REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

INFORMATICS COMPUTER INSTITUTE PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **7626**

For: Cancellation of Assessment for Deficiency Income Tax and Increments on Late Payment of Taxes

Members:

CASTAÑEDA,JR.*Chairperson*
CASANOVA, and
MINDARO-GRULLA, J.J.

Promulgated:

MAR 15 2011

11:00 a.m.

x - x

DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on April 23, 2007 by Informatics Computer Institute Philippines, Inc. as petitioner against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Rule 4, Section 3(a)(2) of the 2005 Revised Rules of the Court of Tax Appeals, as amended.

The said Petition is an appeal from respondent CIR's inaction on petitioner's letter of protest filed on July 28, 2006, against the Assessment Notices dated June 23, 2006, pertaining to alleged deficiency income tax of P1,739,440.91, and increments on late payment of taxes in the amount of P39,689.54, covering the fiscal year (FY) ending March 31, 2003.

The facts of the case, based on the Joint Stipulation of Facts and Issues plus the evidence on record, are stated hereunder.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 5th Floor, Building A-278B, SM Megamall, EDSA, Mandaluyong City.[1] It is also registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 41, bearing the Taxpayer Identification (TIN) No. 201-589-900-000.[2]

Its primary purpose is to establish and operate an educational institution offering degree courses in Information Technology (I.T.), and non-degree courses in Computer Technology along the fields of computer science, system operation, computer repair, trouble shooting, and computer maintenance; and to engage in such other computer-related business

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[1] Exhibit "A" , Docket, p. 253
[2] Exhibit "H", Docket, p. 279

activities as may be necessary to further the aims and purpose of the corporation.[3]

Respondent Commissioner of Internal Revenue is the government officer mandated by law to enforce and implement the provisions of the National Internal Revenue Code (NIRC), as well as related tax and internal revenue statutes and their implementing rules and regulations. She has the power, among others, to issue deficiency tax assessments and to decide on the merits of protests filed by taxpayers against such deficiency tax assessments. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 28, 2006, petitioner received the Formal Letter of Demand for the payment of its fiscal year ending March 2003 deficiency taxes, with attached Assessment Notices dated June 23, 2006, with the following significant details:[4]

Tax Type	**Amount (inclusive of interest and surcharge)**
Income Tax	P1,739,440.91
Increments on late payment of taxes	39,689.54
TOTAL	**P1,779,130.45**

[3] Exhibit "A-1", Docket, p. 254
[4] Exhibits "D" and "E"; Pars. 2.6 and 2.7, Admissions, JSFI, Docket, pp. 71-72; Annexes "A" to "C-1", Docket, pp. 10-13

On July 28, 2006, petitioner filed a letter-protest addressed to respondent,[5] on the foregoing assessments. Subsequently, on September 26, 2006, petitioner submitted relevant documents in support of the aforesaid letter-protest.[6]

However, due to the inaction of respondent on the said protest, petitioner filed the instant Petition for Review on April 23, 2007.

Respondent, in her Answer[7] filed on July 10, 2007, raised Special and Affirmative Defenses, as follows:

> "5. The assessments in question were made and issued in accordance with law, rules and regulations.
>
> 6. Verification disclosed that certain income payments were not subjected to expanded withholding tax by herein petitioner, hence, disallowed as deductions from petitioner's gross income for fiscal year ending March 31, 2003.
>
> 7. It was discovered that the total creditable withholding tax claimed per Income Tax Return amounting to P58,837.00 were not supported with BIR Form 2307, therefore, disallowed pursuant to Section 2.58.3 of Revenue Regulations (RR) No. 2-98, as amended.
>
> 8. Verification revealed petitioner failed to pay the full amount of penalties due on the payment made on the Amended Annual Income Tax Return, therefore, the imposition of increments pursuant to Section 248(A), 249 and 255 of the 1997 Tax Code, with reference to Revenue Memorandum Order (RMO) No. 1-90.

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[5] Exhibit "E", Docket, pp. 270-275
[6] Exhibit "F", Docket, pp. 276-277
[7] Docket, pp. 33-35

9. All presumptions are in favor of the correctness of the tax assessment **(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290).**"

During trial, petitioner presented as witnesses Ms. Aurey Bernadette Sebastian[8], Mr. Ronaldo Hangad[9], and Ms. Bernadette C. Urbiztondo[10]. Thereafter, petitioner filed its Formal Offer of Evidence[11] on July 13, 2009, submitting Exhibits "A" to "X", "AA", and "BB", inclusive of sub-markings. This Court admitted the said offered exhibits in the Resolution[12] dated September 8, 2009.

During the March 22, 2010 hearing, counsel for respondent manifested that he is submitting the case for decision based on the pleadings. Upon motion of the parties, both parties were given thirty (30) days from March 22, 2010 or until April 21, 2010 to file their respective Memorandum, and upon receipt thereof or expiry of the period granted, the case shall be deemed submitted for decision.[13]

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[8] Minutes of Hearing dated May 27, 2008 and March 12, 2009, Docket, pp. 110 and 215
[9] Minutes of Hearing dated September 2, 2008 and October 2, 2008, Docket, pp. 131 and 170
[10] Minutes of Hearing dated February 10, 2009, Docket, p. 206
[11] Docket, pp. 224-252
[12] Docket, pp. 464-465
[13] Minutes of Hearing dated March 22, 2010, Docket, p. 488

On April 30, 2010, the instant case was deemed submitted for decision, considering that counsels for both parties failed to file their respective memorandum within the period given by the Court.[14]

Per joint stipulation of the parties, the issues[15] are:

1. Whether petitioner failed to apply alleged income payments for the fiscal year ending March 31, 2003 amounting to P10,249,734.58 to the expanded withholding tax;

2. Whether petitioner is liable for deficiency income tax for the fiscal year ending March 31, 2003 in the amount of P1,739,440.91; and

3. Whether petitioner is liable for increments on late payment of taxes amounting to P39,689.54.

The foregoing issues can be summed up as - "Whether petitioner is liable to pay the amount of P1,739,440.91, representing deficiency income tax, inclusive of interest and surcharges, and the amount of P39,689.54 as increments on late payment of taxes for the fiscal year ending March 31, 2003."

Respondent assessed petitioner for its deficiency income tax for the fiscal year ending March 31, 2003 in the amount of P1,739,440.91[16], computed as follows:

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[14] Resolution dated April 30, 2010, Docket, p. 489
[15] Docket, p. 73

Taxable Income Per Return			P 5,177,636.00
Add:	Adjustments/Discrepancies per investigation		
	Income payments not subjected to expanded withholding tax		10,249,734.58
Taxable Income per investigation			P15,427,370.58
Income tax due thereon (10%)			P 1,542,737.06
Less:	Allowable tax credits		
	Prior year's excess credits	P 107,263.00	
	Payments per ITR	351,664.00	
	Creditable withholding tax claimed per ITR	58,837.00	
Total		517,764.00	
Less:	Unsupported creditable withholding tax	58,837.00	458,927.00
Deficiency Income Tax			P 1,083,810.06
Add:	20% Interest p.a. from 7.16.03 to 7.24.06		655,630.85
TOTAL AMOUNT DUE			**P 1,739,440.91**

The assessment arose from respondent's disallowance of petitioner's claimed deductions from gross income in the amount of P10,249,734.58, and creditable withholding taxes in the amount of P58,837.00.

On the propriety of the aforesaid disallowances, they are discussed hereunder *in seriatim*.

The income payments not subjected to the expanded withholding tax amount to P10,249,734.58.

According to the Details of Discrepancies/Assessments attached to the Formal Letter of Demand, petitioner failed to subject royalties, professional fees, rentals, and advertising expenses in the total amount of P10,249,734.58 to the expanded withholding tax (EWT). Since said expenses were not

[16] Par. 2.6, Admissions, JSFI, Docket, pp. 71-72.

subjected to EWT as required under Revenue Regulations (RR) No. 2-98, they cannot be claimed as deductions from gross income pursuant to Section 34(K) of the NIRC of 1997, as amended. Below is the computation of the amount of P10,249,734.58:[17]

	Per F/S	Per Returns	Not subjected to EWT
Royalties	P 3,039,889.00	P 1,252,614.89	P 1,787,274.11
Professional Fees	1,675,402.00	382,945.00	1,292,457.00
Rentals	8,026,396.00	1,808,208.48	6,218,187.52
Advertising Expense	2,718,567.00	1,766,751.05	951,815.95
Total not subjected to expanded withholding tax			**P 10,249,734.58**

Petitioner claims that the apparent discrepancy between the Financial Statements (F/S) for the fiscal year ending March 31, 2003 and the Monthly Remittance Returns for the same period can be explained by the fact that the F/S encompasses not only petitioner's finances but also those of its two branch offices. The BIR registration details of petitioner and its two branch offices are as follows:[18]

Name of Center	TIN	RDO Code	Registered Address
Megamall Center (Head office – Petitioner)	201589900-000	041	Level 5, Bldg. A, SM Megamall, Mandaluyong City
Makati Center (Branch)	201589900-001	050	6797 2/F Security Land Bldg., Ayala Ave. cor. Herrera St., Makati City
Eastwood Center (Branch)	201589900-002	041	Formerly Texas Chicken, St. Francis Square, J. Vargas, Ortigas Ctr., Mandaluyong City

[17] Pars. 2.3 and 2.4, Admissions, JSFI, Docket, pp. 70-71
[18] Docket, pp. 5-6

Since the expanded withholding tax returns of the two branch offices were filed separately from petitioner's returns while the finances of all three centers were reflected in petitioner's F/S, a comparison of petitioner's returns *vis-à-vis* its F/S would necessarily yield a discrepancy. However, this does not indicate that petitioner or its branch offices did not withhold on the expenses reported in petitioner's F/S. In fact, petitioner and its branch offices filed withholding tax returns on all the expenses reported in petitioner's F/S as the returns of petitioner and its branch offices will bear out.

As to the Royalties amounting to P1,787,274.11, Mr. Ronaldo Hangad, Center Accountant of petitioner's Makati branch, stated In his Judicial Affidavit[19] dated August 27, 2008, that the royalties subject of the assessment were paid to Informatics Holdings Ltd., a Singapore-based company and petitioner's franchisor.

Under Section 2.57.1(I)(1) of RR No. 2-98, said royalty payments are subject to the final withholding tax (FWT) at the rate of thirty-two percent (32%) beginning January 1, 2000 and thereafter, to quote:

> "SECTION 2.57.1. *Income Payments Subject to Final Withholding Tax.* - The following forms of income shall be subject to final withholding tax at the rates herein specified:
>
> xxx xxx xxx

[19] Exhibit "S", Docket, pp. 390-394

(I) *Income Derived From all Sources Within the Philippines by Non-Resident Foreign Corporation.* - The following shall be subject to final withholding tax based on the gross amount of income and at the rate of tax prescribed therefor:

(1) In general — **On gross income derived from** all sources within the Philippines such as interests, dividends, rents, **royalties,** salaries, premiums (except reinsurance premiums), annuities, emoluments, or other fixed or determinable annual, periodic or casual gains, profits and income and capital gains (except capital gains realized from sale, exchange, disposition of shares of stock in any domestic corporation which is subject to capital gains tax under Sec. 28(B)(5)(c) — at the following rates:

34% - beginning January 1, 1998
33% - beginning January 1, 1999 and
32% - beginning January 1, 2000 and thereafter"
(*Emphasis supplied*)

However, the FWT rate of 32% is reduced to twenty-five percent (25%) pursuant to Article 12(2)(c) of the RP-Singapore Tax Treaty, which states:

"Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but, if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

(a) in the case of the Philippines, 15 percent of the gross amount of the royalties, where the royalties are paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activities and also royalties in respect of cinematographic films or tapes for television or broadcasting;

(b) in the case of Singapore, where the royalties are approved under the Economic Expansion Incentives (Relief from Income Tax) Act of Singapore, the royalties shall be exempt; C

(c) **in all other cases, 25 percent of the gross amount of the royalties.**" (*Emphasis supplied*)

A scrutiny of the Monthly Remittance Returns of Final Income Taxes Withheld (BIR Forms 1601-F) filed by petitioner and its two branch offices for fiscal year 2003 disclosed the following royalty payments that were subjected to 25% final withholding tax: [20]

	Megamall (Petitioner)			**Makati**			**Ortigas**		
FY 2003	**Exh.**	**Royalty Payments**	**FWT**	**Exh.**	**Royalty Payments**	**FWT**	**Exh.**	**Royalty Payments**	**FWT**
Apr	L-1	177,375.20	44,343.80	M-1	70,084.14	17,520.79			
May	L-2	157,746.16	39,369.04	M-2	92,273.48	23,068.37			
June	L-3	234,829.24	58,707.31	M-3	-	-			
July	L-4	161,588.52	40,397.13	M-5	88,276.56	22,069.14			
Aug.	L-5	62,875.84	15,718.96	M-4	94,052.56	23,513.14	N-1	76,418.20	19,104.55
Sept.	L-6	81,272.80	20,318.21	M-6	69,450.48	17,362.62	N-2	86,357.64	21,589.41
Oct.	L-7	87,413.56	21,853.39			-	N-3	97,660.40	24,415.10
Nov.	L-8	42,395.70	10,598.93	M-7	62,134.39	15,533.60	N-4	89,105.85	22,276.60
Dec.	L-9	29,713.11	7,428.28			-	N-5	71,414.68	17,853.54
Jan.	L-10	137,847.00	34,461.74	M-8	26,251.20	6,562.80	N-6	29,653.38	7,413.35
Feb.	L-11	39,329.36	9,832.34				N-7	33,737.60	8,434.40
March	L-12	40,232.40	10,058.10	M-10	40,686.00	10,171.55	N-8	134,585.64	33,646.41
		1,252,618.89	**313,087.22**		**543,208.81**	**135,802.01**		**618,933.39**	**154,733.35**

A comparison of the foregoing royalty payments with the royalty expense per petitioner's F/S for FY 2003[21] revealed that the amount of P625,127.91 was not subjected to the final withholding tax, as shown below:

Center/Branch	**Royalty Payments Per Monthly Remittance Returns of Final Income Taxes Withheld**
Megamall	P 1,252,618.89
Makati	543,208.81
Ortigas	618,933.39

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[20] Docket, pp. 312-341
[21] Docket, p. 357

Total Royalties Per Returns	P 2,414,761.09
Less: Total Royalties Per F/S	3,039,889.00
Royalties not subjected to FWT	**P 625,127.91**

For failure to withhold the corresponding final tax, petitioner cannot claim the royalties amounting to P625,127.91 as deduction from its taxable gross income for FY 2003 as provided for under Section 34(K) of the NIRC of 1997, as amended, to wit:

> "SEC. 34. *Deductions from Gross Income.* - xxx
>
> xxx xxx 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."

Consequently, petitioner shall be assessed of deficiency income tax for FY 2003 on the royalties of P625,127.91.

The Professional Fees allegedly not subjected to the EWT amount to P1,292,457.00. As stated earlier, respondent computed said Professional Fees by comparing the professional fees of P1,675,402.00 reflected per petitioner's F/S with the professional fees of P382,945.00 shown per petitioner's monthly remittance returns.

Petitioner's Finance Manager, Ms. Bernadette Urbiztondo, in her Judicial Affidavit[22] dated February 5, 2009, stated that the professional fees per F/S in the amount of P1,675,402.00 was derived by the BIR by adding the "Commissions" expense in the amount P1,309,110.00[23] and the "Professional and Director's fees" in the amount of P366,292.00[24].

Ms. Urbiztondo pointed out however that it was wrong for the BIR to lump the "Commissions" expense with the "Professional Fees" expense and say that this whole amount of P1,675,402.00 is subject to EWT because the "Commissions" represent sales commissions given to employees of petitioner and its branch offices. Since the sales commissions were paid to employees, they were taxed as compensation and therefore not subject to the expanded withholding tax.[25]

Ms. Urbiztondo further explained that the "Professional and Director's Fees" in the amount of P366,292.00 was claimed as deduction in its FY 2003 income tax return and formed part of the total professional fees of P1,196,122.80 subjected to EWT per the Monthly Remittance Returns of

[22] Exhibit "AA", page 4, Docket, p. 450
[23] Exhibit "P", Line 86, Docket, p. 353; Exhibit "U", Docket, p. 379
[24] Exhibit "P", Line 79, Docket, p. 353; Exhibit "U", Docket, p. 379
[25] Exhibit "AA", page 5, Docket, p. 451

Creditable Income Taxes Withheld (Expanded) [BIR Forms 1601-E] filed by petitioner and its two branch offices for FY 2003.[26]

Moreover, Ms. Urbiztondo clarified that while the total professional fees of P1,196,122.80 was subjected to EWT, only the amount of P366,292.00 was claimed as deduction in its income tax return under the "Director's Fees" account; while the remaining amount of P829,830.80, representing fees paid to professional lecturers who were not part of the regular faculty of petitioner and its branches, formed part of the P18,201,453.00 "Salaries, Wages and Benefits" expense per F/S or "Salaries and Allowances" per income tax return. The lecturers' fees of P829,830.80 were not subjected to the income tax on compensation but to the expanded withholding tax since the lecturers were not employees of petitioner and its branches.[27]

In support of Ms. Urbiztondo's testimony, petitioner offered in evidence its amended Annual Income Tax Return[28], audited F/S[29], BIR Forms 1601-E[30] filed by petitioner and its two branch offices for FY 2003, Summary of Sales Commission for 2003[31], and Payroll Summary for 2003 of Robert Esplana[32].

[26] Exhibit "AA", pages 6 to 7, Docket, pp. 452-453
[27] Exhibit "AA", page 7, Docket, p. 453; Exhibit "P", line 75, Docket, p. 353; Exhibit "U", page 3, Docket, p. 379
[28] Exhibit "P", Docket, pp. 351-353
[29] Exhibit "U", Docket, pp. 379-389
[30] Exhibits "I-1" to "I-12", "J-1" to "J-10", and "K-1" to "K-8", Docket, pp. 282-311
[31] Exhibit "V", Docket, p. 430-444
[32] Exhibit "W", Docket, p. 445

This Court agrees with the deficiency income tax assessment on the professional fees of P1,292,457.00.

Petitioner failed to sufficiently prove that the sales commissions of P1,308,110.00 were paid to its employees and that they were taxed as compensation. Petitioner should have submitted its Annual Information Return of Income Taxes Withheld on Compensation with the Alphalist of Employees from whom taxes were withheld, Monthly Remittance Returns of Income Taxes Withheld on Compensation, and other documents by which the Court can validate that the amount of P1,309,110.00 formed part of petitioner's employees' compensation subjected to withholding tax for the FY 2003.

Suffice it to say that as already held in various cases, assessments are *prima facie* presumed correct and made in good faith. All presumptions are in favor of the correctness of the assessment.[33] The burden of proof to rebut the presumption of correctness of the assessment is on the taxpayer. Thus, failure of petitioner to show documents that would substantiate its argument renders the assessment valid and correct.

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[33] *Interprovincial Autobus Co., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 6741, January 31, 1956

The Rentals allegedly not subjected to the EWT amount to P6,218,187.52.

Section 2.57.2(C) of RR No. 2-98, as amended, prescribes the withholding of creditable income tax on rentals at the rate of five percent (5%), to wit:

> "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:
>
> xxx xxx xxx
>
> (C) *Rentals* - On gross rental for the continued use or possession of real property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity — Five percent (5%)."

In keeping with the above provision, petitioner and its two branch offices filed Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) [BIR Forms 1601-E] for FY 2003, reflecting the following entries:[34]

FY	Megamall			Makati			Ortigas		
2003	Exh.	Rental	EWT	Exh.	Rental	EWT	Exh.	Rental	EWT
April	I-1	127,796.80	6,389.84	J-1	193,160.00	9,658.00			
May	I-2	127,796.80	6,389.84	J-2	193,160.00	9,658.00			
June	I-3	127,796.80	6,389.84						
July	I-4	393,562.80	19,678.14	J-3	196,160.00	9,808.00			
Aug.	I-5	127,797.00	6,389.85	J-4	196,160.00	9,808.00	K-1	263,157.80	13,157.89
Sept.	I-6	127,797.00	6,389.85	J-5	196,160.00	9,808.00	K-2	263,157.80	13,157.89
Oct.	I-7	127,797.00	6,389.85	J-6	196,160.00	9,808.00	K-3	263,157.80	13,157.89

[34] Docket, pp. 294-311

Nov.	I-8	130,701.48	6,535.07	J-7	227,523.64	11,376.18	K-4	263,157.80	13,157.89
Dec.	I-9	127,797.00	6,389.85				K-5	263,157.80	13,157.89
Jan.	I-10	127,963.00	6,398.15	J-8	196,160.00	9,808.00	K-6	263,157.80	13,157.89
Feb.	I-11	130,701.40	6,535.07	J-9	196,160.00	9,808.00	K-7	263,157.80	13,157.89
Mar.	I-12	130,701.40	6,535.07	J-10	196,160.00	9,808.00	K-8	263,157.80	13,157.89
		1,808,208.48	**90,410.42**		**1,986,963.64**	**99,348.18**		**2,105,262.40**	**105,263.12**

Based on the aforesaid returns, a total of P5,900,434.52 in rental expense was subjected to EWT for FY 2003. However, petitioner's claimed business expense deduction for rentals in its 2003 Annual Income Tax Return amounted to P8,026,396.00.[35] Clearly, there is a discrepancy of P2,125,961.48, as shown below:

Center/Branch	Rental Payments Per Monthly Remittance Returns
Megamall	P 1,808,208.48
Makati	1,986,963.64
Ortigas	2,105,262.40
Total Rentals Per Monthly Remittance Returns	P 5,900,434.52
Total Rentals Per FS/ITR	8,026,396.00
Rentals not subjected to EWT	**P 2,125,961.48**

The discrepancy in rentals of P2,125,961.48 should be disallowed as deduction from petitioner's taxable gross income for FY 2003 pursuant to Section 34(K) of the NIRC of 1997, in relation to Section 2.57.2(C) of RR No. 2-98, as there was no tax withheld therefrom.

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[35] Docket, p. 353

The Advertising Expense allegedly not subjected to the EWT amounts to P951,815.95. This Court disagrees.

Respondent arrived at the disallowed advertising expense of P951,815.95 as follows:

	Per F/S	Per Return	Not Subjected to EWT
Advertising Expense	P2,718,567.00	P1,766,751.05	P 951,815.95

The computation of P1,766,751.05, pertaining to advertising expense per return, was provided by respondent, as shown below:

Payments to contractors per returns		P 4,811,377.05
Less: Payments to contractors per financial statements		
Repairs and maintenance – labor	P 404,891.00	
Increase in Leasehold Improvement	2,639,735.00	3,044,626.00
Advertising Expense subjected to EWT		**P 1,766,751.05**

Records disclose that the amount of P4,811,377.05, indicated as payments to contractors per monthly remittance returns, was derived by adding up the WC 120 items in the BIR Forms 1601-E[36]. However, this amount pertains only to the expense incurred by petitioner, exclusive of its two (2) branch offices for FY 2003. The audited F/S on the other hand, reflects expenses incurred by petitioner and its two (2) branch offices. The correct amount of advertising expense per monthly remittance returns filed by petitioner and its two (2) branch offices is computed below:

[36] Exhibits "I-1 to I-12", "J-1 to J-10", and "K-1 to K-8" , Docket, pp. 294-311

FY 2003	Megamall Exh.	Megamall Payments to prime contractors/ subcontractors	Megamall EWT	Makati Exh.	Makati Payments to prime contractors/ subcontractors	Makati EWT	Ortigas Exh.	Ortigas Payments to prime contractors/ subcontractors	Ortigas EWT
April	I-1	142,113.00	1,945.99	J-1	67,507.13	4,667.92			
May	I-2	2,067,870.00	41,357.92	J-2	285,550.61	8,342.53			
June	I-3	1,649,455.00	32,989.10						
July	I-4	531,991.00	10,639.82	J-3	71,773.70	2,429.27			
Aug.	I-5	48,483.00	969.66	J-4	119,688.04	2,393.76	K-1	189,868.50	3,338.86
Sept.	I-6	109,210.50	2,184.21	J-5	211,049.43	4,221.05	K-2	68,206.00	1,364.12
Oct.	I-7	91,170.50	1,823.41	J-6	98,498.29	1,969.97	K-3	60,661.50	1,213.23
Nov.	I-8	39,222.64	632.06	J-7	44,280.63	885.61	K-4	90,008.91	2,334.81
Dec.	I-9	17,279.84	345.60				K-5	233,631.26	4,672.63
Jan.	I-10	28,119.57	562.39	J-8	69,562.70	1,351.26	K-6	67,820.89	1,356.42
Feb.	I-11	31,597.50	631.95	J-9	59,359.50	1,187.19	K-7	127,386.50	2,547.73
Mar.	I-12	54,864.50	1,097.29	J-10	71,061.00	1,421.22	K-8	176,697.10	3,539.42
		4,811,377.05	**95,179.40**		**1,098,331.03**	**28,869.78**		**1,014,280.66**	**20,367.21**

Center	Payments to Contractors per Monthly Remittance Returns
Megamall	P 4,811,377.05
Makati	1,098,331.03
Ortigas	1,014,280.66
Total	**P 6,923,988.74**

The total amount of P6,923,988.74 represents not only advertising expenses but also expenses for repair and maintenance of the building units leased by petitioner.[37] The amount attributable to advertising expense alone is computed below, using the same formula used by respondent.

Payments to contractors per monthly remittance returns			P 6,923,988.74
Less:	Payments to contractors per financial statements		
	Repairs and Maintenance – Labor	P 404,891.00	
	Increase in Leasehold Improvement	2,639,735.00	3,044,626.00
Advertising Expense per monthly remittance returns			P 3,879,362.74
Advertising Expense Per FS/ITR			2,718,567.00
Excess of Advertising Expense Per Returns			**P 1,160,795.74**

[37] Exhibit "AA", page 10, Docket, p. 456

The above computation shows that there is an excess of advertising expense incurred per monthly remittance returns over the amount of advertising expense claimed by petitioner as deduction from gross income in its income tax return. Hence, the assessment of deficiency income tax on the advertising expense amount of P951,815.95 is untenable and without basis.

The alleged Unsupported Creditable Tax Withheld at Source amounts to P58,837.00. This Court agrees.

Petitioner's claimed creditable withholding tax in the amount of P58,837.00 are not supported with Certificates of Creditable Tax Withheld at Source (BIR Forms 2307), hence, the same shall be disallowed as tax credits against petitioner's income tax due for FY 2003, pursuant to Section 2.58.3(A) and (B) of RR No. 2-98 which provides:

> "SECTION 2.58.3. *Claim for Tax Credit or Refund.* -
>
> (A) **The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.**
>
> (B) **Claims for tax credit** or refund of any creditable income tax which was deducted and withheld on income payments **shall be given due course only when** it is shown that the income payment has been declared as part of the gross income and **the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.**

C

Proof of remittance is the responsibility of the withholding agent." (*Emphasis supplied*)

In sum, petitioner is liable to pay the basic deficiency income tax for FY 2003 in the amount of P463,191.24, computed as follows:

Taxable Income Per Return			P 5,177,636.00
Add:	Discrepancies per investigation		
	Income payments not subjected to EWT		
	Royalties	P 625,127.91	
	Professional Fees	1,292,457.00	
	Rentals	2,125,961.48	4,043,546.39
Taxable Income per investigation			P 9,221,182.39
Income tax due thereon (10%)			P 922,118.24
Less:	Allowable tax credits		
	Prior year's excess credits	P 107,263.00	
	Payments per ITR	351,664.00	
	Creditable EWT per ITR	58,837.00	
Total		P 517,764.00	
Less:	Unsupported creditable EWT	58,837.00	458,927.00
Deficiency Income Tax			**P 463,191.24**

As to the assessment for increments on late payment of tax, respondent assessed petitioner thereon for FY 2003 in the amount of P39,689.54, computed as follows:

Income Tax Payable - Amended ITR			P 195,220.00
Add:	25% Surcharge	P 48,805.00	
	20% Interest (07.16.03 to 05.24.04)	33,588.54	82,393.54
Total Amount Payable			P 277,613.54
Less:	Payment made on May 24, 2004		237,924.00
AMOUNT STILL DUE			**P 39,689.54**

This Court finds the assessment in order.

Pursuant to Sections 248(A)(1) and 249(A) of the NIRC of 1997, as amended, petitioner is liable for the P39,689.54 increments for failure to pay the full amount of penalties due on May 24, 2004, the date when petitioner paid its income tax due for FY 2003.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the assessments of deficiency income tax and increments on late payment of tax for FY 2003 are upheld with some modifications.

Petitioner is **ORDERED TO PAY** respondent deficiency income tax in the amount of P578,989.05 inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and deficiency increments on late payment of tax in the amount of P39,689.54, totaling P618,678.59, computed as follows:

	Basic	**25% Surcharge**	**Total**
DEFICIENCY INCOME TAX	P 463,191.24	P115,797.81	P 578,989.05
INCREMENTS ON LATE PAYMENT OF TAX			39,689.54
TOTAL DEFICIENCY TAXES			**P 618,678.59**

Further, petitioner is **ORDERED TO PAY**:

a) deficiency interest at the rate of 20% *per annum* on the basic deficiency income tax of P463,191.24, computed from July 15, 2003 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and

b) delinquency interest at the rate of 20% *per annum* computed from July 24, 2006 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, on the following:

   i. basic deficiency income tax in the amount of P463,191.24;

   ii. 20% deficiency interest which had accrued as aforestated in (a); and

   iii. increments on late payment of tax in the amount of P39,689.54.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice