REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION[1]

ROBINSONS DAISO DIVERSIFIED CORPORATION, Petitioner,	**CTA CASE NO. 9149**
	Members:
-versus-	**Castañeda, Jr.,** *Chairperson,* and, **Manahan,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 06 2018 3:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This is a Petition for Review[2] filed on September 24, 2015 by Robinsons Daiso Diversified Corporation (RDDC) seeking to nullify and cancel the assessments in the amount of ₱20,821,138.84[3] allegedly representing its basic deficiency income tax (IT), expanded withholding tax (EWT), withholding tax on compensation (WTC), Value-Added Tax (VAT), documentary stamp tax (DST), interests and penalties for the taxable year 2009, computed as follows:

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[1] Section 1, Rule VIII of the Internal Rules of the Court of Tax Appeals: "Section 1. *Case assigned to a justice for study and report.* --- Every Division Case, whether appealed or original, assigned to a Justice for study and report shall be retained by him even if he is transferred to another Division. The Justice, though transferred, shall write the report with the other members of the Division to which the case was originally submitted for decision. Their Division shall be called Special (No.) Division."
[2] Docket, Vol. I, pp. 10-27.
[3] Prayer, Petition for Review, Docket, Vol. I, p. 26.

	Basic	Interest	Compromise Penalty	Total
Income Tax	₱ 4,642,964.91	₱ 4,950,799.85	₱ 25,000.00	₱ 9,618,764.76
Value-Added Tax	4,863,058.07	5,398,660.63	25,000.00	10,286,718.70
Expanded Withholding Tax	150,855.04	172,182.89	16,000.00	339,037.93
Withholding Tax – Compensation	240,709.77	269,199.26	16,000.00	525,909.03
Documentary Stamps Tax	227.80	280.02	200.00	707.82
Failure to supply correct information in SLSP (VAT)			50,000.00	50,000.00
TOTAL	**₱ 9,897,815.59**	**₱ 10,791,122.69**	**₱ 132,200.00**	**₱ 20,821,138.84**[4]

THE PARTIES

Petitioner RDDC is a corporation duly organized and existing under Philippine laws, with principal office address at 110 E. Rodriguez Jr. Avenue, Libis, Quezon City.[5] It is engaged in the business of trading of goods on wholesale/retail business carried out through a nationwide network of retail stores operating under the brand name "Daiso Japan"[6] and is registered as a taxpayer with the Bureau of Internal Revenue (BIR).[7]

Respondent is the Commissioner of Internal Revenue (CIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[8]

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[4] Based on the figures in the Final Decision on Disputed Assessment, the total should be ₱20,821,138.24.
[5] Certificate of Incorporation and Articles of Incorporation, Exhibit "P-1", Docket, Vol. II, p. 540
[6] Certificate of Incorporation and Articles of Incorporation, Exhibit "P-1", Docket, Vol. II, p. 540; Q5, Judicial Affidavit of Jessica C. Bugnot, Exhibit "P-32", Docket, Vol. I, p. 160.
[7] Certificate of Registration, Exhibit "P-2", Docket, Vol. II, p. 557; Q8, Judicial Affidavit of Jessica C. Bugnot, Exhibit "P-32", Docket, Vol. I, p. 161.
[8] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. I, p. 126.

THE FACTS

On July 16, 2008, the petitioner was incorporated and registered with the Securities and Exchange Commission.[9] Thereafter, on April 29, 2009, petitioner started commercial operations.[10] Accordingly, it filed the following tax returns in connection with its business operations:

- On July 24, 2009, 2nd Quarter VAT Return (BIR Form 2550Q).[11]
- On January 19, 2010, Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form 1604-CF).[12]
- On April 6, 2010, Annual Income Tax Return (BIR Form 1702).[13]

On June 18, 2010, petitioner RDDC was served a Letter of Authority (LOA) No. LOA-127-2010-00000057 dated June 17, 2010, authorizing the assigned revenue officers under the Large Taxpayers Service (LTS), including Revenue Officer Joel Aguila, to examine RDDC's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009.[14]

On August 17, 2010, Revenue Officer Joel Aguila served RDDC a First Notice for the Presentation of Books of Accounts and Other Accounting Records dated July 29, 2010.[15]

In a letter dated May 16, 2011, the LTS requested additional documents pursuant to the LOA.[16] ge

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[9] Note 1, Notes to Audited Financial Statements, Exhibit "P-30", Docket, Vol. II, p. 761; Articles of Incorporation, Exhibit "P-1", Docket, Vol. II, p. 538; Q5, Judicial Affidavit of Jessica C. Bugnot, Exhibit "P-32", Docket, Vol. I, p. 160.
[10] Q51, Judicial Affidavit of Jessica C. Bugnot, Docket, Vol. I, p. 169.
[11] Exhibit "P-23", Docket, Vol. II, p. 639.
[12] Exhibit "P-25", Docket, Vol. II, p. 710.
[13] Exhibit "P-16", Docket, Vol. II, pp. 634-635.
[14] Exhibits "P-4" and "R-1", BIR Records, Folder 2, p. 1; Q6-7, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, pp. 852-853; Q11-13, Judicial Affidavit of Jessica C. Bugnot, Docket, Vol. I, pp. 161-162.
[15] Exhibit "R-2", BIR Records, Folder 2, p. 2-a; Q8-9, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 853.
[16] Exhibit "R-3", BIR Records, Folder 2, p. 350; Q10-11, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 853.

In the course of the audit, petitioner RDDC executed the following Waivers of the Defense of Prescription under the Statutes of Limitations of the National Internal Revenue Code covering *only* VAT and withholding tax assessments:

- The *first* waiver was executed by James L. Go on March 18, 2012,[17] which extended the period of VAT and withholding tax assessments until June 30, 2012. The waiver was accepted by Alfredo V. Misajon, OIC-ACIR, Large Taxpayers Service on April 27, 2012[18] and conveyed back to the petitioner and received by petitioner's Chief Financial Officer Diosdado "Dong" Zapata III on May 9, 2012.[19]

- The *second* waiver was executed by James L. Go on May 9, 2012, which extended the period of VAT and withholding tax assessments until December 31, 2012.[20] The waiver was accepted by Alfredo V. Misajon, OIC-ACIR, Large Taxpayers Service on May 14, 2012.[21]

- The *third* waiver was executed by James L. Go on October 31, 2012, which extended the period of VAT and withholding tax assessments until June 30, 2013.[22] The waiver was accepted by Alfredo V. Misajon, OIC-ACIR, Large Taxpayers Service on November 14, 2012 and received by its Chief Financial Officer, Diosdado "Dong" Zapata III on November 23, 2012.[23]

In a Memorandum dated January 7, 2013, the group assigned to audit the petitioner recommended the issuance of a Notice of Informal Conference.[24]

On April 5, 2013, a *fourth* waiver, covering all internal revenue taxes, was executed by Lance Y. Gokongwei, which extended the period of assessment until December 31, 2013.[25] The waiver was

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[17] Exhibit "R-4", BIR Records, Folder 2, p. 351; Q12-13, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 853-854;
[18] Exhibit "P-11-A", BIR Records, Folder 2, p. 351; Q29-Q33, Judicial Affidavit of Jessica C. Bugnot, Docket, Vol. I, pp. 164-165.
[19] Exhibit "P-11-B", BIR Records, Folder 2, p. 351; Q29-Q33, Judicial Affidavit of Jessica C. Bugnot, Docket, Vol. I, pp. 164-165.
[20] Exhibit "R-5", BIR Records, Folder 2, p. 351-a; Exhibit "P-12", Docket, Vol. II, p. 632; Q12-Q13, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, pp. 853-854.
[21] Exhibit "R-5", BIR Records, Folder 2, p. 351-a; Exhibit "P-12" Docket, Vol. II, p. 632.
[22] Exhibit "R-6" and Exhibit "P-13", BIR Records, Folder 2, p. 353; Q12-Q13, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, pp. 853-854.
[23] Exhibit "R-6" and Exhibit "P-13", BIR Records, Folder 2, p. 353.
[24] Exhibit "R-8", BIR Records, Folder 2, pp. 360-363; Q13, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 854.
[25] Exhibit "R-10" and Exhibit "P-14", BIR Records, Folder 2, p. 362-a; Q14-15, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, pp. 854-855.

accepted by Alfredo V. Misajon, OIC-ACIR, Large Taxpayers Service on April 17, 2013 and received by its Chief Financial Officer, Diosdado "Dong" Zapata III on April 22, 2013.[26]

