

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PHILIPPINE DAILY INQUIRER, INC.,
Petitioner,

CTA Case No. 7853

Members:

- versus -

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

FEB 16 2012 ; 2:30 p.m.

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DECISION

UY, J.:

This Petition for Review seeks the cancellation and withdrawal of the Formal Letter of Demand dated March 11, 2008 and Assessment No. LN # 116-AS-04-00-00038-00526 issued by respondent Commissioner of Internal Revenue against petitioner, Philippine Daily Inquirer, Inc., assessing it for deficiency value added tax (VAT) in the amount of ₱ 3,154,775.56 and for income tax in the amount of ₱ 1,524,229.99, or the total amount of ₱ 4,679,005.55 for the calendar year 2004.

THE FACTS

Petitioner Philippine Daily Inquirer, Inc. is a corporation duly registered with the Philippine Securities and Exchange Commission, with principal office address at



Chino Roces Ave. corner Mascardo and Yague Streets, Makati City. It is engaged in the business of newspaper publication.¹

Respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of said office, including, among others, the power to cancel disputed internal revenue assessments, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.²

Petitioner filed its Annual Income Tax Return for taxable year 2004 on April 15, 2005,³ and its Quarterly Value-Added Tax (VAT) Returns for the same year as follows:⁴

	Date of filing
For the First Quarter	April 20, 2004
For the Second Quarter	July 16, 2004
For the Third Quarter	October 18, 2004
For the Fourth Quarter	January 21, 2005

Admittedly on August 10, 2006, petitioner received the letter dated June 30, 2006 from Region 020 Large Taxpayers' Service of the BIR under L.N. No. 116-AS-04-00-00038, wherein the BIR alleged that based on the computerized matching conducted by their office on the information/data provided by third party sources against petitioner's declaration in its Value-Added Tax (VAT) Returns for calendar/fiscal year ended 2004, there was an alleged underdeclaration on domestic purchases from its suppliers in the amount of ₱ 317,705,610.52. In the same letter, the BIR invited petitioner to reconcile the said discrepancies with the Large Taxpayer's Audit & Investigation Division I of the BIR (BIR-LTAID).⁵



¹ Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p.119.

² Par. 2, JSFI, Docket, p.119.

³ Exhibit "Q".

⁴ Exhibits "M", "N", "O", and "P".

⁵ Par. 3, JSFI, Docket, p.120. Letter Notice 116-AS-04-00-00038 dated 30 June 2006, Common Exhibit : petitioner's Exhibit "C", and respondent's Exhibit "I", BIR Records, p. 6.

In response, petitioner submitted to the BIR-LTAID reconciliation reports attached to its letters dated August 22, 2006⁶ and December 19, 2006.⁷

On March 21, 2007, petitioner executed a "Waiver of the Statute of Limitation" (hereinafter referred to as the "First Waiver"), whereby petitioner consented to the assessment and/or collection of tax or taxes for the year 2004 which may be found due after the investigation at any time before or after the lapse of the period of limitations fixed by Sections 203 and 222 of the National Internal Revenue Code (NIRC), but not later than June 30, 2007. The First Waiver was accepted on March 23, 2007 by the OIC-ACIR for the Large Taxpayers Service of the BIR, Mr. Nestor S. Valeroso.⁸

Subsequently, through the letter dated May 7, 2007, petitioner sent respondent additional partial reconciliation and explanations on the supposed discrepancies found by the BIR.⁹ On May 30, 2007, petitioner received the letter dated May 28, 2007 from Mr. Gerardo R. Florendo, the Chief of the BIR-LTAID, informing petitioner that the result of evaluation relative to the matching of sales of its suppliers against its purchases for calendar year 2004 has been submitted by Revenue Officer Narciso Laguerta under Group Supervisor Fe Caling. In the same letter, petitioner was invited to an informal conference to present any objections it may have on the findings of the BIR.¹⁰

On June 5, 2007, petitioner executed, once again, a "Waiver of the Statute of Limitation" (hereinafter referred to as the "Second Waiver") giving respondent until December 31, 2007, within which to assess, and/or collect from, petitioner of tax or

⁶ Common Exhibit : petitioner's Exhibit "D", and respondent's Exhibit "2", BIR Records, p. 12.

⁷ Common Exhibit : petitioner's Exhibit "E", and respondent's Exhibit "3", BIR Records, pp. 13 to 37.

⁸ Common Exhibit : petitioner's Exhibit "S", and respondent's Exhibit "4", BIR Records, p. 39.

⁹ Common Exhibit : petitioner's Exhibit "F", and respondent's Exhibit "5", BIR Records, pp. 181 to 182.

¹⁰ Par. 4, JSFI, Docket, p.120. Common Exhibit : Exhibit "G", and Exhibit "6", BIR Records, p. 213.

taxes, if warranted under the premises. This Second Waiver was likewise accepted by Mr. Valeroso on June 8, 2007.¹¹

The BIR-LTAID subsequently issued the Preliminary Assessment Notice (PAN) dated October 15, 2007, wherein the BIR-LTAID assessed petitioner, for alleged deficiency income tax and VAT for calendar year 2004 on the basis of LN# 116-AS-04-00-00038-000526, as follows:¹²

<u>COMPUTATION OF DEFICIENCY VAT</u>			
Undeclared Income		₱	1,007,565.03
Add: Overdeclared input tax			1,601,652.43
Total Undeclared Income per investigation		₱	2,609,217.46
Less: Attributable input tax			715,371.17
VAT still payable per investigation		₱	1,893,846.29
Add: Increments-			
Interest from 1/26/05 to 11/15/07	₱	1,062,629.37	
Compromise Penalty		25,000.00	1,087,629.37
Amount Due and Collectible		₱	<u>2,981,475.66</u>

<u>COMPUTATION OF DEFICIENCY INCOME TAX</u>			
Undeclared Gross Income		₱	10,075,650.28
Less: Cost of Sales			7,153,711.70
Undeclared Net Income		₱	2,921,938.58
Multiply by income tax rate			32%
Income tax still due per investigation		₱	935,020.35
Add: Increments-			
Interest from 4/16/05 to 11/15/07	₱	483,648.88	
Compromise Penalty		20,000.00	503,648.88
Amount Due and Collectible		₱	<u>1,438,669.23</u>

The PAN was received by petitioner on December 4, 2007.¹³

Petitioner sought reconsideration of the PAN in the letter dated December 12, 2007 and also expressed its willingness to execute another Waiver.¹⁴ Accordingly, a Waiver was executed by petitioner on December 12, 2007 (hereinafter referred to as the "Third Waiver"), extending respondent's right to

¹¹ Common Exhibit : petitioner's Exhibit "T", and respondent's Exhibit "7", BIR Records, p. 215.

¹² Par. 5, JSFI, Docket, pp. 120 to 121. Common Exhibit : Exhibit "I", and Exhibit "10", BIR Records, pp. 339 to 341.

¹³ Exhibit "10-A", BIR Records, p. 341.

¹⁴ Common Exhibit : petitioner's Exhibit "J", and respondent's Exhibit "11", BIR Records, pp. 342 to 343.

assess, and/or collect from, petitioner until April 30, 2008. This time, the Third Waiver was accepted by Mr. Romulo L. Aguila, Jr., the OIC-Head Revenue Executive Assistant for the Large Taxpayers Service-Regular of the BIR, on December 20, 2007.¹⁵

On April 17, 2008, petitioner received the Formal Letter of Demand dated March 11, 2008 and an Audit Result/Assessment Notices from the BIR¹⁶, demanding for the payment of ₱ 3,154,775.57 and ₱ 1,525,230.00 for alleged deficiency VAT and income tax, respectively, computed as follows:¹⁷

1. COMPUTATION OF (DEFICIENCY) VAT

Undeclared Income		₱ 1,007,565.03
Add: Overdeclared input tax		1,601,652.43
Total Undeclared Income per investigatio		₱ 2,609,217.46
Less: Attributable input tax		715,371.17
VAT still payable per investigation		₱ 1,893,846.29
Add: Increments-		
Interest from 1/26/05 to 4/30/08	₱ 1,235,929.28	
Compromise Penalty	25,000.00	1,260,929.28
Amount Due and Collectible		₱ 3,154,775.56

2. COMPUTATION OF INCOME TAX DEFICIENCY

Undeclared Gross Income		₱ 10,075,650.28
Less: Cost of Sales		7,153,711.70
Undeclared Net Income		₱ 2,921,938.58
Multiply by income tax rate		32%
Income tax still due per investigation		₱ 935,020.35
Add: Increments-		
Interest from 4/16/05 to 4/30/08	₱ 569,209.65	
Compromise Penalty	20,000.00	589,209.65
Amount Due and Collectible		₱ 1,524,229.99

Petitioner filed its protest on May 16, 2008.¹⁸



¹⁵ Exhibit "12", BIR Records, p. 344.

¹⁶ Exhibits "K", "K-1" to "K-4".

¹⁷ Par. 6, JSFI, Docket, p. 121.

¹⁸ Exhibits "L" and "L-1".

Alleging the lapse of the 180-day period within which the BIR should act on its protest, petitioner filed the instant Petition for Review on December 12, 2008.¹⁹

Respondent filed her Answer²⁰ on March 9, 2009, raising the following special and affirmative defenses, *viz*:

“Petitioner Philippine Daily Inquirer is liable to pay the amount of Three Million One Hundred Fifty Four Thousand Seven Hundred Seventy Five Pesos and 56/100 (P3,154,775.56) and One Million Five Hundred Twenty Four Thousand Two Hundred Twenty Nine Pesos and 99/100 (P1,524,229.99) representing deficiency Value-Added Tax (VAT) and Income Tax, respectively, for the taxable year 2004.

1. The VAT and income tax liabilities of petitioner in the aggregate amount of Four Million Six Hundred Seventy Nine Thousand and Five Pesos and 55/100 (P4,679,005.55) arose on account of the issuance to petitioner of Letter Notice No. 116-AS-04-00-00038 dated June 30, 2006. Computerized matching conducted by respondent on information/data provided by third party sources against its declaration per VAT returns revealed the aforesaid discrepancies for taxable year 2004. The income and value-added tax liabilities were generated through the Reconciliation of Listing for Enforcement (RELIEF) system-Summary List of Sales and Purchases (SLSP) and Third Party Matching. Through the system, respondent was able to detect tax leaks through the matching of data available in the Integrated Tax Systems (ITS) with the information gathered from third party sources.

On the basis of the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases were generated to uncover under-declared income and over-claimed purchases (goods and services).

As explicitly provided under Revenue Memorandum Order (RMO) No. 42-2003²¹:

‘II. POLICIES

2. In order to intensify enforcement, the power of the Commissioner to authorize the examination of the taxpayer and the assessment of the correct amount of tax is hereby ordered done through the so called ‘*no contact-audit-approach*’.

¹⁹ Par. 4.14, Petition for Review, Docket, p. 9; Par. 14, JSFI, Docket, p.124.

²⁰ Docket, pp. 65 to 80.

²¹ “RMO No. 42-2003 – Prescribing Additional Guidelines Governing the Rules on Assessment of National Internal Revenue Code covered by a Letter Notice (LN) issued under the RELIEF system as defined in RMO No. 30-2003 and other matching processes.”



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3. The 'no contact-audit-approach' includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayer under the RELIEF system pursuant to RR NO. 7-95²² as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.
4. Even without conducting a detailed examination of taxpayer's books and records, the computerized/manual matching of sales and purchases/expenses will reveal discrepancies which shall be communicated to the concerned taxpayer through the issuance of a Letter Notice (LN) by the Commissioner.
5. LNs being served by the Bureau upon the taxpayer found to have understated their sales or over claimed their purchases/expenses can be considered notice of audit or investigation in so far as the amendment of any return is concerned which is the subject of such LN. A taxpayer is therefore disqualified from amending his return once an LN is served upon him.

III. GUIDELINES

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5. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice of Informal Conference, thus, the procedures defined in RR 12-99²³ should likewise be observed.'

Furthermore, in CTA Case No. 7093 entitled '*BIG AA Corporation represented by Erlinda L. Stohner vs. Bureau of Internal Revenue*' dated February 22, 2006, the Honorable Court had the opportunity to say:

'Letter Notices issued against a taxpayer in connection with the information of under declaration of sales and purchases gathered through Third Party Information Program may be considered as a 'notice of audit or investigation' in the absence of evident error or clear abuse of discretion.'

2. On the basis of the abovementioned LN and after a careful and extensive scrutiny of petitioner's documents, resulting deficiency in income

²² "RR 7-95 Pursuant to the Provision of Sec. 245 and 4 of NIRC, as amended , in relation to the provision of EO 273 as amended by RA 7716, there Regulations are hereby promulgated to implement Sec. 99-111 of Title IV, Sec. 112, 115, 117, 119-121 and 122 of Title V and Sec. 233, 236-239, 242, 244 of Title IX of the NIRC, as amended."

²³ "RR 12-99 – Implementing the Provisions of the NIRC of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty".

and Value-added taxes led to the issuance of the Preliminary Assessment Notice (PAN) dated October 15, 2007 together with the Details of Discrepancies and subsequently, a Formal Letter of Demand (FLD) dated March 11, 2008.

Relative thereto, Section 203 of the National Internal Revenue Code (NIRC) explicitly provides:

'Section 203. Period of Limitation Upon Assessment and Collection of Taxes.

Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for filing of the return, and no proceeding in court without assessment, for the collection of such taxes shall be begun after the expiration of such period : Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3) year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered filed on such day.'

However, Section 222 of the NIRC provides the exceptions as regards to the provisions laid down under Section 203. In particular, as shown under Section (a) thereof, the three (3) period of limitation in making assessment shall not apply in cases where it involves **false or fraudulent return** or in cases where there is failure to file a return on the person obliged to file such return. Section 222(a) of the National Internal Revenue Code provides:

'Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.

- (a) In the case of a false or fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at anytime within ten (10) years after the discovery of the falsity, fraud or omission; Provided, That in a fraud assessment which has become final and executor, the fact of fraud shall be judicially taken cognizance of in the civil and criminal action for the collection thereof.' (Emphasis and underscoring supplied)

Such being the case, the three (3) period of limitation for the assessment of internal revenue tax liabilities reckoned from the last day prescribed by law for the filing of the return shall not apply in the case at hand for the simple reason that petitioner **falsely** filed the return for taxable year 2004. Such being the case, the applicable provision shall be Section 222(a) where the period of limitation provides that the assessment may be made within ten (10) years after the discovery of falsity, fraud or omission. In the case at hand, the



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reckoning period was from the time during which the LN dated June 30, 2006 was issued to petitioner. Indubitably, the Formal Letter of Demand dated March 11, 2008 was issued within the prescriptive period provided by law. Such being the case, the FLD is considered valid and has the force and effect of law.

3. On the basis of the investigation conducted by respondent through the RELIEF system, respondent, through the FLD, outlined how the tax liabilities in the aggregate amount of P 4,679,005.55 representing income and VAT liabilities were arrived at. Upon matching the data gathered from respondent's Integrated Tax System (ITS) against the Summary of List of Purchases (SLP) attached to the Quarterly VAT returns filed with respondent, the following discrepancies remain unsettled despite petitioner's submission of supporting documents:

(a) An excess of SLP over the Letter Notices (LN) in the amount P1,601,652.43 from the following suppliers:

	Per SLP	Per LN	Discrepancy
Alliance Media Printing Corp.	109,073,375.58	107,640,812.95	1,432,562.63
Citimotors Inc.	70,454.55	70,056.65	397.90
Diamond Motors Corp.	288,181.82	142,363.64	145,818.18
Western Marketing Corp.	30,830.99	7,957.27	22,873.72
Total	109,462,842.94	107,861,190.51	1,601,652.43

(b) On the other hand, it is likewise evident that an excess of LN over the SLP also occurred in the total amount of Seven Hundred Fifteen Thousand Three Hundred Seventy One Pesos and 17/100 (P715,371.17). The details of which are shown hereunder:

	Per SLP	Per LN	Discrepancy
Grasco Industries Inc		202.55	(202.55)
Harrison Communications Inc.	18,157.89	398,331.12	(380,173.23)
Makati Property Ventures		64.55	(64.55)
Mccan Erikson Phils Inc		204,769.38	(204,769.38)
Millenium Cars Inc.		89,545.45	(89,545.45)
WPP Marketing			
Communications Inc.		40,616.01	(40,616.01)
Total	18,157.89	733,529.06	(715,371.17)

On the basis of the aforesaid investigation, it can be observed that the SLP which petitioner attached as supporting documents upon filing the quarterly VAT return revealed the declared amount of P109,462,842.94 as its input VAT for purchases incurred. However, on the basis of the LN, its suppliers recorded in its books of account the aggregate amount of P107,861,190.51 as its corresponding VAT. Suffice it to say, the over-declared VAT input tax on the part of petitioner led to the under declaration of VAT payable in the amount of P1,601,652.43 for the taxable year 2004. Therefore, petitioner is liable to pay said outstanding VAT. In addition, the amount of P10,075,650.28 which resulted from the excess of the LN over the

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SLP amounting to P715,371.17 must be likewise be added to arrive at the total VAT liability of P3,154,775.56 (*including increments up to April 30, 2008*). Details of the computation are shown in the FLD.

As stated earlier, the excess of LN over the SLP in the amount of P715,371.17 resulted to under-declared input tax on the part of petitioner which led to an under declared purchases of P7,153,711.70, arrived at by dividing P715,371.17 by the VAT rate of 10%. As can be gleaned from the LN, suppliers declared in its books of accounts output VAT for sales made to petitioner. However, in petitioner's SLP, no declaration of such amount incurred for the taxable year 2004 was shown. Such being the case, petitioner under-declared its purchases that resulted to the under-declared amount of Input VAT. If petitioner has under declared its purchases, it would likewise have under-declared its Gross Income which will be worked back by using the ratio of Cost of Sales against its Gross Income per Income Tax Return. In the case at hand, the ratio of Cost of Sales against its Gross Income per Income Tax Return filed for taxable year 2004 is 71%. If petitioner divides the amount of P7,153,711.70 by the cost ratio of 71%, the under-declared Gross Income of P10,075,650.28 will be arrived at. Such being the case, petitioner would then be liable to pay the corresponding income tax for the under-declared Net income at the rate of 32%. Net Income was arrived at by deducting from the Gross Income of P10,075,650.28 the corresponding Cost of Sales of P7,153,711.70. Hence, the amount of income tax still to be paid is P1,524,229.99 (*including additional increments until April 30, 2008*). For ready reference of this Honorable Court, the full detail of the aforesaid computation are shown in the Formal Letter of Demand issued to petitioner.

4. Petitioner emphasized that it is a service company deriving its main source of income from newspaper and advertising sales, thus any understatement of expenses or purchases (also mostly from services) does not mean it understated its sales. It goes further by saying that its transactions pertaining mostly to services and goods must be reflected as Operating Expenses and not as part of the Cost of Sales. It revealed that Harrison Communications Inc., McCann Erikson Inc., WPP Marketing Corporation are some of the advertising agencies which rendered direct professional services to petitioner in the form of marketing or promotional purposes. To bolster its claim, it likewise stated that the transactions with aforesaid three (3) main entities should not be treated as cost of sales since what these entities provided were '*not materials*' in order for petitioner to gain income that can be both taxable under the income tax and VAT provisions.

Corollary thereto, Section 27 E(4) of the NIRC specifically provides:

' (4) **Gross Income Defined.** For purposes of applying the minimum corporate income tax provided under Section (E) hereof, the term '**gross income**' shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. '**Cost of goods sold**' shall



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include business expenses directly incurred to produce the merchandise to bring them to their present location and use.

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In the case of taxpayers engaged in the sale of service, '**gross income**' means gross receipts less sales returns, allowances, discounts and cost of services. '**Cost of services**' shall mean direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (a) salaries and employee benefits of personnel, consultants and specialists directly rendering the service and (b) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies.' (Emphasis and underscoring supplied)

Petitioner, by its own admission, is a service-oriented company which derives its income from sale of newspaper and advertisement. It is without doubt that in selling newspapers to public, it necessarily incurs direct costs to bring about the merchandise it sells to its present state and/or condition. In the same vein, in selling advertisements to clients/customers, it likewise incurs direct costs for the rendition of services in the process. On the basis of the aforesaid provision of the NIRC, 'cost of services' include direct costs and expenses necessarily incurred to provide the services required by its customers or clients. Applying the same at hand, in order for petitioner to boost its sales on advertisement, it would actually employ services of companies which would handle the promotion and marketing of the services it is offering. The direct and professional services rendered by the three (3) advertising companies namely Harrison Communications Inc., McCann Erickson Inc. and WPP Marketing Corporation should be considered as part of the cost of advertisement sales/services by petitioner.

In view of the foregoing, the amount of discrepancy that resulted on account of the under-declared input tax of P715,371.17 should be treated as Cost of Sales of services and not just an ordinary operating expenses because the services provided by the aforementioned three (3) advertising agencies are direct costs and expenses necessary to bring about the advertisement sales of petitioner."

During trial, both parties presented their respective oral and documentary evidence. Petitioner presented three (3) witnesses, namely, Margarita De Vera Viray, Jose H. Villareal, and court commissioned independent certified public accountant, Jerome Antonio B. Constantino, to prove its case. For her part,



respondent presented one witness, Revenue Officer III, Narciso T. Laguerta to counter petitioner's claim.

As directed by the Court, petitioner and respondent filed their respective Memorandum on June 28, 2011 and July 11, 2011, respectively. Thereafter, this case was submitted for decision in the Resolution dated July 22, 2011.²⁴

Hence, this Decision.

THE ISSUES

The parties submitted the following issues²⁵ for this Court's resolution:

- "1. Whether or not respondent's authority to issue an assessment against petitioner for deficiency value-added and income taxes has prescribed;
2. Whether or not respondent erred in assessing petitioner deficiency value-added tax and income tax for calendar year 2004;
3. Whether petitioner is liable to pay the aggregate amount of Four Million Six Hundred Seventy Nine Thousand Five Pesos and 55/100 (Php4,679,005.55) representing alleged deficiency income and value-added tax for taxable year 2004, including interest and compromise penalty from 30 April 2008 until fully paid pursuant to Sections 248 and 249 of the Tax Code, arising from discrepancies which were generated through the Reconciliation of Listing for Enforcement (RELIEF) System-Summary List of Sales and Purchases and Third Party Matching of Data available in the Integrated Tax System (ITS) of respondent against information gathered from third party sources;
4. Whether the fees paid to the three (3) advertising agencies, namely Harrison Communications Inc., McCann Erikson Inc. and WPP Marketing Corporation are considered part of the cost of sales made by petitioner for taxable year 2004;
5. Whether Section 222 of the Tax Code is applicable in the case at hand;
6. Whether the Formal Letter of Demand dated 11 March 2008 was issued within the prescriptive period provided by law; and



²⁴ Docket, p. 462.

²⁵ Docket, pp. 125 to 126.

7. Whether or not petitioner should be assessed a compromise penalty.”

It appearing that the first, fifth and sixth issues pertain to the issue of prescription, the Court shall resolve these issues jointly.

Petitioner’s arguments

Petitioner argues that it filed its VAT and income tax returns within the periods required by law. Hence, respondent had until January 25, 2008 to assess petitioner for any VAT deficiency, and until April 15, 2008 to assess any income tax deficiency, pursuant to Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended. However, considering that it received the Formal Letter of Demand and Assessment Notices only on April 17, 2008, clearly beyond the three-year prescriptive period under Section 203 of the NIRC of 1997, the Formal Letter of Demand and Assessment Notices are allegedly void and without effect.

According to petitioner, Section 222(a) of the NIRC of 1997 is not applicable to the present case because of respondent’s failure to present evidence showing that petitioner filed a false return or that petitioner failed to file a return.

Petitioner also points out that the waiver it executed and dated December 12, 2007 did not follow the requirements laid down in Revenue Memorandum Order (RMO) No. 20-90, in relation to Revenue Delegation Authority Order (RDAO) No. 05-01 based on the following grounds: there is no indication in the said waiver of the fact of receipt by the taxpayer of its file copy; respondent failed to offer proof that the waiver was executed in three copies; and finally, the waiver was accepted by a mere OIC-Head Revenue Executive Assistant of the Large Taxpayers Service, a revenue officer who is not among those authorized to sign under RDAO No. 05-01. Thus, the



waiver is allegedly defective and did not have the effect of extending the period to April 30, 2008, within which to assess petitioner for any deficiency taxes.

Moreover, petitioner contends that there was no over-declaration of its input tax, nor was there allegedly any underdeclaration of its gross income. And lastly, petitioner stresses that it should not be assessed a compromise penalty.

Respondent's counter-arguments

Respondent counter-argues that the three-year period of limitation for the assessment of internal revenue tax liabilities, reckoned from the last day prescribed by law for the filing of the return, shall not apply in the case at hand for the simple reason that petitioner filed a false return for taxable year 2004. And in case of a false return, the applicable provision according to respondent is Section 222(a) of the NIRC of 1997, which provides that the assessment may be made within ten (10) years after the discovery of falsity.

Respondent asserts that the counting of the ten-year period must be reckoned instead from the issuance of the Letter Notice on August 10, 2006. Hence, the Formal Letter of Demand dated March 11, 2008 is allegedly valid and binding as it was issued within the prescriptive period provided by law.

Furthermore, it is respondent's position that petitioner is liable to pay deficiency VAT and income tax assessment for taxable year 2004. The fees paid to the three (3) advertising agencies are considered part of cost of sales made by petitioner for taxable year 2004; and that the discrepancies on domestic purchases that allegedly arose due to timing difference do not have the effect on the deficiency tax assessment.



THE COURT'S RULING

After careful consideration and due deliberation of the parties' respective allegations in their pleadings, the oral and documentary evidence presented in this case, the Court finds the instant petition impressed with merit.

Periods of limitation upon the assessment of taxes.

The general rule pertaining to the period of limitation in the assessment and collection of taxes is provided under Section 203 of the NIRC of 1997, to wit:

"SEC. 203. Period of Limitation Upon Assessment and Collection. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

Based on Section 203, internal revenue taxes must be assessed within three (3) years counted from the last day of the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation.

Necessarily therefore, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.²⁶



²⁶ *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.

It must be pointed out however, that the three-year prescriptive period for the BIR to assess tax liabilities under Section 203 of the NIRC of 1997 is applicable to returns that are regularly filed pursuant to legal requirements.

But when the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to a false return, fraudulent return intended to evade payment of tax or failure to file returns, the prescriptive period is ten (10) years after the discovery of the falsity, fraud or omission. Upon the other hand, in the absence of a false or fraudulent return with intent to evade tax, and where a return has been filed, the period of limitation may be extended, where the taxpayer and the Commissioner have agreed in writing to its assessment prior to the expiration of the time prescribed in Section 203 for the assessment of the tax, and after such time, the tax may still be assessed within the period agreed upon. These scenarios are governed by Section 222 of the NIRC of 1997, to wit:

“SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.”



In the instant case, respondent points to the ten-year period as the one enforceable because petitioner allegedly filed a false return for taxable year 2004, while petitioner denies any falsity in its return, and insists that the three-year prescriptive period should be applied.

The alleged falsity in the tax returns is not present. Thus, the 10-year prescriptive period does not apply.

In resolving the issue as to whether or not the right of the Commissioner of Internal Revenue to assess deficiency tax has prescribed, it is necessary to determine whether or not petitioner's tax return is false or fraudulent. If in the affirmative, then the Commissioner's right has not prescribed. If in the negative, then the assessment issued is void because of prescription.²⁷

For easy reference, the following computations of the subject assessments are hereby reiterated, viz.²⁸

<u>COMPUTATION OF DEFICIENCY VAT</u>			
Undeclared Income		P	1,007,565.03
Add: Overdeclared input tax			1,601,652.43
Total Undeclared Income per investigation		P	2,609,217.46
Less: Attributable input tax			715,371.17
VAT still payable per investigation		P	1,893,846.29
Add: Increments-			
Interest from 1/26/05 to 4/30/08	P 1,235,929.28		
Compromise Penalty	25,000.00		1,260,929.28
Amount Due and Collectible		P	3,154,775.56

<u>COMPUTATION OF DEFICIENCY INCOME TAX</u>			
Undeclared Gross Income		P	10,075,650.28
Less: Cost of Sales			7,153,711.70
Undeclared Net Income		P	2,921,938.58
Multiply by income tax rate			32%
Income tax still due per investigation		P	935,020.35

²⁷ *Tan Guan vs. Court of Tax Appeals, et al.*, G.R. No. L-23676, April 27, 1967.

²⁸ Par. 6, JSFI, Docket, p. 121. Exhibits "K", "K-1" to "K-4". Exhibits "13", and "14", BIR Records, pp. 359 to 363.

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Add: Increments-

Interest from 4/16/05 to 4/30/08	₱ 569,209.65	
Compromise Penalty	20,000.00	589,209.65
Amount Due and Collectible		<u>₱ 1,524,229.99</u>

The deficiency income tax assessment arose from the alleged undeclared income of ₱ 10,075,650.28, while the deficiency VAT assessment sprung from the same undeclared income and over-declared input tax of ₱ 1,601,652.43. The said undeclared income of ₱ 10,075,650.28 in turn came about when respondent's examiner found that petitioner allegedly had undeclared input taxes amounting to ₱ 715,371.17, thus:

1. Determination of Cost Ratio for CY 2004:

Gross sales per ITR	₱ 2,840,076,445.00	100%
Cost of sales	1,881,601,684.00	71%
Gross Income	<u>₱ 758,474,761.00</u>	<u>29%</u>

2. Computation of Additional Gross Income:

Excess of LN over SLP	₱ 715,371.17
Divide by VAT rate	10%
Undeclared Purchases	<u>₱ 7,153,711.70</u>
Divide by Cost Ratio	71%
Undeclared Gross Income	<u>₱ 10,075,650.28</u>

Respondent explained the foregoing determinations as follows:

"3. On the basis of the investigation conducted by respondent through the RELIEF system, respondent, through the FLD, outlined how the tax liabilities in the aggregate amount of P 4,679,005.55 representing income and VAT liabilities were arrived at. Upon matching the data gathered from respondent's Integrated Tax System (ITS) against the Summary of List of Purchases (SLP) attached to the Quarterly VAT returns filed with respondent, the following discrepancies remain unsettled despite petitioner's submission of supporting documents:

(a) An excess of SLP over the Letter Notices (LN) in the amount P1,601,652.43 from the following suppliers:

	Per SLP	Per LN	Discrepancy
Alliance Media Printing Corp.	109,073,375.58	107,640,812.95	1,432,562.63
Citimotors Inc.	70,454.55	70,056.65	397.90
Diamond Motors Corp.	288,181.82	142,363.64	145,818.18
Western Marketing Corp.	30,830.99	7,957.27	22,873.72
Total	<u>109,462,842.94</u>	<u>107,861,190.51</u>	<u>1,601,652.43</u>



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(b) On the other hand, it is likewise evident that an excess of LN over the SLP also occurred in the total amount of Seven Hundred Fifteen Thousand Three Hundred Seventy One Pesos and 17/100 (P715,371.17). The details of which are shown hereunder:

	Per SLP	Per LN	Discrepancy
Grasco Industries Inc		202.55	(202.55)
Harrison Communications Inc.	18,157.89	398,331.12	(380,173.23)
Makati Property Ventures		64.55	(64.55)
Mccan Erikson Phils Inc		204,769.38	(204,769.38)
Millenium Cars Inc.		89,545.45	(89,545.45)
WPP Marketing			
Communications Inc.		40,616.01	(40,616.01)
Total	18,157.89	733,529.06	(715,371.17)

On the basis of the aforesaid investigation, it can be observed that the SLP which petitioner attached as supporting documents upon filing the quarterly VAT return revealed the declared amount of P109,462,842.94 as its input VAT for purchases incurred. However, on the basis of the LN, its suppliers recorded in its books of account the aggregate amount of P107,861,190.51 as its corresponding VAT. Suffice it to say, the over-declared VAT input tax on the part of petitioner led to the under declaration of VAT payable in the amount of P1,601,652.43 for the taxable year 2004. Therefore, petitioner is liable to pay said outstanding VAT. In addition, the amount of P10,075,650.28 which resulted from the excess of the LN over the SLP amounting to P715,371.17 must be likewise be added to arrive at the total VAT liability of P3,154,775.56 (*including increments up to April 30, 2008*). Details of the computation are shown in the FLD.

As stated earlier, the excess of LN over the SLP in the amount of P715,371.17 resulted to under-declared input tax on the part of petitioner which led to an under declared purchases of P7,153,711.70, arrived at by dividing P715,371.17 by the VAT rate of 10%. As can be gleaned from the LN, suppliers declared in its books of accounts output VAT for sales made to petitioner. However, in petitioner's SLP, no declaration of such amount incurred for the taxable year 2004 was shown. Such being the case, petitioner under-declared its purchases that resulted to the under-declared amount of Input VAT. If petitioner has under declared its purchases, it would likewise have under-declared its Gross Income which will be worked back by using the ratio of Cost of Sales against its Gross Income per Income Tax Return. In the case at hand, the ratio of Cost of Sales against its Gross Income per Income Tax Return filed for taxable year 2004 is 71%. If petitioner divides the amount of P7,153,711.70 by the cost ratio of 71%, the under-declared Gross Income of P10,075,650.28 will be arrived at. Such being the case, petitioner would then be liable to pay the corresponding income tax for the under-declared Net income at the rate of 32%. Net Income was arrived at by deducting from the Gross Income of P10,075,650.28 the corresponding Cost of Sales of P7,153,711.70. Hence, the amount of income tax still to be paid is P1,524,229.99 (*including additional increments until April 30, 2008*). For ready reference of this Honorable Court, the full detail of the aforesaid computation are shown in the Formal Letter of Demand issued to petitioner."²⁹



²⁹ Par. 3, Answer, Docket, pp. 72 to 75. See also respondent's Memorandum, Docket, pp. 449 to 453.

Undoubtedly, in ascertaining the correctness of any return, or in determining the liability of any person for any internal revenue tax, the Commissioner of Internal Revenue is authorized to obtain, on a regular basis, from **any person** other than the person whose internal revenue tax liability is subject to audit or investigation.³⁰

Correspondingly, respondent may rely on the information obtained from said third party in issuing assessments to taxpayers, and in obtaining such information, respondent enjoys the presumption of regularity.³¹

As a corollary, We are reminded that the determinations and assessments of the BIR are presumed correct and made in good faith, and that the taxpayer has the duty of proving otherwise.³²

In this case, petitioner introduced proof, *inter alia*, to the effect that the determination of the BIR upon the aspect relating to the discrepancy in the amount of ₱ 1,601,652.43 is incorrect. Particularly, petitioner presented the final report of the ICPA³³ on the purchases by petitioner from Alliance Media Printing, Inc. as follows:

Input tax amount per LN (Exh. V-32)	₱	107,640,812.95
Input tax per Summary List of Purchases (Exh. V-3)		109,073,375.58
Discrepancy	₱	1,432,562.63
Add (Less):		
Reconciling item for the month of January	₱	716,831.43
Reconciling item for the month of February		725,604.60
Reconciling item for the month of May		1,263,117.87
Reconciling item for the month of June		(1,263,117.87)
Reconciling item for the month of June		(1,113.79)
Reconciling item for the month of July		1,113.79
Reconciling item for the month of October		(254.80)
Reconciling item for the month of November		254.80

³⁰ Section 5(B), NIRC of 1997.

³¹ Section 3(m), Rule 131 of the Rules of Court.

³² *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

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Reconciling item for the month of November	2,993.53	
Reconciling item for the month of December	(2,993.53)	
Input tax per reconciliation		1,442,436.03
Unreconciled difference		₱ 9,873.40

Furthermore, the rest of the input taxes on purchases from Diamond Motors Corp., Western Marketing Corp., and Citimotors Inc., amounting to ₱ 389,467.36, are supported by accounts payable and check vouchers, invoices and official receipts, and credit memoranda.³⁴

We see no reason not to rely on the foregoing findings of the ICPA, especially so that respondent never presented proof to disprove the same. Thus, petitioner has sufficiently discharged its burden in proving that the VAT assessment relating to the supposed over-declared input tax of ₱ 1,601,652.43 is not correct.

In order to stand judicial scrutiny, the assessment must be based on facts. The presumption of correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption, such as the presumption of regularity in the performance of duties by BIR personnel³⁵ in obtaining the third-party information. Hence, respondent should have presented and offered evidence to disprove the findings of the ICPA.

As shown earlier, the whole income tax assessment and part of the VAT assessment rest on the finding that there is underdeclared input tax in the amount of ₱ 715,371.17. Simply put, respondent's theory is that since there is an underdeclaration of input tax and correspondingly, of purchases, the same should

³⁴ Exhibits "V-37", "V-37-1" to "V-37-11", "V-38", "V-38-1" to "V-38-43", "V-39" and "V-39-1" to "V-39-3".

³⁵ *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005; *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation, et al.*, G.R. No. L-46644, September 11, 1987.



translate to taxable income for income tax purposes, and taxable gross receipts, for VAT purposes.

We disagree with respondent.

The three (3) elements on the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.³⁶ Income tax is assessed on income received from any property, activity or service.³⁷ Such being the case, in the imposition or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer, not when there is an underdeclaration of purchases.

Furthermore, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.³⁸ Hence, even when there is underdeclaration of input tax, which means that there is also a corresponding underdeclaration of purchases or expenses, the same is not prohibited by law. Consequently, respondent's imposition or assessment of the subject income tax does not hold water, for it simply relies on the fact that there is underdeclared input tax.

The same holds true in the case of the subject VAT assessment.

It must be remembered that the 10% VAT is assessed on the "gross receipts derived from the sale or exchange of services".³⁹ Parenthetically, the law defines "gross receipts" as:

³⁶ *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.

³⁷ *Supra*.

³⁸ *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.*, G.R. No. L-19727, May 20, 1965.

³⁹ Section 108(A), NIRC of 1997.



“...the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments **actually or constructively received during the taxable quarter for the services performed or to be performed for another person**, excluding value-added tax.”⁴⁰ (*Emphasis supplied*)

Thus, in the imposition or assessment of VAT, what is critical to be shown is that the taxpayer received an amount of money or its equivalent, and not when there are underdeclared input taxes or purchases. Since it was error for respondent to impose a deficiency income tax on the basis of an under-declared input tax in the amount of ₱ 715,371.17, the income tax return cannot be treated as false. Such being the case, the prescriptive period to be applied is the three-year period.

Consequently, the deficiency income tax assessment issued by the BIR beyond the three-year period is void.

The Waivers are defective and thus, failed to extend the three-year prescriptive period under Section 203 of the NIRC of 1997.

As mentioned earlier, Section 222(b) of the NIRC of 1997 authorizes the extension of the original three-year prescriptive period by the execution of a valid waiver, where the taxpayer and the BIR agrees in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. In other words, the period agreed upon by the parties shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period of three (3) years, provided the agreement is made prior to the expiration of such three-year prescriptive period, and in case of subsequent agreements, the same was made before the lapse of the period previously agreed upon.

⁴⁰ *Supra.*

am

In the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation Corporation*⁴¹, the Supreme Court laid down the guidelines in the proper execution of a waiver, to wit :

“Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

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 or the revenue official authorized by him must make sure that the waiver is in the prescribed form duly notarized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly the 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

⁴¹ G.R. No. 178087, May 5, 2010.



notified of the acceptance of the BIR and the perfection of the agreement.”

The foregoing procedures should be **strictly** followed;⁴² otherwise, the waiver shall be rendered defective and shall not extend the period to assess the tax.

Petitioner argues that respondent failed to offer proof that the First, Second and Third Waivers were executed in three (3) copies. Furthermore, petitioner is of the view that the Third Waiver is defective because there is no indication in the said Waiver of the fact of receipt by the taxpayer of its file copy, and since the same Waiver was accepted by a mere OIC-Head Revenue Executive Assistant, Large Taxpayers Service-Regular, a revenue official who is not among those authorized to sign under RDAO No. 05-01.

A perusal of the First and Second Waivers would reveal that they were executed in three (3) copies. However, the infirmity rests on respondent's failure to provide “the Office accepting the [said W]aiver[s]” the respective third copy thereof, since they are still attached to the docket of the case.⁴³

Anent the Third Waiver, respondent indeed failed to show proof that the same was executed in three (3) copies. Another defect thereon, as correctly pointed out by petitioner, is that the revenue official who accepted the same is not authorized to do so. It must be emphasized that RDAO No. 05-01 states in part:

“The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

A. For National Office cases

⁴² *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004; Revenue Memorandum Order No. 20-90.

⁴³ See pp. 38 to 39, and 214 to 215, BIR Records for the copies of the BIR, and Exhibits “S” and “T”, for petitioner's copy.

XXX XXX XXX

2. ACIR, Large Taxpayers Service – For large taxpayers cases other than those cases falling under Subsection B hereof

XXX XXX XXX

In order to prevent undue delay in the execution and acceptance of the waiver, the assistant heads of the concerned offices are likewise authorized to sign the same **under meritorious circumstances in the absence of the abovementioned officials.** *(Emphases supplied)*

Thus, while it may be true that the signatory of the Third Waiver is Romulo L. Aguila, Jr., the OIC-Head Revenue Executive Assistant for the Large Taxpayers Service-Regular, is deemed the assistant head of the ACIR of the Large Taxpayers Service, respondent however failed to show that he was made the authorized signatory to prevent undue delay in the execution and acceptance of the waiver.

It is noted that the Second Waiver (assuming that it was not defective as above noted) should have expired on December 31, 2007, and yet the Third Waiver was accepted by Romulo Aguila, Jr. as early as December 20, 2007. Thus, the BIR has ample time to have such Third Waiver signed by the ACIR of the Large Taxpayers Service himself. Furthermore, it was likewise not shown by respondent that the acceptance by Romulo Aguila Jr. was made *“under meritorious circumstances in the absence of the abovementioned officials”*.

Such being the case, due to the defects in the Waivers, the three-year period to assess the subject deficiency taxes were not extended. Thus, counting from the dates of the filing of petitioner's tax returns for taxable year 2004, *i.e.*, on April 15, 2005, for its Annual ITR; and on April 20, 2004, July 16, 2004, October 18, 2004, and January 21, 2005, for its First, Second, Third, and Fourth Quarterly VAT Returns, respectively, vis-à-vis the date of receipt of the Formal Letter of Demand

dated March 11, 2008 and an Audit Result/Assessment Notices from the BIR on April 17, 2008, the assessment of the subject taxes were done beyond the said three-year period.

Compromise penalties should not be assessed.

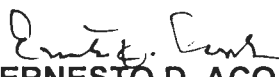
Anent the imposition of compromise penalties on the deficiency VAT and income tax in the amounts of ₱ 25,000.00 and ₱ 20,000.00, respectively, the same should be cancelled. This must be so because compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same.⁴⁴ In other words, compromise penalties imply mutual agreement between the taxpayer, on one hand, and the Commissioner of Internal Revenue, on the other.⁴⁵ Thus, since in this case, there is no indication that petitioner is willing to pay the said amount, the same should not be imposed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The Formal Letter of Demand dated March 11, 2008 and Assessment No. LN # 116-AS-04-00-00038-00528 for calendar year 2004 issued by the BIR against petitioner are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice

⁴⁴ Revenue Memorandum Order No. 1-90.

⁴⁵ Refer to *Dr. Felisa L. Vda. De San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

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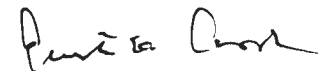


ESPERANZA R. FABON-VICTORINO

Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.



ERNESTO D. ACOSTA

Presiding Justice