REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

AEI INVESTMENTS, INC. (formerly "PRISMA ENERGY PHILIPPINES CORP."),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7327

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUL 2 5 2008

3:00 p.m.

x---x

DECISION

UY, J.:

The instant Petition for Review filed by petitioner, Prisma Energy Philippines Corp.,[1] on September 26, 2005 seeks the cancellation and withdrawal of the deficiency tax assessments issued by respondent, Commissioner of Internal Revenue, against the former for taxable years 2000 and 2001 in the aggregate amount of **NINETEEN MILLION SIX HUNDRED EIGHTY SEVEN THOUSAND EIGHT HUNDRED EIGHTY SIX AND 1/100**

---

[1] Petitioner's Corporate name before it was changed to AEI Investments, Inc. pursuant to the Certificate of Filing of Amended Articles of Incorporation and the Certificate of Filing of Amended By-Laws, both issued by the Securities and Exchange Commission dated August 2, 2007; Docket, pp. 1010-1036.

1157

PESOS (P19,687,886.01), inclusive of increments.

THE FACTS

Culled from the records of this case, and as stipulated by the parties in their Joint Stipulation of Facts and Issues,[2] these are the facts of the case.

Petitioner is a corporation duly organized and existing under and by virtue of Philippines laws, with office address at the 3rd Floor Corinthian Plaza Building, Paseo de Roxas, Legaspi Village, Makati City.

Respondent, on the other hand, is the head of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes. Respondent has the power to decide disputed assessments, refund of internal revenue taxes, fees or other charge, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR.

The Task Force Independent Power Producers of the BIR conducted a tax examination of petitioner for taxable years 2000 and 2001 pursuant to Letter of Authority No. 00065327 dated October 18, 2002.[3]

On September 8, 2004, respondent issued Final Assessment Notices (FANs) and Formal Letters of Demand[4] finding petitioner liable for deficiency income, expanded withholding, value-added, fringe benefit and documentary stamp taxes for taxable years 2000 and 2001. On November 26, 2004,

---

[2] Docket, pp. 207-211.
[3] Exhibit "B"; Docket, pp. 363-365.
[4] Exhibits "II" and "JJ", inclusive; Docket, pp. 648-720.

petitioner protested the alleged deficiency tax assessments contained in the said FANs. The protest was received by respondent on December 3, 2004.[5]

On July 29, 2005, respondent issued the Final Decision on Disputed Assessment holding petitioner liable for the following alleged deficiency taxes for taxable years 2000 and 2001 in the aggregate amount of P19,687,886.01[6]:

Tax Type	Basic	Penalties	Total
Year 2000			
Income Tax	P 670,961.95	P 721,686.68	P 1,392,648.63
VAT	344,445.21	316,510.71	660,955.92
EWT	7,657.85	7,029.91	14,687.76
FBT	81,072.31	74,424.38	155,496.69
DST	3,635,264.70	3,393,883.12	7,029,147.82
Sub-total	P 4,739,402.02	P 4,513,534.80	P 9,252,936.82
Year 2001			
Income Tax	P 622,835.30	P 419,728.71	P 1,042,564.01
VAT	1,408,472.38	1,026,635.52	2,435,107.90
EWT	11,054.47	8,149.36	19,203.83
FBT	1,097,839.48	1,052,608.49	2,150,447.97
DST	2,761,666.75	2,025,958.73	4,787,625.48
Sub-total	P 5,901,868.38	P 4,533,080.81	P10,434,949.19
GRAND TOTAL	P10,641,270.40	P 9,046,615.61	**P19,687,886.01**

On August 31, 2005 and September 26, 2005, however, petitioner paid the following taxes out of the total assessments of P19,687,886.01:[7]

Year 2000

	Basic	Penalties	Total
Income tax	P 670,961.95	P 721,686.68	P 1,392,648.63
VAT	269,469.33	253,899.99	523,369.32
EWT	7,657.85	7,029.91	14,687.76
FBT	12,951.31	12,203.01	25,154.32
DST	3,635,264.70	3,393,883.12	7,029,147.82
Sub-total	P 4,596,305.14	P 4,388,702.71	P 8,985,007.85

[5] Exhibit "C"; Docket, pp. 366-386.
[6] Exhibits "A" and "A-1"; Docket, pp. 341-351.
[7] Exhibits "R" to "R-25" and "S" to" S-31"; Docket, pp. 514-538 and 539-569.

Year 2001

	Basic	Penalties	Total
Income tax	P 357,961.38	P 246,794.49	P 604,755.87
VAT	82,199.23	61,010.09	143,209.32
EWT	11,054.47	8,149.36	19,203.83
FBT	125,840.37	93,401.52	219,241.89
DST	2,761,666.75	2,025,958.73	4,787,625.48
Sub-total	P 3,338,722.20	P 2,435,314.19	P 5,774,036.39
TOTAL	P 7,935,027.34	P 6,824,016.90	**P14,759,044.24**

Hence, petitioner filed the instant Petition for Review before this Court disputing the alleged deficiency assessments for income tax, value-added tax (VAT) and fringe benefit tax (FBT) for taxable years 2000 and 2001, in the total amount of P4,928,841.77, broken down as follows:[8]

Year 2000

	Basic	Penalties	Total
VAT	P 74,975.88	P 62,610.72	P 137,586.60
FBT	68,121.00	62,221.37	130,342.37
Sub-total	P 143,096.88	P 124,832.09	P 267,928.97

Year 2001

	Basic	Penalties	Total
Income Tax	P 264,873.92	P 172,934.22	P 437,808.14
VAT	1,326,273.15	965,625.43	2,291,898.58
FBT	971,999.11	959,206.97	1,931,206.08
Sub-total	P 2,563,146.18	P 2,097,766.62	P 4,660,912.80
TOTAL	P 2,706,243.06	P 2,222,598.71	**P 4,928,841.77**

The total VAT paid by petitioner for taxable year 2001 is P1,619,131.68, as appearing in its monthly and quarterly VAT returns and as certified by the Revenue Accounting Division of the BIR, and not just P439,475.36.[9]

[8] Par. 5, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI); Docket, pp. 208-209.
[9] Par. 6, Stipulation of Facts, JSFI; Docket, p. 209.

Respondent filed an Answer on November 9, 2005[10] raising Special and Affirmative Defenses, to wit:

> "7. The assessments have already become final, executory and unappealable due to the failure of the Petitioner to submit all relevant documents in support of its protest within sixty (60) days from filing its protest pursuant to the provisions of Section 228 of the NIRC of 1997 and Section 3. 1.5 of Revenue Regulations No. 12-99, 'Implementing the Provisions of the National Internal Revenue Code of 1997 Governing Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty', dated September 6, 1999, to wit:
>
> Section 228 of the NIRC of 1997 provide as follows:
>
> > 'Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents **shall** have been submitted; otherwise, the assessment shall become final.' (emphasis ours).
>
> Section 3.1.5 of the Revenue Regulations No. 12-99, provides as follows:
>
> > "The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'shall submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The Revenue Officer shall state this fact in his report of investigation."

[10] Docket, pp. 166-174.

During trial, only petitioner presented testimonial and documentary evidence. As directed in the Resolution dated July 4, 2007[11] and the Order dated August 2, 2007,[12] petitioner filed its Memorandum on August 28, 2007 while respondent failed to do so despite notice. Thus, this case was submitted for Decision on September 4, 2007.[13]

Subsequently, petitioner filed a Manifestation (With Motion for Amendment of Caption)[14] seeking for the revision of the caption of this case pursuant to the change of its corporate name from "Prisma Energy Philippines Corp." to "AEI Investments, Inc." This was duly noted by the Court and it ordered the amendment of the caption of this case in a Minute Resolution dated September 26, 2007.[15]

Petitioner then filed its "Urgent Motion (To Suspend Collection of Tax)" and its "Manifestation (With Supplemental Motion To Suspend Collection of Tax)" on January 21, 2008[16] and February 13, 2008,[17] respectively. Without respondent's comment, the Court granted the same in a Resolution dated February 27, 2008,[18] and correspondingly ordered petitioner to submit various documents attached to the required bond, in accordance with Rule 10 of the Revised Rules of the Court of Tax Appeals, and A.M. 04-7-02-SC. On April 18, 2008, petitioner filed its Compliance[19] thereto, submitting its Surety Bond

[11] Ibid, p. 954.
[12] Id., p. 958.
[13] Resolution dated September 4, 2007; Docket, p. 1005.
[14] Docket, pp. 1006-1036.
[15] Ibid, p. 1037.
[16] Id., pp. 1038-1049.
[17] Id., pp. 1052-1118.
[18] Id., pp. 1119-1120.
[19] Id., pp. 1129-1142.

1162

numbered 200801005 issued by Malayan Insurance Company, Inc. covering the amount of P9,857,683.54, attaching therewith pertinent documents.

However, in a Resolution dated May 20, 2008,[20] the Court further required petitioner to submit a duly certified true copy of the Certificate of Accreditation and Authority by the Office of the Court Administrator; and at the same time ordered petitioner to present the original copy of the Certificate of Accreditation and Authority (With Photos of the Authorized Agent of the Bonding Company). Consequently, petitioner filed on June 5, 2008 its Compliance[21] thereto attaching pertinent documents. Accordingly, the Court noted said compliance and approved the surety bond in a Resolution dated June 25, 2008.[22]

Hence, this Decision.

THE ISSUES

As stipulated by the parties, the issues for this Court's consideration are as follows:

> "1. Whether or not the assessment has become final due to the failure of the petitioner to submit all relevant documents in support of its protest;
>
> 2. Whether or not Petitioner has paid the amount of P14,759,044.24 representing deficiency documentary stamp tax, expanded withholding tax, income tax, VAT and FBT, as stated in Respondent's Final Decision;
>
> 3. Whether or not the leased vehicle amortization expenses of the Petitioner for taxable year 2001 are valid deductible expenses of the Petitioner for income tax purposes;

---

[20] Id., pp. 1143-1144.
[21] Id., pp. 1145-1146.
[22] Id., p. 1151.

4. Whether or not the P141,808.00 corresponding to a car loan of an employee of Petitioner should be made part of Petitioner's taxable income for taxable year 2001;

5. Whether or not Respondent committed an error in the computation of the alleged deficiency VAT for taxable year 2000;

6. Whether or not Respondent erred in disallowing as input VAT for taxable year 2000 the amount of P35,950.91 representing the full amount paid to Bon Gavino on officer uniforms;

7. Whether or not Petitioner is liable to pay for deficiency VAT on the alleged sale of equipment and furniture in 2001;

8. Whether or not the amounts of P144,757.12 and P2,062,620.00 representing the performance bonuses of Mr. Miguel T. Gaffud, Jr., for 2000 and 2001, respectively, are still subject to FBT;

9. Whether or not there is basis to impose penalties on the basic income tax, VAT and FBT assessments issued by Respondent against the Petitioner."

THE COURT'S RULING

We find the petition partially meritorious.

The first issue on whether or not the assessment became final due to petitioner's failure to submit relevant documents, is ruled in the negative.

In the unrebutted testimony of petitioner's witness, Wilfredo C. Luna, petitioner transmitted several relevant documents to the BIR through correspondence.[23] All of these documents were in support of its protest to the deficiency tax assessments. Thus, these assessments did not attain finality.

As for the second issue, the Court finds that petitioner had indeed paid P14,759,044.24 representing deficiency documentary stamp tax, expanded withholding tax, income tax, VAT and FBT as proven by the Certifications

[23] Exhibits "C", "KK" to "WW"; Docket, pp. 366-417 and 721-889.

dated January 30, 2006 and January 31, 2006 issued by respondent confirming the receipt of these payments.[24]

With respect to the remaining issues, the Court will discuss them jointly and in logical order. for convenience and brevity.

I. Deficiency Income Tax (Year 2001 only)

The remaining deficiency income tax assessment of P437,808.14 covers taxable year 2001 and arose from the disallowance of two expense items, namely: (1) leased vehicle and fuel; and (2) expense under Accounts Payable, as shown below:

Disallowed Expenses:		
Leased vehicle and fuel	P	685,923.00
Expense under A/P		141,808.00
Total income subject to tax per audit	P	827,731.00
Income tax due (32%)		264,873.92
Remaining interest as of 8-30-05		172,934.22
Total amount due	**P**	**437,808.14**

A. Leased vehicle and fuel

As stated in the Final Decision on Disputed Assessment[25], respondent disallowed petitioner's claimed leased vehicle and fuel expense in the amount of P685,923.00 for the following reasons:

> "(1) analysis of the expense and nature of payment shows that it should form part of an officer's fringe benefit and therefore subject to withholding tax on fringe benefit. – Disallowance made is in pursuance to Sec. 34 (K) of the NIRC and Rev. Reg. 2-98 Sec. 2.58.5
>
> x x x
>
> (2) supporting documents do not show EPPC as the payee – Disallowance made is in pursuance to Sec. 34(A)(1)(b)."

[24] Exhibits "GG" and "HH"; Docket, pp. 646-647.
[25] Exhibit "A", p. 5; Docket, p. 345.

On the other hand, petitioner alleges that the amount of P685,923.00 represents lease payments of a vehicle for its President. The amount is broken down as follows:[26]

Date	Payee	Check No.		Amount
4-Dec-01	First Malayan Leasing Corp.	307828	P	57,233.00
5-Nov-01	First Malayan Leasing Corp.	308718		57,233.00
3-Oct-01	First Malayan Leasing Corp.	308636		57,233.00
5-Sep-01	First Malayan Leasing Corp.	308533		57,233.00
7-Aug-01	First Malayan Leasing Corp.	308417		56,360.00
Jan-Jul-01	First Malayan Leasing Corp.	Additional		400,631.00
	TOTAL		**P**	**685,923.00**

Also, petitioner argues that the corresponding fringe benefit tax for these lease payments had already been paid. The following quarterly remittance returns for the year 2001 were presented to prove its claim:

Exhibit	Quarter	Date filed		FBT Paid
D	1st	10-Apr-01	P	138,580.17
E	2nd	5-Jul-01		139,549.41
F	3rd	5-Oct-01		139,549.47
G	4th	10-Jan-02		139,549.47
	Total		P	**557,228.52**

The Court finds that the amount of P685,923.00 is a valid deduction against petitioner's taxable gross income pursuant to Section 34(A)(1)(b) and (K) of the NIRC of 1997.

First, in the Final Decision on Disputed Assessment[27] and Final Assessment Notice[28], respondent admitted in a footnote that *"Lease of Expedition already subjected to FBT"*. The Expedition mentioned is the same vehicle that was leased by petitioner for its President's use. *Second,* petitioner was able to show through the Quarterly Remittance Returns of Final

[26] Taken from Annex 1-A of the 15-day notice to taxpayer; BIR Records, Folder 5 of 8, pp. 5508-5517.
[27] Annex "9" of Exhibit "A-11"; Docket, p. 361.
[28] Annex "4" of Exhibit "H"; Docket, p. 446.

Income Taxes Withheld[29] that the fringe benefits tax corresponding to the lease payments of P685,923.00 was indeed properly remitted. *Lastly*, the official receipts[30] covering the lease payments of P685,923.00 were issued in the name of petitioner, contrary to respondent's finding.

B. Expense under Accounts Payable

Based on the 15-day Notice to Taxpayer[31], the amount of P141,808.00 was computed by respondent's examiner as follows:

Date	Payee	Check No.	Amount
4-Dec-01	First Malayan Leasing Corp.	307829	P 11,833.00
5-Nov-01	First Malayan Leasing Corp.	308719	11,833.00
5-Sep-01	First Malayan Leasing Corp.	308534	11,833.00
7-Aug-01	First Malayan Leasing Corp.	308418	11,645.00
Jan-Jul-01	First Malayan Leasing Corp.	Additional	94,664.00
	TOTAL		**P 141,808.00**

Petitioner explains that the amount of P141,808.00 represents payments of a car loan contracted by its employee through salary deduction. Petitioner emphasizes that the car loan was not its loan but that of its employee, Mr. Roland L. Marquez, for the purchase of a Toyota Revo. Petitioner allegedly acted as a mere conduit of First Malayan Leasing Corp. by making monthly deductions from the salary of Mr. Marquez and remitting the same to First Malayan Leasing Corp. Thus, petitioner allegedly did not claim the amount of P141,808.00 as deductible expense from its gross income in arriving at its corporate income tax for taxable year 2001.

We find merit in petitioner's contentions.

As can be seen in one of the documents attached to the protest to the PAN[32], the amount of P141,808.00 actually pertained to the monthly

[29] Exhibits "D" to "G"; Docket, pp. 430-445.
[30] BIR Records, pp. 4595, 4934-4948.
[31] Supra.

1167

installments due on the car loan of petitioner's employee, Roland L. Marquez, deducted from the latter's monthly salary and subsequently remitted by petitioner to First Malayan Leasing Corp. As discussed earlier, this was admitted by respondent in the Final Decision on Disputed Assessment[33] stating: *"Lease of Revo is not subject to FBT because it is being paid by an employee through salary deduction."*

Further, at the time petitioner deducted the amount of P141,808.00 from Marquez's salary, petitioner credited that amount in its Accounts Payable; and thereafter, debited the same amount upon remitting to First Malayan Leasing Corporation.[34] Evidently, while the amount of P141,808.00 was recorded under petitioner's Accounts Payable, petitioner did not claim that amount as an expense. Thus, it was erroneous for respondent to disallow an expense which was never deducted by petitioner against its taxable gross income.

II. Deficiency Value-Added Tax

Year 2000

For the year 2000, the disallowed input VAT included the amount of P74,975.88. According to petitioner, this amount consisted of the following:

Item	Amount
Disallowed input VAT taken up twice	P 42,620.06
Whole invoice amount is disallowed	32,355.82
TOTAL	**P 74,975.88**

[32] Annex "N" of Exhibit "C"; Docket, pp. 416.
[33] Footnote in Annex "9" of Exhibit "A-11", and Exhibit "H", supra.
[34] Docket, p. 417.

With respect to the first disallowance, an evaluation of Annex "1-A" of the Final Assessment Notice for the taxable year 2000[35] reveals that the following items were indeed taken up twice:

Date	Supplier	Check Voucher No.	Pages in Annex 1-A		Amount
5-May-00	Rexel Interiors	5-498	8, 20	P	35,000.00
11-Apr-00	Asiatrust	4-404	9, 21		1,395.00
11-Apr-00	Tuscan	4-401	9, 21		1,642.60
28-Mar-00	Nikko's Fashion	3-357	9, 21		345.46
28-Mar-00	Smart	3-356	9, 21		79.00
28-Mar-00	Smart	3-355	9, 21		117.65
24-Mar-00	Smart	3-347	9, 21		602.65
23-Mar-00	Asiatrust Security	3-344	9, 21		2,790.00
17-Jul-00	Motorists House	7-812	10, 20		647.70
	TOTAL			**P**	**42,620.06**

As for the second disallowance, the Court agrees with petitioner that respondent should have disallowed only the input VAT of P3,595.09 and not the entire invoice amount of P35,950.91.[36] The amount in the Official Receipt is P39,186.49,[37] computed as follows:

Invoice amount	P	35,950.91
Add: VAT (10%)		3,595.09
Less: EWT (1%)		(359.51)
OR amount	**P**	**39,186.49**

Thus, petitioner should not be held liable for deficiency VAT in the amount of P32,355.82 which is the difference between the invoice amount of P35,950.91 and the input VAT of P3,595.09.

Year 2001

The disputed assessment for the deficiency basic VAT of P1,326,273.15 comprises the following: (a) imputed 10% VAT of

[35] Exhibit "I"; Docket, pp. 447-468.
[36] Exhibit "I", p. 21; Ibid.
[37] Exhibit "J"; Docket, pp. 469-471.

P146,616.83 on the alleged sale of depreciable assets of P1,466,168.30; and (b) disallowed VAT payments of P1,179,656.32.

A. Sale of Depreciable Assets

Respondent assessed deficiency VAT on the alleged sale of depreciable assets when the trial balance showed credits to the Property and Equipment account of petitioner in the total amount of P 1,466,168.30.[38] The same trial balance for the year 2001 was presented[39] and a scrutiny of the document reveals the following:[40]

Account Name	Period Credits
A/D-Furniture & Fixtures	P 20,056.26
A/D-Office Equipment	116,283.92
A/D-Computers & Hardware	1,329,828.12
TOTAL	**P 1,466,168.30**

Moreover, petitioner presented a schedule of its Property and Equipment account certified to by its Head Office Controller, Wilfredo C. Luna,[41] which reconciled the trial balance[42] with the audited financial statements for the year 2001[43] and the accompanying notes to the financial statements, particularly on Property and Equipment.[44]

Since it was established that the amount of P1,466,168.30 credited to petitioner's Property and Equipment account pertains to depreciation charges for the year 2001, and not to a sale of depreciable assets as alleged by respondent, no deficiency VAT should be assessed thereon.

---

[38] BIR Records, Folder 4 of 8, p. 05193.
[39] Exhibit "K"; Docket, pp. 472-475.
[40] Exhibit "K-2"; Docket, p. 472.
[41] Exhibit "M"; Docket, p. 495.
[42] Exhibits "K", "K-1" to "K-3"; Docket, pp. 472-475.
[43] Exhibit "L"; Docket, pp. 476-494.
[44] Exhibits "L-1" and "L-1-a"; Docket, p. 485.

B. Disallowed VAT Payments

Out of petitioner's reported VAT payments of P1,619,131.68 for the year 2001, respondent recognized only the amount of P439,475.36 and disallowed the remaining amount of P1,179,656.32.

However, an examination of petitioner's Monthly VAT Declarations and Quarterly VAT Returns filed for the year 2001[45] shows that petitioner's actual VAT payments amounted to P1,619,131.68, broken down as follows:

Exhibit	Payment Period	VAT Paid
T	Monthly 01/2001	P 177,104.29
U	Monthly 02/2001	140,572.04
V	1st Quarter 2001	111,995.83
W	Monthly 04/2001	111,920.13
X	Monthly 05/2001	154,675.30
Y	2nd Quarter 2001	47,421.83
Z	Monthly 07/2001	147,030.69
AA	Monthly 08/2001	143,562.42
BB	3rd Quarter 2001	137,494.74
CC	Monthly 10/2001	152,852.18
DD	Monthly 11/2001	151,939.27
EE	4th Quarter 2001	142,562.96
	Total	**P 1,619,131.68**

Moreover, respondent admitted in the Joint Stipulation of Facts and Issues the fact of payment of the VAT amount of P1,619,131.68, in the following manner:

> "6. The total VAT paid by Petitioner for taxable year 2001 is P1,619,131.68 as appearing in its monthly and quarterly VAT returns, and as certified by the Revenue Accounting Division of the BIR, and not just P439,475.36."

Clearly from the foregoing, respondent erroneously disallowed petitioner's VAT payments of P1,179,656.32.

[45] Exhibits "T" to "EE"; Docket, pp. 570-644.

III. Deficiency Fringe Benefits Tax (Years 2000 and 2001)

Respondent's assessment for deficiency fringe benefit tax included the following:

		2000		2001
Additional bonus to Mr. Gaffud	P	144,757.12	P	2,062,620.00
Divided by		68%		68%
Grossed-up value	P	212,878.12	P	3,033,264.71
Tax rate		32%		32%
Fringe benefits tax	**P**	**68,121.00**	**P**	**970,644.71**

Petitioner argues that for taxable year 2000, the additional bonus for its then president, Miguel T. Gaffud, Jr., was actually P212,992.00 which was subjected to withholding tax on compensation at 32% (or P68,157.44) and that the net amount received by Gaffud was P144,834.56, not P144,757.12.[46] A summary of Gaffud's salary for the year 2000 shows a total gross taxable income of P7,310,481.84 which included the P212,992.00 bonus.[47] From the total gross taxable income, P2,291,554.19 in taxes were withheld and remitted.[48]

For the year 2001, petitioner disputed the inclusion of P2,062,620.00 bonus to Gaffud because it had been already subjected to withholding tax on compensation. The gross amount was taxed at 32% (or P660,038.40) which was duly remitted.[49] A summary of Gaffud's salary for the year 2001 included these amounts.[50]

Section 2.78.1(A) of Revenue Regulations 2-98 provides:

> "(A) Compensation Income Defined. — In general, the term 'compensation' means all remuneration for services

[46] Exhibit "CCC", p. 24; Docket, p. 930.
[47] Exhibit "ZZ"; Docket, p. 903.
[48] Exhibit "O"; Docket, pp. 497-503.
[49] Exhibit "P"; Docket, pp. 504-511.
[50] Exhibit "BBB"; Docket, p. 905.

performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the Code.

The name by which the remuneration for services is designated is immaterial. Thus, salaries, wages, emoluments and honoraria, allowances, commissions (e.g. transportation, representation, entertainment and the like); fees including director's fees, if the director is, at the same time, an employee of the employer/corporation; **taxable bonuses** and fringe benefits except those which are subject to the fringe benefits tax under Sec. 33 of the Code; taxable pensions and retirement pay; and other income of a similar nature constitute compensation income.

The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes compensation. Thus, it may be paid on the basis of piece-work, or a percentage of profits; and may be paid hourly, daily, weekly, monthly or annually." *(Emphasis Ours)*

Clearly, bonuses form part of an employee's compensation income and therefore subject to withholding tax on compensation, not fringe benefits tax.

While petitioner correctly excluded Gaffud's bonus of P2,062,620.00 in computing for the fringe benefit tax due on fringe benefits given to its employees for the year 2001, petitioner is still liable for a basic deficiency fringe benefit tax in the amount of P1,354.82, as shown below:

	Per Petitioner's Computation (*Exhibit CCC*)		Correct Computation	
Fringe benefits per alpha list	P	1,184,110.61	P	1,184,110.61
Additional fringe benefits per audit				
From Annex 1-A of 15-day notice	P	3,142,393.35	P	3,142,393.35
Less: lease of Expedition & Revo		(813,019.00)		(813,019.00)
Addt'l bonus to Mr. Gaffud already subj. to compensation withholding		(2,062,620.00)		(2,062,620.00)
Add: From page 5				
AMEXCO-Annual membership of RLM		1,765.00		1,765.00
AMEXCO-Annual membership of WCL		1,770.44		1,770.44
Total additional fringe benefits	P	267,410.79	P	270,289.79
Total amount subject to FBT	P	1,451,521.40	P	1,454,400.40
		/ 68%		/ 68%
Grossed-up monetary value	P	2,134,590.29	P	2,138,824.12

Nd

1173

		X 32%		X 32%
Fringe benefits tax	P	683,068.89	P	684,423.72
Less FBT paid		557,228.52		557,228.52
Deficiency FBT	**P**	**125,840.37**[51]	**P**	**127,195.20**
Difference	P	1,354.82		

The basic deficiency fringe benefit tax of P1,354.82 arose from a mathematical error made by petitioner in adding all the fringe benefits subject to fringe benefit tax. Petitioner's computation of total fringe benefits subject to fringe benefit tax amounted to P1,451,521.40, instead of P1,454,400.40. Such error resulted in petitioner's underpayment of fringe benefit tax for the year 2001 in the amount of P1,354.82. Thus, petitioner is still liable to pay deficiency fringe benefit tax for the year 2001 in the amount of P2,653.82 (inclusive of interest pursuant to Section 249 of the NIRC of 1997), computed as follows:

Deficiency FBT	P	1,354.82
Add: Interest as of 8-30-05 (95.88%)		1,299.00
Total amount still due on deficiency FBT	**P**	**2,653.82**

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the deficiency tax assessments in the aggregate amount of P4,928,841.77 are hereby **CANCELLED and WITHDRAWN.** However, petitioner is **ORDERED to PAY** the respondent the reduced amount of P2,653.82, representing deficiency fringe benefit tax for taxable year 2001.

SO ORDERED.

ERLINDA P. UY
Associate Justice

[51] Paid on September 26, 2005 plus increments (Exhibits "S", "S-27", "S-28", "S-29", "S-30", and "S-31").

1771

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice