REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

APEX CHEMICAL CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8698

Members:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

Promulgated:

AUG 2 6 2015
9:24 a.m.

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DECISION

BAUTISTA, J:

THE CASE[1]

This is a Petition for Review filed in accordance with *Rule 4, Section 3(a)(1) of the Revised Rules of the Court of Tax Appeals*[2] seeking for the review and setting aside of the Final Decision ("FD") of respondent dated July 11, 2013 against petitioner for alleged tax deficiency assessment in the total amount of Php725,261.83 for taxable year 2007, due to alleged failure of petitioner to submit supporting documents to substantiate its protest; and to uphold petitioner's protest by setting aside and cancelling the disputed assessment.

THE PARTIES[3]

[1] *Records,* CTA Case No. 8698, pp. 15, 338.
[2] *A.M. No. 05-11-07-CTA,* November 22, 2005.
[3] *Records, Joint Submission (of the admitted/stipulated facts and issues to be resolved) ("JSFI"),* p. 312.

Petitioner Apex Chemical Corporation is a corporation duly organized and licensed to do business in the Republic of the Philippines.

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR") in the Republic of the Philippines with authority to perform the duties of the said office in accordance with law, including the power to decide tax cases and disputed assessments pursuant to *Section 4 of the 1997 National Internal Revenue Code ("NIRC").*

THE FACTS

Revenue District Office 043B West, Pasig City ("RDO 43B") issued Tax Verification Notice ("TVN") 2003-00121406 dated October 22, 2008, with the attached "First Notice or Request for Presentation of Records" ("1st RPR"), authorizing Revenue Officer Divina Gracia Ramirez and Group Supervisor Melvin Bedania to verify the supporting documents and/or pertinent records covering all internal revenue taxes of petitioner for taxable year 2007.[4]

On November 5, 2008 and December 15, 2008, petitioner was served the undated 2nd RPR and 3rd RPR, respectively.[5]

On December 29, 2009, RDO 43B issued a letter to petitioner informing the latter that Revenue Officer Daniel Barrairo and Group Supervisor Melvin Bedania were authorized to continue with the verification of the books of accounts and other related records of petitioner, pursuant to the TVN.[6]

On January 18, 2010, petitioner sent a letter to RDO 43B, explaining that its records, documents, inventories and equipment were destroyed by Typhoons Ondoy and Pepeng,[7] enclosed therewith are the Affidavit of Inventory Loss and Destruction of Records[8] executed on November 27, 2009 by one Augusto R. Cruz, Managing Director of petitioner; a Certification issued by Manggahan Barangay Council[9]; and a Certification issued on October 13, 2009 by one Atty.

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[4] *Id., JSFI*, p. 312.
[5] *Id.*, p. 313.
[6] *Records*, p. 383.
[7] *Id.*, pp. 384-385.
[8] *Id.*, pp. 386-387.
[9] *Id.*, p. 388.

Samson J. Juan, the General Manager of Manila Mahogany Marketing Corporation[10].

In a letter dated March 26, 2010, RDO 43B reassigned the case to Revenue Officer Genaro S. Guevara and Group Supervisor Onofre S. De Guzman.[11]

On May 14, 2010, petitioner received a "Five (5) Day Notice Before Sub-poena Duces Tecum" dated May 4, 2010,[12] to which it responded through a Reply-Letter on May 17, 2010.[13]

Respondent issued a Notice of Informal Conference ("NIC") dated September 3, 2010, with the following findings:[14]

TAX TYPE	BASIC TAX	INTEREST	COMPROMISE PENALTY	TOTALS
Income Tax	387,628.75	297,514.34	20,000.00	705,143.09
Value-added Tax	69,936.23	35,667.48	12,000.00	117,603.71
Expanded Withholding Tax	4,161.69	2,301.92	1,000.00	7,469.58
TOTAL DEFICIENCY TAXES				**830,216.38**

In response, petitioner sent a letter dated September 27, 2010 and received by the Revenue Officer on September 28, 2010, submitting its objections to the findings of respondent.[15]

On January 13, 2011, petitioner received a Preliminary Assessment Notice ("PAN"), which provided the following recomputed deficiency taxes:[16]

TAX TYPE	BASIC TAX	INTEREST	TOTALS
Income Tax	385,403.04	204,422.00	589,825.04
Value-added Tax	69,112.31	39,725.38	108,837.69
Expanded Withholding Tax	7,382.59	4,283.93	11,666.52
TOTAL DEFICIENCY TAXES			**710,329.25**

[10] *Id.*, p. 389.
[11] *Id.*, p. 390.
[12] *Id.*, p. 391.
[13] *Id.*, pp. 392-393.
[14] *Id.*, pp. 140-145.
[15] *Id.*, pp. 395-396.
[16] *Id.*, pp. 417-421.

On January 17, 2011, petitioner received a Final Assessment Notice ("FAN") and a Formal Letter of Demand ("FLD"), with the updated discrepancies summed up below:[17]

TAX TYPE	BASIC TAX	INTEREST	TOTALS
Income Tax	385,403.04	216,881.60	602,284.64
Value-added Tax	69,112.31	41,959.69	111,072.00
Expanded Withholding Tax	7,382.59	4,522.60	11,905.19
TOTAL DEFICIENCY TAXES			**725,261.83**

On January 26, 2011 and February 16, 2011, petitioner filed its "Protest to the 2007 PAN"[18] and letter protest "Re: Apex Chemical Corp. (ACC) 2007 FAN"[19], respectively.

On February 22, 2012, the Regional Director sent a letter to petitioner informing the latter that a FAN and a FLD have been issued.[20] On March 21, 2012, petitioner replied that it has already filed a protest letter to the FAN.[21]

On July 11, 2012, respondent sent petitioner a letter introducing a new set of Revenue Officers to conduct a reinvestigation of its books of accounts and other related records in relation to its tax liabilities for 2007.[22] However, in its letter reply filed on July 23, 2012, petitioner clarified that it did not request for a reinvestigation but questioned the legitimacy of the issuance of the said FAN.[23]

On July 19, 2013, petitioner received a letter from the Regional Director of Revenue Region 7 informing it that due to its failure to submit documents in support of its protest, the case was returned by the investigating officer of RDO 43B recommending the reiteration of the assessments, and stating that the same is their final decision.[24]

Thus, on August 16, 2013, petitioner filed a Petition for Review with the Court, docketed as CTA Case No. 8698.[25]

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[17] *Id.*, pp. 422-427.
[18] *Id.*, pp. 362-367.
[19] *Id.*, pp. 428-431.
[20] *Id.*, p. 432.
[21] *Id.*, p. 433.
[22] *Id.*, *JSFI*, p. 315; *Id.*, p. 435.
[23] *Records*, pp. 436-437.
[24] *Id.*, p. 361.
[25] *Id.*, pp. 14-112, with attachments.

On October 10, 2013, respondent filed her Answer[26] interposing the following Special and Affirmative Defenses:

7. The assessment for calendar year 2007 deficiency Income Tax, Value Added Tax and Expanded Withholding Tax in the amount of **PESOS: SEVEN HUNDRED [TWENTY FIVE THOUSAND] TWO HUNDRED SIXTY-ONE [] AND 83/100** (Php725,261.83) was issued in accordance with applicable laws and regulations. The factual and legal bases of the assessments are contained in the [FLD] and [FAN].

8. As alleged by Petitioner in its Petition, it received the Final Decision on July 19, 2013. However, Petitioner failed to submit the required documents in support of its protest within sixty (60) days from the date of filing of its letter of protest, hence, the assessment have already become final, executory and demandable. Consequently, this Honorable Court cannot anymore exercise jurisdiction over Petitioner's Petition for Review.

   Section 3.1.5 of Revenue Regulation No. 12-99 provides as follows:

   > ***3.1.5. <u>Disputed Assessment</u>. The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall he taken on the taxpayers disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed***

[26] *Id.*, pp. 122-128.

assessment. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended. The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto. <u>The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable.</u> The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation. If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable. In general, if the protest is denied, in whole or in part,

> *by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from the date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not he considered final, executory and demandable, in which case, the protest shall he decided by the Commissioner. If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, the assessment shall become final, executory and demandable.*

9. A perusal of the Protest Letter to the [PAN] and [FAN] of the Petitioner does not stand the test as required by the parameters provided under RR 12-99.

10. As to the issue of the validity of the [TVN], it must be noted that the same was duly revalidated on February 23, 2009. Hence, the TVN is still valid and can be used as an authority to make assessment.

11. Further, Sec. 203 of the [1997 NIRC] provides for the prescriptive period to make assessment, to wit:

> *"SEC 203. Period of Limitation Upon Assessment and Collection- Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law*

> ***for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3) year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be consistent as filed on such last day."***

12. The [PAN] with Details of Discrepancy was duly issued on December 17, 2010, hence, issued before the expiration of the three (3) year prescriptive period to make assessment counted from the date of filing of the return which in this case is on April 2008.

13. Therefore, Respondent has the right to make assessment on Petitioners Income tax in the amount of PhP602,284.64, Value Added Tax in the amount of PhP111,072.00 and Expanded Withholding Tax in the amount of PhP11,905.19 for taxable year 2007;

14. Assuming por arguendo that the instant Petition was filed within the period provided by law, the details of discrepancies disclosed the following:

    <u>Deficiency Income Tax</u>

    a. Verification disclosed that Petitioner failed to subject part of the income payments on salaries and related expenses to withholding tax on compensation, thus, disallowed as deductions from Petitioner's gross income pursuant to Section 34(K) of the [1997 NIRC], as amended.

    b. Verification disclosed that sales reported is understated by PhP31,260.20, hence, assessed pursuant to Section 31, in relation to Section 32 of the [1997 NIRC], as amended.

    c. Verification disclosed that certain expenses amounting to PhP582,801.92 were not supported with sufficient evidence/documents in violation of Section 34(A)(1)(b) of the [1997 NIRC], therefore, disallowed as deduction from your gross income pursuant to Section 34 of the [1997 NIRC], as amended.

d. Verification disclosed that you failed to subject below income payment to withholding tax as required under Revenue Regulations No. 2-98, as amended, thus, disallowed as deductions from Petitioner's gross income pursuant to Section 34(K) of the [1997 NIRC], as amended.

<u>**Deficiency Value-Added Tax**</u>

a. Verification disclosed that you claimed input tax from unsupported expenses, hence, disallowed pursuant to Section 110 of the [1997 NIRC], as amended.

<u>**Deficiency Expanded Withholding Tax**</u>

a. Verification disclosed that you failed to subject the following income payments to expanded withholding tax as required under Revenue Regulations No. 2-98, as amended.

15. It must be noted that the Petitioner was given an opportunity to dispute the Assessments issued to them when the Respondent granted their request for reinvestigation. However, the same was futile because it failed to submit the documents that would support its allegations and to refute the assessments issued against it.

16. Hence, the failure of the Petitioner to submit substantial documents during the period of reinvestigation to refute the assessments made results in the finality of the assessments made.

17. Finally, well settled [is] the rule that tax assessments by examiners are presumed correct and made in good faith. It is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. Equally settled is the rule that in the absence of proof of any irregularities in

the performance of official duties, the assessment will not be disturbed.

18. In ***COMMISSIONER OF INTERNAL REVENUE VS. BANK OF THE PHILIPPINE ISLANDS,* GR No. 134062** dated April 17, 2007, the Honorable Supreme Court said, to wit:

> ***"Tax assessment by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessment."***

On December 16, 2013, the parties filed their "Joint Submission (of the admitted/stipulated facts and issues to be resolved)"[27] ("JSFI"), and thus a "Pre-Trial Order"[28] was issued on February 4, 2014.

On March 19, 2014, petitioner filed its "Formal Offer of Exhibits of Petitioner,"[29] which was resolved by the Court on April 25, 2014.[30]

On the other hand, respondent filed her "Formal Offer of Evidence"[31] on June 25, 2014, to which petitioner responded with a "Comment on Respondent's Formal Offer of Evidence"[32] on July 9, 2014.

On July 15, 2014, the Court issued a Resolution admitting the exhibits offered in respondent's "Formal Offer of Evidence," as well as granting the parties thirty (30) days from notice, within which to file their respective memoranda.[33]

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[27] *Id.*, pp. 312-323.
[28] *Id.*, pp. 338-348.
[29] *Id.*, pp. 353-360.
[30] *Id.*, pp. 463-464.
[31] *Id.*, pp. 470-475.
[32] *Id.*, pp. 478-480.
[33] *Id.*, pp. 483-484.

On August 4, 2014, respondent filed its "Respondent's Memorandum,"[34] while petitioner filed its "Memorandum for the Petitioner" on August 27, 2014.[35]

Thus on September 1, 2014, the Court promulgated a Resolution[36] submitting the case for Decision.

Hence, this Decision.

THE ISSUES[37]

Based on the JSFI filed on December 16, 2013, the issues to be resolved are as follows:

1. WHETHER OR NOT PETITIONER WAS ACCORDED DUE PROCESS, AS REQUIRED BY LAW;

2. WHETHER OR NOT PETITIONER IS LIABLE TO PAY DEFICIENCY INCOME TAX IN THE AMOUNT OF PHP602,284.64, VALUE ADDED TAX IN THE AMOUNT OF PHP111,072.00, AND EXPANDED WITHHOLDING TAX IN THE AMOUNT OF P11,905.19 FOR TAXABLE YEAR 2007, INCLUSIVE OF INTEREST; AND

3. WHETHER OR NOT THE ASSESSMENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.

THE RULING OF THE COURT

The Petition for Review is partly meritorious.

Petitioner was accorded due process of law in the issuance of the assessment.

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[34] *Id.*, pp. 485-493.
[35] *Id.*, pp. 494-508.
[36] *Id.*, p. 512.
[37] *Id.*, *JSFI*, p. 317.

Petitioner claims that it was deprived of its right to due process since from the outset and as early as the informal conference, respondent never considered its explanations and documents; respondent subjected it to continuous and annoying rotation and reshuffling of revenue officers; and respondent already issued FANs on January 7, 2011 when it only served the PAN on January 13, 2011 and the fifteen (15)-day period to respond has not yet began. Hence, the FAN and the FLDs were issued way ahead of its receipt of the PAN and before it had the opportunity to file a protest to the latter, thus depriving it the right to protest the PAN within the fifteen (15)-day period.

The relevant provisions of law are *Section 228 of the 1997 NIRC* and *Section 3 of Revenue Regulations No. 12-99*[38], to wit:

> SECTION 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases: xxx [Emphasis ours]
>
> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*
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> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> 3.1.1 Notice for informal conference. - The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. xxx
>
> 3.1.2 Preliminary Assessment Notice (PAN). - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists

[38] *Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty,* September 6, 1999.

> sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). xxx [Emphases ours]

Pursuant to the above-stated provisions, the revenue officer in charge of audit of the taxpayer's books shall determine, based on their examinations, whether there is sufficient basis/bases to pursue the investigation and/or to issue an assessment against the taxpayer. Therefore, said officer has the authority to look into a taxpayer's books, documents and explanations; and based on his/her own findings, determine whether he/she will continue with the assessment. Hence, petitioner cannot claim deprivation of its right of due process based merely on the fact that the revenue officer assigned to handle the present assessment denied its protests. More importantly, there was no clear finding that the revenue officer involved abused his/her authority since the findings and the assessments were backed up by sufficient facts and law.

As to petitioner's claim of continuous and annoying rotation and reshuffling of revenue officers, *Section 17 of the 1997 NIRC* provides that respondent may assign or reassign revenue officers and employees. Moreover, those assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years, as follows:

> SECTION 17. *Assignment of Internal Revenue Officers and Other Employees to Other Duties.* — The Commissioner may, subject to the provisions of Section 16 and the laws on civil service, as well, as the rules and regulations to be prescribed by the Secretary of Finance, upon the recommendation of the Commissioner, assign or reassign internal revenue officers and employees of the Bureau of Internal Revenue, without change in their official rank and salary, to other or special duties connected with the enforcement or administration of the revenue laws as the exigencies of the service may require: Provided, That internal revenue officers assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years: Provided,

N/

further, That assignment of internal revenue officers and employees of the Bureau to special duties shall not exceed one (1) year. [Emphases ours]

Pursuant thereto, respondent issued *Revenue Administrative Order ("RAO") No. 001-09*[39], which prescribes the splitting of RDO No. 43-Pasig City, aiming to strengthen the decentralization of the BIR's set-up for the purpose of maximizing revenue collections and tax assessments, intensifying enforcement of revenue laws and regulations, and bringing the revenue service closer to the taxpaying public. As a result, the personnel of the RDO was reassigned in 2009, and petitioner's TVN was consequently transferred to another revenue officer. Moreover, the further reassignment of the TVN on March 26, 2010 was in compliance with a Revenue Travel Assignment Order ("RTAO").

Therefore, the reassignments of examiners were prescribed by law, were done in compliance the lawful orders of respondent, and were not meant to directly annoy or inconvenience petitioner.

On the matter of the FAN being issued ahead of the protest to the PAN, a perusal of the records reveal that the PAN was indeed issued by respondent on December 17, 2010[40] and received by petitioner on January 13, 2011[41], to which petitioner filed its protest on January 26, 2011[42]. While on January 7, 2011[43], respondent issued a FD and its FANs, which were received by petitioner on January 17, 2011[44] and protested to by the latter on February 16, 2011[45].

It must be emphasized 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 the former's deficiency taxes, and the opportunity to be heard through protest.[46] A PAN is preparatory to the issuance of a FAN, and is not, legally speaking, an assessment even if it contains a computation of the tax liabilities of a taxpayer and a

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[39] *Splitting of Revenue District Office (RDO) No. 43-Pasig City and Redefining Their Areas of Jurisdiction*, February 2, 2009.
[40] *Records*, p. 417; *BIR Records*, p. 286.
[41] *Records*, p. 420.
[42] *Id.*, pp. 362-367.
[43] *Id.*, pp. 422-424.
[44] *Id.*, p. 427.
[45] *Id.*, pp. 428-431.
[46] *Commissioner of Internal Revenue vs. Steelasia Manufacturing Corporation*, CTA *EB* Nos. 631 and 632, December 22, 2011.

demand for payment of the computed tax.[47] *Section 228 of the 1997 NIRC* clearly refers to the FAN, which should be formally protested to by the taxpayer before it becomes final and executory.[48]

Hence, the protest against the PAN, unlike the protest against the FAN, is not indispensable.[49] A PAN may or may not even be protested to by the taxpayer, and non-protest thereof shall not make it final and non-appealable.[50] 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 as the latter is properly served a FAN, which it was able to intelligently contest by filing a protest letter thereto within the period provided by law.[51]

A careful perusal of the records show that in this respect, the FAN issued by respondent on January 7, 2011 contained all the information needed: the facts, the law, and the rules and regulations, which formed the basis of the assessment, as required under *Section 228 of the 1997 NIRC.*

Therefore, petitioner was accorded due process.

The assessment has not yet become final, executory and demandable at the time the Petition for Review was filed.

Respondent avers that the protest letter filed by petitioner was insufficient, due to the latter's failure to submit any supporting document within sixty (60) days therefrom, making the assessments attain finality.[52]

The relevant provision of law is *Section 228 of the 1997 NIRC, viz.:*

> SECTION 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first

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[47] *Id.*
[48] *Id.*
[49] *Medtex Corporation v. Commissioner of Internal Revenue,* CTA Case No. 8508, September 1, 2014.
[50] *Id.*
[51] *Id.*
[52] *Records,* p. 490.

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. [Emphasis ours]

In the case of *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*[53], the Supreme Court explained that the term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment, as determined by the taxpayer, and the BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which

[53] G.R. Nos. 172045-46, June 16, 2009, 589 SCRA 253.

may require the production of documents that a taxpayer cannot submit.

Thus, the fact that petitioner chose to submit the protest without supporting documents does not invalidate the fact of filing a protest. The lack of documentation will only matter in the evaluation of the merits of the protest, but should not result in the finality of the deficiency assessment.

Thus, when respondent issued the FD on July 11, 2013, petitioner was correct in bringing up the disputed assessment to the Court.

The period to assess some of the taxes covered by the FAN have already prescribed.

Section 203 of the 1997 NIRC, as amended, mandates that respondent should issue an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond this three (3)-year prescriptive period shall not be valid, save in certain cases, to wit:

> 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. [Emphases ours]

Since the instant case involves deficiency Income Tax, VAT and EWT, the prescribed due dates for filing of the returns, to be used as bases for the three (3)-year prescriptive period, varies accordingly.

Income Tax

Section 77(B) of the 1997 NIRC, as amended, provides that the filing of the Income Tax Return shall be on or before the fifteenth (15th) day of April, or the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

> SEC. 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax. -
>
> xxx xxx xxx
>
> (B) Time of Filing the Income Tax Return. - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

Value-added Tax

The filing of the Quarterly VAT Returns must be made within twenty-five (25) days after the close of each taxable quarter. Section *114(A) of the 1997 NIRC* provides, as follows:

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

Expanded Withholding Tax

Creditable (and Expanded) Withholding Tax Returns must be filed within ten (10) days after the end of each month. However, for the month of December, it shall be filed on or before January 15 of the following year. *Section 58 of the 1997 NIRC,* as amended, provides that:

> SEC. 58. Returns and Payment of Taxes Withheld at Source. -
>
> (A) Quarterly Returns and Payments of Taxes Withheld. - xxx
>
> xxx xxx xxx
>
> The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: Provided, That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.

However, the above provision was amended by *Section 2.58(A)(2) of Revenue Regulations ("RR") No. 2-98*[54], as amended by *RR No. 17-03*[55], as follows:

> SECTION 2.58. *Returns and Payment of Taxes Withheld at Source.*
>
> (A) *Monthly return and payment of taxes withheld at source —*
>
> xxx xxx xxx
>
> (2) *WHEN TO FILE —*

[54] *Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended, "Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Tax,"* April 17, 1998.

[55] *"Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes,"* March 31, 2003.

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located.

xxx xxx xxx

(b) With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above, unless the EFPS regulations provide for different deadline dates and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof.

Based on the BIR records, petitioner's tax returns for taxable year 2007 were filed on the dates provided below:

TAX RETURNS	EXHIBIT	DATE OF FILING

Income Tax – Annual filing		
Annual Income Tax Return	"R-1"	April 15, 2008[56]
VAT – Quarterly filing		
1st Quarter VAT Return	"R-1"	April 25, 2007[57]
2nd Quarter VAT Return	"R-1"	July 25, 2007[58]
3rd Quarter VAT Return	"R-1"	October 24, 2007[59]
4th Quarter VAT Return	"R-1"	January 25, 2008[60]
EWT – Monthly filing		
January CWT Remittance Return	"R-1"	February 9, 2007[61]
February CWT Remittance Return	"R-1"	March 5, 2007[62]
March CWT Remittance Return	"R-1"	April 10, 2007[63]
April CWT Remittance Return	"R-1"	May 9, 2007[64]
May CWT Remittance Return	"R-1"	June 8, 2007[65]
June CWT Remittance Return	"R-1"	July 10, 2007[66]
July CWT Remittance Return	"R-1"	August 6, 2007[67]
August CWT Remittance Return	"R-1"	September 10, 2007[68]
September CWT Remittance Return	"R-1"	October 8, 2007[69]
October CWT Remittance Return	"R-1"	November 8, 2007[70]
November CWT Remittance Return	"R-1"	December 5, 2007[71]
December CWT Remittance Return	"R-1"	January 9, 2008[72]

The table below will help shed light into the reckoning date of the three (3)-year period to assess:

TAX RETURNS	ACTUAL DATE OF FILING	LAST DATE TO FILE RETURN	LAST DAY TO ASSESS
Income Tax – Annual filing			
Annual Income Tax Return	**April 15, 2008**	**April 15, 2008**	**April 15, 2011**
VAT – Quarterly filing			
1st Quarter VAT Return	**April 25, 2007**	April 25, 2007	April 25, 2010
2nd Quarter VAT Return	**July 25, 2007**	July 25, 2007	July 25, 2010
3rd Quarter VAT Return	**October 24, 2007**	October 25, 2007	October 24, 2010
4th Quarter VAT Return	**January 25, 2008**	**January 25, 2008**	**January 25, 2011**
EWT – Monthly filing			
January Remittance Return	**February 9, 2007**	February 10, 2007	February 9, 2010
February Remittance Return	**March 5, 2007**	March 10, 2007	March 5, 2010
March Remittance Return	**April 10, 2007**	April 10, 2007	April 10, 2010

56 *BIR Records*, p. 22.
57 *Id.*, p. 93.
58 *Id.*, p. 90.
59 *Id.*, p. 85.
60 *Id.*, p. 81.
61 *Id.*, p. 53.
62 *Id.*, p. 52.
63 *Id.*, p. 51.
64 *Id.*, p. 50.
65 *Id.*, p. 49.
66 *Id.*, p. 48.
67 *Id.*, p. 47.
68 *Id.*, p. 46.
69 *Id.*, p. 45.
70 *Id.*, p. 44.
71 *Id.*, p. 43.
72 *Id.*, p. 42.

April Remittance Return	**May 9, 2007**	May 10, 2007	May 9, 2010
May Remittance Return	**June 8, 2007**	June 10, 2007	June 8, 2010
June Remittance Return	**July 10, 2007**	July 10, 2007	July 10, 2010
July Remittance Return	**August 6, 2007**	August 10, 2007	August 6, 2010
August Remittance Return	**September 10, 2007**	September 10, 2007	September 10, 2010
September Remittance Return	**October 8, 2007**	October 10, 2007	October 8, 2010
October Remittance Return	**November 8, 2007**	November 10, 2007	November 8, 2010
November Remittance Return	**December 5, 2007**	December 10, 2007	December 5, 2010
December Remittance Return	**January 9, 2008**	**January 15, 2008**	**January 9, 2011**

Based on the records, the FANs[73] and the FLD[74] issued by respondent on January 7, 2011, were received by petitioner on **January 17, 2011.** Since assessment is deemed made when notice to this effect is released, mailed or sent to the taxpayer,[75] the three (3)-year period within which to assess petitioner shall be based on January 17, 2011. Looking into the last dates to assess on the table above, only the Income Tax, the VAT for the 4th quarter, and the EWT for the month of December can be the proper subjects of respondent's assessments, while respondent's right to assess all the others have already prescribed.

Petitioner is liable for deficiency Income Tax, VAT and EWT.

The Court shall now proceed with the determination of the amount of alleged deficiency taxes pertaining to the unprescribed 2007 Annual Income Tax Return, the 4th Quarter VAT Return and the December CWT/EWT Remittance Return.

On January 17, 2011, petitioner received the FANs and the FLD, all issued on January 7, 2011, imposing deficiency taxes, with the following summary of discrepancies:[76]

1. Income Tax arising from salaries and related expenses not subjected to withholding tax, undeclared sales, disallowed expenses and income payments not subjected to withholding tax;

2. VAT arising from disallowed input taxes; and

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[73] *Records*, pp. 422-424.
[74] *Id.*, pp. 425-427.
[75] *Basilan Estates, Inc. vs. Commissioner of Internal Revenue, et. al.*, G.R. No. L-22492, September 5, 1967, 21 SCRA 17.
[76] *Records*, pp. 422-427.

3. EWT arising from income payments on direct labor and manufacturing overhead not subjected to EWT.

The total amount of taxes assessed are as follows:

TAX TYPE	BASIC TAX	INTEREST	TOTALS
Income Tax	385,403.04	216,881.60	602,284.64
Value-added Tax	69,112.31	41,959.69	111,072.00
Expanded Withholding Tax	7,382.59	4,522.60	11,905.19
GRAND TOTAL			**725,261.83**

Deficiency Income Tax

Based on the FLD[77], the deficiency income tax of petitioner was computed as follows:

I. DEFICIENCY INCOME TAX		
Taxable Income per ITR		-
Add: Adjustments per investigation		
a) Salaries and related expenses not subjected to withholding tax		162,882.72
b) Undeclared sales		31,260.20
c) Disallowed expenses		582,801.92
d) Income payments not subjected to withholding tax		369,129.65
Taxable Income per Investigation		**1,146,074.49**
Income tax due thereon (35%)		401,126.07
Less: Tax credits/payments		
Payments	9,686.00	
Creditable Withholding Tax	12,828.28	
Total	22,514.28	
Less: Excess credit to be carried over next period	6,791.25	15,723.03
Deficiency Income Tax		385,403.04
Add: 20% Interest (April 16, 2008 to February 7, 2011)		216,881.60
TOTAL AMOUNT DUE		**602,284.64**

a) Salaries and related expenses not subjected to withholding tax

Based on the Details of Discrepancies[78], petitioner failed to subject part of the salaries and related expenses to withholding tax on

[77] *Id.*, pp. 422-424.
[78] *BIR Records*, Exhibit "R-15 b."

compensation, thus, should be disallowed as a deduction from gross income pursuant to *Section 34(K) of the 1997 NIRC*[79], as amended:

ITEMS	PER AFS	PER ALPHALIST/ RETURNS	DIFFERENCE
Salaries and Wages	285,671.52		
Fringe Benefits - Rank and file	79,135.68		
Rice Subsidy (Food Subsidy)	45,514.52		
SSS & Philhealth Contributions	33,790.00		
HDMF (Pagibig) Contributions	2,400.00		
TOTALS	**446,511.72**	**283,629.00**	**162,882.72**

On the outset, it must be noted that petitioner failed to disclose any material information in its Notes to the Audited Financial Statements ("AFS") to explain how the items were arrived at. Careful examination of the returns and documents, *per* BIR Forms 1601-C[80] and 1601-CF[81], revealed that Salaries and Wages is broken down, as follows:

13th Month Pay	19,113.00
SSS/HDMF PHC	35,160.00
Taxable Salaries	229,356.00
TOTAL (*per* Alphalist attached to 1604CF)	**283,629.00**

Comparing the two tables above, it is evident that the Salaries and Wages in the AFS [82] is overstated because it already includes SSS/HDMF PHC contributions, which were also treated as separate expense items in the same AFS, leading to double deductions from gross income. While SSS, Philhealth and HDMF (Pagibig) contributions should be excluded from gross income pursuant to

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[79] SECTION 34. *Deductions from Gross Income.* — Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
xxx
(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.
[80] *BIR Records,* pp. 69-80.
[81] *Id.,* pp. 81-82.
[82] *Id.,* pp. 31-47.

Section 32(B)(7)(f) of the 1997 NIRC[83], they should only be deducted once.

Fringe Benefits granted to rank-and-file employees are treated as part of their compensation income, subject to income tax and withholding tax on compensation income.[84] Also, it is necessary that the related tax be withheld pursuant to *Section 34(K) of the 1997 NIRC* before the same may be validly deducted from the gross income. However, petitioner failed to provide sufficient proof that the same is exempt from withholding tax. Thus, the disallowed deduction relating to Fringe Benefits for the rank and file employees of petitioner should be upheld.

With respect to the Rice Subsidy (or Food Subsidy), there was no additional information provided in the Notes to the AFS, which would explain the nature and computation thereof. No other documents or evidence were provided that may lead this Court to believe that it is a *de minimis* benefit under *RR No. 2-98, as amended by RR No. 5-2011*[85], which is not subject to withholding tax. Consequently, the Rice Subsidy expense item may be treated as an allowance to employees that should be subjected to withholding tax before it can be allowed as a deduction to the gross income for the period, pursuant to *Section 34(K) of the 1997 NIRC.*

Consequently, the disallowed deduction relating to Salaries and Related Expenses not subjected to withholding, in accordance with *Section 34(K) of the 1997 NIRC*, should be upheld but amended as to how the total amount was arrived at, *viz.*:

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[83] SECTION 32. *Gross Income.* —
xxx
(B) *Exclusions from Gross Income.* — The following items shall not be included in gross income and shall be exempt from taxation under this Title:
xxx
(7) *Miscellaneous Items.* —
xxx
(f) *GSIS, SSS, Medicare and Other Contributions.* — GSIS, SSS, Medicare and Pag-Ibig contributions, and union dues of individuals.

[84] *Mamalateo, V.C., (2010), Philippine Income Tax*, p. 442.

[85] The following shall be considered as "*de minimis*" benefits not subject to income tax as well as withholding tax on compensation income of both managerial and rank and file employees:
xxx
(d) Rice subsidy of P1,500 or one (1) sack of 50 kg. rice per month amounting to not more than P1,500;
xxx
(j) Daily meal allowance for overtime work and night/graveyard shift not exceeding twenty-five percent (25%) of the basic minimum wage on a per region basis; xxx

ITEMS	*PER* FS	*PER* ALPHALIST/ RETURNS	DIFFERENCE
Salaries and Wages	285,671.52	248,469.00	37,202.52
Fringe Benefits - Rank and file	79,135.68	-	79,135.68
Rice Subsidy (Food Subsidy)	45,514.52	-	45,514.52
SSS & Philhealth Contributions	33,790.00		
HDMF (Pagibig) Contributions	2,400.00	35,160.00	1,030.00
TOTAL SALARIES AND RELATED EXPENSES NOT SUBJECTED TO WITHHOLDING TAX	446,511.72	283,629.00	162,882.72

b) Undeclared sales

Based on the Details of Discrepancies,[86] undeclared sales should be assessed pursuant to *Section 31,* in relation to *Section 32, of the 1997 NIRC,* as amended, based on the finding that the sales reported in 2007 was understated by Php31,260.20, *viz.*:

Sales *per* ITR	1,929,159.02
Receipts *per* VAT Returns	1,960,419.22
UNDECLARED SALES	**31,260.20**

In its Protest Letter,[87] petitioner alleged that the above discrepancy represents sales discounts not considered in the VAT returns. However, upon review of the Annual Income Tax Return[88] ("ITR") for the year 2007, it appears that the Sales in the ITR *per* BIR Investigation amounting to Php1,929,159.02 was already net of the sales discount amounting to Php62,688.48[89], computed as follows:

Sale of Goods/Property	1,991,847.50
Less: Sales Returns/Discounts	62,688.48
Net Sales	**1,929,159.02**

On the other hand, receipts in the VAT Returns represent the sales receipts declared in the Third and Fourth Quarter VAT Returns net of sales discounts, broken down as follows:

[86] *BIR Records,* Exhibit "R-15 b."
[87] *Id.,* p. 139.
[88] *Id.,* pp. 27-30.
[89] *Id., Schedule 1 of BIR Form No. 1702,* p. 29.

Third Quarter *per* BIR Form 2550-Q	1,076,221.70[90]
Fourth Quarter *per* BIR Form 2550-Q	884,197.52[91]
Total Vatable Sales *per* VAT Returns	**1,960,419.22**

Accordingly, petitioner's explanation that the understatement of Php31,260.20 pertains to sales discounts is untenable because sales in the ITR was already presented net of sales discounts before it was compared to the receipts *per* VAT Returns to arrive at the said difference.

Thus, for petitioner's failure to support its allegation, the assessment for undeclared sales is upheld.

c) Disallowed Expenses

Based on the Details of Discrepancies,[92] certain expenses amounting to Php582,801.92 were not supported by sufficient evidence or documents, in violation of *Section 34(A)(1)(b) of the 1997 NIRC*[93]. Therefore, they were disallowed as a deduction from petitioner's gross income.

The said amount pertains to petitioner's purchases in the VAT Returns for the Third and Fourth Quarters of 2007, broken down as follows:

PERIOD	PURCHASES
Third Quarter	328,256.47
Fourth Quarter	254,545.48
TOTAL	**582,801.95**

[90] *Id.*, p. 87.
[91] *Id.*, p. 83.
[92] *Id.*, Exhibit "R-15 b."
[93] SECTION 34. *Deductions from Gross Income.* — Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
(A) *Expenses.* —
(1) *Ordinary and Necessary Trade, Business or Professional Expenses.* —
xxx
(b) *Substantiation Requirements.* — No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the, development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

While petitioner submitted a schedule of VAT Input (Annex B) for the year 2007, containing a breakdown of sales invoices and official receipts received for purchases and rent payments, it did not submit any copy of the alleged invoices and official receipts, which the Court may use as reference to determine whether the information provided in the schedule matches the actual invoices and receipts.

For petitioner's failure to support its allegation, the assessment on disallowed expenses is upheld.

d) Income Payments not subjected to withholding tax

According to the Details of Discrepancies,[94] petitioner failed to subject the following income payments to withholding tax, in accordance with *RR No. 2-98*[95], as amended, thus, should be disallowed as deductions from gross income pursuant to *Section 34(K) of the 1997 NIRC*, as amended, to wit:

ITEMS	*PER* AFS	*PER* ALPHALIST	DIFFERENCE
Direct Labor	208,383.00	-	208,383.00
Manufacturing Overhead	160,746.65	-	160,746.65
INCOME PAYMENTS NOT SUBJECT TO WITHHOLDING TAX			**369,129.65**

According to petitioner, both Direct Labor and Manufacturing Overhead are not subject to withholding tax since the former represents minimum wages paid to extras; and petitioner is not among the top 5,000 corporations under *RR No. 12-94*; or top 10,000 corporations under *RR No. 17-2003*; or top 20,000 corporations under *RR No. 14-2008* for it to be mandated to withhold 1% on local purchases of goods and 2% for local purchases of services on its manufacturing overhead.

Although petitioner's contention that minimum wage earners should not be subject to withholding tax under *RR No. 2-98, as amended by RR No. 01-06*[96] is correct, it failed to provide sufficient proof to

[94] *BIR Records*, Exhibit "R-15 b."
[95] SECTION 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines.
[96] SECTION 2.78.1. Withholding of Income Tax on Compensation Income. —

support its allegation that the Direct Labor relates to the income of its minimum wage earners. In fact, no payroll of minimum wage earners (as supported by check payments made to them) was provided. Neither did the Notes to the AFS shed any light on this matter.

As to the Manufacturing Overhead, the basis of the assessment is *Section 2.57.2 of RR No. 2-98, as amended by RR No. 06-01*[97], which requires petitioner to withhold 2% on income payments made to certain contractors. However, petitioner did not provide any reason or supporting document that would lead the Court to believe that the assessment is invalid.

Therefore, the assessment on the above income payments are upheld.

Based on the foregoing and taking into consideration the Taxable Income of petitioner in the amount of (Php210,705.92), the Court finds that the deficiency income tax should be computed as follows:

Taxable Income per ITR		**(Php210,705.92)**
Add: Adjustments per investigation		
Salaries and related expenses not subjected to withholding tax		162,882.72
Undeclared sales		31,260.20
Disallowed expenses		582,801.92
Income payments not subjected to withholding tax		369,129.65
Taxable Income per Investigation		**935,368.57**
Income tax due thereon (35%)		Php327,379.00
Less: Tax credits/payments		
Tax Payments for the First Three Quarters	Php9,686.00	
Creditable Withholding Tax for the First Three Quarters	9,621.21	
Creditable Withholding Tax for the Fourth Quarter	3,207.07	
Total		22,514.28
Deficiency Income Tax		304,864.72

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xxx xxx xxx
(B) Exemptions from withholding tax on compensation. — The following income payments are exempted from the requirement of withholding tax on compensation:
xxx xxx xxx
(13) COMPENSATION INCOME OF INDIVIDUALS THAT DO NOT EXCEED THE STATUTORY MINIMUM WAGE OR FIVE THOUSAND PESOS (PHP5,000.00) PER MONTH (SIXTY THOUSAND PESOS [PHP60,000.00] A YEAR), WHICHEVER IS HIGHER.

[97] Sec. 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. —
xxx
(E) Income payments to certain contractors — On gross payments to the following contractors, whether individual or corporate — Two percent (2%)

Add: 25% Surcharge		76,216.18
BASIC DEFICIENCY INCOME TAX INCLUSIVE OF SURCHARGE		**Php381,080.90**

Deficiency Value-Added Tax

Based on the FLD[98], the deficiency VAT of petitioner was arrived at in the following manner:

Taxable sales/receipts per returns		1,960,419.22
Add: Adjustments per investigation		-
Taxable sales/receipts per Investigation		1,960,419.22
Output tax due thereon (12%)		**235,250.31**
Less: Tax Credits/Payments		
Payments	111,843.35	
Input tax claimed for the year	69,936.23	
Creditable VAT	30,787.92	
Other Credits	23,506.73	
Total credits/payments	236,074.23	
Less: Disallowed input tax claimed	69,936.23	166,138.00
Deficiency Value Added Tax		69,112.31
Add: 20% Interest p.a (01.26.08 to 2.7.11)		41,959.69
TOTAL AMOUNT DUE		**111,072.00**

The information on Sales/Receipts, Output VAT and Input VAT were all based on the Third and Fourth Quarter VAT Returns, summarized as follows:

PERIOD	SALES/RECEIPTS	OUTPUT VAT	PURCHASES	INPUT VAT
Third Quarter	1,076,221.70	129,146.60	328,256.47	39,390.78
Fourth Quarter	884,197.52	106,103.71	254,545.48	30,545.45
TOTAL	**1,960,419.22**	**235,250.32**	**582,801.95**	**69,936.23**

It must be noted that respondent erroneously disallowed the full amount of Php69,936.23 input VAT pertaining to the third and fourth quarters.[99] As already discussed, respondent may only assess VAT for the fourth quarter and its right to assess the other quarters of the year, including the third quarter, have lapsed. Thus, she may only question the input VAT in the amount of Php30,545.45, relating to the fourth quarter.

[98] *BIR Records*, Exhibit "R-15."
[99] *Id.*, p. 159.

Based on the records, no supporting invoices and official receipts were submitted by petitioner to support its Input VAT claim, as required by *Section 4.110-1 of RR No. 16-05*[100]. Therefore, the input VAT of Php30,545.45 is disallowed, and the VAT deficiency for the fourth quarter is computed as follows:

Taxable Sales/Receipts per returns Add: Adjustments per investigation		Php884,197.52 -
Taxable Sales/Receipts per investigation		884,197.52
Output due thereon		**Php106,103.71**
Less: Tax Credits/Payments		
Payments (Php28,515.30+Php39,345.98)	Php67,861.28	
Input VAT	30,545.45	
Creditable VAT Withheld	7,696.98	
Total	106,103.71	
Less: Input VAT	30,545.45	75,558.26
VAT Still Payable		**Php30,545.45**
Add: 25% Surcharge		7,636.36
BASIC VAT DEFICIENCY INCLUSIVE OF SURCHARGE		**Php38,181.81**

Deficiency Expanded Withholding Tax

Based on the FLD[101], the deficiency EWT of petitioner was computed as follows:

ITEM	AMOUNT	TAX RATE	TAX DUE
Direct Labor	208,383.00	2%	4,167.66
Manufacturing Overhead	160,746.65	2%	3,214.93
Deficiency Expanded Withholding Tax			7,382.59

[100] SECTION 4.110-1. *Credits For Input Tax.* — "*Input tax*" means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax: xxx

[101] *BIR Records*, Exhibit "R-15."

Add: 20% Interest p.a. (01.16.08 to 2.7.11)			4,522.60
TOTAL AMOUNT DUE			**11,905.19**

The defense of petitioner is the same one used to invalidate the assessment of income payments not subject to withholding tax amounting to Php369,129.65 *[see discussion on Deficiency Income Tax (d)]*. Due to failure to provide sufficient proof that the assessment was improper and that the same should not be subject to EWT, the assessment is upheld and should be computed as follows:

ITEM	AMOUNT	TAX RATE	TAX DUE
Direct Labor	208,383.00	2%	4,167.66
Manufacturing Overhead	160,746.65	2%	3,214.93
Deficiency Expanded Withholding Tax			**Php7,382.59**
Add: 25% Surcharge			1,845.65
BASIC EWT DEFICIENCY INCLUSIVE OF SURCHARGE			**Php9,228.24**

It must be noted that tax assessments are presumed correct and prepared in good faith, and all presumptions are in favor of the correctness of a tax assessment.[102]

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.**

Petitioner is hereby **ORDERED TO PAY** deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax for the taxable year ended December 31, 2007, in the modified amount of **FOUR HUNDRED TWENTY EIGHT THOUSAND FOUR HUNDRED NINETY PESOS AND 95/100 (Php428,490.95)**, inclusive of the 25% surcharge imposed under *Section 248(A)(3) of the 1997 NIRC*[103], broken down as follows:

TYPE OF TAX	BASIC TAX	25% SURCHARGE	TOTAL
Income Tax	304,864.72	76,216.18	381,080.90
Value Added Tax	30,545.45	7,636.36	38,181.81

[102] *Commissioner of Internal Revenue v. Hon. Gonzales, et. al.*, G.R. No. 177279, October 13, 2010.
[103] 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:
xxx
(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; xxx

Expanded Withholding Tax	7,382.59	1,845.65	9,228.24
TOTAL	**342,792.76**	**85,698.19**	**428,490.95**

In addition, petitioner is liable to pay:

(a) Deficiency interest at the rate of twenty percent (20%) *per annum* pursuant to *Section 249(B) of the 1997 NIRC*[104], as amended, *viz.*:

TAX TYPE	BASIC TAX	DEFICIENCY INTEREST COMPUTED FROM
Income Tax	304,864.72	April 15, 2008
Value-Added Tax	30,545.45	January 25, 2008
Expanded Withholding Tax	7,382.59	January 15, 2008

(b) Delinquency interest at the rate of twenty percent (20%) *per annum* on the total amount due of Php428,490.95 representing deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax, and on the 20% deficiency interest, which have accrued as aforestated in (a), computed from February 11, 2011, until full payment thereof, pursuant to *Section 249(C) of the 1997 NIRC*[105], as amended.

SO ORDERED.

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[104] 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%) 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.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
[105] 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%) 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.
xxx
(C) *Delinquency Interest.* —In case of failure to pay:
(1) The amount of the tax due on any return required to be filed, or
(2) The amount of the tax due for which no return is required, or
(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

[ON OFFICIAL BUSINESS]
MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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PERIOD	TAXABLE COMPENSATION	WITHHOLDING TAX ON COMPENSATION (PER 1601-C)
January	19,113.00	1,858.74
February	19,113.00	1,858.74
March	19,113.00	1,858.74
April	19,113.00	1,858.74
May	19,113.00	1,858.74
June	19,113.00	1,858.74
July	19,113.00	1,858.74
August	19,113.00	1,858.74
September	19,113.00	1,858.74
October	19,113.00	1,858.74
November	19,113.00	1,858.74
December	19,113.00	1,857.26
TOTAL	**229,356.00**	**22,303.40**