On April 15, 2013, the Notice of Informal Conference was served on the petitioner.[27] The Notice of Informal Conference requested RDDC's authorized representative to appear at the BIR National Office Building in Diliman to discuss the proposed assessment as summarized in the attached Annex A and to submit documentary evidence to support any objections against the proposed assessment. During the informal conference, petitioner RDDC submitted documents to reconcile items, thus, the income tax, VAT, FWT and DST assessments were reduced.[28]

On September 19, 2013, a *fifth* waiver, also covering all internal revenue taxes, was executed by Lance Y. Gokongwei, which extended the period of assessment until June 30, 2014.[29] The waiver was accepted by Alfredo V. Misajon, OIC-ACIR, Large Taxpayers Service on September 26, 2013.[30]

In a Memorandum dated March 2, 2014, Revenue Officer Joel Aguila recommended the issuance of a Preliminary Assessment Notice (PAN).[31]

On May 20, 2014,[32] the PAN issued pursuant to the LOA-127-2010-00000057 with attached Details of Discrepancies was served on RDDC.[33]

Because petitioner did not agree with the findings in the PAN, it filed a protest through a letter dated May 28, 2014.[34] The protest letter, *Jc*

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[26] Exhibit "R-10" and Exhibit "P-14", BIR Records, Folder 2, p. 362-a; Q34-Q38, Judicial Affidavit of Jessica C. Bugnot, Docket, Vol. I, p. 165-166.
[27] Exhibit "R-12", BIR Records, Folder 2, pp. 399-414; Q16-17, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 855.
[28] Q18, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 855.
[29] Exhibit "R-11", BIR Records, Folder 2, p. 360-a; Q14-15, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, pp. 854-855; Exhibit "P-15", Docket, Vol. II, p. 633; Q29-Q33, Judicial Affidavit of Jessica C. Bugnot, Docket, Vol. I, pp. 164-165.
[30] Exhibit "R-11", BIR Records, Folder 2, p. 360-a; Q14-15, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, pp. 854-855; Exhibit "P-15", Docket, Vol. II, p. 633.
[31] Exhibit "R-13", BIR Records, Folder 2, p. 440-444; Q19-20, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 855.
[32] Exhibit "R-14", BIR Records, Folder 1, pp. 269-275; Q19-20, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 855.
[33] Par. 1, Stipulation of Facts, JSFI, Docket, Vol. I, p. 126; Exhibit "P-5", Docket, Vol. II, pp. 559-565.
[34] Exhibit "P-6", Docket, Vol. II, p. 566-576; Q16, Judicial Affidavit of Jessica C. Bugnot, Docket, Vol. I, p. 162.

received by the Large Taxpayers Service on June 3, 2014,[35] requested that the assessments be cancelled for lack of factual and legal basis.

In a Memorandum dated June 9, 2014, Revenue Officer Joel Aguila then recommended the issuance of a Formal Letter of Demand (FLD) and Assessment Notices reiterating the assessment.[36]

On June 24, 2014,[37] petitioner received the Formal Letter of Demand (FLD) dated June 23, 2014 with Details of Discrepancies and Assessment Notices pursuant to LOA-127-2010-00000057.[38] The FLD found petitioner liable for deficiency income tax (IT), expanded withholding tax (EWT), withholding tax on compensation (WTC), Value-Added Tax (VAT), documentary stamp tax (DST), interests and penalties in the amount of ₱18,613,734.20 for the taxable year ended December 31, 2009.[39]

Again, because petitioner did not agree with the findings stated in the FLD, it filed a written protest dated July 23, 2014.[40] The protest reiterated its position that the assessments should be canceled for lack of factual and legal basis.[41]

On September 22, 2014, petitioner also filed a supplemental protest letter dated September 18, 2014 whereby it transmitted additional documents to the BIR in support of its protest.[42]

In a Memorandum dated July 24, 2015, after petitioner submitted documents in reply to the FLD, Revenue Officer Joel Aguila prepared a recommendation for the issuance of a Final Decision on Disputed Assessment.[43]

On August 25, 2015, a Final Decision on Disputed Assessment (FDDA) with attached Details of Discrepancies and Assessment Notices was served on the petitioner.[44] The FDDA recalculated the deficiency

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[35] Q21, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 856.
[36] Q21, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 856; Exhibit "R-15", BIR Records, Folder 1, pp. 138-139.
[37] Q18, Judicial Affidavit of Jessica C. Bugnot, Docket, Vol. I, p. 162.
[38] Exhibit "P-7", Docket, Vol. II, pp. 577-590; Exhibit "R-16"- "R-16-g", Docket, Vol. II, pp. 863-876.
[39] Par. 2, Stipulation of Facts, JSFI, Docket, Vol. I, p. 127.
[40] Q20, Judicial Affidavit of Jessica C. Bugnot, Exhibit "P-32", Docket, Vol. I, p. 163.
[41] Exhibit "P-8", Docket, Vol. II, pp. 591-601.
[42] Q20, Judicial Affidavit of Jessica C. Bugnot, Exhibit "P-32", Docket, Vol. I, p. 163; Exhibit "P-9", Docket, Vol. II, pp. 602-619.
[43] Q24, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 857; Exhibit "R-17", BIR Records, Folder 1, pp. 266-268.
[44] Exhibit "R-18", BIR Records, Folder 3, pp. 23-28; Q27, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, p. 857; Q22, Judicial Affidavit of Jessica C. Bugnot, Docket, Vol. I, p. 163; Exhibit "P-10", Docket, Vol. II, pp. 620-631.

IT, EWT, WTC, VAT, DST, interests and penalties in the amount of ₱20,821,138.84 for the taxable year ended December 31, 2009, detailed as follows:[45]

	Basic	Interest	Compromise Penalty	Total
Income Tax	₱ 4,642,964.91	₱ 4,950,799.85	₱ 25,000.00	₱ 9,618,764.76
Value-Added Tax	4,863,058.07	5,398,660.63	25,000.00	10,286,718.70
Expanded Withholding Tax	150,855.04	172,182.89	16,000.00	339,037.93
Withholding Tax – Compensation	240,709.77	269,199.26	16,000.00	525,909.03
Documentary Stamps Tax	227.80	280.02	200.00	707.82
Failure to supply correct information in SLSP (VAT)			50,000.00	50,000.00
TOTAL	**₱ 9,897,815.59**	**₱ 10,791,122.69**	**₱ 132,200.00**	**₱ 20,821,138.84**[46]

On September 24, 2015, petitioner RDDC filed the present Petition for Review.[47]

On December 7, 2015, after two extensions, respondent filed an Answer,[48] interposing the following Special and Affirmative Defenses:

- Respondent observed both substantive and procedural due process in issuing the assessments;
- The assessments have not prescribed because valid waivers were executed;
- The assessments issued are valid and lawful; and,
- The assessments issued have factual and legal bases.

On February 4, 2016, after the filing of the pre-trial briefs for the respondent on January 11, 2016 and for the petitioner on February 1, 2016,[49] pretrial conference was held.[50] The Joint Stipulation of Facts and Issues (JSFI) was also filed on February 24, 2016.[51] In a Pre-Trial

[45] Par. 3, Stipulation of Facts, JSFI, Docket, Vol. I, p. 127.
[46] Based on the figures in the Final Decision on Disputed Assessment, the total should be ₱20,821,138.24.
[47] Docket, Vol. I, pp. 10-27.
[48] Docket, Vol. I, pp. 84-96.
[49] Docket, Vol. I, pp. 100-106; Docket, Vol. I, pp. 112-117.
[50] Minutes of February 4, 2016 Hearing, Docket, Vol. I, p. 118.
[51] Docket, Vol. I, pp. 126-131.

Order promulgated on March 21, 2016, the Court approved the JSFI filed by the parties.[52]

On May 11, 2016, petitioner submitted the Judicial Affidavit of Jessica C. Bugnot, its controller, who testified on what transpired during the examination and assessment such as the execution of the waivers, the receipt of the PAN, FLD and FDDA from the BIR, the filing of protests, submission of documents as well as the explanations for the discrepancies noted by the examiners.[53]

On July 15, 2016, petitioner filed a Motion for Leave to Recall Ms. Jessica C. Bugnot and Submit the Attached Supplemental Affidavit of Ms. Jessica C. Bugnot.[54] Her testimony covered the loss of the original copies of Exhibit "P-25" (Alphalist of Minimum Wage Earners) and Exhibit "P-29" (Summary List of Purchases).

On July 15, 2016, petitioner also filed the Affidavit of Leanette F. Falquerabao, Accountant of Herco Trading Inc. (Herco), who testified on petitioner's purchases of inventory from Herco.[55]

On August 24, 2016, petitioner again presented the witness Jessica C. Bugnot whose testimony was completed and terminated on said date.[56]

On November 7, 2016, petitioner filed its Formal Offer of Evidence for Petitioner Robinsons Daiso Diversified Corporation[57] offering Exhibits "P-1" to "P-16-A", "P-21" to "P-34-A" as its documentary evidence. Respondent filed his Comment (Re: Formal Offer of Evidence for Petitioner)[58] on November 11, 2016. In a Resolution dated December 2, 2016, the Court admitted Exhibits "P-1" to "P-16" and "P-21" to "P-34-A" *except* Exhibit "P-29" which was denied admission as secondary evidence.[59] Consequently, petitioner filed a Motion for Reconsideration (Re: Resolution dated 2 December 2016)[60] with Comment with Omnibus Motion (1. To Admit and 2. To Cancel Hearing) by respondent.[61] In a Resolution dated March 24, 2017, the Court denied petitioner's motion under Rule 130 of the Rules

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52 Docket, Vol. I, pp. 133-140.
53 Docket, Vol. I, pp. 156-177.
54 Docket, Vol. II, pp. 446-453.
55 Docket, Vol. II, pp. 484-489.
56 August 24, 2016 Order, Docket, Vol. II, p. 503.
57 Docket, Vol. II, p. 525-535.
58 Docket, Vol. II, p. 793-794.
59 Docket, Vol. II, pp. 798-799.
60 Docket, Vol. II, pp. 802-806.
61 Docket, Vol. II, pp. 825-826.

of Court.[62] Accordingly, petitioner filed a Manifestation with Tender of Excluded Evidence under Section 40 of Rule 132 of the Rules of Court.[63]

On June 9, 2017, respondent filed the Judicial Affidavit of Revenue Officer Joel Aguila whose testimony covered the examination that his team conducted pursuant to LOA-127-2010-00000057 dated June 17, 2010.[64] The lone witness was presented during the July 17, 2017 hearing.[65]

On July 31, 2017, respondent filed a Respondent's Formal Offer of Evidence offering Exhibits "R-1" to "R-6", "R-8", "R-10" to "R-18" as documentary evidence[66] with a Comment from petitioner.[67] In a Resolution dated September 5, 2017, the Court admitted all the exhibits of respondent.[68]

On December 18, 2017, with the filing of petitioner's Memorandum on October 6, 2017[69] and respondent's Memorandum on December 15, 2017,[70] the case was considered submitted for decision.[71]

THE ISSUES

The parties submitted the following issues for the Court's resolution:[72]

1. Whether the assessments are null and void due to the absence of an electronic letter of authority.

2. Whether respondent's right to assess petitioner has prescribed despite the five (5) waivers executed.

3. Whether petitioner is liable to pay the amount of ₱20,821,138.84 allegedly representing its basic deficiency income tax (IT), expanded withholding tax (EWT),

[62] Docket, Vol. II, pp. 833-837.
[63] Docket, Vol. II, pp. 838-840.
[64] Exhibit "R-19", Docket, Vol. II, pp. 852-862.
[65] July 17, 2017 Order, Docket, Vol. II, p. 882.
[66] Docket, Vol. II, pp. 886-890.
[67] Docket, Vol. II, pp. 894-896.
[68] Docket, Vol. II, pp. 900-901.
[69] Docket, Vol. II, pp. 902-929.
[70] Docket, Vol. II, pp. 942-958.
[71] Docket, Vol. II, p. 964.
[72] JSFI, Docket, Vol. I, p. 127.

withholding tax on compensation (WTC), Value-Added Tax (VAT), documentary stamp tax (DST), interests and penalties for the taxable year 2009.

THE COURT'S RULING

1. LOA-127-2010-00000057 dated June 17, 2010 is an electronic Letter of Authority (eLA) under Revenue Memorandum Order No. 44-2010, thus, the investigation conducted and the assessments issued pursuant to said eLA are valid.

It is not disputed by the parties that on June 18, 2010, LOA-127-2010-00000057 dated June 17, 2010 was served on the petitioner.[73] Said LOA authorized the assigned revenue officers under the LTS to examine petitioner RDDC's books of accounts and other accounting records for all internal revenue taxes for 2009.

What petitioner raises as an issue is the alleged failure to issue an electronic Letter of Authority (eLA) to replace said LOA, pursuant to Revenue Memorandum Order Nos. (RMO) 62-2010 and 69-2010, which therefore, invalidates the assessments.[74]

The petitioner's contention lacks merit.

A careful examination of LOA-127-2010-00000057 dated June 17, 2010 (Exhibit "P-4"/"R-1") on its face will clearly show that it was, in fact, the Letter of Authority that was generated *electronically* by the BIR's Letter of Authority Monitoring System (LAMS). Near the lower portion of the Exhibit "P-4"/"R-1" is a notation which reads:

> "IMPORTANT: Please address any communication on this matter to the authorized officer(s) <u>SULPICIO M. ADAPON, CHIEF, LT-REGULAR AUDIT DIVISION 4</u> with the address at <u>Rm. 216 2/F BIR NATIONAL OFFICE BLDG, QUEZON CITY</u> with telephone no. <u>920-</u>

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[73] Exhibits "P-4" and "R-1", BIR Records, Folder 2, p. 1; Q6-7, Judicial Affidavit of Revenue Officer Joel Aguila, Exhibit "R-19", Docket, Vol. II, pp. 852-853; Q11-13, Judicial Affidavit of Jessica C. Bugnot, Docket, Vol. I, pp. 161-162.

[74] Docket, Vol. II, pp. 907-910.

7515, 926-3375. This Letter of Authority becomes void if it contains erasures. **This is an electronically-issued Letter of Authority**. Please confirm the validity of this document with the authorized signatory above." (*emphasis supplied and underscoring supplied*)

Second, RMO 44-2010, which was issued by the BIR to implement the automation procedures for the issuance of the eLAs, enumerates the features of an eLA:

"III. Features of the Electronic LA

1. The electronic LA (Annex "A" hereof) shall bear the name, designation and electronic signature of the approving BIR official, as follows:

Investigating Office	*Approving Official*
▪ Revenue District Office	Regional Director
▪ LTS and its Divisions	Assistant Commissioner (ACIR)-LTS
▪ ES and its Divisions	Deputy Commissioner-Legal and Inspection Group (DCIR-LIG)
▪ Task Forces and Special Teams	Commissioner of Internal Revenue, or any other authorized Bureau official

2. The serial number of an electronic LA shall be system-generated, while the date of the LA shall reflect the date when it was printed. All electronic LAs shall be printed in triplicate, and distributed as follows:

   Original Copy — Taxpayer
   Duplicate Copy — To be attached to the case docket
   Triplicate Copy — File copy of the investigating office

3. The names of the Revenue Officers (ROs) assigned to a particular case shall be printed on the corresponding electronic LA. The first name on the space provided shall be the lead RO.

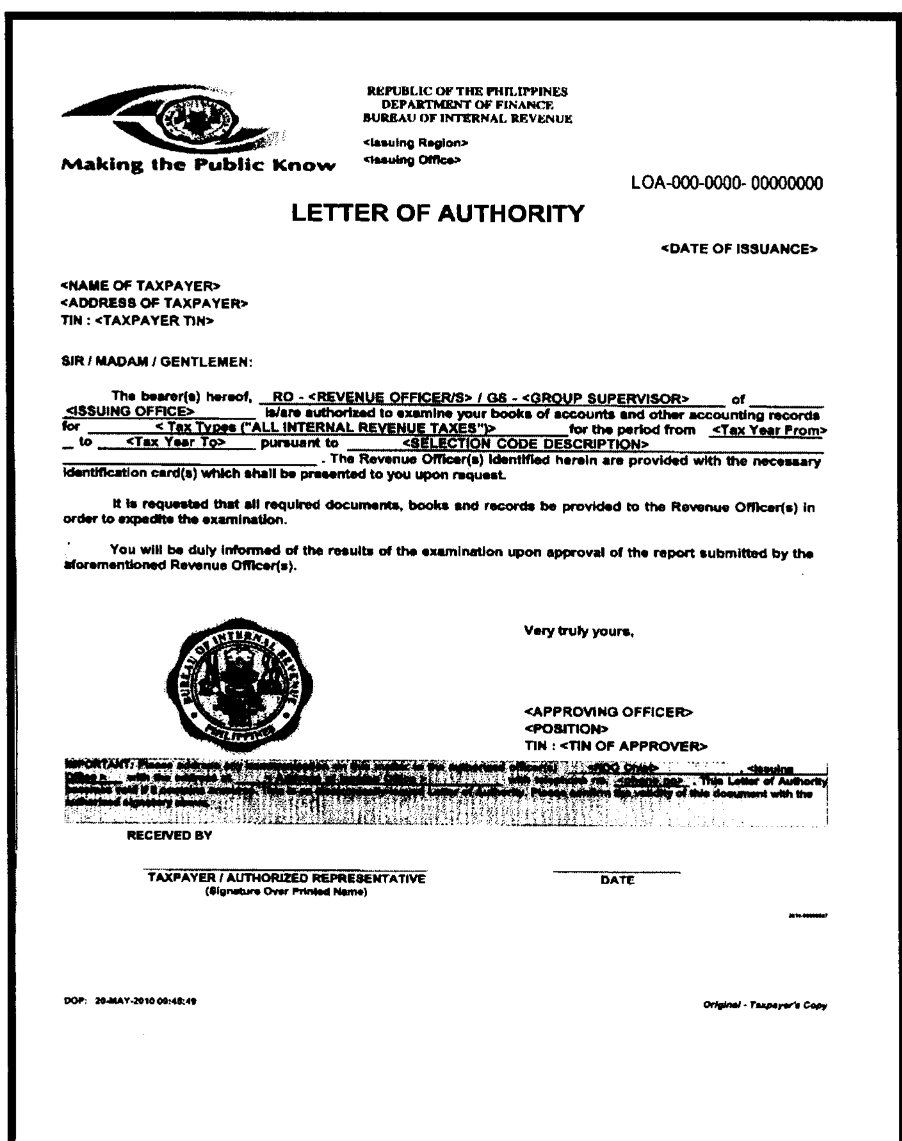
4. The tax types and taxable period to be covered by the audit shall be reflected on the electronic LA.

5. The basis for the audit (i.e., regular audit program, special audit, etc.) shall be indicated in the LA.

6. Any manually-written character (alphabetical or numeric), notation or erasure shall render the LA invalid.

7. The electronic LA shall contain a notation stating that the taxpayer is requested to verify the validity of the LA with the authorized BIR official, at the address and contact information provided therein." (*underscoring supplied*)

Once again, a comparison of LOA-127-2010-00000057 (Exhibit "P-4"/"R-1"), which was served on the petitioner on June 18, 2010, against the specimen eLA of RMO 44-2010 (Annex A) patently shows that the same complies with all the requisite features of an eLA under the RMO.



Making the Public Know

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

<Issuing Region>
<Issuing Office>

LOA-000-0000- 00000000

LETTER OF AUTHORITY

<DATE OF ISSUANCE>

<NAME OF TAXPAYER>
<ADDRESS OF TAXPAYER>
TIN : <TAXPAYER TIN>

SIR / MADAM / GENTLEMEN:

The bearer(s) hereof, RO - <REVENUE OFFICER/S> / GS - <GROUP SUPERVISOR> of <ISSUING OFFICE> is/are authorized to examine your books of accounts and other accounting records for < Tax Types ("ALL INTERNAL REVENUE TAXES")> for the period from <Tax Year From> to <Tax Year To> pursuant to <SELECTION CODE DESCRIPTION> . The Revenue Officer(s) identified herein are provided with the necessary identification card(s) which shall be presented to you upon request.

It is requested that all required documents, books and records be provided to the Revenue Officer(s) in order to expedite the examination.

You will be duly informed of the results of the examination upon approval of the report submitted by the aforementioned Revenue Officer(s).

Very truly yours,

<APPROVING OFFICER>
<POSITION>
TIN : <TIN OF APPROVER>

IMPORTANT: [illegible] <RDO Chief> [illegible] This Letter of Authority [illegible] Please confirm the validity of this document with the authorized signatory above.

RECEIVED BY

TAXPAYER / AUTHORIZED REPRESENTATIVE
(Signature Over Printed Name)

DATE

DOP: 20-MAY-2010 09:48:49

Original - Taxpayer's Copy

Finally, it should be noted that the RMOs relied upon by petitioner to support its position merely serve as instructions that deal with matters of administration or procedures as defined by Revenue Administrative Order No. (RAO) 1-2003:

> "SECTION 3. Classification of BIR Rulings and Issuances. — The following terms shall have the meaning described below:
>
> xxx xxx xxx
>
> h) Revenue Memorandum Orders (RMO) — These are directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow, and the like, which are necessary to carry out programs or to achieve policy goals and objectives. These issuances may be of general or of limited scope yet in any case require definite compliance by those concerned. They are not addressed to any particular group of employees or offices because they are for general information, but those directly concerned with the compliance of these provisions are either definitely stated, or unmistakably implied thereat." (*underscoring supplied*)

There is nothing in these guidelines issued by the BIR under RMO 62-2010 and 69-2010 which state that the failure to replace the manually prepared LAs with eLAs shall invalidate the entire investigation conducted pursuant to the previously issued LAs. Such consequence is not contemplated by the RMOs and petitioner, therefore, failed to cite the relevant RMO provisions supporting the invalidity.

2. The Income Tax Assessment for 2009, the EWT, FWT and WTC Assessments for January to March 2009 and, the DST Assessment are Barred by Prescription

The investigation authorized by the eLA covered all internal revenue taxes from January to December 2009. However, petitioner began commercial operations only on April 29, 2009 and, accordingly during trial, offered in evidence the following tax returns it filed after commencing its operations: *jz*

- 2nd Quarter (April – June 2009) VAT Return (BIR Form 2550Q) filed on July 24, 2009[75]

- Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (attachment to BIR Form 1604-CF) filed on January 19, 2010[76]

- Annual Income Tax Return (BIR Form 1702) filed on April 6, 2010[77]

Section 203 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, limits the CIR's period to assess and collect internal revenue taxes to three (3) years counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later.[78]

Based on the information gathered from these returns and other exhibits and counting the ordinary three-year prescription to assess from the reckoning dates, respondent had until the following dates to issue an assessment:

Tax Type	Period Covered	Date Actually Filed and Paid	Last Date Required by Law to be Filed and Paid	Date of Prescription
Income Tax (IT)	January - December 2009	April 6, 2010[79]	April 15, 2010	April 15, 2013
Value-Added Tax (VAT)	2nd Quarter 2009 (April – June 2009)	July 24, 2009[80]	July 27, 2009[81]	July 27, 2012
	3rd Quarter 2009 (July – September 2009)		October 26, 2009[82]	October 26, 2012
	4th Quarter 2009 (October – December 2009)		January 25, 2010	January 25, 2013
Withholding Tax on Compensation (WTC) / Final Withholding Tax (FWT)	January 2009	February 10, 2009[83]	February 10, 2009	February 10, 2012

[75] Exhibit "P-23", Docket, Vol. II, p. 639.
[76] See Exhibit "P-25", Docket, Vol. II, pp. 710-722.
[77] Exhibit "P-16", Docket, Vol. II, p. 634.
[78] *Commissioner of Internal Revenue v. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.
[79] Exhibit "P-16-A", Docket, Vol. II, p. 634-635.
[80] Exhibit "P-23", Docket, Vol. II, p. 639.
[81] Monday; July 25, 2009, the last day for filing under the law, fell on a Saturday.
[82] Monday; October 25, 2009, the last day for filing under the law, fell on a Sunday.
[83] Date of Remittance, Exhibit "P-25", Docket, Vol. II, p. 710.

	February 2009	March 10, 2009[84]	March 10, 2009	March 10, 2012
	March 2009	April 13, 2009[85]	April 10, 2009	April 13, 2012
	April 2009	May 11, 2009[86]	May 11, 2009[87]	May 11, 2012
	May 2009	June 10, 2009[88]	June 10, 2009	June 10, 2012
	June 2009	July 10, 2009[89]	July 10, 2009	July 10, 2012
	July 2009	August 10, 2009[90]	August 10, 2009	August 10, 2012
	August 2009	September 11, 2009[91]	September 10, 2009	September 11, 2012
	September 2009	October 13, 2009[92]	October 12, 2009[93]	October 13, 2012
	October 2009	November 12, 2009[94]	November 10, 2012	November 12, 2012
	November 2009	December 11, 2009[95]	December 11, 2012	December 11, 2012
	December 2009	January 13, 2010[96]	January 15, 2010	January 15, 2013
Expanded Withholding Tax (EWT)				
Documentary Stamp Tax (DST)			January 11, 2010[97]	January 11, 2013

However, as early as March 18, 2012, before these dates of prescription set in, petitioner executed the first three waivers *limited* to VAT and withholding taxes, which successively extended the assessment period to June 30, 2013.

Before the expiry of the *third* waiver, petitioner executed a *fourth* waiver on April 5, 2013, which extended the assessment of all internal revenue taxes to December 31, 2013. Then before the expiration of the *fourth* waiver, petitioner finally executed a *last/fifth* waiver which extended the assessment of all internal revenue taxes to September 26, 2013.

Below is a table summarizing the details of the five waivers for ready reference:

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[84] Date of Remittance, Exhibit "P-25", *Id.*
[85] Date of Remittance, Exhibit "P-25", *Id.*
[86] Date of Remittance, Exhibit "P-25", *Id.*
[87] Monday; May 10, 2009, the last day for filing under the law, fell on a Sunday.
[88] Date of Remittance, Exhibit "P-25", Docket, Vol. II, p. 710.
[89] Date of Remittance, Exhibit "P-25", *Id.*
[90] Date of Remittance, Exhibit "P-25", *Id.*
[91] Date of Remittance, Exhibit "P-25", *Id.*
[92] Date of Remittance, Exhibit "P-25", *Id.*
[93] Monday; October 10, 2009, the last day for filing under the law, fell on a Saturday.
[94] Date of Remittance, Exhibit "P-25", Docket, Vol. II, p. 710.
[95] Date of Remittance, Exhibit "P-25", *Id.*
[96] Date of Remittance, Exhibit "P-25", *Id.*
[97] Section 200, 1997 NIRC, as amended. On the assumption that the taxable transaction occurred in December 2009, the DST due is payable within ten (10) days after the close of December 2009, or January 10, 2010, Sunday.

Waiver	Coverage	Date of Execution by the Taxpayer	Date of Acceptance by the BIR	Expiry Date (Extension of the Period to Assess)
First	VAT and Withholding Tax	March 18, 2012	April 27, 2012	June 30, 2012
Second	VAT and Withholding Tax	May 9, 2012	May 14, 2012	December 31, 2012
Third	VAT and Withholding Tax	October 31, 2012	November 14, 2012	June 30, 2013
Fourth	All Internal Revenue Taxes	April 5, 2013	April 17, 2013	December 31, 2013
Fifth	All Internal Revenue Taxes	September 19, 2013	September 26, 2013	June 30, 2014

First, what is evident from the foregoing is that, for three (3) years from 2012 until 2013, petitioner RDDC voluntarily executed and submitted five consecutive waivers to the respondent. Nonetheless, despite numerous opportunities afforded it, petitioner failed to raise any issue on any infirmity thereon. Specifically, in both petitioner's protest letters to the PAN[98] and the FLD[99] it remained silent on the validity of any of the five (5) waivers it executed.

Second, in *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*,[100] the Supreme Court enumerated the strict and mandatory requisites of a valid waiver:

> "To implement the foregoing provisions, the BIR issued RMO 20-90 and RDAO 05-01, outlining the procedures for the proper execution of a valid waiver, viz.:
>
> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ______ 19 ___', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly

[98] Exhibit "P-6", Docket, Vol. II, pp. 566-576.
[99] Exhibit "P-8", Docket, Vol. II, pp. 591-601.
[100] G.R. No. 220835, July 26, 2017.

notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

<u>These requirements are mandatory and must strictly be followed. To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01</u>." (*underscoring supplied; citations omitted*)

A review of the five waivers executed by the petitioner and accepted by the BIR shows that they have fully and adequately hurdled all the requisites enumerated in the case of *Systems Technology Institute, Inc.*:

	First Waiver Exhibit P-11/R-4	**Second Waiver Exhibit P-12/R-5**	**Third Waiver Exhibit P-13/R-6**	**Fourth Waiver Exhibit P-14/R-10**	**Fifth Waiver Exhibit R-11**
Form / Expiry Date	June 30, 2012	December 31, 2012	June 30, 2013	December 31, 2013	June 30, 2014
Signed by Taxpayer	Signed by James L. Go	Signed by James L. Go	Signed by James L. Go	Signed by Lance Y. Gokongwei	Signed by Lance Y. Gokongwei
Notarized	Notarized March 8, 2012	Notarized May 9, 2012	Notarized October 31, 2012	Notarized April 5, 2013	Notarized September 19, 2013
BIR Acceptance / Authority of Revenue Official	Accepted by ACIR Alfredo Misajon on April 27, 2012	Accepted by ACIR Alfredo Misajon on May 14, 2012	Accepted by ACIR Alfredo Misajon on November 14, 2012	Accepted by ACIR Alfredo Misajon on April 17, 2013	Accepted by ACIR Alfredo Misajon on September 26, 2013
Date of Execution and Date of Acceptance before Expiration Date	Not applicable	Both dates of execution and acceptance before expiration date of the previous waiver on June 30, 2012	Both dates of execution and acceptance before expiration date of the previous waiver on December 31, 2012	Both dates of execution and acceptance before expiration date of the previous waiver on June 30, 2013	Both dates of execution and acceptance before expiration date of the previous waiver on December 31, 2013
Taxpayer furnished a copy	Furnished	Furnished	Furnished	Furnished	Furnished
Three Copies	No issue raised on this point; falls under the presumption of regularity in Rule 131	No issue raised on this point; falls under the presumption of regularity in Rule 131 Section 3(m) of the Rules of Court.	No issue raised on this point; falls under the presumption of regularity in Rule 131 Section 3(m) of the Rules of Court.	No issue raised on this point; falls under the presumption of regularity in Rule 131 Section 3(m) of the Rules of Court.	No issue raised on this point; falls under the presumption of regularity in Rule 131 Section 3(m) of the Rules of Court.

	Section 3(m) of the Rules of Court.[101]				

Accordingly, contrary to petitioner's position,[102] all the foregoing waivers are *valid* and, thus, binding upon both the government and the taxpayer.

Nonetheless, when the *first* waiver was accepted on April 27, 2012, the assessments for expanded withholding tax (EWT), final withholding tax (FWT) and withholding tax on compensation (WTC) for January to March 2009 had, by that time, already been barred by prescription.

In addition, because the *third* waiver covered only VAT and withholding tax assessments and also because prescription had already set in on April 15, 2013 for the income tax (IT) assessment and on January 11, 2013 for the DST assessment, *before* the *fourth waiver* was accepted by the BIR on April 17, 2013, the IT and DST assessments had already prescribed under Sections 203 and 222 of the 1997 NIRC, as amended.

Accordingly, only the following assessments remain:

- VAT for 2009; and,
- EWT / FWT / WTC, for April to December 2009.

3. On the Merits

The Court now proceeds to discuss the substantive aspect of the assessments.

3.a Deficiency Value-Added Tax (VAT)

Respondent retained the VAT assessment per FLD thus:[103]

---

[101] **Rule 131. Burden of Proof and Presumptions**. Section 3. *Disputable Presumptions.* – (m) That official duty has been regularly performed.
[102] Pars. 54 and 56, Petitioner's Memorandum, Docket, Vol. II, pp. 914-915.
[103] Exhibit "P-10", Docket, Vol. II, p. 621.

Taxable sales per return		₱ 34,779,356.25
Add: Adjustment		
Difference-sales per VAT vs SLS	₱ 938.11	
Unaccounted source of cash per CAATTS	5,000.00	5,938.11
Taxable sales per investigation		₱ 34,785,294.36
Multiply by: tax rate		12%
Output tax		₱ 4,174,235.32
Less: Input tax		
Per return	₱ 7,379,266.59	
Less: IT carried over to succeeding period	3,217,570.57	
Total	₱ 4,161,696.02	
Less: Disallowed/unsupported input tax	4,862,345.50	(700,649.48)
Net VAT Payable		₱ 4,874,884.80
Less: Tax credits/Payments		
Creditable VAT withheld		11,826.73
Deficiency Tax		**₱4,863,058.07**

VAT - Adjustments to taxable sales

The adjustments added to petitioner's taxable sales for the year 2009 arose from respondent's findings in the income tax assessment, consisting of two (2) items:[104]

- Undeclared sales, ₱938.11, and,
- Unaccounted source of cash, per CAATTS, ₱5,000.00

"Undeclared sales, P938.11 – Sales per VAT returns is compared to sales per books, disclosing an undeclared sales in the amount of P938.11, hence, subjected to income tax pursuant to Section 32 of the tax code, as amended.

	PER VAT RETURNS		PER BOOKS	
MONTH	SALES	OUTPUT TAX	NET SALES	OUTPUT TAX
January	₱ -	₱ -	₱ -	₱ -
February	-	-	-	-
March	-	-	-	-
April	239,517.86	28,742.14	239,517.86	28,742.14
May	5,173,871.07	620,864.53	5,173,871.07	619,813.93
June	3,883,106.57	465,972.79	3,884,044.64	466,085.39
July	3,503,897.42	420,467.69	3,503,897.42	420,467.68
August	3,819,698.00	458,363.76	3,819,698.03	458,363.77
September	3,091,117.75	370,934.13	3,091,117.71	370,934.08
October	3,830,312.59	459,637.51	3,830,312.59	459,637.49
November	4,094,343.83	491,321.26	4,094,343.85	491,321.25
December	7,143,491.16	857,218.94	7,143,491.19	857,218.90

[104] Exhibit "P-10", Annex-A Details of Discrepancies, Docket, Vol. II, p. 623.

Total	₱34,779,356.25	₱4,173,522.75	₱34,780,294.36	₱ 4,172,584.63
Sales per return			34,779,356.25	4,173,522.75
Difference			**₱ 938.11**	**₱ (938.12)**

Unaccounted source of cash, per CAATTS, P5,000.00 – Discrepancy noted per master file extract for EWT (CAATTS) as against SAWT submitted by the taxpayer is considered as unaccounted source of cash, hence, the corresponding income tax due was assessed pursuant to Section 32 of the tax code, as amended."

An examination of the foregoing table shows that the alleged undeclared sales of ₱938.11 is accounted by the difference in sales in June 2009:

Month	Sales Per Returns	Sales Per Books	Difference
June	₱ 3,883,106.57	₱ 3,884,044.64	₱ 938.07
August	3,819,698.00	3,819,698.03	0.03
September	3,091,117.75	3,091,117.71	(0.04)
November	4,094,343.83	4,094,343.85	0.02
December	7,143,491.16	7,143,491.19	0.03
TOTAL	**₱22,031,757.31**	**₱22,032,695.42**	**₱ 938.11**

Petitioner's controller, Jessica C. Bugnot, explains this discrepancy as an adjustment representing sales return not transacted in petitioner's point of sales.[105]

Petitioner submitted its general journal book containing an entry for an adjustment contained in a journal voucher (JV) 0600309 dated June 30, 2009 with the description "Reclass (Error posting)", thus:[106]

Account Code	Account Description	Debit	Credit
2750110100	Output Tax-Net Sales Galleria	111.96	-
4010010101	Sales Galleria VAT	938.04	-
6190099900	Other Expense Corporate	-	1,050.00
		1,050.00	1,050.00

The Court finds the foregoing explanation in order. Petitioner has, thus, sufficiently accounted for the ₱938.11 difference.

Regarding the item of unaccounted source of cash of ₱5,000.00, petitioner claims that it is void for the FDDA's failure to state verifiable facts upon which it is based and to provide sufficient information to reconcile the alleged discrepancy. Jr

[105] Q42 to Q44, Exhibit "P-32", Docket, Vol. I, p. 167.
[106] Exhibits "P-21" and "P-21-A", Docket, Vol. II, pp. 636-637.

A review of the Details of Discrepancies attached to the PAN, FLD and FDDA confirms that it merely states the discrepancy of ₱5,000.00 per master file extract for EWT (CAATTS) noted against SAWT submitted by taxpayer.[107] There is no indication therein of the name of the suppliers or income payers and the amounts of income payments so that petitioner may be able to verify the same.

Therefore, the Court is constrained to give credence to petitioner's arguments and rule in its favor. The findings of unaccounted source of cash amounting to ₱5,000.00 should be cancelled.

VAT - Disallowed Input taxes

The total disallowed input taxes per respondent's findings is broken down as follows:[108]

Disallowed input tax for being incorrectly supported (VAT not separately indicated)	₱ 3,005,872.12
Disallowed input tax related to the unsupported purchases	1,856,473.40
TOTAL	**₱ 4,862,345.52**

Concerning the disallowed input tax with invoices that do not separately indicate the VAT, petitioner quotes in its defense Revenue Regulations (RR) No. 16-2005, as amended by RR 04-2007, which states that "if the VAT is not billed separately, the selling price stated in the sales document shall be deemed to be inclusive of VAT."

Petitioner is incorrect on this point.

The Court notes that petitioner merely quoted a provision of Section 4.106-4 of RR 04-2007 which does *not* apply to this item of assessment. Petitioner referred to a provision of the regulations on barter or exchange of real property subject to VAT which transaction is not applicable to the petitioner as a seller of goods. Quoted in full, however, the section pertains to the meaning of the term "gross selling price" which does *not* exonerate the petitioner from the requirement, thus:

> "SECTION 4.106-4. *Meaning of the Term 'Gross Selling Price'.* — The term 'gross selling price' means the total amount of money or

[107] Exhibits "P-5", "P-7" and "P-10", Docket, Vol. II, pp. 562, 580 & 623.
[108] Exhibit "P-7", Docket, Vol. II, p. 581.

its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding VAT. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

In the case of sale, barter or exchange of real property subject to VAT, gross selling price shall mean the consideration stated in the sales document or the fair market value whichever is higher. If the VAT is not billed separately in the document of sale, the selling price or the consideration stated therein shall be deemed to be inclusive of VAT.

The term 'fair market value' shall mean whichever is higher of: 1) the fair market value as determined by the Commissioner/zonal value, or 2) the fair market value as shown in schedule of values of the Provincial and City Assessors (real property tax declaration).

However, in the absence of zonal value/fair market value as determined by the Commissioner, gross selling price refers to the market value shown in the latest real property tax declaration or the consideration, whichever is higher. If the gross selling price is based on the zonal value or market value of the property, the zonal or market value shall be deemed exclusive of VAT. Thus, the zonal value/market value, net of the output VAT, should still be higher than the consideration in the document of sale, exclusive of the VAT." *(emphasis and underscoring supplied)*

More importantly, Section 113(B) of the 1997 NIRC, as amended, explicitly provides:

"SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —

xxx xxx xxx

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt; 𝒽𝓏

> (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rate sale' shall be written or printed prominently on the invoice or receipt;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
>
> xxx xxx xxx
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
>
> (4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client." *(underscoring supplied)*

Petitioner insists that it cannot assume the responsibility for the failure of its suppliers to indicate the VAT separately in the invoices and/official receipts they issued. Consequently, it should not be penalized for said non-compliance, which is apparently beyond its control.

The Court is not persuaded.

Under the clear mandate of the law, the Court reiterates that to ensure proper payment of taxes, the invoicing requirements should be strictly followed since these were designed to create an orderly VAT system without prejudice to both the taxpayers and the government.[109] Contrary to petitioner's view, it is, therefore, the petitioner's duty to ensure that the VAT invoices and/or official receipts issued to it are fully compliant with the requirements, especially since they provide the necessary documentary support for its input tax credits. Je

[109] *Wellington Investment and Manufacturing Corporation v. Commissioner of Internal Revenue*, CTA Vase No. 8726, September 14, 2017; *Sumisetsu Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8062, May 26, 2015.

The disallowed input taxes of ₱1,856,473.40 were derived from the unsupported purchases found by respondent between petitioner's summary list of purchases and the purchases claimed per financial statement/ITR, computed as follows:[110]

Herco Trading Inc.

Invoice No.	Date	Amount	Net of VAT
40482	6/15/2009	₱ 1,247,821.55	₱ 1,114,126.38
40901	7/8/2009	1,454,630.87	1,298,777.56
41597	8/6/2009	1,644,210.45	1,468,045.04
42197	9/8/2009	3,627,065.54	3,238,451.38
42397	9/15/2009	2,209,537.80	1,972,801.61
43095	10/8/2009	1,618,511.67	1,445,099.71
43201	10/13/2009	4,127,966.77	3,685,684.62
43620	10/22/2009	3,665,796.30	3,273,032.41
44361	11/17/2009	4,343,407.36	3,878,042.29
44735	11/26/2009	4,115,858.10	3,674,873.30
Total			₱ 25,048,934.29
Unsupported purchases per INFOCON			40,519,545.89
Unsupported purchases per PAN			₱ (15,470,611.60)
VAT Rate			12%
Input tax			₱ 1,856,473.39

Petitioner states that the unsupported purchases of ₱15,470,611.60 pertain to its wholesale purchases from Herco Trading, Inc. for the month of May 2009. However, the invoice/s for said transactions can no longer be found allegedly despite diligent search.[111] In lieu thereof, petitioner submitted a certification issued by Herco's accountant showing its sales to petitioner for the year 2009.[112]

Under Section 34(A)(1)(b) of the NIRC, as amended, the supplier's certification issued to petitioner may qualify as "other adequate records" which are sufficient to evidence the deductions from gross income. For VAT purposes, however, the same does not qualify as sufficient substantiation for input tax. Section 4.113-1(A) of RR 16-2005, as amended, specifically requires a *VAT invoice* for purchases of goods:

"**SECTION 4.113-1.** ***Invoicing Requirements.*** —

(A) A VAT-registered person shall issue: — fr

[110] Exhibit "P-10", Docket, Vol. II, pp. 623-624.
[111] Q48, Exhibit "P-32", Docket, Vol. I, p. 168.
[112] Exhibit "P-22", Docket, Vol. II, p. 638.

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. <u>All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.</u>

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records." *(underscoring supplied)*

Further, Section 4.110-8 of RR 16-2005 plainly provides for the substantiation requirements for input tax credits, to wit:

"**SECTION 4.110-8.** ***<u>Substantiation of Input Tax Credits</u>.*** —

(a) <u>Input taxes for</u> the importation of goods or <u>the domestic purchase of goods</u>, properties or services is <u>made in the course of trade or business</u>, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, <u>must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau</u>:

(1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) <u>For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.</u>

(3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code." (*underscoring supplied*) *gr*

The law and its implementing VAT regulations oblige the taxpayer to exercise due diligence in keeping the necessary supporting documents for its purchases. This requirement is important since the item of assessment, *i.e.* unsupported purchases of ₱15,470,611.60, involves a material amount. Accordingly, the Court upholds the disallowance of petitioner's input taxes in the aggregate amount of ₱4,862,345.50.

In sum, petitioner is liable for deficiency VAT amounting to ₱4,862,345.50, computed as follows:

Taxable sales per return		₱ 34,779,356.25
Multiply by: tax rate		12%
Output tax		₱ 4,173,522.75
Less: Input tax		
Per return	₱ 7,379,266.59	
Less: IT carried over to succeeding period	3,217,570.57	
Total	₱ 4,161,696.02	
Less: Disallowed input tax	4,862,345.50	
Allowable input tax		(700,649.48)
Net VAT Payable		₱ 4,874,172.23
Less: Tax credits/Payments		
Creditable VAT withheld		11,826.73
Deficiency VAT		**₱4,862,345.50**

VAT - Penalty for Failure to Supply Information in SLSP

Respondent imposed a ₱50,000.00 penalty for petitioner's alleged failure to supply information in the Summary List of Sales and Purchases (SLSP) and cites Section 4.114-3 of RR 16-2005 as basis:

> "**SEC. 4.114-3.** ***Submission of Quarterly Summary List of Sales and Purchases. —***
>
> a. **Persons Required to Submit Summary List of Sales/Purchases. —**
>
> (1) Persons Required to Submit Summary Lists of Sales. — All persons liable for VAT such as manufacturers, wholesalers, service-providers, among others, with quarterly total sales/receipts (net of VAT) exceeding Two Million Five Hundred Thousand Pesos (₱2,500,000.00).
>
> (2) Persons Required to Submit Summary Lists of Purchases.— All persons liable for VAT such as manufacturers, service-providers,

among others, with quarterly total purchases (net of VAT) exceeding One Million Pesos (₱1,000,000.00).

xxx xxx xxx

(i) Penalty Clause

xxx xxx xxx

(2) Penalties in case of failure to submit quarterly summary list of sales and purchases.—In accordance with the provisions of the Tax Code of 1997, a person who fails to file, keep or supply a statement, list, or information required herein on the date prescribed therefor shall pay, upon notice and demand by the Commissioner Of Internal Revenue, an administrative penalty of One Thousand Pesos (₱1,000.00) for each such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect. For this purpose, the failure to supply the required information for each buyer or seller of goods and services shall constitute a single act or omission punishable hereof. However, the aggregate amount to be imposed for all such failures during a taxable year shall not exceed Twenty-five Thousand Pesos (₱25,000.00).

(3) In addition to the imposition of the administrative penalty, willful failure by such person to keep any record and to supply the correct and accurate information at the time or times as required herein, shall be subject to the criminal penalty under the relevant provisions of the Tax Code (e.g., Sec. 255, Sec. 256, etc.), upon conviction of the offender.

(4) The imposition of any of the penalties under the Tax Code and the compromise of the criminal penalty on such violations, notwithstanding, shall not in any manner relieve the violating taxpayer from the obligation to submit the required documents.

(5) Finally, the administrative penalty shall be imposed at all time, upon due notice and demand by the Commissioner of Internal Revenue. A *subpoena duces tecum* for the submission of the required documents shall be issued on the second offense. A third offense shall set the motion for a criminal prosecution of the offender." *(underscoring supplied)*

Petitioner refutes the respondent's basis through the testimony of its controller, thus:[113]

"Q69. Finally, under the heading 'Penalties for Failure to Supply Information in SLSP', the Details of Discrepancy alleged that

[113] Q69, Exhibit "P-32", Docket, Vol. I, p. 175.

Petitioner failed to submit Quarterly SLSP, did Petitioner actually file its SLSP in 2009?

A69. Petitioner filed its Summary List of Purchases in 2009. However, it need not file a Summary List of Sales since it is engaged in retail sales to the public who purchase Petitioner's merchandise for consumption and not in connection with trade or business pursuant to Revenue Regulations No. 13-97 and Revenue Memorandum Circular No. 2-90."

According to RR 13-97, operators of supermarkets and department stores, retailers selling direct to consumers, hotels, restaurants, lending investors, pre-need companies, non-life insurance and common carriers shall submit only the names of the persons from whom they purchased the subject goods and services to be contained in the quarterly Summary Lists of Purchases. In other words, retailers such as petitioner are not required to submit quarterly Summary Lists of Sales but only Summary Lists of Purchases.

However, petitioner's Summary List of Purchases for the year 2009 was denied admission as secondary evidence in a Resolution dated December 2, 2016.[114] Petitioner's Motion for Reconsideration was later also denied.[115]

The Court, therefore, sustains the imposition of the administrative penalty for petitioner's failure to submit quarterly summary lists of purchases. As quoted previously, under the provisions of RR 16-2005, the aggregate amount to be imposed shall *not* exceed ₱25,000.00.

3.b Deficiency Expanded Withholding Tax (EWT)

Respondent's examiner found the following deficiency EWT per line-by-line reconciliation:[116]

Supplier Registered Name	**Def. Tax**
Automatic Identification Phils. Inc.	₱ 1,126.79
CEC Industries Inc.	22.25
Concepcion Carrier Air Conditioning Co.	1,964.29
Contrade Enterprises Inc.	390.61
Herco Trading Inc.	141,425.66

[114] Docket, Vol. II, pp. 798-799.
[115] Resolution dated March 24, 2017, Docket, Vol. II, pp. 833-837.
[116] Exhibit "P-10", Docket, Vol. II, pp. 624-625.

Holiday Inn	1,272.00
Jax Lighting Industries Co.	1,975.72
Manila Electric Company	360.02
Metro Paper Industries	77.50
Pantronics International Corp.	146.61
Poslink Asia Inc.	782.14
Project Security and Investigation Services	579.32
Total Security System Inc.	732.14
	₱150,855.04

Petitioner contends that respondent failed to provide the details of the deficiency EWT assessment, thus, should be cancelled for lack of factual and legal basis.

An examination of the Details of Discrepancies attached to the PAN, FLD and FDDA confirms that it merely states that a reconciliation and verification of all income payments of petitioner were conducted and resulted in a deficiency EWT of ₱150,855.04.[117] Respondent listed the names of petitioner's suppliers and the corresponding deficiency EWT and yet the Details of Discrepancies does not show how the deficiency was computed.

The Court finds for the petitioner. The deficiency EWT assessment should be cancelled for lack of factual basis.

3.c Deficiency Withholding Tax on Compensation (WTC)

The Court deemed it prudent to compute for the deficiency WTC liability for the whole taxable year since respondent's findings were not broken down on a monthly basis.

The deficiency WTC assessment for petitioner consists of the following items:[118]

Amount subject to WT-Compensation	670,093.85
Deficiency Tax	214,430.03
Add: Under withheld D7.5	26,279.74
Total	**240,709.77**

[117] Exhibits "P-5", "P-7" and "P-10", Docket, Vol. II, pp. 563, 582 & 624-625.
[118] Exhibit "P-10", Docket, Vol. II, p. 621.

Respondent compared the salaries and wages claimed by petitioner per ITR/FS with the actual amount subjected to withholding tax on compensation and found a discrepancy as follows:[119]

Salaries, wages and benefits Per ITR/FS	₱ 4,819,257.00
Less: Per Alphalist	4,149,163.15
Difference	**₱ 670,093.85**

The difference is accounted for by petitioner thus:[120]

"A60. Yes. The difference is accounted for as follows:

a. Compensation from previous employer – part of the alphalist but not part of the expense per FS	₱ (90,642.02)
b. Group life insurance – not part of the alphalist but part of the expense per FS	128,181.23
c. Employer's share in SSS, Philhealth, ECC and Pag-ibig – not part of the alphalist but part of the expense per FS	211,821.36
d. Uniform allowance, rice allowance, and seminar expenses not part of the alphalist but part of the expense per FS	420,733.53
TOTAL	**₱670,094.10"**

To support the first item in the reconciliation above, petitioner submitted its alphalist of employees for the calendar year 2009.[121] However, Schedule 7.4 Alphalist of Employees as of December 31 with Previous Employer Within the Year shows the following information:[122]

Previous employer		
Taxable income-Salaries & other forms of compensation		₱ 63,069.97
Present employer		
Non-taxable income:		
13th month pay & other benefits	₱ 32,900.00	
SSS, GSIS, PHIC, etc.	14,641.70	47,541.70
Taxable income		
Basic salary	₱ 275,525.55	
Salaries & other forms of compensation	13,282.60	288,808.15
Gross compensation income		**₱399,419.82**

[119] Exhibit "P-7", Docket, Vol. II, p. 581.
[120] Exhibit "P-32", Docket, Vol. I, pp. 171-172.
[121] Exhibit "P-25", Docket, Vol. II, pp. 713-721.
[122] *Id.*, p. 716.

It is clear that compensation income from previous employer amounted to ₱63,069.97, not ₱90,642.02.

Petitioner likewise submitted system-generated reports of its alleged payments for uniform allowance, rice subsidy, group insurance, healthcare insurance and medical allowance, summarized as follows:[123]

Due Date	Payee	Payment For	Amount
7/31/2009	Episode Garments Mfg.	Uniform	₱ 49,890.00
7/26/2009	Episode Garments Mfg.	White shirt & apron	8,985.14
	Subtotal		**₱ 58,875.14**
4/23/2009		Rice Subsidy	₱ 1,800.00
10/13/2009		Rice Subsidy	3,600.00
7/22/2009		Rice Subsidy	2,700.00
1/7/2010		Rice Subsidy	6,000.00
	Subtotal		**₱ 14,100.00**
9/3/2009	PhilAm Life	Group Insurance	₱14,710.80
10/1/2009	PhilAm Life	Group Insurance	325.00
	Subtotal		**₱ 15,035.80**
6/5/2009	Maxicare	Healthcare	₱ 23,068.01
6/23/2009	Maxicare	Healthcare	42,507.00
10/27/2009	Maxicare	Healthcare	5,960.00
11/26/2009	Health Plan Phil., Inc.	Healthcare	18,178.87
9/3/2009	Health Plan Phil., Inc.	Healthcare	9,680.00
10/27/2009	Health Plan Phil., Inc.	Healthcare	4,074.19
9/4/2009	Health Plan Phil., Inc.	Healthcare	2,193.97
	Subtotal		**₱ 105,662.04**
6/23/2009		Medicine Allowance	₱ 1,300.00
	Subtotal		**₱ 1,300.00**
	TOTAL		**₱ 194,972.98**

Once again, the amounts do not tally with those in petitioner's reconciliation. Furthermore, the amount of employer's share in SSS, Philhealth, ECC and Pag-ibig is not detailed or supported by documents. A recomputation of the reconciliation of the discrepancy results in an unaccounted difference of ₱538,190.84:

Discrepancy per BIR audit		₱ 670,093.85
Less: Reconciling items		
a. Compensation from previous employer – part of the alphalist but not part of the expense per FS	₱(63,069.97)	
b. Group life insurance – not part of the alphalist but part of the expense per FS	15,035.80	
c. Employer's share in SSS, Philhealth, ECC and Pag-ibig – not part of the alphalist but part of the expense per FS	-	

gc

[123] Exhibits "P-26" and "P-27", Docket, Vol. II, pp. 722-739.

d. Uniform allowance, rice allowance, and seminar expenses not part of the alphalist but part of the expense per FS	179,937.18	131,903.01
Unaccounted difference		**₱ 538,190.84**

It should be noted that the respondent used the top income tax rate of 32% to compute for the deficiency WTC. Considering that the income subjected to WTC is traced to various individuals who belong to different income brackets, the Court deems it fair to use the *average* effective income tax rate based on the total taxable income, per the monthly remittance returns of petitioner for the taxable year 2009:[124]

Month	Taxable Income	WTC Remitted
January	₱ 47,282.51	₱ 9,184.75
February	114,048.53	21,819.95
March	144,612.50	26,551.21
April	271,191.20	41,352.20
May	349,378.33	44,392.35
June	370,023.36	42,246.62
July	429,067.26	38,960.39
August	476,569.71	70,329.38
September	329,889.18	68,874.36
October	345,626.81	67,258.40
November	385,158.91	67,382.80
December	494,516.41	57,256.91
TOTAL	**₱ 3,757,364.71**	**₱ 555,609.32**

From the foregoing, the average income tax rate for the year 2009 is 14.7872% (₱555,609.32 divided by ₱3,757,364.71).

Regarding respondent's finding of under-remittance of WTC, petitioner argues that the same has no factual and legal basis. However, it did not present any documentary evidence to refute the finding. Therefore, the assessment should be retained.

In fine, petitioner is liable for deficiency WTC in the amount of ₱105,863.14, computed as follows:

Amount subject to WT-Compensation	₱ 538,190.84
Deficiency Tax (at the average rate of 14.7872%)	₱ 79,583.40
Add: Under withheld D7.5	26,279.74
Deficiency WTC	**₱ 105,863.14**

[124] BIR Records, Folder 2, pp. 140-170.

3.d Compromise Penalties

Included in the deficiency tax assessments issued by respondent covering the taxable year 2009 are the following compromise penalties in the sum of ₱82,200.00:[125]

Tax Assessment	Compromise Penalty
Deficiency Income Tax	₱ 25,000.00
Deficiency VAT	25,000.00
Deficiency EWT	16,000.00
Deficiency WTC	16,000.00
Deficiency DST	200.00
Total	**₱ 82,200.00**

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provision of the Tax Code.[126] Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-07, compromise penalties are only 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. Clearly, the compromise penalty implies a mutual agreement between the parties in respect of the thing or subject matter which is so compromised. The imposition of the compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[127]

In this case, there was nothing in the records which would show that petitioner consented to the compromise penalty. Consequently, the same should be cancelled.

WHEREFORE, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**.

Accordingly, the deficiency income tax, expanded withholding tax and documentary stamp tax assessments are **CANCELLED**. However, petitioner is held **LIABLE** for deficiency Value-Added Tax and Withholding Tax on Compensation and penalty for failure to supply information in SLSP for the taxable year 2009 in the aggregate amount of ₱19,657,525.58, inclusive of 25% surcharge imposed under Section 248(A) of the NIRC of 1997, as amended, and deficiency and delinquency interest imposed under Section 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017:[128]

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[125] Exhibit "P-10", Docket, Vol. II, pp. 620-621.

[126] *The Philippines International Fair, Inc. v. The Collector of Internal Revenue, et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.

[127] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., et al.*, G.R. No. 35266, January 21, 1991.

[128] Section 6 of Revenue Regulations No. 21-2018 dated September 14, 2018.

	VAT	WTC	Total
Basic Deficiency Tax	₱ 4,862,345.50	₱ 105,863.14	₱ 4,968,208.64
25% Surcharge	1,215,586.38	26,465.79	1,242,052.16
Deficiency Interest			
1/26/2010 to 8/25/2015[129] [2,038 days]			
(₱4,862,345.50 x 20% x 5.5836 yrs.)	5,429,841.17		
1/11/2010 to 8/25/2015 [2,053 days]			5,548,929.95
(₱105,863.14 x 20% x 5.6247 yrs.)		119,088.78	
Total Amount Due – Aug. 25, 2015	**₱11,507,773.04**	**₱251,417.71**	**₱11,759,190.75**
Deficiency Interest			
8/26/2015 to 12/31/2017 [859 days]			
(₱4,862,345.50 x 20% x 2.3534 yrs.)	2,288,632.76		2,338,460.94
(₱105,863.14 x 20% x 2.3534 yrs.)		49,828.18	
Delinquency Interest			
8/26/2015 to 12/31/2017 [859 days]			
(₱11,507,773.04 x 20% x 2.3534 yrs.)	5,416,535.37		5,534,873.89
(₱251,417.71 x 20% x 2.3534 yrs.)		118,338.53	
Total Amount Due - Dec. 31, 2017	**₱19,212,941.17**	**₱419,584.42**	**₱19,632,525.58**
Add: Penalty for failure to supply information in SLSP			25,000.00
TOTAL			**₱19,657,525.58**

In addition, petitioner is **LIABLE** to pay delinquency interest at the rate of 12%[130] on the total unpaid basic deficiency tax, surcharge and deficiency interest as of August 25, 2015 amounting to ₱11,507,773.04 for VAT and ₱251,417.71 for WTC, or in the aggregate amount of ₱11,759,190.75, 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).

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[129] Date of Receipt of FDDA, Exhibit "P-10", Docket, Vol. II, pp. 620-622.
[130] Section 2 of Revenue Regulations No. 21-2018 dated September 14, 2018.

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice