REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

QUARTZ BUSINESS PRODUCTS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11096

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ*

Promulgated:

MAY 19 2025
4:30 p.m.

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition")[1] filed on March 10, 2023, under *Section 7 of Republic Act ("RA") No. 1125,[2] as amended in relation to Section 228 of RA No. 8424 as amended,*[3] requesting the Court to issue a judgment reversing the Decision of the respondent affirming the Final Decision on Disputed Assessment ("FDDA"), dated August 31, 2017, declaring petitioner liable for the alleged deficiency income tax and value-added tax;[4] and issue a judgment declaring the FDDA together with the Details of Discrepancies, and Amended Assessment Notices No. IT-ELA78608-11-1037 and VT-ELA78608, all dated August 31, 2017, as void *ab initio*.[5]

In the FDDA, petitioner was assessed for deficiency income tax and value-added tax ("VAT") for taxable year ("TY") 2011 in the aggregate amount of Php 7,860,810.23.

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1 See Petition for Review, Records, Docket Vol. I, pp. 7-404, with annexes.
2 An Act Creating the Court of Tax Appeals, 16 June 1954.
3 An Act Amending the National Internal Revenue Code, as amended, and for Other Purposes.
4 See Prayer, Petition for Review, Docket Vol. I, p. 30-31.
5 *Id.*

The Parties

Quartz Business Products Corporation ("QBPC" or "petitioner") is a domestic corporation duly organized and existing under Philippine laws, with principal office at 15th Floor Capital House 9th Ave. Cor. 34th St. Bonifacio Global City Fort Bonifacio Taguig City 1634.[6] It is engaged in service repair and maintenance of copier machines and printers and selling and rental of office equipment, mobile phones, wireless data equipment products and communication and distribution equipment.[7]

Respondent Commissioner of Internal Revenue ("CIR" or "respondent") is vested under the *1997 National Internal Revenue Code, as amended* ("*Tax Code*"), with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code, as amended or other laws or portions thereof. He may be served with summons and other court processes at the Bureau of Internal Revenue ("BIR"), National Office Building, Agham Road, Diliman, Quezon City.[8]

The Facts

On September 3, 2012, respondent issued a Letter of Authority (LOA) No. 050-2012-00000284 SN: eLA 201000078608[9] authorizing Revenue Officer Wilfredo Pongase and Group Supervisor Ma. Cristina Carsolin to conduct an examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes for TY 2011.

In relation to said LOA, petitioner received from the respondent, on December 23, 2014, a Preliminary Assessment Notice ("PAN"),[10] dated December 22, 2014, alleging petitioner's deficiency income tax, expanded withholding tax ("EWT"), withholding tax on compensation ("WTC"), final withholding tax ("FWT"), and documentary stamp tax ("DST") in the total amount of Php30,471,165.23, inclusive of basic taxes and interests.

Petitioner then filed its Reply to PAN[11] on January 7, 2015.[12]

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6 See Joint Stipulation of Facts and Issues, *id.*, p. 451.
7 *Id.*
8 *Id.*
9 Exhibit "P-3", Letter of Authority No. 050-2012-00000284, Docket Vol I, p. 60.
10 Exhibit "P-4", Preliminary Assessment Notice (PAN), *id.*, pp. 61-66.
11 Exhibit "P-5", Reply to PAN, *id.*, pp. 67-83.
12 See Joint Stipulation of Facts and Issues, *id.*, p. 452.

On January 20, 2015, petitioner received from respondent the Formal Assessment Notice ("FAN") together with the Details of Discrepancies,[13] and Assessment Notice Nos. IT-ELA78608-11-15-118,[14] VAT-ELA78608-11-15-118,[15] EWT-ELA78608-11-15-118,[16] WC-ELA78608-11-15-118,[17] WF-ELA78608-11-15-118,[18] and DS-ELA78608-11-15-118,[19] all dated January 14, 2015. Respondent alleged in the FAN that petitioner is liable for deficiency income tax, VAT, EWT, WTC, FWT and DST in the total amount of Php29,536,804.67, inclusive of penalties and interest.

In response to the foregoing assessments, petitioner filed its protest letter[20] to the FAN on February 18, 2015.[21]

On September 13, 2017,[22] petitioner received the FDDA with the Details of Discrepancies,[23] and Amended Assessment Notices Nos. IT-ELA78608-11-17-1037,[24] VAT-ELA78608-11-17-1037,[25] and WE-ELA78608-11-17-1037,[26] all dated 31 August 2017.

The FDDA, signed by Regional Director Glenn Geraldino, stated that petitioner is liable for deficiency IT, VAT, and EWT in the total amount of Php8,023,690.89, broken down as follows:

Tax Type	Basic Tax	Interest	Total
Income Tax	₱ 2,693,598.01	₱ 2,962,219.83	₱ 5,655,817.84
Value Added Tax	1,028,395.38	1,176,597.01	2,204,992.39
Expanded Withholding Tax	75,772.93	87,107.73	162,880.66
TOTAL	**₱ 3,797,766.32**	**₱4,225,924.57**	**₱8,023,690.89**

On October 12, 2017, petitioner filed a Motion for Reconsideration of FDDA with respondent.[27]

[13] Exhibit "P-6" Formal Assessment Notice (FAN), with the Details of Discrepancies, *id.*, pp. 84-89.
[14] Exhibit "P-6-1", Assessment Notice No. IT-ELA78608-11-15-118, *id.*, p. 90
[15] Exhibit "P-6-2", Assessment Notice No. VAT-ELA78608-11-15-118, *id.*, p. 91.
[16] Exhibit "P-6-3", Assessment Notice No. WE-ELA78608-11-15-118, *id.*, p. 92.
[17] Exhibit "P-6-4", Assessment Notice No. WC-ELA78608-11-15-118, *id.*, p. 93
[18] Exhibit "P-6-5", Assessment Notice No. WF-ELA78608011015 0118, *id.*, p. 94
[19] Exhibit "P-6-6", Assessment Notice No. DS-ELA786080110150118, *id.*, p. 95.
[20] Exhibit "P-7" Protest Letter to the FAN, *id.*, pp. 96-125.
[21] See Joint Stipulation of Facts and Issues, *id.*, p. 452.
[22] See Joint Stipulation of Facts and Issues, *id.*, p. 452.
[23] Exhibit "P-8" Final Decision on Disputed Assessment (FDDA) with the Details of Discrepancies, *id.*, pp. 126-131.
[24] Exhibit "P-8-1", Amended Assessment Notice No. IT-ELA78608-11-17-1037, *id.*, p. 132.
[25] Exhibit "P-8-2", Amended Assessment Notice No. VAT-ELA78608-11-17-1037, *id.*, p. 133.
[26] Exhibit "P-8-3", Amended Assessment Notice No. WE-ELA78608-11-17-1037, *id.*, p. 134.
[27] Exhibit "P-9", Motion for Reconsideration to FDDA, *id.*, pp. 135-200.

Respondent's Decision, partially denying the motion, was thereafter received by petitioner on February 9, 2023.[28] In the Decision, respondent partially affirmed the FDDA insofar as the assessments issued against petitioner for the alleged deficiency income tax and VAT amounting to Php5,655,817.84 and Php2,204,992.39, thus demanding the payment for the total amount of Php7,860,810.23. The assessed deficiency taxes were computed as follows:

I. INCOME TAX (Amounts in Php)			
Taxable Income (Loss)			14,540,296.00
Add:	**(A)** Disallowed Expenses due to non-withholding (Schedule 1)	7,561,659.33	
	(B) Unaccounted Income Payments (Schedule 2)	4,287,024.69	11,848,684.02
			26,388,980.02
Income Tax Due			7,916,694.01
Less:	Prior year excess credits	2,977,209.00	
	Creditable withholding tax	5,993,943.00	
	Subtotal	8,971,152.00	
	(C) Less: Excess credits carried forward to succeeding period	3,748,056.00	5,223,096.00
Basic Deficiency Income Tax			2,693,598.01
Add: Interest (04/16/12 – 10/13/17)			2,962,219.83
TOTAL AMOUNT DUE			**5,655,817.84**

II. VALUE ADDED TAX (Amounts in Php)			
Vatable Sales per Return			379,132,392.17
Add:	**(D)** Unaccounted Income Payments (Schedule 2)	4,287,024.69	
	(E) Unsupported Zero-Rated Sales (Schedule 3)	2,949,563.35	

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28 Exhibit "P-10", Decision, dated January 26, 2023, *id.*, pp. 201-215.

(F) Unsupported Exempt Sales (Schedule 4)			1,333,365.00	8,569,953.04
Adjusted Vatable Sales				387,702,345.21
Output Tax				46,524,281.43
Less: Excess input tax carried over from previous quarter			7,914,669.76	
Input tax deferred on capital goods >P1M from previous quarter			1,129,542.26	
Input tax on purchases			42,502,301.59	
Total			51,546,513.61	
Less: Input tax deferred from capital goods >P1M to succeeding period		977,041.09		
Input tax carried forward to succeeding period		3,520,256.84		
Input tax on sales to government closed to expenses		457,977.82		
Input tax allocable to exempt sales		1,807,476.43	6,762,752.18	44,783,761.43
VAT Due				1,740,520.00
Less: VAT Withheld to sales to government				712,124.62
Basic Deficiency VAT				1,028,395.38
Add: Interest (01/26/12 – 10/13/17)				1,176,597.01
TOTAL AMOUNT DUE				**2,204,992.39**

Undeterred, petitioner appealed the CIR's Decision through a Petition for Review filed before this Court on March 10, 2023.[29]

Respondent, on the other hand, filed his Answer[30] on June 15, 2023.

[29] *Supra* note 1.
[30] Answer, Docket, Vol. I, pp. 414-420.

After filing their respective pre-trial briefs,[31] the pre-trial conference was held on September 5, 2023.[32]

On October 5, 2023, the parties submitted their Joint Stipulation of Facts and Issues.[33]

Petitioner then moved for the commissioning of an independent Certified Public Accountant ("ICPA"), James A. Cafirma, on October 11, 2023.[34] The same was approved during the hearing on October 17, 2023.[35]

To support its case, petitioner submitted the judicial affidavits of Stella Ann D. Bonsol[36] and of ICPA Cafirma, with attached report.[37] Its evidence were formally offered to the Court on February 16, 2024.[38]

Meanwhile, respondent's counsel manifested, during the hearing held on April 4, 2024, that the CIR would no longer present any witness.[39]

Respondent[40] and petitioner[41] posted their memoranda on April 29, 2024 and May 6, 2024, respectively.

In a Resolution dated May 21, 2024, the case was submitted for decision.

The Issue

The lone issue submitted by the parties is:

> WHETHER THE SUBJECT ASSESSMENTS ISSUED BY RESPONDENT AGAINST PETITIONER COVERING DEFICIENCY INCOME TAX AND VAT IN THE AGGREGATE AMOUNT OF PHP7,860,810.62 FOR TAXABLE YEAR 2011, ARE VALID.[42]

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31 See Respondent's Pre-Trial Brief, filed on August 30, 2023, *id.*, pp. 426-431; see also Petitioner's Pre-Trial Brief, filed on August 31, 2023, *id.*, pp. 433-445.

32 Minutes of Hearing held on September 5, 2023, *id.*, p. 447

33 Joint Stipulation of Facts and Issues ("JSFI"), *id.*, pp. 450-458.

34 Motion for Commissioning of Independent Certified Public Accountant, *id.*, pp. 460-463.

35 Minutes of Hearing held on October 17, 2023, *id.*, p. 483.

36 Exhibit "254", Judicial Affidavit of Stella Ann. D. Bonsol,

37 See Judicial Affidavit of James A.Cafirma, dated December 15, 2023, Docket, Vol. II, pp. 498-503; see also Exhibit "P-12", Independent Certified Public Accountant Report (ICPA) Report, *id.*, pp. 507-546.

38 Formal offer of Evidence, *id.*, pp. 562-579.

39 Minutes of Hearing held on April 4, 2024, *id.*, p. 587.

40 Memorandum for Respondent, *id.*, pp. 589-596.

41 Memorandum for Petitioner, *id.*, pp. 599-626.

42 See Pre-Trial Order, dated January 17, 2024, Docket, Vol. II, p. 555; see also, JSFI, Docket, Vol. I, p. 453.

Arguments of the Parties

Petitioner's Arguments[43]

Petitioner argues that respondent failed to comply with the requirements of *Section 228 of the Tax Code* on the issuance of a formal letter of demand, thus violating its right to due process.

Petitioner also submits that the assessment for deficiency income tax due to the disallowance of expenses in the amount of Php7,561,659.33, as deductible expenses from petitioner's taxable income, has no actual and legal bases. Specifically, petitioner posits that the disallowance was based on a mere presumption and is, hence, invalid. Moreover, assuming that the same is valid, petitioner advances that it was able to account for the alleged difference in the amount of purchases per Summary List of Purchases ("SLP") and alphalist generated under the Regional Computer Assisted Audit Tools and Techniques ("RCAATT").

Petitioner also raises that the assessment for deficiency income tax due to the alleged unaccounted income payment amounting to Php4,267,024.69, is invalid due to failure of respondent to accord petitioner with due process in the issuance of the said assessment.

It likewise emphasizes that respondent exceeded his authority in the LOA by disallowing the carry-over of accumulated excess income tax credits for the taxable year 2011 amounting to Php3,748,056.00, to the succeeding taxable year.

Meanwhile, as regards the assessed VAT for the total amount of Php2,204,992.39, petitioner argues that respondent's right to issue an assessment for deficiency VAT for TY2011 has prescribed.

Respondents' Counter-Arguments[44]

On the other hand, respondent emphasizes that petitioner was not deprived of its right to due process.

Respondent likewise maintains that petitioner is liable for deficiency income tax and VAT in the total amount of Php7,860,810.23 for TY2011. Specifically, respondent argues that the EWT for the concerned income payments were not withheld; thus, the disallowance of the same as deductible expense was proper. Also, he raises that the alleged unaccounted income

43 See Memorandum for Petitioner, Arguments/Discussions, *id.*, pp. 605-626.
44 See Memorandum for Respondents, Discussion, *id.*, pp. 593-596.

payments were properly disallowed due to petitioner's failure to substantiate the same. Respondent further holds that the excess credits carried over by petitioner to the succeeding period were rightfully deducted from petitioner's tax credits.

Lastly, respondent advances that the right to issue assessment for deficiency VAT has not yet prescribed. He argues that the entire taxable year of TY2011 may still be assessed when the FAN was issued on January 14, 2015, due to petitioner's failure to show which purchases were made during the first three quarters of TY2011.

The Ruling of the Court

The FAN adequately demands for a definite amount of tax liability within a duly specified period.

According to petitioner, there was a violation of its right to due process due to respondent's failure to comply with the requirements of *Section 228 of the Tax Code* which prescribes that "taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

Specifically, petitioner raises that the assessments were invalid due to the following alleged defects:

1. The amount of tax indicated in the FAN is still subject to modification, depending on the date of payment; and
2. There was lack of exact due date for payment of the assessed deficiency taxes.

Citing the case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc. (Fitness by Design case)*,[45] petitioner highlighted the Supreme Court's ruling on the importance of demand to pay the taxes in order for an assessment to be considered final, to wit:

> A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and **must demand payment of the taxes described therein within a specific period.**"
>
> The disputed Final Assessment Notice is not a valid assessment.

[45] G.R. No. 215957, November 9, 2016.

> First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:
>
>> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that the interest and the total amount due will have to be adjusted if [paid] prior or beyond April 15, 2004.*
>
> Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
>> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished. (Italics in the original; emphasis supplied)

Upon review of the subject FAN, We find for petitioner's misapplication of the *Fitness by Design case.*

A comparison between the FAN in the instant case *vis-à-vis* in the *Fitness by Design case* shows the following differences:

	Fitness by Design (G.R. No. 215957)	**Quartz Business Products Corporation TY2011**
As to the adjustment of total amount due	"Please note, however, that the interest and the total amount due will have to be adjusted if paid **prior or beyond April 15, 2004.**"	"Please take note that the interest will have to be adjusted **if paid beyond the date specified therein.**"[46]

[46] See FAN, dated January 14, 2015, Docket, Vol. I, p. 272.

As to the indication of specific due date	"In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice." The Supreme Court found, however, that there are no due dates in the enclosed assessment notice, thus, negating respondent's demand for payment.	"In view thereof, you are requested to pay your aforementioned deficiency tax liabilities through the duly authorized agent bank in which you are enrolled using the Electronic BIR Payment Form (eBIR Form 0605) within the time as shown in the enclosed assessment notice."[47] A review of the enclosed Assessment Notices[48] shows the following: "Please pay the above amount on or before February 16, 2015."

First, in the *Fitness by Design case*, the Supreme Court found the FAN therein lacking a definite amount of tax liability because the same is subject to modification and is entirely dependent on the taxpayer's payment date.

In the instant case, however, the FAN clearly indicates that the interest, which forms part of the total amount due, will only be adjusted if paid beyond the deadline for payment, *i.e.,* February 16, 2015, as stated in the assessment notice. Thus, insofar as the total amount indicated in the FAN is concerned, it is undeniable that the amount of deficiency taxes plus interest are definite and certain on the due date provided therein. The statement merely reminded petitioner that interest would have to be adjusted if paid beyond the due date, pursuant to *Section 249 of the Tax Code* which states:

> SECTION 249. Interest. —
>
> (A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%)[49] per annum, or such higher rate as may be prescribed by rules and regulations, ***from the date prescribed for payment until the amount is fully paid***.
>
> (B) Deficiency Interest. —
>
> (C) Delinquency Interest. —
> (Emphasis and italics supplied)

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[47] *Id.*
[48] See Assessment Notices, all dated January 14, 2015, *id.,* pp. 277-282.
[49] The rate has been changed to "double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas" under Republic Act No. 10963, Tax Reform for Acceleration and Inclusion (TRAIN), effective January 1, 2018.

Second, the enclosed assessment notice in the *Fitness by Design case* remained unaccomplished and does not indicate the due date, while the subject assessment notices herein state that the payment should be made on or before February 16, 2015, thus clearly indicating the due date for payment.

Therefore, the subject FAN is valid because it contains ***definite tax liabilities*** and a ***definite due date***.

(A) Disallowed expenses due to non-withholding (Php7,561,659.33)

The expenses not subjected to withholding taxes in TY2011 were properly disallowed.

The Schedule 1 of the Details of Discrepancies attached to the FDDA shows that respondent disallowed deductible expenses pursuant to *Section 34(K) of the Tax Code*[50] due to petitioner's alleged failure to withhold the appropriate withholding tax on the relevant income payments.

The disallowed expenses amounting to Php7,561,659.33 pertains to the remaining difference between the amount of purchase from various suppliers listed in the SLP and alphalist generated under the RCAATT.

Petitioner argues, however, that the assessment is anchored on mere presumptions. It raises that respondent failed to provide opportunity to dispute the said differences by providing the written confirmations, tax returns or any other externally sourced data which the latter may use to verify the integrity and accuracy of the information generated from the RCAATT.

Petitioner further highlights that only respondent has access to the RCAAT, hence, petitioner must at least have been accorded the right to verify the validity of the information generated therefrom. Citing the case of *Commissioner of Internal Revenue vs. G& W Architects Engineers and Project Consultants, Co.*,[51] petitioner advances that the execution and presentation of sworn statements from third-party informants to attest to the veracity of the

[50] Section 34 - Deductions from Gross Income.

. . . .

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

. . . .

[51] CTA EB Case No. 1572 (CTA Case No. 8604), February 23, 2018.

schedules and data on which the assessment is based is required from respondent, absent which, the information becomes questionable.

The Court, however, finds that confirmations or verifications are not required to be complied with by respondent in this case.

To reiterate, the disallowed expenses were derived from the comparison of SLP and alphalist of payees - both of which were documents supposedly attached by petitioner to its tax returns (i.e., BIR Form 2550Q, 1601-E, 1604-E) upon submission to the BIR. While the lists were generated from the BIR's RCAATT, these are not third-party information but were supplied by petitioner itself. Petitioner could have conveniently checked its records for all the details indicated in the BIR's calculations.

Moreover, the Court notes that petitioner made no allegations that the entities listed by the BIR are actually not its suppliers or that the amounts listed in the schedule are incorrect. Instead, petitioner proceeded to present its reconciliation on the alleged discrepancies noted by the BIR.

Hence, We find petitioner's argument that the disallowed expenses are merely based on presumptions and are untenable.

Moving to the merits of petitioner's contentions, it raises that the difference between amounts per SLP versus per alphalist were duly reconciled as follows:

Disallowed expenses due to non-withholding		P 7,561,659.33
Accounted for as follows:		
1. Purchases made in 2011 but tax withheld in 2012		
a. Group 5 Audio Visual System	P 809,943.81	
b. GCOMM Business Supplies	6,104,226.84	
c. Bridge Distribution	378,016.11	
d. Integrated Computer System	45,026.80	P 7,337,213.56
2. Others		P 224,445.77
Unaccounted Difference		0

As shown above, petitioner alleges that discrepancies pertain to purchases made in 2011 but with corresponding taxes withheld in 2012.

To support its claim, petitioner provided ICPA Cafirma with check vouchers and invoices relating to its transactions with the above suppliers. In his report, ICPA Cafirma presented reconciliations[52] on the amounts noted by the BIR as difference between SLP and alphalist, per FDDA, versus total purchases per invoices submitted by petitioner.

	Difference between SLP and alphalist	**Total purchases per invoice**	**Difference**
Group 5 Audio Visual	809,943.81	816,367.84	(6,424.03)
GCOMM Business Supplies Corporation	6,104,226.84	6,436,401.80	(332,174.96)
Bridge Distribution	378,016.11	287,308.94	90,707.17
Integrated Computer Systems Inc.	45,026.80	45,026.77	0.03

As reported by ICPA Cafirma, and as further verified by the Court in the evidence submitted, the invoices, check vouchers and official receipts show that the expenses were paid in 2012, and the corresponding taxes were withheld during the same period.

Significant to the foregoing argument is *Section 2.57.4 of RR No. 12-01*,[53] and jurisprudence[54] which state that the income payor-withholding agent's duty to withhold accrues from the moment such income is paid or payable, accrued or recorded as an expense in the payor's/employer's books, whichever comes first. Thus, contrary to petitioner's contention, its legal obligation to withhold taxes on its supplier's income is not contingent on whether the same was paid or unpaid. Rather, its responsibility to deduct taxes on its supplier's income must be done when the same was paid; or became due, demandable or legally enforceable, or accrued or recorded as an expense in the payor's books, whichever is earlier. Simply put, even if income remains unpaid, as long as it is due, demandable, or legally enforceable, or accrued, withholding of taxes thereon must ensue.

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52 See ICPA Report, Tables 3-6, Docket, Vol. II, pp. 517-518.

53 SEC. 2.57.4. Time of Withholding. - The obligation of the payor to deduct and withhold the tax under Section 2.57 of these regulations arises at the time an income is paid or payable, or the income payment is accrued or recorded as expense or asset, whichever is applicable in the payor's books, whichever comes first. The term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable.

54 ING Bank N.V, engaged in baking operations in the Philippines as ING Bank N.V. Manila Branch vs. Commissioner of Internal Revenue, G.R. No. 167679, July 22, 2015.

Here, petitioner does not deny that no taxes were withheld and remitted to the BIR in 2011, in relation to the above expenses. Instead, withholding was belatedly done in 2012.

Moreover, *34 (K) of the Tax Code* provides:

> SEC. 34. Deductions from Gross Income. — . . . .
> (K) Additional Requirements for Deductibility of Certain Payments. — Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction ***only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue*** in accordance with this Section, Sections 58 and 81 of this Code.
> (Emphasis and italics supplied)

Thus, for purpose of deductibility of an expenses, it is imperative that the tax required to be withheld on the amount paid or payable is shown to have been remitted to the BIR by the taxpayer constituted as a withholding agent of the government.

Here, ICPA Cafirma reported that petitioner failed to prove actual remittance of the taxes withheld in 2012, pertaining to the subject expenses reported in 2011. The ICPA report states:

> (B)ased on the Official Receipt or Provisional Receipt attached per check voucher, there were taxes withheld on the said income payments in 2012. However, I'm not able to ascertain if the taxes withheld were remitted in 2012 since the amount of income payments in the 2012 alphalist provided by the Petitioner were presented in bulk per supplier.[55]

Based on the foregoing, the Court hereby holds that petitioner failed to prove that the disallowance of the expenses due to non-withholding lacks factual and legal bases.

(B) & (D) Unaccounted income payments (Php4,287,024.69)

The income tax and VAT assessments based on alleged unaccounted sources of income are not valid.

As stated in the Details of Discrepancies attached to the FDDA, respondents' comparison of SLP versus alphalist of payees resulted to discrepancy in the total amount of Php4,287,024.69. The same was treated by

[55] ICPA Report, Docket, Vol. II, p. 518.

the BIR as unaccounted source of cash which was considered as undeclared income pursuant to *Section 32 of the Tax Code.*

Citing *Perez vs. Court of Tax Appeals and Commissioner of Internal Revenue,*[56] the BIR argues that the unreflected sources of funds not accounted for in the taxpayer's tax return can validly lead to the inference that part of his income had not been reported.

The Court finds the assessment bereft of merit.

Respondent's imputation of alleged undeclared income is based on a mere presumption that since there were alleged unaccounted expenses in the petitioner's alphalist of payees, there was likewise undeclared income which corresponds to it.

At this juncture, We emphasize that there are three elements for the imposition of income tax: (1) there must be gain or profit; (2) that the gain or profit is realized or received, actually or constructively; and (3) it is not exempted by law or treaty from income tax.[57] Income tax is assessed on income received from any property, activity or service.

Stated differently, the imposition of income tax should be triggered only when there is income received or realized by the taxpayer.

The elements are not present in this case. The BIR assessed income tax simply on the basis that there were unaccounted payments to petitioner's suppliers, nothing more.

Moreover, for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[58]

Clearly, even granting that there is an undeclared purchase, the same is not prohibited by law. Thus, in simply relying on the fact that there is an under-declaration of purchase, respondent's imposition or assessment of the subject income tax does not hold water, and the subject deficiency income tax assessment must perforce be cancelled.

In the same vein, no deficiency VAT assessment should arise from the alleged unaccounted income payments.

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[56] G.R. No. L-9193, May 29, 1957.
[57] Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and A. Soriano Corp., G.R. No. 108576, January 20, 1999.
[58] Commissioner of Internal Revenue vs. Phoenix Assurance, G.R. No. L-19727, May 20, 1965.

Under *Section 105 and 106 of the Tax Code*, VAT is imposed on seller of goods based on the gross selling price or gross value in money of the goods or properties sold, to wit:

> SECTION 105. Persons Liable. — ***Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties,*** **renders services,** and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> . . . .
>
> SECTION 106. Value-added Tax on Sale of Goods or Properties. —
>
> . . . .
>
> The term 'gross selling price' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price. (Emphasis and italics supplied)

Accordingly, in VAT assessments, it is imperative to show that there is a sale of goods or properties or rendering of services, and that the taxpayer is paid or ought to be paid in an amount of money or its equivalent, in consideration thereof. As VAT is imposed on the seller or transferor, VAT is imposed not when a taxpayer purchases or disburses an amount of money to purchase. Simply put, a VAT assessment is proper when one sells, not when one purchases.

Correspondingly, the VAT assessment arising from the alleged unaccounted source of income must likewise be cancelled.

(C) Excess credits carried forwards to succeeding period (Php3,748,056.00)

Excess tax credits carried over to succeeding period were properly recaptured but for an incorrect amount.

In the BIR's calculation of income tax deficiency, the amount of Php3,748,056, allegedly pertaining to petitioner's excess credits carried forward to succeeding period, was deducted from petitioner's income tax credits for TY2011. Such reduction on the allowable credits is based on the premise that the said amount has been credited against the income tax liabilities for the taxable quarter of the succeeding taxable years.

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The Court finds this in order, but the assessment should be in the correct amount reflected in petitioner's ITR, which is Php4,609,062.20.[59]

As shown in petitioner's ITR, it opted to carry the excess tax credits to the succeeding taxable year. *Section 76 of the Tax Code* states the non-revocability of the choice to carry-over the excess tax credits to the succeeding period, to wit:

> SEC. 76. Final Adjustment Return. — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of the tax still due; or
>
> ***(B) Carry-over the excess credit;*** or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. ***Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period*** and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.
> (Emphasis and italics supplied)

Based on the above rule on irrevocability, the said credits shall continue to be reflected as such in petitioner's ITR until fully utilized and duly offset against income tax due in the succeeding periods. It thus appears that the BIR's recapturing of the excess tax credits carried forward to succeeding period is not tantamount to invalidating the said credit. Instead, it supports the validity and irrevocability of the carry-over, and recognizes its proper application against income tax due in the following taxable year.

Besides, petitioner failed to proffer any evidence to establish that it did not utilize the excess credits of Php4,609,062.20 carried over to succeeding period. Thus, if the Court were to allow the application of said credits without ascertaining that such excess income tax carried over is still available, petitioner may end up benefiting twice from it, i.e., (1) as tax credit against income tax due in the subsequent periods; and (2) as payment for deficiency income tax, at the expense of the government. ↑

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[59] See ITR for TY2011, field number 37, Docket, Vol. I, p. 81.

In addition, if the Court should decide to allow petitioner to utilize the subject credits for the current audit year, this would put an additional burden on the taxpayer to amend subsequent returns to remove the excess tax credits already utilized. It would likewise burden the BIR to monitor the decisions of this Court to make sure that utilized excess tax credits are not being utilized again in the subsequent periods. This is an outright disregard of the basic principle in tax law that taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.[60]

Petitioner failed to prove that the assessed deficiency VAT pertain to the prescribed months.

In the Decision, dated January 26, 2023, respondent found partial merit in petitioner's position that the BIR's right to assess deficiency VAT has already prescribed.

Under *Section 114 of the Tax Code*, VAT returns are required to be filed quarterly, within 25 days following the close of each taxable quarter. Meanwhile, *Section 203 of the Tax Code* provides that:

> SECTION 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.
> (Emphasis and italics supplied)

Applying the foregoing to the case at hand, respondent summarized the filing dates and prescription of assessment in the table below.[61] The Court highlights that We are unable to verify the dates stated below due to petitioner's failure to submit copies of the VAT returns. While petitioner's Formal Offer of Evidence dated February 15, 2024, states that the VAT returns were marked as Exhibits "P-26" to "P-29", a review of the records show that the documents refer to check voucher, official receipt, and invoices.

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[60] Commissioner of Internal Revenue vs. Maxicare Healthcare Corporation, G.R. NO. 260105, July 10, 2023, citing Commissioner of Internal Revenue vs. Algue, Inc., et al., G.R. No. L-28896, February 17, 1988.

[61] See Decision, dated January 26, 2023, *id.*, p. 392.

Quarter	Deadline of Filing	Actual Date of Filing	Prescription of Assessment
1st Qtr. 2011	April 25, 2011	May 5, 2011	May 5, 2014
2nd Qtr. 2011	July 25, 2011	July 27, 2011	July 27, 2014
3rd Qtr. 2011	October 25, 2011	October 22, 2011	October 25, 2014
4th Qtr. 2011	January 25, 2012	February 25, 2012	February 25, 2015

Based on the foregoing, the BIR's right to assess petitioner deficiency VAT for the first three quarters of TY2011 has already prescribed. However, deficiency VAT assessment for the last quarter thereof may still be validly issued at the time of the petitioner's receipt of the FAN on January 20, 2015.[62]

It must be emphasized, however, that petitioner failed to specify which portion of said deficiency VAT pertain to the prescribed months. Consequently, the Court is constrained to impute the entire deficiency tax assessments to the unprescribed portion of TY2011. This is the ruling of this Court in the case of *Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue*[63] ("*Liquigaz case*") as follows:

> 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. 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.

For its part, petitioner shifts the burden to respondent by arguing that the latter has to issue another assessment for deficiency VAT solely pertaining to the 4th quarter of TY2011, and that for such purpose, petitioner cannot be required by respondent to show proofs of transaction on a quarterly basis.

The Court disagrees. Applying the above-cited *Liquigaz case* on the presumption of regularity and correctness of assessments by tax examiners, while it was found that respondent's right to assess has prescribed for the first three quarters of TY2011, the burden is still upon petitioner, as the taxpayer contesting the validity of the assessments, to show which portion of said deficiency taxes pertain to the prescribed months.

Thus, in the absence of proof as to when the VATable transactions occurred, the Court has no alternative but to uphold the validity of the assessment and consider its entirety as pertaining to the unprescribed portion of TY2011.

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62 *Supra* note 13.
63 CTA EB No. 1117 (CTA Case No. 8149), September 21, 2015.

(E) & (F) Unsupported VAT zero-rated (Php2,949,563.35) and exempt sales (Php1,333,365.00)

Petitioner failed to provide evidence to support its zero-rated and exempt sales.

Respondent assessed petitioner for deficiency VAT pertaining to alleged unsupported zero-rated sales amounting to Php2,949,563.35, pursuant to *Section 108 (B) of the Tax Code,* as implemented by *Section 4.108-5 of RR No. 16-2005*; and to alleged unsupported exempt sales amounting to Php1,333,365.00, pursuant to *Section 109 of the Tax Code,* as implemented by *Section 4.109-1 of RR No. 16-2005.*

At this juncture, We reiterate the hornbook doctrine that tax exemptions are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and he who claims an exemption from the burden of taxation must justify his claim.[64]

In addition, by applying the principle of regularity and correctness of assessment by a tax examiner, petitioner has the burden of proving the invalidity of the VAT assessments relating to the alleged unsupported zero-rated and exempt sales.

Here, petitioner raised no arguments, in its Petition for Review[65] or Memorandum,[66] regarding the propriety of its zero-rating and exempt treatments on the assessed transactions. Moreover, no evidence and other documents were submitted in relation thereto.

Thus, for failure of petitioner prove that the assessed transactions were properly subjected to VAT zero-rating and exemption, respondent's deficiency VAT assessments relative to these items must necessarily be retained.

Computation of deficiency tax liabilities

In fine, petitioner is liable for the following reduced basic deficiency taxes for TY2011.

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[64] Bases Conversion and Development Authority vs. City Government of Baguio City, G.R. No. 192694, February 22, 2023.
[65] *Supra* note 1.
[66] *Supra* note 41.

I. INCOME TAX (Amounts in Php)			
Taxable Income (Loss)			14,540,296.00
Add: Disallowed Expenses due to non-withholding			7,561,659.33
			22,101,955.33
Income Tax Due			6,630,586.60
Less: Prior year excess credits		2,977,209.00	
Creditable withholding tax		5,993,943.00	
Subtotal		8,971,152.00	
Less: Excess credits carried forward to succeeding period		4,609,062.20	4,362,089.80
Basic Deficiency Income Tax			**2,268,496.80**

II. VALUE ADDED TAX (Amounts in Php)			
Vatable Sales per Return			379,132,392.17
Add: Unsupported Zero-Rated Sales		2,949,563.35	
Unsupported Exempt Sales		1,333,365.00	4,282,928.35
Adjusted Vatable Sales			383,415,320.52
Output Tax			46,009,838.46
Less: Excess input tax carried over from previous quarter		7,914,669.76	
Input tax deferred on capital goods >P1M from previous quarter		1,129,542.26	
Input tax on purchases		42,502,301.59	
Total		51,546,513.61	
Less: Input tax deferred from capital goods >P1M to succeeding period	977,041.09		
Input tax carried forward to succeeding period	3,520,256.84		

	Input tax on sales to government closed to expenses	457,977.82		
	Input tax allocable to exempt sales	1,807,476.43	6,762,752.18	44,783,761.43
VAT Due				1,226,077.03
Less: VAT Withheld to sales to government				712,124.62
Basic Deficiency VAT				**513,952.41**

In addition, petitioner is liable to 25% surcharge imposed on the basic deficiency taxes pursuant to *Section 248 (A)(3) of the Tax Code*, as amended, which states:

> SECTION 248. Civil Penalties. —
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to ***twenty-five percent (25%)*** of the amount due, in the following cases:
>
> . . . .
>
> (3) ***Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment***; or
>
> . . . .
>
> (Emphasis and italics supplied)

Moreover, in accordance with *Section 249 (B) and (C) of the Tax Code*, petitioner is liable to pay deficiency and delinquency interests, at the rate of 20% per annum before the effectivity of *Republic Act No. 10963* ("TRAIN Law") on January 1, 2018, and at 12% thereafter. Note that under the TRAIN Law, deficiency and delinquency interests shall not be imposed simultaneously.

Thus, for TY2011, petitioner is liable to pay the aggregate amount of Php9,602,306.18, consisting of basic deficiency taxes, surcharges and interests computed until December 31, 2017, as follows:

	Income Tax	VAT
Basic Deficiency Taxes	2,268,496.80	513,952.41
25% Surcharge	567,124.20	128,488.10
20% Deficiency Interest		

Income Tax - April 16, 2012 to February 16, 2015 [P2,268,496.80 x 20% x (1037/365 days)]	1,289,003.39	
VAT - January 26, 2012 to February 16, 2015 [P513,952.41 x 20% x (1118/365 days)]		314,848.66
Total Amount Due as of February 16, 2015	**4,124,624.39**	**957,289.17**
Add: 20% Deficiency Interest		
Income tax - February 17, 2015 to December 31, 2017 [P2,268,496.80 x 20% x (1049/365 days)]	1,303,919.53	
VAT - February 17, 2015 to December 31, 2017 [P513,952.41 x 20% x (1049/365 days)]		295,417.03
Add: 20% Delinquency Interest		
Income tax - February 17, 2015 to December 31, 2017 [P4,124,624.39 x 20% x (1049/365 days)]	2,370,811.50	
VAT - February 17, 2015 to December 31, 2017 [P957,289.17 x 20% x (1049/365 days)]		550,244.57
Total Amount Due as of December 31, 2017	**7,799,355.41**	**1,802,950.77**

ACCORDINGLY, the foregoing premises considered, the instant Petition for Review, filed on March 10, 2023, by petitioner Quartz Business Products Corporation is hereby **PARTIALLY GRANTED**. The deficiency income tax and value-added tax assessments is adjusted as a result. Consequently, petitioner is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of Php Php9,602,306.18 representing basic deficiency income, inclusive of surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under *Sections 248 (A)(3), 249 (B) and (C) of the Tax Code*, respectively, computed until December 31, 2017, as summarized below:

	Basic Deficiency Tax	**Surcharge**	**Deficiency Interest**	**Delinquency interest**	**TOTAL**
Income Tax	2,268,496.80	567,124.20	2,592,922.92	2,370,811.50	7,799,355.41
VAT	513,952.41	128,488.10	610,265.69	550,244.57	1,802,950.77
TOTAL					**9,602,306.18**

In addition, petitioner **is ORDERED TO PAY** respondent delinquency interest at the rate of 12% per annum on the total amount due of Php5,081,913.56 (Php4,124,624.39 for income tax and Php957,289.17 for VAT) as of February 16, 2015, as determined above, or equivalent to Php1,670.77 per day, from January 1, 2018 until full payment thereof pursuant to *Section 249 (C) of the Tax Code*, as amended by the TRAIN Law and as implemented by *Revenue Regulations No. 21-2018.*

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice