Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SAN PAOLO DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8521

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUN 30 2015
4:00 p.m.

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DECISION

CASANOVA, *J.*:

This resolves the Petition for Review[1], filed on July 27, 2012, by petitioner San Paolo Development Corporation, seeking the cancellation and termination of the corresponding tax assessments against it for alleged deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax and Compromise Penalty for taxable year 2008 in the total amount of ₱6,652,245.27.

The facts, as borne by the records of this case, are as follows:

Petitioner San Paolo Development Corporation is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal address at Victoria Building, 1670 Quezon Avenue, South Triangle, Quezon City.[2] It is engaged in the purchase, lease, donation or otherwise, and to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise, real estate of all kinds whether improve manage or otherwise dispose of buildings, houses, apartments, and other structures of whatever kind, together with their

[1] Docket (Vol. I), pp. 6-22.
[2] Par. 2, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 79.

appurtenances.[3] It is duly registered with the Securities and Exchange Commission with Certificate of Registration numbered AS095-006659.[4] Petitioner is also duly registered with the Bureau of Internal Revenue ("BIR") with Tax Identification Number 004-614-551-000.[5]

Respondent, on the other hand is the Commissioner of Internal Revenue, who is duly appointed and empowered to perform duties of her office including, among others, the power to decide, cancel, and abate tax liabilities as provided by law. She holds office at BIR National Office, Diliman, Quezon City.[6]

On October 28, 2011, petitioner received from respondent a Preliminary Assessment Notice ("PAN") dated October 27, 2011 with attached Details of Discrepancies.[7] In the said PAN, petitioner was found liable for deficiency Income Tax, Value-Added Tax (VAT) Expanded Withholding Tax (EWT) and Compromise Penalty for taxable year 2008.

On November 29, 2011, petitioner received from respondent a Formal Letter of Demand ("FLD")[8] with attached Final Assessment Notices ("FAN") dated November 21, 2011[9] assessing petitioner for supposed deficiency income tax, VAT and EWT for taxable year 2008 in the total amount of ₱6,652,245.27, the details of which are as follows:

DEFICIENCY INCOME TAX				
Taxable revenue per ITR				
Add:	Adjustment per investigation:			₱
	Non-deductible charitable contributions		₱ 47,384.00	
	Salaries and wages not subjected to withholding tax		50,472.94	97,856.94
Taxable income per investigation				**₱ 97,856.94**
Income tax due thereon				₱ 34,249.33
Add:	Disallowable tax credits/payments:			
	Creditable Withholding Tax		₱	
	Tax Payments		51,565.77	
	Total		₱ 51,565.77	
	Less: Unsupported Payments	₱ 51,565.77		
	Excess of MCIT over NIT carried over to succeeding period	9,213.46		
	Excess tax credits carried over	42,352.31	103,131.54	51,565.77

[3] Exhibit A-1.
[4] Exhibit A.
[5] Exhibit B.
[6] Par. 3, Facts Admitted, JSFI, Docket (Vol. I), p. 79.
[7] Exhibit C.
[8] Exhibit D.
[9] Exhibits D-1, D-2, D-3 and D-4.

to succeeding period		
Deficiency Income Tax		₱ 85,815.70
Add: 20% Interest p.a. (4/16/2009 to 12.21.11)		46,081.85
TOTAL AMOUNT DUE		**₱ 131,897.55**

DEFICIENCY VALUE ADDED TAX		
Taxable revenue/receipts per VAT return		₱ 1,181,106.71
Add: Adjustment per investigation:		
Revenue not subjected to VAT	₱ 299,309.29	
Proceeds from sale of land	33,975,000.00	34,274,309.29
Taxable sales/receipts per investigation		₱ 35,455,416.00
Output tax due thereon		₱ 4,254,649.92
Less: Allowable Tax Credits/Payments		
Input Tax	₱ 39,801.46	
VAT Paid	105,234.26	
Total	₱ 145,035.72	
Less: Disallowed input tax	13,120.58	
Excess input tax carried over to succeeding period	3,302.92	128,612.22
Deficiency value added tax		₱ 4,126,037.70
Add: 20% Interest p.a. (1/27/2009 to 12.21.11)		2,394,232.29
TOTAL AMOUNT DUE		**₱ 6,520,269.99**

DEFICIENCY EXPANDED WITHHOLDING TAX	
Under-remittance	49.00
Deficiency expanded withholding tax	₱ 49.00
Add: 20% Interest p.a. (01/16/2009 to 12.21.11)	28.73
TOTAL AMOUNT DUE	**₱ 77.73**

On December 29, 2011, petitioner filed its Protest Letter[10] with the BIR to question the FLD/FAN. The Protest Letter sought the cancellation of the said assessments, including all incremental liabilities arising therefrom.[11]

However, respondent denied petitioner's Protest in the Final Decision on the Disputed Assessment ("FDDA")[12] dated June 21, 2012.[13] In the FDDA, respondent reiterated the assessment against petitioner alleging that petitioner failed to submit documents in support of its protest.

Petitioner was, therefore, constrained to file the instant Petition for Review[14] on July 27, 2012, due to the unfavorable Final Decision on Disputed Assessment issued by respondent.[15]

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[10] Exhibit E.
[11] Par. 5, Facts Admitted, JSFI, Docket (Vol. I), p. 79.
[12] Exhibit G.
[13] Par. 6, Facts Admitted, JSFI, Docket (Vol. I), p. 79.
[14] Docket (Vol. I), pp. 6-22.
[15] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), pp. 78-79.

Within the extended time granted by the Court, respondent filed her Answer[16] on September 17, 2012, and interposed the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses;

5. The assessments for calendar year ending December 31, 2008 in the total amount of ₱6,652,245.27 for deficiency income, value-added and expanded withholding taxes, were issued in compliance with the provisions of Section 228 of the 1997 National Internal Revenue Code, as amended (the 'Tax Code'), and in accordance with existing Revenue Rules and Regulations relative to the right of the petitioner to be informed of the factual and legal bases upon which the assessments were made. The factual and legal bases of the assessments are stated in the accompanying Schedule '1' or Details of Discrepancies of the Formal Letter of Demand and Assessment Notices No. 39-B065-08;

6. Verification disclosed that petitioner was at a net loss at the end of taxable year thus, no charitable contributions can be claimed as deduction from gross income pursuant to Section 34(H) of the Tax Code;

7. A portion of petitioner's salaries and wages was not subjected to expanded withholding tax as required under Revenue Regulations No. 2-98 therefore, disallowed as deduction pursuant to Section 34(K) of the Tax Code;

8. Verification disclosed that petitioner claimed income tax payments in the amount of ₱51,565.77. However, no proof of tax payments was presented and could not be verified in the Integrated Tax System (ITS).

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[16] Docket (Vol. I), pp. 57-60.

Hence, the same was disallowed as deduction pursuant to Section 114 of the Tax Code;

9. Petitioner is engaged in leasing business and so subject to VAT on Gross Receipts pursuant to Section 108 of the Tax Code. Comparison of petitioner's revenue per FS as against VAT returns resulted to a difference of ₱299,309.29 thus, added to petitioner's vatable revenue pursuant to aforesaid Section;

10. Verification disclosed that petitioner's proceeds from a sale of land was not subjected to value-added tax, hence assessed pursuant to Sections 106 and 108 of the Tax Code in relation to Revenue Regulations No. 16-2005 as amended;

11. Petitioner's claimed input tax was not properly substantiated, hence disallowed pursuant to Section 110(A)(1) in relation to Sections 113 and 237 of the Tax Code;

12. Verification disclosed that petitioner failed to remit in full its withholding tax as computed by the BIR therefore, assessed pursuant to Revenue Regulations No. 2-98, as amended;

13. Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of the assessments. (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 134062, April 17, 2007).*"

The case was then set for Pre-Trial Conference on October 25, 2012.[17] Accordingly, respondent's Pre-Trial Brief[18] and petitioner's Pre-Trial Brief[19] were filed on October 22, 2012.

[17] Notice of Pre-Trial Conference dated September 19, 2012, Docket (Vol. I), p. 61.

Thereafter, the parties filed their Joint Stipulation of Facts and Issues[20] on November 9, 2012. This was approved by the Court in the Resolution dated November 14, 2012[21] which also terminated the Pre-Trial.

Upon motion[22] of petitioner, the Court commissioned Ms. Myra Celeste O. Dabalos as the Independent Certified Public Accountant (Independent CPA).[23]

During trial, petitioner presented the following witnesses: Atty. Victoria B. Roman, President of San Paolo Development Corporation and Ms. Myra Celeste O. Dabalos, the Court-commissioned Independent CPA.

After the completion of the presentation of witnesses and formal offer of evidence for the petitioner, the Court admitted as evidence for petitioner Exhibits "A" to "U", "W", "X" to "HH", "II" to "II-1", "UU" to "VV-3", "WW-1" to "XX-1" and "AAA" to "FFF-1" pursuant to the Resolution[24] dated July 18, 2013. However, the Court denied the admission of Exhibits "W-1" to "W-12", "HH-1", "WW", "ZZ" "V", "KK", and "LL".

Petitioner filed a Motion for Reconsideration (Re: Resolution dated 18 July 2013 with Motion to Recall Witness)[25] on August 6, 2013. The Court then recalled petitioner's witness Ms. Myra Celeste O. Dabalos. Thereafter, petitioner's Exhibits "WW", "ZZ" and "W-1" to "W-12" were admitted by the Court in the Resolution[26] dated November 22, 2013.

Subsequently, respondent presented Revenue Officers Carlyn B. Cruz, Emmajane V. Geronimo and Rehmar Q. Mortiz as her witnesses.

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[18] Docket (Vol. I), pp. 62-65.
[19] Docket (Vol. I), pp. 66-75.
[20] Docket (Vol. I), pp. 78-82.
[21] Docket (Vol. I), p. 84.
[22] Motion for Commissioning of Independent Certified Public Accountant, Docket (Vol. I), pp. 95-98.
[23] Oath of Commission, Docket (Vol. I), p. 111.
[24] Docket (Vol. II), pp. 652-653.
[25] Docket (Vol. II), pp. 656-661.
[26] Docket (Vol. II), pp. 679-681.

Respondent also presented and formally offered pieces of documentary evidence. In a Resolution[27] dated April 14, 2014, the Court admitted respondent's Exhibits "1", "2", "3", "4", "5", "6", "6-a", "7", "8", "9", "10", "11", "11-a", "12", "12-a", "13" and "13-a".

On June 30, 2014, respondent submitted her Memorandum[28] while petitioner submitted its Memorandum[29] on July 10, 2014. Accordingly, the case was submitted for decision on July 15, 2014.[30]

The parties submitted the following issues[31] for the Court's resolution:

> "1. Whether or not Petitioner's charitable contributions are deductible?
>
> 2. Whether or not the entire salaries and wages in the instant case are deductible in Petitioner's gross taxable income?
>
> 3. Whether or not the expenses in connection with Petitioner's profession, trade or business are allowed deductions from gross income?
>
> 4. Whether or not Petitioner is engaged in the real estate business?
>
> 5. Whether the property involved is capital asset or ordinary asset?
>
> 6. Whether or not the property in question is held for sale or lease in the regular course of trade or business?
>
> 7. Whether or not the sale of the property in question is subject to VAT?

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[27] Docket (Vol. II), pp. 799-800.
[28] Docket (Vol. II), pp. 819-828
[29] Docket (Vol. II), pp. 829-849.
[30] Docket (Vol. II), p. 850.
[31] Issues, JSFI, Docket (Vol. I), pp. 80-81.

> 8. Whether or not there is legal and/or factual basis on the disallowance of Petitioner's input tax?
>
> 9. Whether or not the subject deficiency expanded withholding tax against Petitioner is proper and valid?
>
> 10. Whether or not the Final Assessment Notice is valid?"

The foregoing issues may be summarized as follows:

> "Whether or not the assessment against petitioner for deficiency income tax, VAT and EWT and compromise penalty for taxable year 2008 is valid?"

Petitioner argues that the Final Assessment Notice is void for non-compliance with Revenue Regulations No. 12-99. It alleges that the FAN failed to state the specific facts that led to the alleged deficiency taxes against it.

Respondent, on the other hand contends that she complied with the due process requirement under Sec. 228 of the National Internal Revenue Code (NIRC) of 1997, as amended and Revenue Regulations No. 12-99.

Section 228 of the NIRC of 1997, as amended, provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void. To implement the aforesaid provision, Revenue Regulations No. 12-99 was enacted by the BIR, of which Section 3.1.4 thereof reads:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —*
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx

> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void** (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." (*Emphasis ours)*

It is clear from the foregoing that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.[32] The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice.

Respondent was able to comply with this due process requirement. An examination of the Formal Letter of Demand and Final Assessment Notices issued on November 21, 2011, shows that the complete factual and legal bases of the assessments against petitioner are shown in the accompanying SCHEDULE "1" of the letter or the Details of Discrepancies.[33] Thus, the Final Assessment Notices issued by respondent against petitioner is valid.

The Court will now discuss each of the deficiency tax assessed against petitioner for taxable year 2008 and the compromise penalty.

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[32] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014.

[33] Exhibits "6" and "6-a".

I. DEFICIENCY INCOME TAX - ₱131,897.55

The assessment for deficiency income tax was computed as follows:[34]

Taxable revenue per ITR			₱ -
Add: Adjustments per investigation			
Non-deductible charitable contributions		₱ 47,384.00	
Salaries and wages not subjected to withholding tax		50,472.94	97,856.94
Taxable income per investigation			₱ 97,856.94
Income tax due thereon			₱ 34,249.93
Add: Disallowable tax credits/payments:			
Creditable withholding tax		₱ -	
Tax Payments		51,565.77	
Total		₱ 51,565.77	
Less: Unsupported payments	₱ 51,565.77		
Excess of MCIT over NIT carried over to succeeding period	9,213.46		
Excess tax credits carried over to succeeding period	42,352.31	103,131.54	51,565.77
Deficiency Income Tax			₱ 85,815.70
Add: 20% Interest p.a. (04/16/2009 to 12/21/2011)			46,081.85
Total Amount Due			**₱131,897.55**

The Court shall now determine the validity of the above assessment by delving into the propriety of the expense deductions and tax credits disallowed by respondent, namely:

A. Non-deductible charitable contributions	₱ 47,384.00
B. Salaries and wages not subjected to withholding tax	50,472.94
C. Excess MCIT over NIT carried over to succeeding period	9,213.46
D. Excess tax credits carried over to succeeding period	42,352.31

A. Non-deductible Charitable Contributions - ₱47,384.00

[34] Exhibit D.

Respondent's verification disclosed that petitioner was at a net loss at the end of the taxable year, wherein no charitable contributions can be claimed deductible for income tax purposes; hence, the charitable contributions amounting to ₱47,384.00[35] was disallowed[36].

At the outset, the assessed amount was based on petitioner's tentative Annual Income Tax Return. On May 14, 2009, petitioner filed an amended Annual Income Tax Return which showed that the charitable contributions claimed as deduction from its gross income amounted to ₱46,337.00[37] only.

Proceeding on the deductibility of petitioner's claimed charitable contributions, Section 34(H) of the NIRC of 1997, as amended, provides:

> SEC. 34. *Deductions from Gross Income.*– x x x
>
> (H) *Charitable and Other Contributions.*–
>
> (1) *In General.*–Contributions or gifts actually paid or made within the taxable year to, or for the use of the Government of the Philippines or any of its agencies or any political subdivision thereof exclusively for public purposes, or to accredited domestic corporations or associations organized and operated exclusively for religious, charitable, scientific, youth and sports development, cultural or educational purposes or for the rehabilitation of veterans, or to social welfare institutions, or to nongovernment organizations, in accordance with rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, no part of the net income of which inures to the benefit of any private stockholder or individual in an amount not in excess of ten percent (10%) in the case of an individual, and five percent (5%) in the case of a corporation, of the taxpayer's taxable income derived from trade, business or profession as computed without the benefit of this and the following subparagraphs.
>
> (2) *Contributions Deductible in Full.*–Notwithstanding the provisions of the preceding subparagraph, donations to the following institutions or entities shall be deductible in full:
>
> (a) *Donations to the Government.*–Donations to the Government of the Philippines or to any of its agencies or political subdivisions, including fully-owned government corporations, exclusively to finance, to provide for, or to be used in undertaking priority activities in education, health, youth and sports development, human settlements, science and culture, and in economic development according to a National Priority

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[35] Exhibit V, Section D, line 106.
[36] Exhibit "6-a".
[37] Exhibit VV-3.

Plan determined by the National Economic and Development Authority (NEDA), in consultation with appropriate government agencies, including its regional development councils and private philanthropic persons and institutions: *Provided*, That any donation which is made to the Government or to any of its agencies or political subdivisions not in accordance with the said annual priority plan shall be subject to the limitations prescribed in paragraph (1) of this Subsection;

(b) *Donations to Certain Foreign Institutions or International Organizations.*–Donations to foreign institutions or international organizations which are fully deductible in pursuance of or in compliance with agreements, treaties, or commitments entered by the Government of the Philippines and the foreign institutions or international organizations or in pursuance of special laws;

(c) *Donations to Accredited Nongovernment Organizations.*–The term 'nongovernment organization' means a nonprofit domestic corporation:

(1) Organized and operated exclusively for scientific, research, educational, character-building and youth and sports development, health, social welfare, cultural or charitable purposes, or a combination thereof, no part of the net income of which inures to the benefit of any private individual;

(2) Which, not later than the 15th day of the third month after the close of the accredited nongovernment organizations taxable year in which contributions are received, makes utilization directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated, unless an extended period is granted by the Secretary of Finance in accordance with the rules and regulations to be promulgated, upon recommendation of the Commissioner;

(3) The level of administrative expense of which shall, on an annual basis, conform with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, but in no case to exceed thirty percent (30%) of the total expenses; and

(4) The assets of which, in the event of dissolution, would be distributed to another nonprofit domestic corporation organized for similar purpose or purposes, or to the state for public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of said court shall best accomplish the general purpose for which the dissolved organization was organized.

Subject to such terms and conditions as may be prescribed by the Secretary of Finance, the term 'utilization' means:

(i) Any amount in cash or in kind (including administrative expenses) paid or utilized to accomplish one or more purposes for which the accredited nongovernment organization was created or organized.

(ii) Any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes

> for which the accredited nongovernment organization was created or organized.
>
> An amount set aside for a specific project which comes within one or more purposes of the accredited nongovernment organization may be treated as a utilization, but only if at the time such amount is set aside, the accredited nongovernment organization has established to the satisfaction of the Commissioner that the amount will be paid for the specific project within a period to be prescribed in rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, but not to exceed five (5) years, and the project is one which can be better accomplished by setting aside such amount than by immediate payment of funds.
>
> (3) Valuation. - The amount of any charitable contribution of property other than money shall be based on the acquisition cost of said property.
>
> (4) Proof of Deductions. - Contributions or gifts shall be allowable as deduction only if verified under the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

Based on the Schedule of Donation[38] prepared by the Court-commissioned Independent CPA, Ms. Myra Celeste O. Dabalos, petitioner had charitable contributions totaling to ₱39,959.29, the amount of ₱6,377.71 being unaccounted. Petitioner claims that these contributions are within the limits set by Section 34(H) of the same Code. However, the Court finds the subject charitable contributions non-deductible from gross income.

Records show that out of petitioner's claimed charitable contributions of ₱46,337.00, only the amount of ₱20,000.00 is duly supported by an official receipt issued by Roman Scholarship Fund, Inc. (RSFI)[39]. Thus, petitioner's claimed charitable contributions in the amount of ₱26,337.00 (₱46,337.00 less ₱20,000.00) shall be denied outright for being unsupported.

Nevertheless, while petitioner was able to prove that it actually paid the amount of ₱25,000.00 as donation to RSFI, it failed to establish that RSFI is an accredited non-stock, non-profit corporation[40]/NGO[41] as defined in Revenue Regulations (RR) No. 13-

[38] Exhibit WW.

[39] Exhibit WW-1.

[40] "Non-stock, non-profit corporation or organization" – shall refer to a corporation or association/organization referred to under Section 30 (E) and (G) of the Tax Code created or organized under Philippine laws exclusively for one or more of the following purposes: (i) religious; (ii) charitable; (iii) scientific; (iv) athletic; (v) cultural; (vi) rehabilitation of veterans; and (vii) social welfare.

98, which enumerates the requirements for the deductibility of charitable contributions under Section 34(H) of the NIRC of 1997, as amended. As provided for under RR No. 13-98, the Philippine Council for NGO Certification, Inc. (PCNC)[42], as an Accrediting Entity, shall examine, evaluate and accredit non-stock, non-profit corporations and NGOs as a pre-requisite for their registration with the Bureau of Internal Revenue (BIR) as qualified-donee institutions.[43] Petitioner should have submitted the corresponding Certificate of Accreditation to prove the accreditation of the donee-RSFI.[44]

For failure to conform to the first requirement under RR No. 13-98, petitioner cannot claim the amount of ₱25,000.00 as deduction from its gross income. The Court, therefore, will no longer discuss the remaining requirements enumerated under RR No. 13-98.

B. Salaries and Wages Not Subjected to Withholding Tax - ₱50,472.94

Respondent's verification disclosed that a portion of the salaries and wages per petitioner's financial statements (FS), in the amount of ₱50,472.94, as computed below, was not subjected to expanded withholding tax as required under RR No. 2-98, thus, disallowed as deduction from gross income pursuant to Section 34(K) of the NIRC of 1997, as amended[45].

Salaries and wages per FS/ITR		₱ 118,332.00
Salaries and wages per alphalist		
Salaries and wages	₱ 51,574.80	
13thmonth pay	10,739.14	
SSS, GSIS, PHILHEALTH, etc.	5,545.12	67,859.06
Salaries and wages not subjected to withholding tax		**₱ 50,472.94**

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41 "Non-government Organization (NGO)"–shall refer to a non-stock, non-profit domestic corporation or organization as defined under Section 34 (H)(2)(c) of the Tax Code organized and operated exclusively for scientific, research, educational, character-building and youth and sports development, health, social welfare, cultural or charitable purposes, or a combination thereof, no part of the net income of which inures to the benefit of any private individual.

42 Section 1(d), RR No. 13-98.

43 Section 2(a),RR No. 13-98.

44 Section 2(f), Revenue Regulations No. 13-98.

45 Exhibit "6-a".

Petitioner contends that any alleged discrepancy found could be due to mere account classifications of expense accounts and does not necessarily mean non-withholding for salaries and wages. It is a firm rule that there are some employee benefits that are properly includable in the salaries and wages item in the financial statements but are not required to be reported in the alphalist, such as the employer's share in SSS, Philhealth and Pag-ibig contributions.[46]

Petitioner's contention is untenable.

A perusal of petitioner's financial statements and Annual Income Tax Return reveals that petitioner's share in SSS, HDMF and Philhealth in the amount of ₱10,848.00[47]is reflected as a separate expense line item and does not form part of the reported salaries and wages of ₱118,332.00[48].

On the other hand, the alphalist[49] shows that petitioner had withheld and remitted tax corresponding to the salaries and wages of only ₱67,859.06, to wit:

		Non-Taxable			
	Employee	13th Month and Other Benefits	SSS, PhilHealth, HDMF and Union Dues	Taxable	Total Salaries and Wages
With previous employer	Gonzales, Merly A.	₱ 4,775.00	₱ 1,191.80	₱ 19,358.39	₱ 25,325.19
Terminated before December 31	Flores, Jose Nikkolo R.	5,964.14	4,353.32	32,216.41	42,533.87
Per alphalist					**₱ 67,859.06**

Thus, there is indeed a difference of ₱50,472.94 in the salaries and wages declared per petitioner's Financial Statements and Annual Income Tax Return *vis-à-vis* those subjected to withholding tax per alphalist as validated and confirmed by the ICPA.[50]

Based on Section 34(K) of the NIRC of 1997, as amended, an expense/cost shall be allowed as deduction from gross income only if

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[46] Exhibit E.
[47] Exhibit XX, Notes to Financial Statements, December 31, 2008, under Note 17; Exhibit VV, Section D, line 94.
[48] Exhibit XX-2; "Exhibit" VV, Section D, line 76.
[49] BIR Records, pp. 61-62.
[50] Exhibit UU, Procedures and Findings, par. 6.

it is shown that the tax required to be deducted and withheld therefrom has been paid to the BIR. Section 34(K) reads:

> (K) *Additional Requirements for Deductibility of Certain Payments.*-Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, Sections 58 and 81 of this Code.

For failure to subject the salaries and wages, in the amount of ₱50,472.94, to withholding tax, petitioner failed to meet the requirement for deductibility of an expense as previously stated. Thus, respondent's assessment shall be upheld.

C. Unsupported Tax Payments - ₱51,565.77

Respondent's verification disclosed that petitioner had claimed income tax payments. However, no proof of such was presented, and the same could not be verified in the Integrated Tax System (ITS). Hence, the claimed income tax payments have been disallowed as deduction from its deficiency income tax, per audit, pursuant to Section 114 of the NIRC of 1997, as amended[51].

Petitioner argues that respondent did not provide the detail as to the nature of payment that is not allowed as a deduction. It contends that respondent's failure to state the fact and the law upon which such disallowance was based is a violation of its right to due process and makes this item of the assessment null and void.

However, perusal of the tentative Annual Income Tax Return for the taxable year 2008 would easily give hint to the petitioner of the nature of the subject item in the amount of ₱51,565.77[52], that is, income tax payments for the first three quarters.

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[51] Exhibit "6-a".
[52] Exhibit V, line 28B.

Considering the item of the assessment is income tax payment, Section 34(C)(1) of the NIRC of 1997, as cited by the petitioner, does not apply in this case, particularly:

> SEC. 34. *Deductions from Gross Income.* – x x x
>
> (C) *Taxes.* –
>
> (1) *In General.* – Taxes paid or incurred within the taxable year in connection with the taxpayer's profession, trade or business, shall be allowed as deduction, **except**:
>
> (a) **The income tax provided for under this Title**; (*Emphasis supplied*)

Instead, the deductibility of the petitioner's income tax payment for the first three quarters finds support in Section 75 of the same Code, which provides:

> **SEC. 75.** *Declaration of Quarterly Corporate Income Tax.*–Every corporation shall file in duplicate a quarterly summary declaration of its gross income and deductions on a cumulative basis for the preceding quarter or quarters upon which the income tax, as provided in Title II of this Code, shall be levied, collected and paid. **The tax so computed shall be decreased by the amount of tax previously paid or assessed during the preceding quarters** and shall be paid not later than sixty (60) days from the close of each of the first three (3) quarters of the taxable year, whether calendar or fiscal year. (*Emphasis supplied*)

Even so, petitioner failed to submit evidence of the tax payment. On this note, petitioner needs only to prove the payment of ₱48,000.02[53] based on the amended Annual Income Tax Return.

C. Excess MCIT over NIT carried-over to succeeding period - ₱9,213.46

D. Excess tax credits carried-over to succeeding period - ₱42,352.31

[53] Exhibit VV, line 28B.

Respondent disallowed the amounts of ₱9,213.46 and ₱42,352.31 representing petitioner's excess MCIT over NIT and excess tax credits carried-over to succeeding period, respectively. However, she did not indicate the basis for the disallowance in the Details of Discrepancy[54], attached to the Formal Letter of Demand (FLD).

Respondent's failure to provide the factual and legal bases for the disallowance of the said amounts denied petitioner of due process for not having the opportunity to be clarified with the issues which, in its discretion, need to be refuted. Thus, pursuant to Section 228 of the NIRC of 1997, as amended, these items of assessment shall be considered void.

Further, it was improper for respondent to disallow the said excess MCIT over NIT and excess tax credits because any tax benefit derived by petitioner from the carry-over of the said amounts redounds to the succeeding year 2009. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

After taking into account petitioner's disallowed deductions for charitable contributions and salaries and wages, petitioner would still be in a net loss position in the amount of ₱1,127,106.06. Nevertheless, as reflected in its amended Annual Income Tax Return for taxable year 2008, petitioner had a Minimum Corporate Income Tax (MCIT) due of ₱20,786.00, which when offset against its tax credits of ₱14,244.66, petitioner is still liable for basic deficiency income tax in the amount of ₱6,541.34, as computed below:

Taxable income (loss) per ITR		₱(1,224,963.00)
Add: Disallowed deductions		
Non-deductible charitable contributions	₱47,384.00	
Salaries and wages not subjected to withholding tax	50,472.94	97,856.94
Adjusted Taxable Loss		₱ (1,127,106.06)
Minimum Corporate Income Tax (MCIT)		₱ 20,786.00

54 Exhibit "6-a", Schedule "1".

Less: Tax Credits		
Tax Payments for the First Three Quarters		-
Creditable Tax Withheld for the First Three Quarters		14,244.66
Basic Deficiency Income Tax		**₱ 6,541.34**

II. DEFICIENCY VALUE-ADDED TAX - ₱6,520,269.99

Respondent computed the deficiency VAT assessment as follows:[55]

Taxable revenues/receipts per VAT returns		₱ 1,181,106.71
Add: Adjustment per investigation		
Revenue not subjected to VAT	₱ 299,309.29	
Proceeds from sale of land	33,975,000.00	34,274,309.29
Taxable sales/receipts per investigation		₱ 35,455,416.00
Output tax due thereon		₱ 4,254,649.92
Less: Allowable tax credits/payments		
Input tax	₱ 39,801.46	
VAT paid	105,234.26	
Total	₱ 145,035.72	
Less: Disallowed input tax	13,120.58	
Excess input tax carried over to succeeding period	3,302.92	128,612.22
Deficiency VAT		₱ 4,126,037.70
Add: 20% Interest p.a. (01/27/2009 to 12.21.2011)		2,394,232.29
Total Amount Due		**₱ 6,520,269.99**

As can be seen from the above computation, the deficiency VAT assessment arose from the following items:

A. Revenue not subjected to VAT	₱ 299,309.29
B. Proceeds from sale of land	33,975,000.00
C. Disallowed input tax	13,120.58
D. Excess input tax carried over to succeeding period	3,302.92

[55] Exhibit D.

A. Revenue Not Subjected to VAT - ₱299,309.29

Respondent maintains that petitioner, being engaged in the leasing business, is subject to VAT based on gross receipts. Invoking Section 108[56] of the NIRC of 1997, as amended, respondent imposed 12% VAT on the amount of ₱299,309.29, representing the discrepancy between petitioner's revenues per FS and per VAT returns, as shown below[57]:

Revenue per FS	₱ 1,480,416.00
Revenue per VAT returns	1,181,106.71
Discrepancy	**₱ 299,309.29**

Petitioner disagrees with this assessment, holding that the respondent's findings have no legal and factual bases.

The Court finds respondent's assessment proper.

In relation to Section 108 of the NIRC of 1997, as amended, relevant portions of RR No. 16-05 read as follows:

> SEC. 4.108-1. *VAT on the Sale of Services and Use or Lease of Properties*. – Sale or exchange of services, as well as **the use or lease of properties**, as defined in Sec. 108 (A) of the Tax Code shall be **subject to VAT, equivalent to 10%**[58] **of the gross receipts (excluding VAT)**.
>
> SEC. 4.108-2. *Meaning of "Sale or Exchange of Services"*. – The term "*sale or exchange of services*" means the performance of all kind of services in the Philippines for others for a fee, remuneration or consideration, whether in kind or in cash, including those performed or rendered by the following:
>
> x x x
>
> (3) **lessors of property**, whether personal or **real**; (*Emphasis supplied*)

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[56] **SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties.* –**
(A) ***Rate and Base of Tax.***– There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

[57] Exhibit "6-a".

[58] Effective February 1, 2006 the VAT rate was increased from 10% to 12% (Revenue Memorandum Circular No. 7-06).

Petitioner is engaged primarily in the business of acquiring by purchase, lease, donation or otherwise, and owning, using, improving, developing, subdividing, selling, mortgaging, exchanging, **leasing**, developing and holding for investment or otherwise, **real estate of all kinds.**[59] Clearly, petitioner falls within the ambit of the foregoing provisions and is subject to 12% VAT based on gross receipts, defined in the same regulations, as follows:

> SEC. 4.108-4. *Definition of Gross Receipts*. – '***Gross receipts***' refers to 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 applied as payments for services rendered and advance payments **actually or constructively received** during the taxable period for the services performed or to be performed for another person, excluding VAT. (*Emphasis supplied*)

A review of the petitioner's financial statements reveals that the subject revenue, as disclosed in Note 14, consists of rental income of ₱1,460,073.00[60]. The same amount is reflected in the amended Annual Income Tax Return.[61] The respondent, as noted by the ICPA, derived the revenue amount of ₱1,480,416.00[62] from the tentative Annual Income Tax Return. Thus, the assessed amount is reduced to ₱278,966.29, that is, ₱1,460,073.00 less ₱1,181,106.71.

As disclosed also in its Notes to Financial Statements, petitioner recognizes revenue when it is earned, and not necessarily, when the money is actually or constructively received, to wit:[63]

> 2. **SIGNIFICANT ACCOUNTING POLICIES**
>
> x x x
>
> **Revenue Recognition**
>
> Revenue is recognized when it is probable that the economic benefits associated with the transaction will flow to the Company and the amount of the revenue can be measured reliably.
>
> When the outcome of a transaction involving the rendering of services can be estimated reliably, **revenue** associated with the transaction **shall**

59 Exhibit A-1; Exhibit XX, Notes to Financial Statements, December 31, 2008, under Note 1.
60 Exhibits XX and XX-1.
61 Exhibit VV-1.
62 Exhibit V, line 15C.
63 Exhibit XX, Notes to Financial Statements, December 31, 2008, under Note 2.

> **be recognized by reference to the stage of completion of the transaction at the balance sheet date.**
>
> Revenue is measured at the fair value of the consideration received or receivable and represents amounts receivable for goods or services provided in the normal course of business.
>
> - **The fees are recognized as revenue when the significant act of providing services has been completed.** x x x"

Accordingly, the revenue per FS may not coincide with that of VAT returns. Petitioner's adoption of the accrual method of accounting (i.e., the income is reported in the period it is earned regardless of whether it has been received or not) for income tax purposes and the cash method of accounting (i.e., the income is reported based on gross receipts/collection) for VAT purposes, may result to a timing difference in the recognition of its income. However, petitioner failed to establish that the ₱278,966.29 discrepancy in its reported income was brought about by such timing difference.

In the case of *Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corp.*[64], income was defined as an amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment. **Unless otherwise specified, it means cash or its equivalent.** In the present case, petitioner's financial statements[65] show that it had no Trade Receivables as of December 31, 2008. It may then be safely concluded that all of its rental income for the year 2008 in the amount of ₱1,460,073.00 had already been collected and should have been subjected to VAT as of December 31, 2008. Thus, respondent's deficiency VAT assessment on the ₱278,966.29 discrepancy in petitioner's income shall be sustained.

B. Proceeds from Sale of Land - ₱33,975,000.00

Citing Sections 106 and 108 of the NIRC of 1997, as amended, in relation to RR No. 16-05, as amended, respondent imposed 12%

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[64] G.R. No. 108576, January 20, 1999, citing *Conwi vs. CTA*, G.R. No. 48532, August 31, 1992.
[65] Exhibit XX, Balance Sheets as of December 31, 2008 and 2007.

VAT on the proceeds from petitioner's sale of land in the amount of ₱33,975,000.00, computed as follows[66]:

Cost of land sold	₱ 33,236,604.00
Add: Gain from disposal	738,396.00
Proceeds from sale of land	**₱33,975,000.00**

Petitioner, on the other hand, admitted that it is engaged in the real estate business but argued that the nature of its business does not *pro tanto* make any transfer of its assets subject to VAT. The parcels of land sold are allegedly capital assets considering that at the time of their acquisition, the said properties were never held for sale or lease nor used by petitioner in its business, and remained idle up to the time of such sale. Hence, the transfer should not be subject to VAT.

Petitioner submitted the Schedule of Rental Income[67] to prove that the lands sold were bought for investment purposes and that they were not rented out and remained idle up to the time of sale.

The Court finds the assessment in order.

Per its Amended Articles of Incorporation[68], petitioner's primary purpose is not only to acquire by purchase and lease real properties but also to hold for investment and sell real properties, to wit: "***to acquire by purchase****, lease, donation or otherwise,* ***and to own****, use, improve, develop, subdivide,* ***sell****, mortgage, exchange, lease, develop and* ***hold for investment*** *or otherwise,* ***real estate of all kinds****, whether improve manage or otherwise dispose of buildings, houses, apartments, and other structures of whatever kind, together with their appurtenances*". As such, petitioner is considered as a "taxpayer engaged in the real estate business" defined in Section 2(g) of RR No. 07-03 as follows:

> g. **Taxpayers engaged in the real estate business** shall refer collectively to real estate dealers, real estate developers, and/or real estate lessors. Conversely, the term **"taxpayers not engaged in the real estate business"** shall refer to persons other than real estate dealers, real estate developers and/or real estate lessors. A taxpayer

66 Exhibit "6-a".
67 Exhibit CCC.
68 Exhibit A-1.

whose primary purpose of engaging in business, or whose Articles of Incorporation states that its primary purpose is to engage in the real estate business shall be deemed to be engaged in the real estate business for purposes of these Regulations.

The parcels of land sold by petitioner[69], subject of the assessment, are ordinary assets contrary to petitioner's claim, as set forth under Section 3 of RR No. 07-03, to wit:

SEC. 3. GUIDELINES IN DETERMINING WHETHER A PARTICULAR REAL PROPERTY IS A CAPITAL ASSET OR ORDINARY ASSET.-

a. Taxpayers engaged in the real estate business. – Real property shall be classified with respect to taxpayers engaged in the real estate business as follows:

1. Real Estate Dealer. – **All real properties acquired by the real estate dealer shall be considered as ordinary assets.**

2. Real Estate Developer. – All real properties acquired by the real estate developer, whether developed or undeveloped as of the time of acquisition, and all real properties which are held by the real estate developer primarily for sale or for lease to customers in the ordinary course of his trade or business or which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year and all real properties used in the trade or business, whether in the form of land, building, or other improvements, shall be considered as ordinary assets.

3. Real Estate Lessor. – All real properties of the real estate lessor, whether land and/or improvements, which are for lease/rent or being offered for lease/rent, or otherwise for use or being used in the trade or business shall likewise be considered as ordinary assets.

x x x

e. **Treatment of abandoned and idle real properties**. – Real properties formerly forming part of the stock in trade of a taxpayer engaged in the real estate business, or formerly being used in the trade or business of a taxpayer engaged or not engaged in the real estate business, which were later on abandoned and became idle, **shall continue to be treated as ordinary assets**. Real property initially acquired by a taxpayer engaged in the real estate business **shall not result in its conversion into a capital asset even if the same is subsequently abandoned or becomes idle**.

Provided however, that properties classified as ordinary assets for being used in business by a taxpayer engaged in business other than real

[69] Exhibits AAA and BBB.

> estate business as defined in Section 2(g) hereof are automatically converted into capital assets upon showing of proof that the same have not been used in business for more than two (2) years prior to the consummation of the taxable transactions involving said properties." (*Emphasis supplied*)

Moreover, the fact that the subject properties from the time of their acquisition were never held for sale or lease nor used by petitioner in its business and remained idle up to the time of such sale does not convert them into capital assets since the taxpayer is engaged in real estate business.[70]

Furthermore, petitioner, in its Annual Income Tax Return for taxable year 2008, treated the gain on the sale of the subject lands as ordinary gain[71]. If petitioner truly believed that the said lands are capital assets then it should have reported the capital gains thereon and paid the corresponding capital gains tax instead of ordinary income tax.

Considering that petitioner's sale of the subject lands was made in the ordinary course of its real estate business, the proceeds therefrom in the amount of ₱33,975,000.00 is subject to 12% VAT pursuant to Sections 105 and 106 of the NIRC of 1997, as amended, which reads:

> SEC. 105. **Persons Liable**. - Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> xxx xxx xxx
>
> "The phrase *'in the course of trade or business'* means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net

[70] BIR RULING NO. 215-11, July 6, 2011; BIR RULING NO. 142-11, May 4, 2011.
[71] Exhibit VV, Schedule 4, line 54.

income and whether or not it sells exclusively to members or their guests), or government entity.

xxx xxx xxx

SEC. 106. ***Value-Added Tax on Sale of Goods or Properties.*** –

(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:"

Petitioner argues that the right of respondent to assess it of deficiency VAT for the first, second, and third quarters of the year 2008 had already lapsed pursuant to Section 203 in relation to Section 114 of the NIRC of 1997, as amended.

The Court disagrees with petitioner.

The present case falls under Section 222(a) of the NIRC of 1997, as amended, which states:

"**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.

The above provision enumerates three (3) instances when the running of the three-year prescriptive period does not apply, to wit: (1) filing a false return, (2) filing a fraudulent return with intent to evade tax, and (3) failure to file a return. In all these instances, the period within which to assess deficiency taxes is ten (10) years from discovery of the fraud, falsification or omission.

In the case of *Aznar vs. Court of Tax Appeals*[72], the Supreme Court made a distinction between "false" and "fraudulent" returns as provided for by the law, to wit:

> xxx xxx We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission'. **That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due**.

Following the doctrine in the **Aznar** case, it is evident that herein petitioner committed falsity in its 2008 Quarterly VAT Returns as it did not declare substantial sales/receipts from its rental and sale of real properties for the said year. There is a deviation from the truth and it follows that the applicable prescriptive period would be ten years from the discovery of falsity, which should be reckoned from the issuance of the Preliminary Assessment Notice (PAN)[73] on

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[72] G.R. No. L-20569, August 23, 1974.
[73] Exhibit "3".

October 27, 2011. Since the FLD and FAN were issued on December 21, 2011, it follows that the deficiency VAT assessment had not yet prescribed.

C. Disallowed Input Tax - ₱13,120.58

Respondent alleges that the claimed input tax of ₱13,120.58 was not properly supported with the required documentary evidence, basically unsubstantiated, hence, disallowed pursuant to the provisions of Section 110(A)(1) in relation to Sections 113 and 237 of the NIRC of 1997, as amended[74].

Petitioner contends that respondent did not provide a breakdown of the disallowed input tax. Hence, it could not identify which transactions were allegedly unsubstantiated.

The Court finds respondent's assessment void.

Section 228 of NIRC of 1997, as amended, provides that the taxpayer must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void. This is in consonance with the due process requirement of the 1997 Philippine Constitution, which provides that "No person shall be deprived of his property without due process of law." The taxpayer needs to know the nature of the examiner's findings in order to be able to properly contest the same and submit supporting documents.

In *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*[75], the Supreme Court ruled:

> The CIR insists that an examination of the facts shows that Enron was properly apprised of its tax deficiency. During the pre-assessment stage, the CIR advised Enron's representative of the tax deficiency, informed it of the proposed tax deficiency assessment through a preliminary five-day letter and furnished Enron a copy of the audit working paper allegedly showing in

[74] Exhibit "6-a".
[75] GR. No. 166387, Resolution dated January 19, 2009.

detail the legal and factual bases of the assessment. The CIR argues that these steps sufficed to inform Enron of the laws and facts on which the deficiency tax assessment was based.

We disagree. The advice of tax deficiency, given by the CIR to an employee of Enron, as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment. These steps were mere perfunctory discharges of the CIR's duties in correctly assessing a taxpayer. The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax assessment is markedly different from the requirement of what such notice must contain. Just because the CIR issued an advice, a preliminary letter during the pre-assessment stage and a final notice, in the order required by law, does not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made.

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged 'factual bases' in the advice, preliminary letter and 'audit working papers' did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.

We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the

assessment against it, the assessment in question was void." xxx (*Emphasis supplied*)

A review of petitioner's 2008 Quarterly VAT Returns reveals that it had a total input tax of ₱39,801.46, as shown below:

Exhibit	Taxable Quarter	Amount of Input Tax
J	1st	₱ 124.62
M	2nd	1,352.10
P	3rd	834.64
S	4th	37,490.10
		₱ 39,801.46

Of the said amount, ₱13,120.58 was disallowed by the respondent. However, the latter failed to provide the detailed composition of the amount of ₱13,120.58. Petitioner cannot be expected to be able to determine and thereafter refute the examiner's findings without the disclosure of the details of the basis of the assessment. Accordingly, due to respondent's failure to adequately provide the details of the disallowed input tax of ₱13,120.58, the deficiency VAT assessment thereon shall be cancelled.

D. Excess input tax carried-over to succeeding period - ₱3,302.92

Respondent disallowed the amount of ₱3,302.92 representing the excess input VAT carried-over to the succeeding year 2009. However, no legal and factual bases were provided in the Details of Discrepancies[76] to justify the disallowance of such amount.

Despite petitioner's failure to refute the same, the Court finds it improper to uphold an assessment which is already void on its face.

Furthermore, it was improper for respondent to disallow the said excess input tax because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2009. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

[76] Attached to Exhibit "6-a".

In fine, petitioner is liable to pay basic deficiency VAT for taxable year 2008 in the amount of ₱4,107,173.04, computed as follows:

Taxable sales/receipts per VAT returns		₱ 1,181,106.71
Add: Adjustments per investigation		
Revenue not subjected to VAT	₱ 278,966.29	
Proceeds from sale of land	33,975,000.00	34,253,966.29
Taxable sales/receipts per investigation		₱ 35,435,073.00
Output tax due thereon		₱ 4,252,208.76
Less: Allowable tax credits/payments		
Input tax	₱ 39,801.46	
VAT paid	105,234.26	145,035.72
Deficiency VAT		**₱ 4,107,173.04**

III. DEFICIENCY EXPANDED WITHHOLDING TAX - ₱77.73

Respondent avers that petitioner failed to remit in full the withholding tax, as computed below, therefore, assessed pursuant to RR No. 02-98, as amended[77].

Total tax due per alphalist	₱ 109,917.50
Less: Remittance	109,868.50
Under-remittance	**₱ 49.00**

Examination of the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) [BIR Form No. 1601-E][78] for taxable year 2008 shows that petitioner really has an under-remittance of EWT in the amount of ₱49.00[79] which pertains to the month of May. There was neither bank validation nor tax payment form attached to the BIR Form No. 1601-E[80] for the month of May. Thus, respondent's assessment shall be sustained.

[77] Exhibit "6-a".
[78] Exhibits X-1, Y-1, Z-1, AA-1, CC-1, DD-1, EE-1, FF-1, GG-1 and II-1.
[79] Exhibit DDD.
[80] Exhibit BB.

IV. COMPROMISE PENALTY - ₱2,000.00

Respondent imposed compromise penalty in the amount of ₱2,000.00 against petitioner for non-filing/non-submission of various documents pursuant to Sections 250 and 255 of the NIRC of 1997, as amended, with reference to Revenue Memorandum Order (RMO) No. 1-90, as amended.[81]

However, under RMO No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[82] Absent of showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[83]

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The compromise penalty assessed by respondent against petitioner in the amount of ₱2,000.00 is hereby **CANCELLED**. On the other hand, the assessments issued by respondent against petitioner for taxable year 2008 covering deficiency income tax, value- added tax, and expanded withholding tax are **AFFIRMED** with some modifications. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **FIVE MILLION ONE HUNDRED FORTY TWO THOUSAND TWO HUNDRED FOUR PESOS AND TWENTY THREE CENTAVOS (₱5,142,204.23)** for the taxable year 2008, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

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[81] Exhibit "6-a".

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

[83] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et. al.,* G.R. No. L-35266, January 21, 1991.

Tax Type	Basic Tax	25% Surcharge	Total
Income Tax	₱ 6,541.34	₱ 1,635.34	₱ 8,176.68
Value-Added Tax	4,107,173.04	1,026,793.26	5,133,966.30
Expanded Withholding Tax	49.00	12.25	61.25
Total	**₱ 4,113,763.38**	**₱ 1,028,440.85**	**₱ 5,142,204.23**

In addition, petitioner is **ORDERED TO PAY** respondent:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, value-added tax, and expanded withholding tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	Deficiency Interest Computed From
Income Tax	₱ 6,541.34	April 15, 2009
Value-Added Tax	4,107,173.04	January 25, 2009
Expanded Withholding Tax	49.00	January 15, 2009

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱5,142,204.23 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from December 21, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
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, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice