REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BENCHMARK MARKETING CORP., *Petitioner,*	**CTA Case No. 9296**
	Members:
-*versus*-	**CASTAÑEDA, JR.**, *Chairperson, and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 04 2019 4:30 p.m.

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D E C I S I O N

MANAHAN, *J.*:

This involves a Petition for Review[1] seeking to reverse and set aside the Final Assessment Notice (FAN) dated July 22, 2015, in the aggregate amount of Php127,130,709.77, representing alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), inclusive of interest and compromise penalties for taxable year 2011.

FACTS

Petitioner Benchmark Marketing Corp. (BMC) is a domestic corporation duly organized and existing under the law of the Philippines with business address at Doña Natividad Bldg. 10 Quezon Avenue, Quezon City. Petitioner may be served with orders, summons and other processes through its counsel with office address at Suite 1102, 11th Floor, 139 Corporate Center, 139 Valero St., Salcedo Village, 1227, Makati City.[2] The principal purpose for which it was created is to engage in, conduct and carry on the business of buying, selling,

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[1] Docket, Vol. I, pp. 10-45.
[2] Docket, Vol. I, Petition for Review (PFR), p. 10.

distributing, marketing at wholesale and retail of fermented liquor, bottled water and other beverages.[3]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

On April 8, 2013, petitioner received Letter of Authority (LOA) No. LOA-116-2013-00000011 with SN: eLA201100007112[5] and Checklist of Audit Requirements for the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the year 2011.[6]

On September 28, 2013, petitioner received a Second and Final Notice[7] from BIR dated September 24, 2013.[8]

On June 20, 2014, petitioner executed a "Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC"[9] (Waiver) in relation to the 2011 Tax Audit which was accepted by the BIR on June 24, 2014 extending the audit period until December 31, 2014.[10]

On September 24, 2014, petitioner received a Final Reminder and Audit Notice[11] from BIR dated September 23, 2014.[12]

On November 13, 2014, petitioner executed another Waiver[13] which was accepted by the BIR on November 21, 2014 extending the audit period until June 30, 2015.[14]

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[3] Docket, Vol. I, PFR, p. 12.
[4] Docket, Vol. IV, Joint Stipulation of Facts and Issues (JSFI), p. 1597.
[5] Docket, Vol. III, Exhibit "P-4", p. 1341.
[6] Docket, Vol. IV, JSFI, p. 1598.
[7] Docket, Vol. III, Exhibit "P-26", p. 1441.
[8] Docket, Vol. IV, JSFI, p. 1598.
[9] BIR Records, Folder 1, Exhibit "P-30", p. 358.
[10] Docket, Vol. IV, JSFI, p. 1598.
[11] BIR Records, Folder I, Exhibit "P-31", p. 355-A.
[12] Docket, Vol. I, PFR, p. 13.
[13] Docket, Vol. III, Exhibit "P-32", p. 1471.
[14] Docket, Vol. IV, JSFI, p. 1598.

On March 27, 2015, petitioner executed another Waiver[15] which was accepted by the BIR on April 27, 2015 extending the audit period until December 31, 2015.[16]

On June 10, 2015, a Preliminary Assessment Notice (PAN)[17] dated June 9, 2015 together with the Details of Discrepancies[18] were received by petitioner from the BIR.[19]

On July 22, 2015, the Formal Letter of Demand (FLD),[20] Details of Discrepancies,[21] and Assessment Notices (FAN)[22] were received by petitioner from the BIR assessing deficiency income tax, VAT, and EWT.[23] The FLD shows the following computations:

Assessment Notice No. IT-116-LOA-0000011-11-15-1911			
I. INCOME TAX			
Taxable Income per return			P 4,236,787.70
Add: Findings per investigation			
IT-1	GP from undeclared purchases (WP vs FS/ITR)	P 10,603,293.62	
IT-2	Undeclared sales due to unreported A/R	1,110,068.45	
IT-3	Unallowable Sales Returns & Allowances	46,338,319.08	
IT-4	Unsupported Freight-in, Fuel & Transportation expenses	29,181,966.24	
IT-5	Unsupported Advertising & Other Outside Services	22,089,137.55	
IT-6	Sales to Gov't (not included in the SLS)	211,610.64	
IT-7	Excess of std input over actual input (to be closed to expense)	(10,475.73)	
IT-8	Disallowed expenses due to nonwithholding (Sec. 24K NIRC)	41,230,990.26	
IT-9	GP on undeclared sales per recon of SLS, SAWT & TPI data	5,230,200.00	
IT-10	Undeclared income due to understatement of carry-over input	4,012,104.70	
	Total Adjustments per audit		159,997,214.81
Taxable income per audit			P 164,234,002.51
Multiplied by: Income tax rate			30%
Income tax due per audit			**P 49,270,200.75**
Less: Allowable Credits/Payments			
	Unexpired prior years MCIT	P 427,028.47	
	Tax payments	585,581.85	
	Creditable withholding tax claimed per ITR	248,425.99	1,261,036.31
Basic Income Tax Deficiency			P 48,009,164.44
Add: Increments			
	Surcharge	P 0.00	
	Interest – 7/31/2015	31,593,976.16	
	Compromise	50,000.00	31,643,976.16
Total Amount Due (IT)			**P 79,653,140.60**

Assessment Notice No. VT-116-LOA-0000011-11-15-1912			
II. VALUE ADDED TAX			
Sales per VATR			P 394,636,706.23
Add: Findings per investigation			

[15] BIR Records, Folder 1, Exhibit "P-35", p. 359-B.
[16] Docket, Vol. IV, JSFI, p. 1598.
[17] BIR Records, Folder 1, Exhibit "P-36", pp. 407-409.
[18] BIR Records, Folder 1, Exhibit "P-36-a", pp. 401-406.
[19] Docket, Vol. IV, JSFI, p. 1598.
[20] BIR Records, Folder 2, Exhibit "P-37", pp. 1605-1607.
[21] BIR Records, Folder 2, Exhibit "P-37-a", pp. 1599-1604.
[22] BIR Records, Folder 2, Exhibits "P-37-b" to "P-37-d", pp. 1596-1598.
[23] Docket, Vol. I, PFR, p. 14.

VT-1	Grossed-up sales from undeclared purchases (WP vs FS/ITR)	P 67,450,977.23	
VT-2	Undeclared sales due to unreported A/R	1,110,068.45	
VT-3	Unallowable Sales Returns & Allowances	46,338,319.08	
VT-4	Sales to Gov't. (not included in SLS)	211,610.64	
VT-5	Undeclared sales per recon of SLS, SAWT & TPI data	33,270,992.34	
VT-6	Undeclared income due to understatement of carry-over input	4,012,104.70	
	Total Adjustments per audit		152,394,072.44
Vatable sales per audit			P 547,030,778.67
Multiplied by: VAT rate			12%
Output tax due per audit			**P 65,643,693.44**
Less: Net Allowable Input Tax			
	Input tax from current purchases		P 47,160,957.03
	Add: Carry-over input fr previous period		149,654.30
	Available Input Tax		P 47,310,611.33
	Less: Audit Findings		
VT-7	Input closed to expense (sales to gov't)	P 10,475.73	
VT-8	Unsupported freight-in, fuel & transpo expenses	3,501,835.95	
VT-9	Unsupported advertising & other outside services	2,650,696.51	
VT-10	Unsupported input tax per FS/TB vs. VATR	2,595,757.24	
VT-11	Input claimed from Non-vat supplier per SLP	69,704.61	8,828,470.03
Net allowable input tax per audit			**P 38,482,141.30**
Net VAT due per audit			**P 27,161,552.14**
Less: VAT Credits/Payment			
	VAT Remittance	P 35,211.93	
	VAT Withheld on Sales to Gov't	10,580.53	45,792.46
Basic Value Added Tax Deficiency			27,115,759.68
Add: Increments			
	Surcharge	P 0.00	
	Interest – 7/31/2015	19,047,892.55	
	Compromise	50,000.00	19,097,892.55
Total Amount Due (VT)			**P 46,213,652.23**

Assessment Notice No. WE-116-LOA-0000011-11-15-1913
III. WITHHOLDING TAX – EXPANDED

Basic EWT Deficiency			P 728,311.97
Add: Increments			
	Surcharge	P 0.00	
	Interest – 7/31/2-15	515,604.97	
	Compromise	20,000.00	535,604.97
Total Amount Due (WE)			**P 1,263,916.94**
	Total Deficiency Tax	**P 127,130,709.77**	

On August 20, 2015, petitioner filed its administrative protest[24] disputing the deficiency income tax, VAT and EWT assessed against it.

Due to the BIR's alleged inaction on its protest, petitioner filed the instant Petition for Review on March 17, 2016 praying that the assessment notices for deficiency income tax, VAT, and EWT for the year ending December 31, 2011 in the aggregate amount of Php127,130,709.77 be declared null and void.

[24] BIR Records, Folder 2, Exhibit "P-38", pp. 1608-1627.

On June 13, 2016, respondent filed his Answer,[25] arguing that due process was accorded to petitioner and reiterating that the assessment has bases both in fact and in law.

On July 15, 2016, petitioner filed its "Pre-Trial Brief for Petitioner",[26] while respondent filed his "Respondent's Pre-Trial Brief"[27] on August 1, 2016.

On September 30, 2016, the parties filed their Joint Stipulation of Facts and Issues (JSFI),[28] which was approved and adopted in the Pre-Trial Order (PTO)[29] dated October 6, 2016.

The case proceeded to trial. Petitioner presented its witness: Ms. Sarah Ecija Lacra[30] on November 7, 2016;[31] and Independent Certified Public Accountant (ICPA) Mr. John Christian B. Sabal[32] on April 3, 2017,[33] May 8, 2017,[34] and July 5, 2017.[35]

On July 17, 2017, Formal Offer of Evidence (FOE) for the Petitioner[36] was filed. On September 26, 2017, the Court resolved petitioner's FOE, denying several of petitioner's exhibits.[37] Petitioner filed its "Motion For Partial Reconsideration [of the Resolution promulgated on September 26, 2017][38] on October 12, 2017. The Court allowed the recall of ICPA, Mr. Sabal,[39] who testified on April 11, 2018.[40] On April 16, 2018, petitioner filed its Supplemental Formal Offer of Evidence[41], which was resolved in the Court's Resolution[42] dated June 8, 2018, still denying several of petitioner's exhibits.

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25 Docket, Vol. III, pp. 1227-1248.
26 Docket, Vol. III, pp. 1261-1269.
27 Docket, Vol. III, pp. 1576-1583.
28 Docket, Vol. IV, pp. 1597-1605.
29 Docket, Vol. IV, pp. 1609-1614.
30 Docket, Vol. III, Exhibit "P-49", pp. 1273-1310.
31 Docket, Vol. IV, Minutes of Hearing on November 7, 2016, p. 1673.
32 Docket, Vol. IV, Exhibit "P-123", pp. 1721-1744 and Exhibit "P-125", pp. 1821-1830.
33 Docket, Vol. IV, Minutes of Hearing on April 3, 2017, p. 1799.
34 Docket, Vol. IV, Minutes of Hearing on May 8, 2017, p. 1804.
35 Docket, Vol. IV, Minutes of Hearing on July 5, 2017, p. 1831.
36 Docket, Vol. IV, pp. 1835-1859.
37 Docket, Vol. IV, pp. 1866-1869.
38 Docket, Vol. IV, pp. 1871-1875.
39 Docket, Vol. IV, Exhibit "P-126", pp. 1886-1892.
40 Docket, Vol. IV, Minutes of Hearing on April 11, 2018, p. 1893.
41 Docket, Vol. IV, pp. 1895-1905.
42 Docket, Vol. IV, pp. 1908-1910.

On June 11, 2018,[43] respondent presented his lone witness, Ms. Riza F. Budaño.[44] On June 26, 2018, respondent filed his Formal Offer of Evidence[45], which were all admitted in the Court's Resolution[46] dated July 26, 2018.

