ₱44,612.75 is duly supported by Accounts Payable Vouchers, Purchase Acquisition Forms, Official Receipts and Material Receiving Reports[54], while the remaining ₱2,507.50 is not supported by documents. Examination of the documents shows that indeed the office supplies were purchased and consumed in the factory offices. *Ergo*, the amount of ₱44,612.75 should be charged to Cost of Goods Manufactured and Sold.

[53] Exhibit "W", docket, p. 1946.
[54] Exhibit "X", docket, pp. 1948-1997.

g) Tools and Spare Parts - ₱283,832.23

To substantiate its Schedule of Tools and Spare Parts[55], petitioner submitted Journal Vouchers, Material Receiving Reports, Spare Parts Inventory and Accounts Payable Vouchers.[56] Scrutiny of said documents indicates that petitioner sufficiently proved that these expenses are chargeable to its Cost of Goods Manufactured and Sold because these were used in the manufacturing activity of the company. Consequently, the amount of ₱283,832.23 should not be disallowed.

In sum, petitioner is liable for basic deficiency income tax in the amount of ₱160,917.34, computed as follows:

Net Income per return		₱32,081,141.00
Add: Deductions not allowed under RA No. 7916		
Forex Loss	₱1,745,974.25	
Other Dues to Authorities	21,550.00	
Documents and Handling	37,740.00	
Miscellaneous	1,410,575.04	
Office Supplies	2,507.50	3,218,346.79
Net Income per audit		₱35,299,487.79
Income tax due		₱ 1,764,974.39
Less: Tax paid		1,604,057.05
Deficiency Income Tax		**₱ 160,917.34**

B. Deficiency Expanded Withholding Tax - ₱405.00

Respondent assessed petitioner for deficiency expanded withholding tax in the amount of ₱830.25 based on the following computation:

Income Payments	Tax Base	Tax Due
Professional Fees (10%)	₱ 73,333.32	₱ 7,333.33
Rentals	16,500.00	825.00
Repairs	11,635.00	232.70
Freight/Handling	2,340,561.94	46,811.24

[55] Exhibit "W", docket, p. 1946.
[56] Exhibit "Y", docket, pp. 1998-2028.

Total	2,442,030.26	₱55,202.27
Less: Remittances		54,797.27
Total Deficiency Expanded Withholding Tax		₱ 405.00
Add: Interest (January 21, 2007 to April 20, 2012)		425.25
Total Deficiency Final Withholding Tax		**₱ 830.25**

A comparison of the EWT payments per petitioner's records and the BIR computation[57] reveals that respondent's computation of deficiency EWT amounting to ₱405.00 came from the investigation of Rental expense. Respondent claims that petitioner's rentals amount to ₱16,500.00, whilst petitioner contends that the amount for rentals is only ₱8,400.00, thus the difference of ₱405.00 EWT.

The Court finds for petitioner.

Petitioner's Trial Balance[58] shows that petitioner has no other rental account except for the account number "531000 FO – Rental", which formed part of petitioner's Cost of Goods Manufactured and Sold categorized under Factory Overhead[59] amounting to ₱8,400.00. There is no evidence or record whatsoever as to how respondent arrived at a conclusion that petitioner's rental expense amounts to ₱16,500.00. Since petitioner properly subjected the rentals to Kooler Industries amounting to ₱8,400.00 to EWT equivalent to ₱420.00, the Court finds respondent's assessment baseless, hence, should be cancelled.

C. Deficiency Final Withholding Tax – ₱27,680.50

Upon verification by respondent of the Minutes of the Board of Directors[60] and the Secretary's Certificate[61], it was found that not all dividends were paid to corporation but includes individual stockholders as of December 31, 2004. The ratio of ownership as found by respondent is shown below:

[57] Exhibit "Z", docket, p. 2030.
[58] BIR Records, pp. 1-4.
[59] BIR Records, p. 336.
[60] BIR Records, p. 537.
[61] BIR Records, pp. 535-536.

Stockholders	No. of Shares	Percentage
Medtecs International Corp., Ltd.	17,047,000.00	99.8091%
Individual	32,600.00	0.1909%
Total	17,079,600.00	100.0000%

Based on the above-stated shareholdings, respondent assessed petitioner for deficiency FWT on the dividends paid to individuals stockholders amounting to ₱27,680.50, computed as follows:

Total dividends paid	₱145,000,000.00
Individual ownership	0.1909%
Payment to individuals	276,805.00
x Final Tax rate	10%
Tax Due thereon	27,680.50
Less: Tax paid	-
Deficiency FWT	**₱ 27,680.50**

Petitioner maintains that the assessment has no basis since no dividends were paid to individual stockholder. Petitioner alleges that all dividend payments were made to Medtecs International Corporation Ltd – Philippine Branch, a resident foreign corporation, which under Section 28(A)(7) of the Tax Code are not subject to the FWT.

The Court finds for respondent.

The Minutes of the Board of Directors clearly confirms that petitioner's directors approved a resolution declaring cash dividends to its stockholders. The pertinent portion of which reads:

> "RESOLVED, that the Corporation declare the amount of One Hundred Forty Five Million Pesos (Php145,000,000.00) as cash dividends to the Corporation's stockholders of record as of December 31, 2004, out of its unrestricted retained earnings as of December 31, 2004, payable within such reasonable time from date hereof as the Chairman and Treasurer of the Corporation shall determine subject to applicable laws and rules of the Securities and Exchange Commission;"

The Secretary's Certificate, however, stated that all of the ₱145,000,000.00 shall be paid and/or issued to Medtecs International Corporation Limited only, to wit:

> "3. As of December 31, 2004, the following are the stockholders of the Corporation and their respective shareholdings:

Stockholder	Amount Subscribed	Amount Paid
Medtecs Int'l Corporation Ltd	17,047,000.00	₱17,047,000.00
Chu Wen-Fu	19,900.00	19,900.00
Marinette B. Avera	7,500.00	7,500.00
Wang Wan-Fa	3,000.00	3,000.00
Richard Fook Hing Sze	600.00	600.00
Wilfrido C. Rodriguez	1,000.00	1,000.00
Huang Hung	400.00	400.00
Clement Yang	100.00	100.00
Paul Winston Poe	100.00	100.00
Total	**17,079,600.00**	**₱17,079,600.00**

> 4. The above-named stockholders are all nominees of Medtecs International Corporation Limited, and therefore, all of the One Hundred Forty Five Million Pesos (₱145,000,000.00) cash dividends declared pursuant to the aforecited resolutions shall be paid and/or issued to Medtecs International Corporation Limited only."

Nonetheless, petitioner did not present evidence to prove that the whole amount of ₱145,000,000.00 cash dividends has been issued or paid only to Medtecs International Corporation Limited. Without such proof of release, respondent's assessment for deficiency FWT in the amount of ₱27,680.50 should be maintained.

D. Compromise Penalties – ₱33,000.00

The compromise penalties imposed by respondent against petitioner in the amount of ₱33,000.00 shall be cancelled there being no compromise agreement between the parties.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner for calendar year 2006 covering the alleged deficiency expanded withholding tax in the amount of ₱405.00 is **CANCELLED** and **WITHDRAWN**, while the assessment for deficiency income tax and final withholding tax is **UPHELD** with some modifications. Accordingly, petitioner is **ORDERED TO PAY** the amount of ₱201,146.68 and ₱34,600.63 representing deficiency income tax and FWT, respectively, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	BASIC DEFICIENCY TAX	**25% SURCHARGE**	**TOTAL**
Income Tax	₱160,917.34	₱40,229.34	₱201,146.68
Final Withholding Tax	27,680.50	6,920.13	34,600.63
Total	**₱188,597.84**	**₱47,149.47**	**₱235,747.31**

In addition, petitioner is **ORDERED TO PAY** the following:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of ₱160,917.34 and FWT of ₱27,680.50, computed from April 15, 2007 and January 2007, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

b) Delinquency interest at the rate of 20% per annum on the total deficiency taxes of ₱235,747.31, computed from April 30, 2012 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended; and

c) Delinquency interest at the rate of 20% per annum on the 20% deficiency interest which have accrued as afore-mentioned in (a), computed from April 30, 2012 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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

ROMAN G. DEL ROSARIO
Presiding Justice