On August 8, 2018, respondent filed his Memorandum[47], while petitioner filed its Memorandum for the Petitioner[48] on August 31, 2018. Thus, the case was considered submitted for decision on September 7, 2018.[49]

ISSUE

> Whether or not petitioner is liable for the assessed deficiency income tax, value-added tax, and expanded withholding tax for taxable year (TY) 2011 in the aggregate amount of Php127,130,709.77, inclusive of interest and penalties.[50]

RULING OF THE COURT

The petition has merit.

The Petition for Review was timely filed.

In the instant case, petitioner received the FLD/FAN on July 22, 2015. On August 20, 2015, or within the 30-day period allowed, petitioner filed its administrative protest. Counting 180 days from April 20, 2015, respondent had until February 16, 2016 within which to resolve petitioner's protest. However, petitioner did not receive any decision on its protest.

Rule 8, Section 3 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> Rule 8 Civil Procedure in Civil Cases

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[43] Docket, Vol. IV, Minutes of Hearing on June 11, 2018, p. 1912.
[44] Docket, Vol. IV, Exhibit "R-14", pp. 1621-1630.
[45] Docket, Vol. IV, pp. 1916-1924.
[46] Docket, Vol. IV, pp. 1933-1934.
[47] Docket, Vol. IV, pp. 1936-1957.
[48] Docket, Vol. IV, pp. 1958-2001.
[49] Docket, Vol. IV, p. 2002.
[50] Docket, Vol. IV, JSFI, pp. 1598-1599.

> xxx xxx xxx
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> Sec. 3. Who may appeal; period to file petition. – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx (*Underscoring supplied*)

Counting thirty (30) days from February 16, 2016, petitioner had until March 17, 2016 within which to file its appeal. Thus, the instant Petition for Review was timely filed on March 17, 2016.

The assessments for deficiency VAT for the 1st quarter of TY 2011 and deficiency EWT for the months of January 2011 to May 2011 have already prescribed.

On July 22, 2015, petitioner received respondent's FLD, with attached Details of Discrepancies and Assessment Notices,[51] assessing the former for deficiency income tax, VAT and EWT for TY 2011, in the aggregate amount of Php127,130,709.77.

Section 203 of the 1997 National Internal Revenue Code as amended (NIRC), mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for filing of the tax return or the actual date of filing, whichever comes later, *to wit*:

> Sec. 203. *Period of Limitation Upon Assessment.* – 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

[51] BIR Records, Folder No. 2, Exhibits "P-37" to "P-37-d", pp. 1596-1607.

day prescribed by law for the filing thereof shall be considered as filed on such last day.

In relation thereto, Section 77[52] of the NIRC provides that 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; and Section 114[53] of the same Code provides that the quarterly VAT returns shall be filed within twenty-five (25) days following the close of each taxable quarter.

In the case of EWT, Section 2.58(A)(2)(a)[54] of Revenue Regulations (RR) No. 2-98, as amended by RR No. 17-2003, requires that the manual filing of the EWT returns be filed within ten (10) days after the end of each month for the months of January to November and on or before January 15 of the following year for the month of December. Further, pursuant to RR No. 26-2002,[55] for the purpose of filing returns under the electronic filing and payment system (EFPS), taxpayers classified under group C, such as herein petitioner, are required to file the monthly withholding tax returns within thirteen (13) days following the end of the month.

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[52] Sec. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* – 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.

[53] 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 value-added tax on a monthly basis.

[54] Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.
(A) *Monthly return and payment of taxes withheld at source.* – xxx
(2) WHEN TO FILE –
(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 each year, which shall be filed on or before January 15 of the following year.

[55] Amending Further Revenue Regulations No. 9-2001, as amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (EFPS) Based on Industry Classification.

Applying the foregoing provisions of law and regulations, the following are the dates pertinent to the subject deficiency tax assessments:

Exhibit No.	Period	Date filed	Last day to file	Last day to assess	Date of Receipt of FLD and FANs[56]
Annual ITR					
P-22, FOE Folder	CY 2011	Jul. 19, 2012	Apr. 16, 2012[57]	Jul. 19, 2015	Jul. 22, 2015
Quarterly VAT Returns					
P-78	1st Qtr of CY 2011	Apr. 25, 2011	Apr. 25, 2011	Apr. 25, 2014	Jul. 22, 2015
P-29-e, FOE Folder	2nd Qtr of CY 2011	Jul. 19, 2011	Jul. 25, 2011	Jul. 25, 2014	
P-29-h, FOE Folder	3rd Qtr of CY 2011	Oct. 21, 2011	Oct. 25, 2011	Oct. 25, 2014	
R-13 (BIR Rec.), Folder 1, p. 270	4th Qtr of CY 2011	Jan. 21, 2012	Jan. 25, 2012	Jan. 25, 2015	
Monthly EWT Returns					
P-8, Docket Vol. III, p. 1349	January 2011 (manual)	Feb. 10, 2011	Feb. 10, 2011	Feb. 10, 2014	Jul. 22, 2015
P-9, Docket Vol. III, p. 1351	February 2011 (manual)	Mar. 10, 2011	Mar. 10, 2011	Mar. 10, 2014	
P-10, Docket Vol. III, p. 1353	March 2011 (manual)	Apr. 11, 2011	Apr. 11, 2011[58]	Apr. 11, 2014	
P-11, Docket Vol. III, p. 1355	April 2011 (manual)	May 10, 2011	May 10, 2011	May 10, 2014	
P-12, Docket Vol. III, p. 1357	May 2011 (manual)	Jun. 10, 2011	Jun. 10, 2011	Jun. 10, 2014	
P-13, FOE Folder	June 2011 (eFPS)	Jul. 8, 2011	Jul. 13, 2011	Jul. 13, 2014	
P-14, FOE Folder	July 2011 (eFPS)	Aug. 9, 2011	Aug. 15, 2011[59]	Aug. 15, 2014	
P-15, FOE Folder	August 2011 (eFPS)	Sept. 8, 2011	Sept. 13, 2011	Sept. 13, 2014	
P-16, FOE Folder	September 2011 (eFPS)	Oct. 8, 2011	Oct. 13, 2011	Oct. 13, 2014	
P-17, FOE Folder	October 2011 (eFPS)	Nov. 8, 2011	Nov. 14, 2011[60]	Nov. 14, 2014	
P-18, FOE Folder	November 2011 (eFPS)	Dec. 9, 2011	Dec. 13, 2011	Dec. 13, 2014	
P-19, FOE Folder	December 2011 (eFPS)	Jan. 11, 2012	Jan. 13, 2012	Jan. 13, 2015	

Based on the foregoing presentation, the FLD/FAN were issued beyond the three-year prescriptive period to assess.

However, the three-year prescriptive period to assess may be extended through the execution of a written agreement, the Waiver of Defense of Prescription Under the Statute of Limitations of the NIRC (waiver), by the parties, pursuant to Section 222(b) of the NIRC, which states:

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[56] BIR Records, Exhibits "P-37" to "P-37-d", pp. 1596 to 1607.
[57] April 15, 2012 fell on a Sunday.
[58] April 10, 2011 fell on a Sunday.
[59] August 13, 2011 fell on a Saturday.
[60] November 13, 2011 fell on a Sunday.

> Sec. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
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> xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

Relative thereto, Revenue Memorandum Order (RMO) No. 20-90[61] provides that both the date of execution by the taxpayer and the date of acceptance by the BIR should be before the expiration of the period of prescription.

Petitioner executed various waivers with the following details:

	Exhibit No.	**Date of Execution**	**Date of Acceptance**	**Extended Date of Prescription**
1st waiver	R-5; P-30 (BIR Records, Folder 1, p. 358)	Jun. 20, 2014	Jun. 24, 2014	Dec. 31, 2014
2nd waiver	R-6 (BIR Records, Folder 1, p. 359-A); P-32 (Docket, Vol. III, p. 1471)	Nov. 13, 2014	Nov. 21, 2014	Jun. 30, 2015
3rd waiver	R-7; P-35 (BIR Records, Folder 1, p. 359-B)	Mar. 27, 2015	Apr. 27, 2015	Dec. 31, 2015

From the foregoing, the deficiency VAT assessment for the 1st quarter of TY 2011 (last day to assess was on April 25, 2014) and the deficiency EWT assessment for the months of January 2011 to May 2011 (last day to assess was on June 10, 2014) had already prescribed when the first waiver was executed by petitioner on June 20, 2014 and accepted by the BIR on June 24, 2014. Consequently, the assesments for the said periods are deemed invalid.

On the other hand, the deficiency income tax assessment for TY 2011, the deficiency VAT assessment for the 2nd to 4th quarters of TY 2011, and the deficiency EWT assessment for the months of June 2011 to December 2011, were issued within the extended period to assess under Section 222(b) in relation to

[61] Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code, April 4, 1990.

Section 203 of the NIRC, by virtue of the waivers executed by petitioner. As such, the assessments were timely issued.

The assessments for deficiency VAT and EWT are void.

Petitioner contends that the final assessments for VAT and EWT are fatally infirm for failure to indicate the due date for payment thereof. Petitioner asserts that it was not afforded with a reasonable opportunity to settle and pay the alleged deficiency VAT and EWT as the due date indicated in the FANs had already lapsed when the said FANs were received by petitioner on July 22, 2015. It further avers that depriving a recourse available under the law for the petitioner to settle and pay the deficiency taxes assessed necessarily equates to "lack of due date", and such situation makes the alleged deficiency VAT and EWT liability indefinite. Hence, petitioner posits that the deficiency VAT and EWT assessments should be declared to have been invalidly issued and would not result to any deficiency tax liability.

We agree with petitioner.

Based on the FLD,[62] petitioner is requested to pay the deficiency tax liabilities "within the time shown in the enclosed assessment notice". However, a perusal of the Audit Result/Assessment Notices (BIR Form No. 0401) with Assessment Nos. VT-116-LOA-00000011-11-15-1912[63] and WE-116-LOA-00000011-11-15-1913[64] for VAT and EWT, respectively, reveals that there are two dates appearing in the "DUE DATE" portion thereof. On the upper portion, the due date indicated is April 30, 2015, while the lower portion indicates July 31, 2015.

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*,[65] the Supreme Court emphasized that a FAN without a definite due date for payment is not valid. The Supreme Court explained:

> A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for

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[62] BIR Records, Folder 1, Exhibit "R-11", p. 433; Folder 2, Exhibit "P-37", p. 1605.
[63] BIR Records, Folder 1, Exhibit "R-12-a", p. 425; Folder 2, Exhibit "P-37-c", p. 1597.
[64] BIR Records, Folder 1, Exhibit "R-12-b", p. 424; Folder 2, Exhibit "P-37-d", p. 1596.
[65] G.R. No. 215957, November 9, 2016.

> payment thereof." this demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.'" Thus, it must be "sent to and received by the taxpayer, and must demand payment of taxes described therein within a specific period."
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> The disputed Final Assessment Notice is not a valid assessment.
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> xxx xxx xxx
>
> Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
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> xxx xxx xxx
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and charges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.

The two different due dates indicated in the VAT and EWT assessment notices leaves the taxpayer in a quandary as to when payment should be made. Thus, similar to when no due date is indicated in the FAN, as in the *Fitness By Design* case, two (2) due dates indicated in the FANs negate the respondent's demand for payment of the deficiency tax liabilities. Absent such demand, the assessments for VAT and EWT are fatally infirm.

Petitioner is liable for deficiency income tax.

Respondent assessed petitioner for deficiency income tax for taxable year 2011 in the amount of Php79,653,140.60, inclusive of increments, computed as follows:[66]

Taxable income per return		₱ 4,236,787.70
Add: Findings per Investigation:		
IT-1 GP from undeclared purchases (WP vs FS/ITR)	₱10,603,293.62	
IT-2 Undeclared sales due to unreported A/R	1,110,068.45	
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IT-6 Sales to Gov't (not included in the SLS)	211,610.64	
IT-7 Excess of std input over actual input (to be closed to expense)	(10,475.73)	
IT-8 Disallowed expenses due to nonwithholding (Sec. 34K NIRC)	41,230,990.26	
IT-9 GP on undeclared sales per recon of SLS, SAWT & TPI data	5,230,200.00	
IT-10 Undeclared income due to understatement of carry-over input	4,012,104.70	
Total Adjustments per audit		159,997,214.81
Taxable income per audit		₱ 164,234,002.51
Multiplied by: Income tax rate		30%
Income tax due per audit		₱ 49,270,200.75
Less: Allowable Credits/Payments:		
Unexpired prior years MCIT	₱ 427,028.47	
Tax Payments	585,581.85	
Creditable withholding tax claimed per ITR	248,425.99	1,261,036.31
Basic Income Tax Deficiency		**₱48,009,164.44**
Add: Increments		
Surcharge	-	
Interest - 7/31/2015	₱31,593,976.16	
Compromise	50,000.00	31,643,976.16
Total Amount Due (IT)		**₱79,653,140.60**

IT-1 GP from undeclared purchases (WP vs FS/ITR) – Php10,603,293.62

Respondent's comparison of the purchases declared per petitioner's Financial Statements/Income Tax Return (FS/ITR) against the purchases from Asia Brewery, Inc. and Interbev Philippines, Inc. per petitioner's Summary List of Purchases (SLP) and the purchases per respondent's working paper (WP) revealed discrepancies, which were treated by respondent as undeclared purchases. The assessed gross profit (GP) on undeclared purchases amounting to Php10,603,293.62 was computed as follows:

	Per FS/ITR	Per SLP	Per WP
Purchases per FS/ITR:			

[66] BIR Records, Folder 2, Exhibit "P-37", p. 1607.

Cost of Sales per FS	₱332,605,299.88		
Freight In	(47,329,257.00)		
Baginning Inventory	(30,405,210.00)		
Ending Inventory	28,035,788.00		
Supplier per SLP:			
Asia Brewery Inc.		₱169,803,610.41	
Interbev Philippines Inc		162,919,137.48	
Purchases per Working Paper:			
Total debits to Inventories			₱ 370,166,880.98
Beginning inventory per WP			(30,412,576.49)
	₱282,906,620.88	₱332,722,747.89	₱ 339,754,304.49
Purchases per FS/ITR	282,906,620.88	282,906,620.88	282,906,620.88
Undeclared Purchases	-	₱ 49,816,127.01	**₱56,847,683.61**
Undeclared Purchases (WP vs FS/ITR-higher amount)			₱ 56,847,683.61
Divided by: COS rate			84.28%
Grossed-up sales			**₱67,450,977.23**
Multiplied by: GP rate			15.72%
GP on undeclared purchases			**₱10,603,293.62**

The assessment is unmeritorious.

As held in *Commissioner of Internal Revenue v. Agrinurture, Inc.*,[67] a finding of under-declaration of purchases does not by itself result in the imposition of income tax and VAT.

The three (3) elements for the imposition of income tax are: (1) there must be gain or profit, (2) that gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.[68] Income tax is assessed on income received from any property, activity or service. As such, income tax is imposed only when there is an income, and such income was received by the taxpayer and not when there is an under-declaration of purchases.

For income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[69]

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[67] CTA EB No. 1054, January 13, 2015.

[68] *Commissioner of Internal Revenue v. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.

[69] *The Commissioner of Internal Revenue v. Phoenix Assurance Co., Ltd.*, G.R. No. L-19727, May 20, 1965. *au*

Thus, for lack of factual and legal basis, the deficiency income tax on the alleged gross profit of Php10,603,293.62 on undeclared purchases is cancelled.

IT-2 Undeclared sales due to unreported A/R – Php1,110,068.45

Pursuant to Sections 32 and 24 of the NIRC, respondent assessed petitioner for undeclared sales in the amount of Php1,110,068.45 after comparing the amount of sales booked under the "Trade and Other Receivables" account per petitioner's Trial Balance (TB) against the amount of sales reported in its FS/ITR/VATR[70], as follows:

Debits to Trade and Other Receivables per TB	₱443,236,387.74
Less: VAT component	47,489,612.97
Sales from recorded A/R per TB	₱395,746,774.77
Sales per FS/ITR/VATR	394,636,706.32
Undeclared sales	**₱ 1,110,068.45**

Asserting that it has no undeclared sales due to unreported Accounts Receivable in the amount of Php1,110,068.45, petitioner presented the amounts of "Trade and Other Receivables" as reported in its Audited Financial Statements (AFS) and how it arrived at such amounts of receivables, as follows:[71]

Trade and Other Receivables per AFS:

	2011	2010
Trade Receivables	107,483,028.00	122,534,171.00
Other Receivables	643,919.00	627,788.00
	108,126,947.00	123,161,959.00

Trade and Other Receivables per petitioner:

	Trade and Other Receivables	
Beg. Balance	123,161,959.37	
Transactions	443,236,387.74	458,271,401.03
End Balance	108,126,946.08	

	Trade Receivables	
Beg. Balance	122,534,170.99	
Transactions	441,993,111.01	457,044,254.27
End Balance	107,483,027.73	

	Other Receivables	
Beg. Balance	627,788.38	
Transactions	1,243,276.73	1,227,146.76

[70] Value-Added Tax Returns.
[71] Docket, Vol. I, Petition for Review, pars. 58 and 59, p. 29.

End Balance	643,918.35

Petitioner contends that respondent's computation is erroneous since the amount of Php443,236,387.74 (Debits to Trade and Other Receivables per TB) used by the latter included both Trade and Non-Trade Receivables. It avers that respondent should have distinguished receivables arising from sales and those receivables not arising from sales. Further, according to petitioner, the amount corresponding to "Other Receivables" of Php1,243,276.73 should have been excluded since this does not result to taxable sales and consequently, the alleged undeclared sales should have been computed as follows:[72]

Debits to Trade and Other Receivables per TB	₱443,236,387.74
Less: Total Debits to Other Receivables Account for CY 2011	1,243,276.73
Trade Receivables	₱441,993,111.01
Less: VAT Component	47,356,404.75
Sales per recorded A/R per TB	₱394,636,706.26
Sales per FS/ITR/VATR	394,636,706.32
Under (Over) Declared Sales	₱ (0.06)

The Court finds for the petitioner.

At the outset, nothing in respondent's computation would show that there is an unreported Accounts Receivable from which the alleged undeclared sales may arise. In fact, incorporating the debits and credits to "Trade and Other Receivables" per TB[73] in the respective amounts of Php443,236,387.74 and Php458,271,401.03 to the Php123,161,959.00 beginning balance of the same account per the Statements of Financial Position as of December 31, 2011 and 2010[74] would result to an ending balance of Php108,126,945.71, which is approximately the same as (with minimal difference of 1.29 which may be due to rounding) the Php108,126,947.00 reported therein.

Based on respondent's computation, the alleged undeclared sales is actually the discrepancy between the debit amounts recorded under "Trade and Other Receivables" (net of VAT) per TB and the sales reflected in the AFS and ITR. Respondent merely picked up the total debits to "Trade and Other Receivables" per TB of Php443,236,387.74 and treated

[72] Docket, Vol. I, Petition for Review, pars. 58 and 59, p. 29.
[73] BIR Records, Folder 1, Exhibit "P-34", p. 360.
[74] Docket, Vol. III, Exhibit "P-23", p. 1406.

the same as pertaining to sales without verifying if the entire amount actually represents petitioner's sales transactions. As can be seen from Note 4[75] of petitioner's Notes to FS, its "Trade and Other Receivables" is composed of "Trade Receivables" and "Other Receivables" with the following balances:

Trade and Other Receivables		
	2011	2010
Trade receivables	₱107,483,028.00	₱122,534,171.00
Other receivables	643,919.00	627,788.00
	₱108,126,947.00	₱123,161,959.00

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[76] Hence, for lack of factual basis, the assessed undeclared sales due to unreported A/R in the amount of Php1,110,068.45 is cancelled.

IT-3 Unallowable Sales Returns & Allowances – Php46,338,319.08

Per respondent, the contra-sales account, "Sales Returns, Discounts & Allowances", requires verification of supporting records such as Debit/Credit Memo and Certificate of Deductibility issued by the BIR pursuant to Revenue Audit Memorandum Order (RAMO) No. 01-99. For petitioner's failure to present the required supporting documents, respondent disallowed as reduction from petitioner's sales, the contra-sales amount of Php46,338,319.08 reflected in the latter's TB.

Petitioner argues that it has proper documentation for its sales discounts and validly claimed the same as reduction to its gross sales/receipts.

The Court partially upholds the disallowance.

Section 27(A) of the NIRC defines "gross income" as that equivalent to gross sales *less* sales returns, discounts and allowances and cost of goods sold. Further, in the case of *Commissioner of Internal Revenue v. Central Luzon Drug*

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[75] Docket, Vol. III, Exhibit "P-23", p. 1417.
[76] *Collector of Internal Revenue v. Benipayo*, G.R. No. "-13656, January 31, 1962.

Corporation,[77] the Supreme Court explained the nature of sales discounts in this wise:

> By ordinary acceptation, a discount is an "abatement or reduction made from the gross amount or value of anything." To be more precise, it is in business parlance "a deduction or lowering of an amount of money;" or "a reduction from the full amount or value of something, especially a price." In business, there are many kinds of discount, the most common of which is that affecting the *income statement* or financial report upon which the *income tax* is based.
>
> xxx xxx xxx
>
> Based on this discussion, we find that the nature of a *sales discount* is peculiar. Applying generally accepted accounting principles (GAAP) in the country, this type of discount is reflected in the *income statement* as a line item deducted – along with the returns, allowances, rebates and other similar expenses – from *gross sales* to arrive at *net sales*. This type of presentation is resorted to, because the *accounts receivable* and sales figures that arise from *sales discounts*, – as well as from *quantity, volume or bulk discounts* – are recorded in the manual and computerized *books of accounts* and reflected in the financial statements at the gross amounts of the invoices. This manner of recording credit sales – known as the *gross method* – is most widely used, because it is simple, more convenient to apply than the *net method*, and produces no material errors over time.
>
> However, under the *net method* used in recording *trade, chain or functional discounts*, only the net amounts of the invoices – after the discounts have been deducted – are recorded in the *books of accounts* and reflected in the financial statements. A separate line item cannot be shown, because the transactions themselves involving both *accounts receivables* and *sales* have already been entered into, net of the said discounts.
>
> The term *sales discounts* is not expressly defined in the Tax Code, but one provision adverts to amounts whose sum – along with *sales returns, allowances* and *cost of goods sold* – is deducted from *gross sales* to come up with the *gross income, profit* or *margin* derived from business. In another provision therein, *sales discounts* that are granted and indicated in the invoices at the time of sale – and that do not depend upon the happening of

[77] G.R. No. 159647, April 15, 2005.

> any future event – may be excluded from the *gross sales* within the same quarter there were given. While determinative only of the VAT, the latter provision also appears as a suitable reference point for income tax purposes already embraced in the former. After all, these two provisions affirm that *sales discounts* are amounts that are always deductible from *gross sales.*

Essentially, sales returns and discounts, being deductions from gross sales, which ultimately reduce the taxpayer's taxable net income, partake the nature of tax exemption. Exemptions from taxation are construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[78] As such, to be entitled to claim a tax deduction, the taxpayer must competently establish the factual and documentary bases of its claim.[79]

Simply put, while it is true that the sales account should be presented net of sales returns, discounts and allowances, it is imperative for petitioner to prove proper substantiation of its claimed sales returns and discounts before it can be allowed as deduction from gross sales.

A perusal of petitioner's worksheet for TY ended December 31, 2011[80] shows the total monthly debits and credits to its "Sales" account. The total amount of Php46,338,319.08 under the Debit (DR) column pertains to the alleged sales returns, discounts and allowances which were disallowed by respondent while the total amount of Php440,975,025.40 under the Credit (CR) column pertains to the Total Salse for TY 2011, as follows:

Month	Sales	
	DR	CR
January	₱ 4,307,950.81	₱ 30,728,853.59
February	810,993.42	28,309,802.67
March	2,596,959.41	27,848,152.68
April	1,724,517.90	35,678,630.34
May	5,379,774.56	53,500,520.55
June	5,464,326.14	40,611,118.77
July	4,850,883.12	38,464,630.36
August	4,377,041.62	37,995,420.54
September	4,362,426.75	34,520,133.03
October	4,556,762.16	40,490,197.32
November	3,830,035.34	33,965,696.43

[78] *Esso Standard Eastern, Inc. vs Acting Commissioner of Customs,* G.R. No. L-21841, October 28, 1966.
[79] *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 173373, July, 29, 2013.
[80] BIR Records, Folder 1, Exhibit "P-28", p. 341.

December	4,076,647.85	38,861,869.12
Total	₱46,338,319.08	₱440,975,025.40
End Balance		₱394,636,706.32

Notwithstanding the absence of Debit/Credit Memo or Certificate of Deductibility issued by the BIR, the Court finds that petitioner sufficiently proved a portion of its claimed sales returns, discounts and allowances through the presentation of its sales invoices for TY 2011[81], which were examined by the Court-commissioned Independent Certified Public Accountant (ICPA). The ICPA verified substantial sales returns and discounts indicated as "Trade discount, Deals and Pick Up Allowance" per sales invoices in the amount of Php39,258,500.52[82].

However, upon scrutiny of the ICPA's monthly schedules of sales returns/discounts and allowances, together with the corresponding invoices, the Court finds that petitioner's substantiated sales returns and discounts from its five sales offices only amounts to Php36,451,830.46 (inclusive of VAT), detailed as follows:

Sales office (per month)	**Sales Returns and Discounts (inclusive of VAT)**	**Exhibit Nos. of monthly schedule of sales returns/discounts and allowances**	**Exhibits Nos. of supporting sales invoices**
Daet			
January	₱ 447,903.20	P-120-A-1 to P-120-A-1-h	P-120-A-1-1 to P-120-A-1-490
February	505,885.60	P-120-A-2 to P-120-A-2-i	P-120-A-2-1 to P-120-A-2-527
March	521,864.10	P-120-A-3 to P-120-A-3-j	P-120-A-3-1 to P-120-A-3-655
April	558,637.00	P-120-A-4 to P-120-A-4-i	P-120-A-4-1 to P-120-A-4-512
May	674,494.60	*(schedule not labeled)*	P-120-A-5-1 to P-120-A-5-555
June	471,660.30	P-120-A-6 to P-120-A-6-f	P-120-A-6-1 to P-120-A-6-393
July	638,113.70	P-120-A-7 to P-120-A-7-h	P-120-A-7-1 to P-120-A-7-505
August	660,645.10	P-120-A-8 to P-120-A-8-i	P-120-A-8-1 to P-120-A-8-564
September	684,691.00	P-120-A-9 to P-120-A-9-h	P-120-A-9-1 to P-120-A-9-531
October	677,136.20	P-120-A-10 to P-120-A-10-j	P-120-A-10-1 to P-120-A-10-560
November	398,349.70	P-120-A-11 to P-120-A-11-e	P-120-A-11-1 to P-120-A-11-337
December	592,436.50	P-120-12-a-1 to P-120-12-a-6, P-120-A-12-a-1 to P-120-A-12-a-5	P-120-A-12-1 to P-120-A-12-539
subtotal	***₱ 6,831,817.00***		
Masbate			

[81] Exhibits "P-120-A-1-1 and series" to "P-120-E-12-1 and series" except the exhibits which were denied admission by the Court.
[82] Exhibit "P-121", 2nd Amended ICPA Report, Docket, Vol. IV, p. 1762.

January	₱ 687,056.80	P-120-B-1 to P-120-B-1-l	P-120-B-1-1 to P-120-B-1-642
February	826,386.87	P-120-B-2 to P-120-B-2-j	P-120-B-2-1 to P-120-B-2-648
March	580,867.25	P-120-B-3 to P-120-B-3-h	P-120-B-3-1 to P-120-B-3-602
April	465,951.00	P-120-B-4 to P-120-B-4-j	P-120-B-4-1 to P-120-B-4-639
May	1,005,636.90	P-120-B-5 to P-120-B-5-i	P-120-B-5-1 to P-120-B-5-615
June	381,574.00	P-120-B-6 to P-120-B-6-d	P-120-B-6-1 to P-120-B-6-286
July	268,343.00	P-120-B-7 to P-120-B-7-b	P-120-B-7-1 to P-120-B-7-162
August	657,283.55	P-120-B-8 to P-120-B-8-d	P-120-B-8-1 to P-120-B-8-314
September	727,110.75	P-120-B-9 to P-120-B-9-d	P-120-B-9-1 to P-120-B-9-359
October	538,585.15	P-120-B-10 to P-120-B-10-e	P-120-B-10-1 to P-120-B-10-364
November	645,020.21	P-120-B-11 to P-120-B-11-e	P-120-B-11-1 to P-120-B-11-408
December	485,650.65	P-120-B-12-a-1 to P-120-B-12-a-4	P-120-B-12-1 to P-120-B-12-269
subtotal	***₱ 7,269,466.13***		
Legaspi			
January	₱ 653,164.75	P-120-C-1 to P-120-C-1-f, P-120-C-a-1 to P-120-C-a-3	P-120-C-1-1 to P-120-C-1-472
February	489,296.07	P-120-C-2 to P-120-C-2-b, P-120-C-2-a-1 to P-120-C-2-a-2	P-120-C-2-1 to P-120-C-2-230
March	471,917.95	P-120-C-3 to P-120-C-3-e	P-120-C-3-1 to P-120-C-3-232
April	520,192.90	P-120-C-4 to P-120-C-4-g, P-120-C-4-a-9 to P-120-C-4-a-11	P-120-C-4-1 to P-120-C-4-458
May	1,333,232.55	P-120-C-5 to P-120-C-5-m, P-120-C-5-a-15 to P-120-C-5-a-18	P-120-C-5-1 to P-C-5-777
June	696,706.50	P-120-C-6 to P-120-C-6-f, P-120-C-6-a-7 to P-120-C-6-a-12	P-120-C-6-1 to P-120-C-6-510
July	736,567.85	P-120-C-7 to P-120-C-7-g, P-120-C-7-a-9 to P-120-C-7-a-13	P-120-C-7-1 to P-120-C-7-542
August	1,023,278.02	P-120-C-8 to P-120-C-8-k, P-120-C-8-a-13 to P-120-C-8-a-15	P-120-C-8-1 to P-120-C-8-706
September	764,459.55	P-120-C-9 to P-120-C-9-k, P-120-C-9-a-12 to P-120-C-9-a-14	P-120-C-9-1 to P-120-C-9-625
October	1,159,326.38	P-120-C-10 to P-120-C-10-n, P-120-C-10-a-15 to P-120-C-10-a-17	P-120-C-10-1 to P-120-C-10-775
November	609,813.80	P-120-C-11 to P-120-C-11-h, P-120-C-11-a-9 to P-120-C-11-a-12	P-120-C-11-1 to P-120-C-11-535
December	1,306,322.05	P-120-C-12 to P-120-C-12-m, P-120-C-12-a-14 to P-120-C-12-a-16	P-120-C-12-1 to P-120-C-12-785
subtotal	***₱ 9,764,278.37***		
Less: Sales discounts with exhibits that were denied admission by the Court (from January)	87,814.50	P-120-C-a-1 to P-120-C-a-3	P-120-C-1-399 to P-120-C-1-472

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Net	***₱ 9,676,463.87***		
Sorsogon			
January	₱ 75,771.20	P-120-D-1-a-1 to P-120-D-1-a-3	P-120-D-1-1 to P-120-D-1-200
February	45,930.00	P-120-D-2-a-1 to P-120-D-2-a-4	P-120-D-2-1 to P-120-D-2-155
March	54,520.00	P-120-D-3-a-1 to P-120-D-3-a-3	P-120-D-3-1 to P-120-D-3-125
April	117,298.00	P-120-D-4-a-1 to P-120-D-4-a-4	P-120-D-4-1 to P-120-D-4-216
May	172,298.00	P-120-D-5-a-1 to P-120-D-5-a-5	P-120-D-5-1 to P-120-D-5-255
June	126,526.00	P-120-D-6-a-1 to P-120-D-6-a-4	P-120-D-6-1 to P-120-D-6-192
July	88,820.00	P-120-D-7-a-1 to P-120-D-7-a-4	P-120-D-7-1 to P-120-D-7-157
August	98,869.00	P-120-D-8-a-1 to P-120-D-8-a-3	P-120-D-8-1 to P-120-D-8-143
September	111,257.00	P-120-D-9-a-1 to P-120-D-9-a-5	P-120-D-9-1 to P-120-D-9-218
October	63,092.00	P-120-D-10-a-1 to P-120-D-10-a-3	P-120-D-10-1 to P-120-D-10-110
November	52,776.00	P-120-D-11-a-1 to P-120-D-11-a-3	P-120-D-11-1 to P-120-D-11-161
December	69,045.00	P-120-D-12-a-1 to P-120-D-12-a-3	P-120-D-12-1 to P-120-D-12-133
subtotal	***₱ 1,076,202.20***		
Naga			
January	₱ 889,103.03	P-120-E-1-a-1 to P-120-E-1-a-21	P-120-E-1-1 to P-120-E-1-1059
February	745,419.50	P-120-E-2-a-1 to P-120-E-2-a-15	P-120-E-2-1 to P-120-E-2-732
March	994,110.72	P-120-E-3-a-1 to P-120-E-3-a-20	P-120-E-3-1 to P-120-E-3-1268
April	1,352,823.49	P-120-E-4-a-1 to P-120-E-4-a-25	P-120-E-4-1 to P-120-E-4-1314
May	1,537,713.30	P-120-E-5-a-1 to P-120-E-5-a-24	P-120-E-5-1 to P-120-E-5-1247
June	1,305,206.10	P-120-E-6-a-1 to P-120-E-6-a-22	P-120-E-6-1 to P-120-E-6-1107
July	1,075,264.17	P-120-E-7-a-1 to P-120-E-7-a-17	P-120-E-7-1 to P-120-E-7-999
August	865,833.40	P-120-E-8-a-1 to P-180-E-8-a-17	P-120-E-8-1 to P-120-E-8-826
September	649,495.80	P-120-E-9-a-1 to P-120-E-9-a-9	P-120-E-9-1 to P-120-E-9-508
October	597,437.48	P-120-E-10-a-1 to P-120-E-10-a-10	P-120-E-10-1 to P-120-E-10-520
November	473,242.46	P-120-E-11-a-1 to P-120-E-11-a-8	P-102-E-11-1 to P-120-E-11-427
December	1,112,231.81	P-120-E-12-a-1 to P-120-E-12-a-20	P-120-E-12-1 to P-120-E-12-917
subtotal	***₱11,597,881.26***		
Total	**₱36,451,830.46**		

Furthermore, a comparison of the sales returns and discounts-net of VAT per the ICPA's monthly schedules of sales returns/discounts and allowances in the total amount of Php32,546,277.20 (Php36,451,830.46/112%) as against the sales returns and discounts recorded per petitioner's 2011 worksheet in the amount of Php46,338,319.08, reveals a difference of Php13,792,041.88. This difference consisted of the Php2,489,328.35 sales returns and discounts accounted by the ICPA but were not included in the subject disallowance and the

Php16,281,370.23 sales returns and discounts which remained unaccounted and unsupported. The details of the Court's verification are presented hereunder:

Month	Sales Office	Sales Returns and Discounts per ICPA Schedules (as indicated in the previous table)			Debits to "Sales" per petitioner's 2011 Worksheet [c]	Difference [c-b]	
		Subtotal - Inclusive of VAT	Total - Inclusive of VAT [a]	Total - Net of VAT [b = a/112%]		Over accounted by the ICPA but not included in the subject disallowance	Unsupported Sales Returns and Discounts
January	Daet	₱ 447,903.20					
	Masbate	687,056.80					
	Legaspi	565,350.25					
	Sorsogon	75,771.20					
	Naga	889,103.03	₱ 2,665,184.48	₱ 2,379,629.00	₱ 4,307,950.81		₱ 1,928,321.81
February	Daet	505,885.60					
	Masbate	826,386.87					
	Legaspi	489,296.07					
	Sorsogon	45,930.00					
	Naga	745,419.50	2,612,918.04	2,332,962.54	810,993.42	(₱ 1,521,969.12)	
March	Daet	521,864.10					
	Masbate	580,867.25					
	Legaspi	471,917.95					
	Sorsogon	54,520.00					
	Naga	994,110.72	2,623,280.02	2,342,214.30	2,596,959.41		254,745.11
April	Daet	558,637.00					
	Masbate	465,951.00					
	Legaspi	520,192.90					
	Sorsogon	117,298.00					
	Naga	1,352,823.49	3,014,902.39	2,691,877.13	1,724,517.90	(967,359.23)	
May	Daet	674,494.60					
	Masbate	1,005,636.90					
	Legaspi	1,333,232.55					
	Sorsogon	172,298.00					
	Naga	1,537,713.30	4,723,375.35	4,217,299.42	5,379,774.56		1,162,475.14
June	Daet	471,660.30					
	Masbate	381,574.00					
	Legaspi	696,706.50					
	Sorsogon	126,526.00					
	Naga	1,305,206.10	2,981,672.90	2,662,207.95	5,464,326.14		2,802,118.19
July	Daet	638,113.70					
	Masbate	268,343.00					
	Legaspi	736,567.85					
	Sorsogon	88,820.00					
	Naga	1,075,264.17	2,807,108.72	2,506,347.07	4,850,883.12		2,344,536.05
August	Daet	660,645.10					
	Masbate	657,283.55					
	Legaspi	1,023,278.02					
	Sorsogon	98,869.00					
	Naga	865,833.40	3,305,909.07	2,951,704.53	4,377,041.62		1,425,337.09
September	Daet	684,691.00					
	Masbate	727,110.75					
	Legaspi	764,459.55					
	Sorsogon	111,257.00					
	Naga	649,495.80	2,937,014.10	2,622,334.02	4,362,426.75		1,740,092.73
October	Daet	677,136.20					
	Masbate	538,585.15	3,035,577.21	2,710,336.79	4,556,762.16		1,846,425.37

	Legaspi	1,159,326.38					
	Sorsogon	63,092.00					
	Naga	597,437.48					
November	Daet	398,349.70					
	Masbate	645,020.21					
	Legaspi	609,813.80					
	Sorsogon	52,776.00					
	Naga	473,242.46	2,179,202.17	1,945,716.22	3,830,035.34		1,884,319.12
December	Daet	592,436.50					
	Masbate	485,650.65					
	Legaspi	1,306,322.05					
	Sorsogon	69,045.00					
	Naga	1,112,231.81	3,565,686.01	3,183,648.22	4,076,647.85		892,999.63
Total			**₱36,451,830.46**	**₱32,546,277.20**	**₱46,338,319.08**	**(₱2,489,328.35)**	***₱16,281,370.24**

**With 0.01 discrepancy due to rounding off.*

Since the sales returns and discounts accounted for by the ICPA covering the months of February and April in the amounts of Php2,332,962.54 and Php2,691,877.13, are higher than the amounts of Php810,993.42 and Php1,724,517.90 recorded by petitioner and disallowed by respondent, the difference thereon in the amounts of Php1,521,969.12 and Php967,359.23, respectively, or in the total amount of Php2,489,328.35 shall be excluded from the substantiated sales returns and discounts of Php32,546,277.20 for the purpose of determining the allowable claimed deductions from gross sales. Consequently, only the amount of Php30,056,948.85 (Php32,546,277.20 less Php2,489,328.35) represents petitioner's properly substantiated sales returns and discounts which shall be considered as validly claimed deductions from its gross sales.

Thus, out of the assessed unallowable sales returns and allowances of Php46,338,319.08, only the amount of Php16,281,370.23 (Php46,338,319.08 less Php30,056,948.85) shall remain for petitioner's failure to properly support the same.

<u>**IT-4** Unsupported Freight-in, Fuel & Transportation Expenses – Php29,181,966.24</u>

Respondent's audit of petitioner's expenses claimed per FS and the related purchases from suppliers listed in the latter's SLP revealed that "Freight-in" and "Fuel and transportation" expenses in the amount of Php29,181,966.24 was not fully supported, hence, disallowed as deduction from gross income. Respondent's computation is shown below: au

Per FS/ITR/TB		
Freight-In	₱47,329,257.00	
Transportation	2,369,147.21	
Fuel & Oil	9,861,117.87	₱ 59,559,522.08
Less: Freight Contractors & Fuel Suppliers per SLP:		
LFH Venture Mdsg Corp	₱11,702,250.28	
Pilipinas Shell Petroleum Corp	4,970,167.56	
Petron Corp	4,749,098.05	
Rapid Movers & Forwarders Co Inc	2,687,483.02	
Quincela Shipping Lines	2,539,108.30	
Hizon Transport Services & Trdg Inc	1,774,705.07	
MRTC Trucking Services Corp	743,925.07	
Our Beverly Village Trucking Corp	709,860.05	
CMT Hauling Services	259,411.75	
Regina Shipping Lines Inc	63,169.59	
Powerzone Petroleum Products Corp	43,628.04	
Philippine Airlines Inc	28,658.03	
LBC Express-Sel Inc	28,316.81	
JRS Business Corp	25,002.84	
Montenegro Shipping Lines Inc	17,133.89	
TCL Merchandise Brokerage Inc	16,986.83	
Air Philippines Corp	6,751.78	
Santa Clara Shipping Corp	5,107.13	
Penafrancia Shipping Corp	3,587.26	
DHL Worldwide Express	3,204.49	30,377,555.84
Unsupported		**₱29,181,966.24**

Petitioner contends that respondent's allegation has no factual basis. It explains that the total "Freight-in" and "Fuel and transportation" expenses per SLP amounts to Php54,442,002.25 and that it also has non-VAT "Freight-in" and "Fuel and transportation" not reflected in its SLP in the amount of Php5,117,520.06, the total of which amounts to Php59,559,522.31.

In support thereof, petitioner submitted a Reconciliation of Freight, Fuel and Transportation Expenses[83] showing no unsupported freight, fuel and transportation expenses and the breakdown of the amount of Php54,442,002.25 allegedly corresponding to the freight and transportation contractors and fuel suppliers per SLP[84].

Further, upon the ICPA's verification, out of the Php59,559,522.31 expenses relating to freight, fuel and transportation, the amount of Php58,563,790.52, as detailed below, was found to be supported:[85]

[83] FOE Folder, Exhibit "P-44".
[84] FOE Folder, Exhibits "P-40" to "P-40-c".
[85] Docket, Vol. IV, Exhibit "P-121", p. 1765.

EXHIBIT	PER FS/ITR/TB		
	Freight – In	₱47,329,257.23	
	Fuel & Oil	9,861,117.87	
	Transportation	2,369,147.21	**₱59,559,522.31**
	Less: Freight, Fuel & Transporation per SLP		
"P-91 to 91-c; P-95-a"	Freight - In per SLP	₱43,959,779.93	
"P-91 to 91-c; P-95-b"	Fuel & Oil per SLP	9,860,788.91	
"P-91 to 91-c; P-95-c"	Travel &Transportation per SLP	471,502.73	
P-95; P-95-d	Non -VAT Freight & Handling	3,231,333.47	
P-95; P-95-e	Non - VAT Transportations Expense	1,040,385.48	58,563,790.52
	Discrepancy		**₱ 995,731.79**

However, perusal of petitioner's reconciliation and the ICPA's findings reveals that petitioner failed to substantiate the subject expenses. Petitioner's reconciliation only showed the breakdown of the amounts per supplier appearing in the SLP, without any documents to support such purchases or expenses. Likewise, the ICPA provided only the schedules for each classification of expense showing the amounts per supplier included in petitioner's SLP but were not corroborated with invoices and/or official receipts.

Section 34(A)(1)(b) of the NIRC specifically requires adequate substantiation of ordinary and necessary business expenses, as follows:

> Sec. 34. *Deductions from Gross Income.* – xxx
>
> (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.

Without the presentation of credible and sufficient evidence such as invoices and/or official receipts, respondent's disallowance of petitioner's claimed deductions for "Freight-in", and "Fuel and transportation" expenses in the amount of Php29,181,966.24 is upheld.

It bears stressing that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise, the presumption of correctness of tax assessment stands.[86]

IT-5 Unsupported Advertising & Other Outside Services – Php22,089,137.55

Respondent's examination of the Advertising and Other Outside Services claimed per FS and the related suppliers listed in the SLP revealed that not all expenses were properly supported. Further, according to respondent, advertising expenses are normally not shouldered by the manufacturing/owner company of the product which, in this case, are Asia Brewery, Inc. and Interbev Philippines, Inc. Hence. Pursuant to Section 34(A)(1)(b) of the NIRC, the following Advertising & Other Outside Services, in the amount of Php22,089,137.55, were disallowed by respondent for being unsupported/unnecessary:

Per FS/TB:		
Security Services	₱ 1,142,961.38	
Outside Services	11,609,840.55	
Advertising & Promotions	10,479,297.00	₱ 23,232,098.93
Less: Service & Advertising Provider per SLP:		
Tigon Security Investigation & Gen Services Inc	₱ 375,000.00	
Paraseal Security Agency	312,187.50	
New Bicol Veterans Security Agency Inc	268,273.88	
Mezza Security Agency Inc	137,500.00	
Hot Rod Detective & Protective Agency Inc	50,000.00	1,142,961.38
Unsupported/un-necessary advertising expenses		**₱22,089,137.55**

Petitioner maintains that respondent's allegation has no factual basis. Petitioner asserts that the purchases from Asia Brewery Inc. and Interbev Philippines Inc. charged to Advertising & Promotions represent freebies or products which were given to its customers for free for promotion purposes. Further, to explain the alleged unsupported amounts, petitioner

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

presented its SLPs[87] and a line-by-line reconciliation[88], wherein its Advertising Promotions, Security and Outside Services per SLP purportedly amounts to Php10,195,468.73 while its Non-VAT Advertising and Other Outside Services purportedly amounts to Php13,036,630.37.

Upon examination of the submitted documents, the ICPA found that the Advertising and Outside Services Expenses, in the amounts of Php1,209,905.09 and Php1,841,604.50, respectively, were included in the SLP; that the SLP did not include Non-VAT purchases related to Advertising and Outside Services; and, that the unsupported Adverstising and Outside Services Expenses amounted only to Php2,330,572.67, as summarized below:[89]

EXHIBIT	**PER FS/TB**		
	Security Services	*₱ 1,142,961.38*	
	Outside Services	*11,609,840.55*	
	Advertising and Promotions	*10,479,297.00*	***₱23,232,098.93***
	Less: Advertising & Outside services per SLP		
P-91-91-c;P-96;P-96-a	***Security Services per SLP***	*₱ 1,142,961.38*	
P-91-91-c;P-96;P-96-c	***Advertising and Promotions per SLP***	*1,209,905.09*	
P-91-91-c;P-96	***Asia Brewery Inc purchase charge to Advertising***		
	Vatable purchases - Php 169,803,610.41		
	Less:Charged to Inventory 165,127,308.66	*4,676,301.75*	
P-91-91-c;P-96	***Intervev Philippines Inc. purchase charge to Advertising***		
	Vatable purchases - Php 162,919,137.48		
	Less:Charged to Inventory 161,979,200.00	*939,937.48*	
P-91-91-c;P-96;P-96-b	***Outside Services***	*1,841,604.50*	
	Non - Vatable Outside Services	-	
P-96;P-96-d	*Commission – OP*	*201,737.81*	
P-96;P-96-e	*Janitorial & Security*	*12,000.00*	
P-96;P-96-f	*Sales Men Expenses*	*5,456,878.89*	
	Non - Vatable Advertising & Promotions		
P-96;P-96-g	*Promotions – Sponsorship*	*5,420,199.36*	*20,901,526.26*
	Discrepancy		***₱ 2,330,572.67***

However, the Court finds petitioner's reconciliation and the ICPA's findings insufficient to overturn the subject disallowance.

The reconciliation made by petitioner presented a mere list of suppliers included in the SLP with the corresponding amounts allegedly related to Advertising and Outside Services not backed up by any pertinent documents. Likewise, the Advertising & Outside Services per SLP enumerated in the

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[87] FOE Folder, Exhibits "P-40" to "P-40-c".
[88] FOE Folder, Exhibit "P-45".
[89] Docket, Vol. IV, Exhibit "P-121", pp. 1766-1767.

ICPA's summary of findings were picked up from mere schedules without reference to any supporting documentary evidence.

Moreover, petitioner failed to substantiate its claim that a portion of its purchases from Asia Brewery Inc. and Interbev Philippines Inc. allegedly charged to Advertising Expense were freebies or products given to its customers for free for promotion purposes. Even the amounts shown in the ICPA's summary, which were referenced to the SLP and petitioner's reconciliation, are mere reflections of those indicated in petitioner's reconciliation, without details of verification done by the ICPA, if any. Although petitioner submitted schedules of purchases[90] from Asia Brewery Inc. and Interbev Philippines Inc. and the related sales invoices[91] to prove its purchases from said suppliers, still the same do not show that the alleged amounts pertaining to Advertising Expense actually pertain to freebies, which are necessary for the promotion of its business.

Thus, the assessed unsupported Advertising & Other Outside Services of Php22,089,137.55 is upheld.

IT-6 Sales to Gov't (not included in the SLS) – Php211,610.64

Respondent's scrutiny of the VAT returns revealed that petitioner had claimed Final VAT Withheld on its sales to the Provincial government of Camarines Sur which were not included in the Summary List of Sales (SLS), hence, assessed as undeclared sales to government pursuant to Section 32 of the NIRC.

Per Form 2306-Vat Withheld Claimed for 3Q & 4Q	
Provincial Govt of Camarines Sur	₱ 46,696.43
Provincial Govt of Camarines Sur	164,914.21
Undeclared sales to gov't	**₱ 211,610.64**

Petitioner avers that the subject sales made to the Provincial Government of Camarines Sur were reported in the SLS for 2011 under the registered name CWC, which stands for

[90] Exhibits "P-99", "P-99-A", "P-99-A-1" to "P-99-A-12", "P-99-B", "P-99-B-1" to "P-99-B-12", "P-100" and "P-100-A".
[91] Exhibits "P-99-A-1-1 and series" to "P-99-A--12-1 and series", "P-99-B-1-1 and series" to "P-99-B-12-1 and series' and "P-100-A-1-1 and series" (except for "P-100-A-3-1") to "P-100-A-12-1 and series".

Camarines Sur Watersports Complex, with Provincial Government of Camarines Sur allegedly indicated as name of customer and Capitol Cadlan Pili C S specified as the customer's address. Therefore, petitioner submits that the deficiency income tax due thereon should be cancelled for want of factual or legal basis; it having been proved that the subject sales were indeed duly reported.

A perusal of petitioner's SLS[92] for 2011 shows no inclusion of sales to the Provincial Government of Camarines Sur. Further, the name of customer corresponding to the sales to CWC is Bing Rivera and not the Provincial Government of Camarines Sur, though the customer's address indicated therein is the same with the address of the Provincial Government of Camarines Sur per the Certificates of Final Tax Withheld at Source (BIR Forms No. 2306)[93], which is Cadlan Pili Cam Sur.

While the sales under the registered name CWC cannot be confirmed as actually pertaining to sales to Camarines Sur Watersports Complex or Provincial Government of Camarines Sur based solely on the SLS, the records of the case show that a portion of the sales to the Provincial Government of Camarines Sur was included in the reported amount of sales per SLS under the registered name CWC.

Per its 2011 Quarterly VAT Returns[94], petitioner claimed creditable VAT withheld in the amounts of Php2,334.82[95] and Php8,245.71[96], which correspond to the 5% withholding VAT on the income payments of the Provincial Government of Camarines Sur in the amounts of Php46,696.43[97] and Php164,914.21[98], respectively, for the third and fourth quarters of TY 2011. As gleaned from the related BIR Forms No. 2306[99], the said payments pertain to the periods "02/01/11 to 02/28/11" and "05/01/11 to 05/31/11". Upon examination of the SLS for the months of February and May 2011, the sales to CWC amounted to Php52,308.93 and Php94,420.64, as detailed below, which do not match with the income payments

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[92] FOE Folder, Exhibits "P-41" to "P-41-c".
[93] BIR Records, Folder 1, Exhibit "R-13", pp. 281 and 263.
[94] BIR Records, Folder 1, Exhibit "R-13", pp. 303, 298, 297, 288 and 270 (*Line 26B*).
[95] Ibid., p. 288 *(Line 26B)*.
[96] Ibid., p. 270 *(Line 26B)*.
[97] Ibid., pp. 284 and 282.
[98] Ibid., pp. 266 and 264.
[99] Ibid., pp. 281 and 263.

of the Provincial Government of Camarines Sur in the amounts of Php46,696.43 and Php164,914.21, respectively:

Month	Registered Name	Taxable Sales
2/28/2011	CWC	₱ 23,482.14
2/28/2011	CWC	2,000.00
2/28/2011	CWC	2,000.00
2/28/2011	CWC	2,000.00
2/28/2011	CWC	1,987.50
2/28/2011	CWC Bing Rivera	20,839.29
Total for February		***₱ 52,308.93***
5/31/2011	CWC	₱ 35,223.21
5/31/2011	CWC	23,482.14
5/31/2011	CWC Bing Rivera	35,715.29
Total for May		***₱ 94,420.64***

Meanwhile, based on the BIR Form No. 2306 for the period 05/01/11 to 05/31/11, it is apparent that the Php8,245.71 taxes withheld comprised of the amounts of Php6,484.55 and Php1,761.16, with the corresponding tax bases of Php129,691.00 (Php6,484.55/5%) and Php35,223.20 (Php1,761.16/5%). Considering that the income payment of the Provincial Government of Camarines Sur per the BIR Form No. 2306 for May, in the amount of Php35,223.20[100], equates to the reported sales in petitioner's SLS for May under the registered name CWC (as highlighted in the table above), the said amount of Php35,223.20 may be considered as pertaining to petitioner's sales to the Provincial Government of Camarines Sur.

As to the remaining sales to CWC per SLS for the months of February and May, it cannot be ascertained whether the same actually pertain to sales to the Provincial Government of Camarines Sur absent any proof showing to that effect.

Thus, out of the undeclared sales to government in the amount of Php211,610.64, only the amount of Php176,387.43 (Php211,610.64 less 35,223.21) shall be assessed deficiency income tax.

<u>**IT-7** Excess of std input over actual input (to be closed to expense) – (Php10,475.73)</u>

Respondent's comparison of actual input tax against the standard input tax for government money payments revealed

[100] With a minimal discrepancy of 0.01 which may be due to rounding-off.

that the actual input tax attributable to the said transactions is of higher amount than the standard input tax claimed in the VAT returns. Thus, in accordance with Section 4.114-2 of Revenue Regulations (RR) No. 16-05, which states that "... should actual input VAT exceed 7% of standard input tax, the excess may form part of the seller's expense or cost", the excess of petitioner's actual over standard input tax, in the amount of Php10,475.73, computed below, is reflected in the computation of the deficiency income tax:

7% Standard Input on sales to gov't		
Sales to Gov't	₱ 211,610.60	
Ratio	12% x 7/12	₱ 14,812.74
Input tax allocation (in lieu of the actual input)		
Total Input Tax per VATR	₱47,160,957.03	
Ratio of Sales to Gov't	0.05362%	25,288.47
		(₱10,475.73)

As correctly indicated in the FLD, this item is not an addition to the taxable income per return but a deduction therefrom, hence, would not result to a deficiency tax liability on the part of the petitioner. Nonetheless, the Court shall look into the propriety of the computation of the subject item.

Notably, petitioner never denied that it had sales to government in the amount of Php211,610.64, which is subject to VAT at 12% rate. Pursuant to Section 4.114-2 of RR No. 16-05[101], the 5% final VAT withholding rate represents the net VAT payable of the seller while the remaining 5% (now 7%) effectively accounts for the standard input VAT, in lieu of the actual input VAT attributable to such sales; and, if the actual input exceeds 5% (now 7%) of gross payments, the excess may form part of the seller's expense or cost.

Considering the foregoing and the details from petitioner's VAT returns[102], the Court finds the computation of the amount of Php10,475.73 in order and respondent's deduction thereof from petitioner's taxable income shall not be disturbed.

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[101] Consolidated Value-Added Tax Regulations of 2005.
[102] Exhibits "P-29-b" (Docket, Vol. III, p. 1450), "P-29-e" (FOE Folder), "P-29-h" (FOE Folder) and "R-13" (BIR Records, p. 270).

IT-8 Disallowed expenses due to nonwithholding (Sec. 34K NIRC) – Php41,230,990.26

After matching of data per petitioner's FS/TB against its Alphalist of Payees (BIR Form 1604E), respondent found that certain income payments were not subjected to EWT, in violation of RR No. 02-98, as amended. Hence, the total discrepancy of Php41,230,990.26, as shown below, was disallowed for failure to withhold and remit the corresponding EWT pursuant to Section 34(K) of the NIRC:

Total Purchases per FS/ITR/TB	₱ 371,369,828.46
Subjected to withholding per 1604E	330,138,838.20
Disallowed due to non-withholding	**₱41,230,990.26**

Below is respondent's detailed computation of the Php41,230,990.26 disallowed expenses:[103]

Account Name	Goods 1%	Services/Contrac. 2%	Rentals 5%	Prof. Fee 15%	Total
Office Furniture & Equipment (additions)	₱ 51,438.00				₱ 51,438.00
Cost of Sales					
Purchases	282,906,620.88				282,906,620.88
Freight-in		₱ 47,329,257.00			47,329,257.00
Operating Expenses					
Security Services		1,142,961.38			1,142,961.38
Outside Services		11,609,840.55			11,609,840.55
Advertising & Promotions		10,479,297.00			10,479,297.00
Transportation		2,369,147.21			2,369,147.21
Fuel & Oil	9,861,117.87				9,861,117.87
Communication		513,230.23			513,230.23
Light & water		1,056,291.76			1,056,291.76
Rental			₱292,989.28		292,989.28
Insurance		405.00			405.00
Repairs & Maintenance		2,900,720.04			2,900,720.04
Representation		236,191.93			236,191.93
Professional Fees				₱37,900.00	37,900.00
Supplies	287,084.81				287,084.81
Research & development		295,335.52			295,335.52
TOTAL PURCHASES PER FS	₱293,106,261.56	₱ 77,932,677.62	₱292,989.28	₱37,900.00	₱ 371,369,828.46
SUBJECTED TO EWT PER 1601-E	283,475,479.96	46,332,468.46	292,989.78	37,900.00	330,138,838.20
PURCHASES NOT SUBJECTED TO WTAX	**₱9,630,781.60**	**₱31,600,209.16**	**(₱ 0.50)**	**-**	**₱41,230,990.26**

[103] BIR Records, Folder 1, Exhibit "R-13", p. 385.

Petitioner argues that it had properly subjected all its income payments to withholding tax for the taxable year 2011 and that the alleged income payments not subjected to EWT were either: (1) casual purchases from a person who is not considered a regular supplier, (2) petty cash disbursements incurred by salesmen and sales offices, such as but not limited to meals, representation and entertainment, gasoline, out-of-town fieldwork expenses and supplies, or (3) expenses that were paid in cash, such as, but not limited to prepaid cellphone loads, registered mails transmitted to customers and the like. In support of its argument, petitioner prepared the following reconciliation:[104]

Account Name	**SUPPLIERS 1%**	**CONTRACTORS 2%**	**RENTAL 5%**	**PROFESSIONALS 15%**	**TOTAL**
Cost of Sales					
Purchases	₱282,906,620.66				₱282,906,620.66
Freight-in		₱47,329,257.23			47,329,257.23
Operating Expenses					
Rental			₱292,989.28		292,989.28
Professional Fees				₱37,900.00	37,900.00
Security Services		1,142,961.38			1,142,961.38
Other Outside Services	4,438,556.82	7,171,283.73			11,609,840.55
Advertising	10,479,297.17				10,479,297.17
Repairs & Maintenance		2,900,720.04			2,900,720.04
Research & development		295,335.52			295,335.52
Office Supplies	287,084.81				287,084.81
Insurance		405.00			405.00
Representation and Entertainment	236,191.93				236,191.93
Transportation and Travel		2,369,147.21			2,369,147.21
Fuel and Oil	9,861,117.87				9,861,117.87
Communication, Light and Power		1,569,521.99			1,569,521.99
Miscellaneous	6,836.50				6,836.50
Increase in PPE					
Office Furniture & Equipment	51,438.39				51,438.39
Total	₱308,267,144.15	₱62,778,632.10	₱292,989.28	₱37,900.00	₱371,376,665.53
Less: CASUAL PURCHASES, ETC.	24,791,664.42	16,446,164.71			41,237,829.13
TOTAL INCOME PAYMENTS SUBJECT TO EWT	₱283,475,479.73	₱46,332,467.39	₱292,989.28	₱37,900.00	₱330,138,836.40
LESS: SUBJECTED PER ALPHABETICAL LIST	283,475,479.73	46,332,467.39	292,989.28	37,900.00	330,138,836.40
INCOME PAYMENT NOT SUBJECTED TO EWT	-	-	-	-	-

[104] FOE Folder, Exhibit "p-47".

Moreover, petitioner contends that assuming that certain expenses were not subjected to withholding taxes, respondent cannot simply disallow the expenses claimed as deduction from gross income for failure by the taxpayer to subject them to withholding taxes. If there is a deficiency in the payment of the withholding tax, the respondent should, at the very least, assess it for deficiency in withholding taxes and not disallow the expenses altogether.

We rule against petitioner.

Based on its reconciliation, petitioner accounts a portion of the discrepancy to the income payments for Other Outside Services, Advertising, and Representation and Entertainment, in the respective amounts of Php4,438,556.82, Php10,479,297.17 and Php236,191.93, which it apparently claims as payments to supplier of goods subject to 1% EWT and not payments to contractors subject to 2% EWT as assessed by respondent. However, without the corresponding invoices and/or official receipts, the Court cannot verify petitioner's claim.

Also, petitioner's inclusion of the Php6,836.50 Miscellaneous expense as subject to 1% EWT in its reconciliation may be disregarded since petitioner failed to show that it is indeed subject and was actually subjected to 1% EWT and the same is not included in the income payments subject of the assessment.

Further, the alleged casual purchases of Php24,791,664.42 and Php16,446,164.71 deducted by petitioner from the income payments subject to EWT per its reconciliation cannot be given credence as petitioner failed to properly substantiate the same with documentary evidence in order for the Court to verify the actual nature of the said payments and to ascertain whether the alleged casual purchases are indeed not subject to withholding tax. Bare allegations, unsubstantiated by evidence, are not equivalent to proof, in short, mere allegations are not evidence.[105]

Anent petitioner's contention that respondent cannot simply disallow the expenses claimed as deduction from gross income for failure by the taxpayer to subject them to

[105] *Ermelinda C. Manaloto, et. al. vs. Ismael Veloso III,* G.R. No. 171365, October 6, 2010.

withholding taxes, Section 34(K) of the NIRC, is instructive, thus:

> (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 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, Section 58 and 81 of this Code. (*emphasis supplied*)

The foregoing provision clearly states that any amount paid or payable taken into account in computing the gross income shall be allowed as deduction only if it is shown that the withholding tax required therefrom was paid to the BIR. Hence, respondent's disallowance of said expenses not subjected to withholding tax is proper.

Thus, the disallowed expenses due to nonwithholding in the amount of Php41,230,990.26 is upheld.

IT-9 GP on undeclared sales per recon of SLS, SAWT & TPI data-Php5,230,200.00

After matching of the SLS, Summary Alphalist of Withholding Tax (SAWT) and third-party information from BIR AITEID (TPI Data), respondent noted an unreconciled discrepancy amounting to Php5,230,200.00, which allegedly reflects the income not declared in petitioner's FS/ITR. This was assessed for income tax purposes pursuant to Section 32 of the NIRC.

	SLS	SAWT	TPI	Undeclared
Dy, Henson Co			₱12,010,615.18	₱ 12,010,615.18
Lasala Everbright Corp			5,258,667.82	5,258,667.82
Lion Commercial Corp	₱21,866.07	₱ 4,841,825.32		4,819,959.25
Dy, Rosendo Reyes		1,961,730.59		1,961,730.59
Central Metro Trade Dist Inc		1,795,698.11		1,795,698.11
Metro Legazpi Devt Corp	23,858.26	1,450,605.00		1,426,746.74
Ong, Gui Ching Tan		1,143,183.75	846,928.39	1,143,183.75
Southern Nature Craft Co			1,116,599.11	1,116,599.11

Tabaco Liberty Comm Cntr Inc		872,126.07		872,126.07
Prov Govt of Camarines Sur		553,963.92		553,963.92
Graceland Food Industries Inc		523,163.00		523,163.00
Magallanes, Amalia Bravo			296,560.18	296,560.18
BMC G110 Multi-Purpose Coop		242,456.46		242,456.46
Pillejera, Efren Lee			236,792.96	236,792.96
Chase Distribution Inc		204,808.91	99,954.46	204,808.91
Ang Hung Concepcion Co			182,827.74	182,827.74
Duka, celia Domasian			154,214.28	154,214.28
Manlangit, Reynato Conche			123,484.06	123,484.06
Kho, Suzette Oblina			120,267.07	120,267.07
Tycangco, Merle Crescini			116,195.89	116,195.89
Ongjoco, Anita Y			110,931.25	110,931.25
	₱45,724.33	₱13,589,561.13	₱20,674,038.39	
Undeclared sales per recon				**₱33,270,992.34**
Multiplied by: GP rate				15.72%
GP on undeclared sales				**₱ 5,230,200.00**

As shown above, the alleged undeclared sales that resulted from the matching was grossed up using petitioner's gross profit ratio for the year to determine the alleged undeclared income.

Petitioner argues that the BIR revenue officers arrived at the alleged variance solely on the basis of computerized matching of petitioner's SLS/SAWT as against the TPI Data, without the necessary verification and validation by the third party sources as required under RMO No. 04-03 dated February 20, 2003; and that respondent's own witness, Revenue Officer (RO) Riza F. Budaño testified that she did not confirm or verify the said third-party information gathered from the BIR's system. Thus, petitioner alleges that the assessment on the basis of TPI was arbitrarily and capriciously made.

Petitioner further asserts that respondent's use of the Gross Profit Ratio or what is termed as "Percentage Method" per Revenue Audit Memorandum Order (RAMO) No. 01-00, has no factual or legal basis as RAMO No. 01-00 only acknowledged an indication or the mere possibility of revenue being understated, which is not certain, definite and foolproof.

Nonetheless, petitioner still presented the following reconciliation alleging that some discrepancies were caused by differences in reporting of business or trade name between petitioner and its customers:[106]

NAME OF CUSTOMERS PER BIR / REGISTERED NAME REPORTED PER BMC	EXTRACTED FROM SLS** OF BMC	SAWT	TPI	UNDECLARED
Dy Henson Co / DaetHighgrade Ent	14,245,124.11		12,010,615.18	(2,234,508.93)
Lasala Anita / LasalaEverbright Corp	6,887,142.86		5,258,667.82	(1,628,475.04)
Lion Commercial Corp / LCC Lion Commercial Corp	5,159,704.46	4,841,825.32		(317,879.14)
DyRosendo Reyes / Master Square	2,458,965.18	1,961,730.59		(497,234.59)
Central Metro Trade DistInc / LCC CmtDist Tabaco	2,235,868.75	1,795,698.11		(440,170.64)
Souther Nature Craft Co / SNC Minimart	1,259,455.36		1,116,599.11	(142,856.25)
Tabaco Liberty Commercial Center Inc / LCC Tabaco	1,325,410.71	872,126.07		(453,284.64)
Provincial Government of Camarines Sur / Camarines Sur Water Sports Complex CWC	657,213.39	553,963.92		(103,249.47)
Graceland Fond Industries Inc / Graceland	522,888.39	523,163.00		274.61
BMC G110 Multi Purpose Coop / G110 Coop Mart	327,093.75	242,456.46		(84,637.29)
Chase Distribution Inc / Chase Dist Incorporated	692,299.11	204,808.91	99,954.46	(487,490.20)
Duka, Celia Domasian / Duka Store / Duka Variety Store	2,032,272.32		154,214.28	(1,878,058.04)
Manlangit, ReynatoConche / Viga Mall	207,901.79		123,484.06	(84,417.73)
Kho, Suzette Oblina / Court Yard Terrace Grill	134,235.71		120,267.07	(13,968.64)
TOTALS	**38,145,575.89**	**10,995,772.38**	**18,883,801.98**	**(8,365,955.99)**

The Court partially agrees with petitioner.

The assessed undeclared sales which arose from the amounts per TPI should be cancelled since the same were based merely on figures extracted from respondent's own database (AITEID data) not verified with the pertinent externally sourced documents to check its veracity and without the corroborating certifications or confirmations from related third-party sources to support its credibility and integrity.

In the cross-examination of RO Riza F. Budaño, during the June 11, 2018 hearing, she admitted that the TPI amounts were not verified, to wit:[107]

"ATTY. BARAOIDAN:

In relation to IT-9 in relation to VT-5, you used third party information other than frm the Bureau of Internal Revenue system, is that correct?

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[106] Docket, Vol. IV, Memorandum for the Petitioner, pp. 1992-1993.
[107] Transcript of Stenographic Notes (TSN), June 11, 2018, pp. 9-10.

A:

Yes.

Q:

Were you able to confirm or verify the said Third-party information you gathered from the Bureau of Internal Revenue system?

WITNESS:

No, I was not able to verify that information, xxx."

Under RMO No. 4-2003[108], even the BIR recognizes the need to verify the amounts reflected in the Quarterly report with other externally sourced data in ascertaining the taxpayer's under-declaration of revenues or overstatement of costs and expenses, if any. The pertinent portions of RMO No. 4-2003 are quoted below:

> The Bureau of Internal Revenue is reengineering its work processes in order to increase revenue collections and to pursue quality audit by making use of available internal and external information resources. In order to strengthen and enhance its assessment functions, the utilization of information technology has been identified as an effective tool to improve tax administration through the development of the Reconciliation of Listings for Enforcement (RELIEF) system.
>
> The RELIEF system was created to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third-party information from the taxpayer's Summary List of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR8-2002.
>
> The RELIEF system shall cover all VAT taxpayers above threshold limits set by RR 8-2002 to submit Summary Lists of Sales and Purchases in magnetic form based on a prescribed electronic format. The consolidation and matching of information with other externally sourced data will detect underdeclaration of

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[108] Guidelines and Procedures on the Processing of Quarterly Summary Lists of Sales and Purchases and of the Imposition of Penalties Therefor as Provided under Revenue Regulations No. 8-2002.

revenues/overdeclaration of cost and expenses, thus, resulting to greater tax potential.

Tax assessments by tax examiners are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.[109]

However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment", i.e., without any foundation character, the determination of the tax due is without rational basis.[110]

As regards the assessed undeclared sales which resulted from the comparison of the SLS against the SAWT, respondent's computation and petitioner's reconciliation are presented hereunder:

Table 1 - Per BIR's assessment:

		SLS	SAWT	UNDECLARED
1	Lion Commercial Corp	₱ 21,866.07	₱ 4,841,825.32	₱ 4,819,959.25
2	DyRosendo Reyes		1,961,730.59	1,961,730.59
3	Central Metro Trade DistInc		1,795,698.11	1,795,698.11
4	Metro Legazpi Devt Corp	23,858.26	1,450,605.00	1,426,746.74
5	Ong, GuiChing Tan		1,143,183.75	1,143,183.75
6	Tabaco Liberty Commercial Center Inc		872,126.07	872,126.07
7	Provincial Government of Camarines Sur		553,963.92	553,963.92
8	Graceland Fond Industries Inc		523,163.00	523,163.00
9	BMC G110 Multi Purpose Coop		242,456.46	242,456.46
10	Chase Distribution Inc		204,808.91	204,808.91
	Total	**₱45,724.33**	**₱13,589,561.13**	**₱13,543,836.80**

Table 2 - Per petitioner's reconciliation:

	NAME OF CUSTOMERS PER BIR / REGISTERED NAME REPORTED PER BMC	SLS	SAWT	UNDECLARED
1	Lion Commercial Corp / LCC Lion Commercial Corp	₱ 5,159,704.46	₱ 4,841,825.32	(₱ 317,879.14)
2	DyRosendo Reyes / Master Square	2,458,965.18	1,961,730.59	(497,234.59)
3	Central Metro Trade DistInc / LCC CmtDist Tabaco	2,235,868.75	1,795,698.11	(440,170.64)
4	Metro Legazpi Devt Corp			
5	Ong, GuiChing Tan			
6	Tabaco Liberty Commercial Center Inc / LCC Tabaco	1,325,410.71	872,126.07	(453,284.64)
7		657,213.39	553,963.92	(103,249.47)

[109] *Bonifacio Sy Po vs. Honorable Court of Tax Appeals and Honorable Commissioner of Internal Revenue,* G.R. No. 81446, August 18, 1988.
[110] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.

	Provincial Government of Camarines Sur / Camarines Sur Water Sports Complex CWC			
8	Graceland Fond Industries Inc / Graceland	522,888.39	523,163.00	274.61
9	BMC G110 Multi Purpose Coop / G110 Coop Mart	327,093.75	242,456.46	(84,637.29)
10	Chase Distribution Inc / Chase Dist Incorporated	692,299.11	204,808.91	(487,490.20)
	Total	**₱13,379,443.74**	**₱10,995,772.38**	**(₱2,383,671.36)**

Upon further verification, the Court affirms petitioner's reconciliation for item nos. 8, 9 and 10. On the other hand, the Court upholds the assessment on item no. 4 since petitioner did not dispute the same.

As to item nos. 1, 3 and 6, it cannot be ascertained whether the registered names reported per its SLS (LCC Lion Commercial Corp, LCC CmtDist Tabaco, and LCC Tabaco) are the same with the name of customer per BIR (Lion Commercial Corp, Central Metro Trade DistInc, and Tabaco Liberty Commercial Center Inc) absent any proof to support the same. The SLS does not indicate the TIN of the customers therein to verify if the alleged registered names are the same as those included in the subject assessment and the amounts related to the alleged registered names per SLS do not match the amounts per SAWT. Further, based on the SLS, the amounts reported as sales to Lion Commercial Corp and Tabaco Liberty Commercial Center Inc are php21866.07 (as included in the assessment) and Php1,022.32,[111] respectively.

As to item nos. 2 and 5, the related Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)[112] show the payors' names as "DY, ROSENDO REYES-MASTER SQUARE SUPERMART" and "ONG, GUI CHING TAN/NEW ONG TO EXPRESSMART", respectively. Hence, based on the SLS, the reported sales to Master Square and to New Ong To Expressmart in the amounts of Php2,458,935.14 and Php1,975,977.69, broken down below, pertain to sales to Dy, Rosendo Reyes and Ong, Gui Ching Tan, respectively:

Per SLS[113]	Dy, Rosendo Reyes/ Master Square Supermart	Ong, Gui Ching Tan/New Ong to Express Mart
January	₱ 186,630.71	₱ 145,665.18
February	155,883.92	181,049.11
March	161,263.39	92,138.40
April	245,857.14	72,781.25

[111] FOE Folder, Exhibit "P-41-b", p. 65.
[112] BIR Records, Exhibit "R-13", pp. 127 and 132.
[113] FOE Folder, Exhibits "P-41" to "P-41-c".

May	298,004.47	179,790.18
June	206,366.07	78,482.14
July	224,656.24	202,294.64
August	177,720.53	156,794.64
September	196,985.71	178,669.64
October	210,383.93	223,383.93
November	127,330.36	219,651.79
December	267,852.67	245,276.79
Total	**₱2,458,935.14**	**₱1,975,977.69**

As to item no. 7, although petitioner was not able to establish the fact that CWC is actually the same as the Provincial Government of Camarines Sur, records show that certain amounts of sales to CWC per SLS matched with the amounts of sales considered by respondent per SAWT. Further, a perusal of the SAWT and the related BIR Form No. 2306 reveals that the total tax base of the sales to the Provincial Government of Camarines Sur amounts to Php494,610.65 and not to Php553,963.92 as used by respondent. Below are the amounts per SLS that matched with the amounts per SAWT (as highlighted) and the breakdown of the total amount per SAWT of Php494,610.65:

Month	Exhibit No.	Per SLS	Exhibit No.	Per SAWT
January	P-41, FOE Folder	₱ 25,428.57		
February	P-41, FOE Folder	52,308.93	R-13, BIR Rec, pp. 141, 129	₱ 46,696.43
March	P-41, FOE Folder	13,619.64		
April	P-41-a, FOE Folder	199,339.27		
May	P-41-a, FOE Folder	94,420.64	R-13, BIR Rec, pp. 124, 106	164,914.21
June	P-41-a, FOE Folder	35,223.21	R-13, BIR Rec, pp. 100, 35	35,223.21
July	P-41-b, FOE Folder	35,714.29	R-13, BIR Rec, pp. 100, 37	35,714.29
			R-13, BIR Rec, pp. 100, 36	58,705.36
August	P-41-b, FOE Folder	126,214.28	R-13, BIR Rec, pp. 100, 38	41,705.36
September	P-41-b, FOE Folder	34,231.25		
October			R-13, BIR Rec, pp. 100, 34	70,937.50
November	P-41-c, FOE Folder	40,714.29	R-13, BIR Rec, pp. 100, 33	40,714.29
December				
Total		**₱657,214.37**		**₱494,610.65**

Moreover, the amounts of Php46,696.43 and Php164,914.21 for the respective months of February and May per SAWT should be excluded in the subject assessment since the same were already included and resolved under the assessed undeclared sales to government (IT-6 above). Hence, only the amount of Php111,651.79 (total of Php35,223.21, Php35,714.29 and Php40,719.29) may be considered as sales to the Provincial Government of Camarines Sur reported per

SLS under CWC and only the amount of Php283,000.01 (Php494,610.65 less Php46,696.43 and Php164,914.21) shall be included in the assessed amount per SAWT.

Considering the foregoing, the undeclared sales per reconciliation of SLS and SAWT amounted to Php9,095,130.68, as summarized below. Consequently, the deficiency income tax on the undeclared income of Php1,428,182.54, as computed below, shall be sustained:

	NAME OF CUSTOMERS / REGISTERED NAME REPORTED PER SLS	**SLS**	**SAWT**	**Undeclared Sales**
1	Lion Commercial Corp	₱ 21,866.07	₱ 4,841,825.32	₱ 4,819,959.25
2	Dy Rosendo Reyes / Master Square	2,458,935.14	1,961,730.59	-
3	Central Metro Trade DistInc	-	1,795,698.11	1,795,698.11
4	Metro Legazpi Devt Corp	23,858.26	1,450,605.00	1,426,746.74
5	Ong, GuiChing Tan / New Ong to Expressmart	1,975,977.69	1,143,183.75	-
6	Tabaco Liberty Commercial Center Inc	1,022.32	872,126.07	871,103.75
7	Provincial Government of Camarines Sur / CWC	111,651.79	283,000.01	171,348.22
8	Graceland Fond Industries Inc / Graceland	522,888.39	523,163.00	274.61
9	BMC G110 Multi Purpose Coop / G110 Coop Mart	327,093.75	242,456.46	-
10	Chase Distribution Inc / Chase Dist Incorporated	692,299.11	204,808.91	-
	Total	₱ 6,135,592.52	₱ 13,318,597.22	**₱9,085,130.68**
	Multiply by: GP rate			15.72%
	GP on undeclared sales			**₱1,428,182.54**

IT-10 Undeclared income due to understatement of carry-over input – Php4,012,104.70

A comparison of the carry-over input tax reflected in petitioner's VAT return against the carry-over input reported in its AFS Supplemental Information per RR No. 15-2010 revealed a discrepancy of Php4,012,104.70, which was assessed by respondent as undeclared revenue.

Carry-over Input per RR 15-2010	₱ 4,161,759.00
Carry-over Input Beginning, per VATR	149,654.30
Discrepancy	**₱4,012,104.70**

The assessment is bereft of merit.

The assessment arose from respondent's inference that since there was an amount of input VAT not declared per return, the corresponding purchases thereto were also undeclared, which consequently led to the presumption that petitioner had earned income which it failed to declare.

To reiterate, income tax is assessed on income received from any property, activity or service. It is imposed only when there is an income, and such income was received by the taxpayer, and not when there is an under declaration of purchases.

Respondent's assessment was arbitrary and not based on undeclared income actually received by petitioner but on mere presumption that the undeclared purchase from which the alleged undeclared input VAT originated translates to undeclared revenue.

Thus, the assessed undeclared income due to understatement of carry-over input of Php4,012,104.70 is cancelled for lack of factual and legal bases.

Compromise penalty

The imposition of the Php50,000 compromise penalty on the deficiency income tax must be deleted.

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code.[114] Under RMO No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties with respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[115] Absent a showing that petitioner consented to the compromise penalty, its imposition should be deleted.

In sum, petitioner is liable to pay the basic deficiency income tax of Php33,113,267.56 for TY 2011, computed as follows:

Taxable income per return		₱ 4,236,787.70
Add: Findings per Investigation:		

[114] The Philippine International Fair, Inc. vs. The Collector of Internal Revenue, et. Al. G.R. Nos. L-12928 and L-12932, March 31, 1962.
[115] *Phil. International Fair, Inc. vs. The Collector of Internal Revenue,* G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 781.

IT-3 Unallowable Sales Returns & Allowances	₱16,281,370.23	
IT-4 Unsupported Freight-in, Fuel & Transaportation expenses	29,181,966.24	
IT-5 Unsupported Advertising & Other Outside Services	22,089,137.55	
IT-6 Sales to Gov't (not included in the SLS)	176,387.43	
IT-7 Excess of std input over actual input (to be closed to expense)	(10,475.73)	
IT-8 Disallowed expenses due to nonwithholding (Sec. 34K NIRC)	41,230,990.26	
IT-9 GP on undeclared sales per recon of SLS and SAWT	1,428,182.54	
Total Adjustments per audit		110,377,558.52
Taxable income per audit		₱ 114,614,346.22
Multiplied by: Income tax rate		30%
Income tax due per audit		₱ 34,384,303.87
Less: Allowable Credits/Payments:		
Unexpired prior years MCIT	₱ 427,028.47	
Tax Payments	585,581.85	
Creditable withholding tax claimed per ITR[116]	258,425.99	1,271,036.31
Basic Income Tax Deficiency		**₱33,113,267.56**

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency VAT, EWT and compromise penalties for TY 2011 are **CANCELLED AND WITHDRAWN**.

However, the assessment issued against petitioner for deficiency income tax for TY 2011 is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **ONE HUNDRED NINE MILLION EIGHT HUNDRED TWENTY-SEVEN THOUSAND EIGHTY-FIVE PESOS AND 82/100 (Php109,827,085.82)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

Basic Deficiency Income Tax	₱ 33,113,267.56
25% Surcharge	8,278,316.89
20% Deficiency Interest from April 17, 2012 to July 31, 2015 (₱33,113,267.56 x 20% x 1,201 days/365 days)	21,791,251.69
Total Amount Due, July 31, 2015	**₱ 63,182,836.14**
Add: 20% Deficiency Interest from August 1, 2015 to December 31, 2017 (₱33,113,267.56 x 20% x 884 days/365 days)	16,039,522.48
20% Delinquency Interest from August 1, 2015 to December 31, 2017 (₱63,182,836.14 x 20% x 884 days/365 days)	30,604,727.20
Total Amount Due as of December 31, 2017	**₱109,827,085.82**

116 The CWT claimed per ITR (see Exhibit "P-22", FOE Folder) actually amounted to ₱258,425.99, to wit:

Creditable Tax Withheld from Previous Quarter/s (Line 33F)	₱ 59,802.81
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter (Line 33H)	198,623.18
Adjusted Creditable withholding tax claimed per ITR	**₱258,425.99**

In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the total unpaid amount of **Php63,182,836.13**, as of July 31, 2015, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and implemented by RR No. 21-2018.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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.
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.

ROMAN G. DEL ROSARIO
Presiding Justice