REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

H. TAMBUNTING PAWNSHOP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6238

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 0 8 2004

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DECISION

This Petition for Review seeks to set aside the assessments issued by respondent against petitioner for deficiency income and percentage taxes, and compromise penalties for the taxable year 1997.

Petitioner is a corporation engaged in the pawnshop business. It is duly organized and existing under the laws of the Republic of the Philippines with principal address at 822 M. dela Fuente Steet, Trabajo, Manila *(par. 2, Facts Admitted, Joint Stipulation of Facts).*

On June 26, 2000, respondent, through Acting Regional Director Lucien E. Sayuno of Revenue Region No. 6, Manila, issued assessment notices bearing the same number 32-1-97 against petitioner for deficiency income and percentage taxes and compromise penalties for the taxable year 1997 in the amounts of P5,751,504.06, P957,970.00 and P69,000.00, respectively. The assessment notices were duly received by petitioner *(par. 3, Facts Admitted, Joint Stipulation of Facts)*, details of which are as follows:

A. Deficiency Income Tax

Tax Due	P3,951,565.83
Add: Interest up to 7-26-00	1,799,938.23

Total Amount Payable	5,751,504.06 *(Exh. A)*
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B. Deficiency Percentage Tax

Tax Due	P637,456.76
Interest up to 7-26-00	320,513.24

Total Amount Payable	P957,970.00 *(Exh. B)*
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C. Compromise Penalty

For Late Payment (income tax)	P25,000.00	*(Exh. A-3)*
For Failure to File withholding tax return for the month of April & May	24,000.00	*(Exh. C)*
Percentage Tax	20,000.00	*(Exb. B-2)*

Thereafter, petitioner filed its administrative protest on July 26, 2000 assailing the above assessments. *(par. 4, Facts Admitted, Joint Stipulation of Facts)*

For failure on the part of the respondent to act upon or resolve petitioner's protest within the 180-day period prescribed by law, petitioner filed the instant petition for review on February 21, 2001.

Respondent filed his Answer on March 21, 2001 and raised therein the following Special and Affirmative Defenses:

7. The assessment is valid and correct and the taxpayer has the burden of proof to impugn its validity *(Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil 647)*. Thus, similarly held, tax assessments by tax examiners are presumed correct and made in good faith. The

taxpayer has the duty to prove otherwise *(Commissioner of Internal Revenue vs. Constructions Resources of Asia, Inc., 145 SCRA 671)*; and an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed *(Gutierrez vs. Villegas, 8 SCRA 527)*

8. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that the taxpayer is right *(Tan Guan vs, Court of Tax Appeals, et al., 19 SCRA 903 [1967])*; otherwise, the presumption in favor of the correctness of the tax assessment stands *(Inter Provincial Bus Co., Inc. vs. Collector of Internal Revenue, 98 Phil 290 [1956]; Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil 967 [1960])*.

9. Prior to the amendment of the National Internal Revenue Code by E.O. No. 273 which took effect on January 1, 1988, pawnshops and lending investors had a different tax treatment, such that lending investors and pawnshops were subject to different fixed taxes. After said amendment, fixed taxes on business were already deleted and that pawnshops and lending investors were subjected to the 5% lending investor's tax on their gross income pursuant to Revenue Memorandum Order No. 15-91 dated March 11, 1991.

10. The principal activity of pawnshops is lending money at interest and incidentally accepting "pawn" of personal property delivered by the pawner to the pawnee as security for the loan. Thus, this makes pawnshop business akin to lending investor's activity which is broad enough to encompass the business of lending money at interest by any person whether natural or juridical. Such being the case, pawnshops shall be subject to the 5% lending investor's tax based on their gross income pursuant to Section 116 of the Tax Code, as amended.

11. The inclusion of pawnshops in the coverage of lending investor has not amended any provision of the Tax Code. It merely applied the definition to the reality that pawnshops are indeed engaged in the business of lending money at interest. The contention that the essence of pawnshop operation is the "pawn" is only one way of looking at their two-sided operations. The other way of looking at it is that since they lend money at interest and requires a pledge of personal property as security (an accessory contract), the essence of their operation is lending money.

12. RMO No. 15-91, being issued in accordance with law, has the force and effect of law. There is no doubt that respondent issued RMO No. 15-91 in order to interpret a pre-existing law particularly Section 116 of the Tax Code, as amended.

In an Authority to Cancel dated March 21, 2001, the assailed percentage tax assessment was cancelled by the respondent through Regional Director Teodorica R. Arcega *(BIR Records, p. 257).* Subsequently, a VAT assessment was issued against the petitioner on April 11, 2001 *(BIR Records, p. 258).* As a result thereof, the deficiency percentage tax assessment is no longer an issue in this case.

Thus, the issues to be resolved in this case and as jointly stipulated by the parties are:

1. Whether or not the disallowances made by the BIR relative to the determination of petitioner's deficiency income tax for taxable year 1997 are valid.

2. Whether or not the petitioner is subject to the 5% lending investor's tax.

Before proceeding to discuss the above stipulated issues, we shall first determine if the assessment has already become final, executory and demandable due to petitioner's failure to submit the pertinent documents in support of its protest, within the sixty (60)-day period prescribed under Section 228 of the National Internal Revenue Code of 1997.

As admitted by the parties, the assessment notices were issued on June 26, 2000 and the administrative protest was filed on July 26, 2000, or within thirty (30) days from receipt of the assessment notices. However, respondent claims that petitioner failed to submit the supporting documents within sixty (60) days from the date of filing of its protest as provided under Section 228 of the 1997 NIRC. Thus, the subject assessments have become final by operation of law.

Petitioner, on the other hand, asserts that it submitted documents in support of the deductions claimed from gross income for taxable year 1997. It further maintains that respondent's witness, Mr. Joseph Manuel, admitted during the hearing held on December 12, 2002 that petitioner submitted the following documents, namely, (1) Cash Disbursement Book, (2) Journal Ledger, (3) Cash Receipts, (4) Rematado Book, (5) Subasta Book and (6) Payroll on June 28, 1999 *(TSN, December 12, 2002, p. 20)*.

Moreover, petitioner alleges that no further supporting documents need be submitted to support its protest dated July 26, 2000, as copies of the aforementioned documents were already submitted to the Bureau of Internal Revenue (BIR). It contends that said documents were sufficient proof to support the losses and expenses claimed by petitioner as deductions from its 1997 gross income.

Respondent, in his memorandum, insists that petitioner was given several opportunities to refute the subject deficiency income tax assessment. First, during the original investigation of Revenue Officer Joseph Manuel of RDO No. 32, BIR-Manila *(TSN, December 12, 2002, pp. 28-30)*; Second, during the re-investigation of Revenue Officer Ma. Antonietta Suarez of RDO No. 32, BIR-Manila *(TSN, April 1, 2003, pp. 9-11)*; and Third, during the audit review of Assessment Division, BIR-Manila *(TSN, June 18, 2003 pp. 16-18)*, but petitioner had continually failed to controvert the same because of the non-presentation of the supporting documents being required by the BIR. The disclosure and presentation of all the accounting records/data for the first time before this court will not alter the subject deficiency income tax assessment which has become final, executory and demandable.

We do not agree with respondent's contentions.

In the first place, it is not up for the respondent to determine whether or not all the relevant documents have been submitted. In a case, we ruled in this wise:

> This Court believes that the "relevant supporting documents" mentioned in the law refers to such documents which the taxpayer feels would be necessary to support his protest and not what the Respondent Commissioner feels should be submitted, otherwise, Petitioner taxpayer would always be at the mercy of the BIR which may require production of such documents which taxpayer could not produce. In this manner the assessment could easily become final. The most appropriate way Respondent Commissioner would do under the circumstances when he feels the documents submitted are insufficient, is to deny the protest stating his reason therefore, so the taxpayer would have the opportunity to go to Court, if warranted ***(Resolution, Standard Chartered Bank-Philippine Branches vs. Commissioner of Internal Revenue, CTA Case No. 5696, May 27, 1999)***.

Clearly then, since it is the taxpayer-petitioner that protested the assessments, then, it should be the petitioner that would determine the relevant documents to support its protest,

Section 228 of the 1997 Tax Code provides in part:

> SEC. 228. *Protesting of Assessment*. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If

the taxpayer fails to respond, the Commissioner or is duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Underlining and emphasis ours)*

In the case at bar, the respondent, on July 16, 1999, sent an informal conference letter *(Exhibit 5)* to the petitioner requiring the latter to explain its side on the proposed deficiency income tax assessment. Petitioner's response was to request for two (2) extensions *(Exhibits 6 & 7)* to submit supporting documents relative to the ongoing examination by respondent of its internal revenue taxes for the year 1997. Consequently, a pre-assessment notice was issued by the respondent on February 17, 2000 *(Exhibit 19)* for failure of the petitioner to submit the supporting documents. It must be noted that the above provision of law states that the Commissioner or his duly authorized representative *shall issue an assessment based on his findings*. Hence, the pre-assessment notice was subsequently issued.

Petitioner, on May 15, 2000, filed a protest on the pre-assessment notice. On May 2, 2000, petitioner was required to submit documents to support its protest. On May 4, 2000, the docket of the case was forwarded by the Assessment Division to the

RDO No. 32, BIR-Manila *(Exhibit 22)*. On May 10, 2000, petitioner was informed that its request for reinvestigation was granted. It was then required to submit supporting documents to refute the pre-assessment notice *(Exhibit 24)*. However, petitioner allegedly still failed to submit the supporting documents. Thus, a final assessment notice was issued on June 26, 2000. Petitioner filed a protest thereon on July 26, 2000. And it is the position of the petitioner that no further documents need be submitted to support its protest filed on July 26, 2000 since copies of the documents to support the losses and expenses it claimed as deductions from gross income for 1997 were already submitted to the BIR. And it was admitted by respondent's witness that petitioner submitted the documents required by the examiner *(TSN, December 12, 2002, pp. 19-20)*.

Anent the issue of whether or not petitioner is subject to the 5% lending investor's tax, the same has long been settled in the case of ***Commissioner of Internal Revenue vs. Michel J. Lhullier Pawnshop, Inc., G.R. No. 150947 promulgated July 15, 2003***, wherein the Supreme Court held and we quote:

> Under Section 157(u) of the NIRC of 1986, as amended, the term *lending investor* includes "all persons who make a practice of lending money for themselves or others at interest." A *pawnshop*, on the other hand, is defined under Section 3 of P.D. No. 114 as "a person or entity engaged in the business of lending money on personal property delivered as security for loans and shall be synonymous, and may be used interchangeably, with pawnbroker or pawn brokerage."
>
> While it is true that pawnshops are engaged in the business of lending money, they are not considered "lending investors" for the purpose of imposing the 5% percentage taxes for the following reasons:
>
> *First.* Under Section 192, paragraph 3, sub-paragraphs (dd) and (ff) of the NIRC of 1977, prior to its amendment by E.O. No. 273, as well

as Section 161, paragraph 2, sub-paragraphs (dd) and (ff), of the NIRC of 1986, pawnshops and lending investors were subjected to different tax treatments; xxx

Second. Congress never intended pawnshops to be treated in the same way as lending investors. Section 116 of the NIRC of 1977, as renumbered and rearranged by E.O. No. 273, was basically lifted from Section 175 of the NIRC of 1986, which treated both tax subjects differently. xxx

Third. Section 116 of the NIRC of 1977, as amended by E.O. No. 273, subjects to percentage tax dealers in securities and lending investors only. There is no mention of pawnshops. Under the maxim *expressio unius est exclusio alterius,* the mention of the thing implies the exclusion of another thing not mentioned. xxx

Fourth. The BIR had ruled several times prior to the issuance of RMO No. 15-91 and RMC 43-91 that pawnshops were not subject to the 5% percentage tax imposed by Section 116 of the NIRC of 1977, as amended by E.O. No. 273. This was even admitted by the CIR in RMO No. 15-91 itself. Considering that Section 116 of the NIRC of 1977, as amended, was practically lifted from Section 175 of the NIRC of 1986 as amended, and there being no change in the law, the interpretation thereof should not have been altered.

We now resolve the remaining issue of whether or not the disallowances made by the BIR relative to the determination of petitioner's deficiency income tax for taxable year 1997 are valid.

Petitioner was assessed of deficiency income tax for taxable year 1997 in the amount of P5,751,504.06 *(Exhs. 8 & 9, A, A-1 to A-2)* computed as follows:

Net Income Per Income Statement			P 54,107.36
Add: Overstatement of Gain/Loss on Auction Sales			
Gain/Loss on Auction Sales Per F/S	P4,914,967.50		
Gain/Loss on Auction Sales Per audit	133,057.40	P4,781,910.00	
Unsupported Security,Janitorial Services			
Security, Janitorial Services Per F/S	P2,183,573.02		
Security, Janitorial Services With Supporting Documents	358,800.00	1,824,773.02	
Unsupported Rent Expenses			
Rent Expenses Per F/S	P2,293,631.13		
Rent Expenses With Supporting Documents	434,406.77	1,859,224.36	

Unsupported Interest Expense	1,155,154.28	
Unsupported Management & Professional Fees	96,761.00	
Unsupported Repairs & Maintenance	348,074.68	
Unsupported 13th Month Pay & Bonus	317,730.73	
Disallowed Loss on Fire & Theft	906,560.00	11,290,188.07
Taxable Net Income Per Audit		P 11,344,295.43
Tax Due		P 3,970,503.40
Less: Tax Paid		18,937.57
Deficiency Income Tax		P 3,951,565.83
Add: 20% Interest until 7-26-00 (Sec. 249)		1,799,938.23
TOTAL INCOME TAX DUE		**P 5,751,504.06**

The foregoing items of expenses: security/janitorial services, rent expense, interest expense, management and profession fees, repairs & maintenance, 13th month pay & bonus and loss due to fire & theft, were disallowed by respondent due to petitioner's alleged failure to produce the corresponding supporting documents. Likewise, according to the respondent, petitioner overstated its loss on auction sale.

We shall discuss the disallowed items the way they were presented in the preceding computation.

On petitioner's alleged overstated loss on auction sales, a perusal of petitioner's Financial Statement reveals that its "Loss on Auction Sale" amounted to P4,914,967.50 *(Exh. 11).* However, as per examiner's audit based on the data gathered, the amount of loss should only be P133,057.40 *(BIR Records, page 162)*, computed hereunder:

SUMMARY of Loss on Auction Sale Per Audit (Data as obtained from BIR Records, pp. 118-129)

	TOTAL CAPITAL PER REMATADO BK	**TOTAL CAPITAL PER SUBASTA BK**	**SALES PER SUBASTA BK.**	**SALES PER OR**	**GAIN/(LOSS) ON AUCTION PER AUDIT***
STA MESA	P 3,784,250.00	P 3,898,950.00	P 3,215,381.00	P 2,041,893.80	P (568,869.00)
COMEMBO	318,750.00	309,850.00	239,542.50	-	(70,307.50)
BLUMENTRITT	1,367,440.00		3,559,991.00	245,220.00	2,192,551.00
PACO	7,700,030.00	8,185,650.00	6,549,850.00	6,489,450.00	(1,150,180.00)
NAVOTAS	1,477,950.00	1,258,400.00	1,229,842.00	1,228,842.00	(28,558.00)

TRABAJO	2,764,200.00	2,891,600.00	2,313,380.00	2,070,680.00	(450,820.00)
STA MESA II	-	1,348,450.00	1,189,345.00	-	(159,105.00)
SAMSON ROAD	2,227,950.00	256,650.00	2,165,428.50	-	(62,521.50)
LEGARDA	-	2,022,250.00	2,104,395.00	-	82,145.00
BALIC[2]	1,047,350.00	1,212,450.00	1,119,292.50	-	71,942.50
DIVISORIA	-	485,650.00	496,315.00	-	10,665.00
			GAIN(LOSS) on AUCTION SALE PER AUDIT		P (133,057.50)

* CAPITAL = whichever is lower between CAPITAL per <u>REMATADO</u> & CAPITAL per <u>SUBASTA BK.</u>
<u>- SALES</u> = whichever is higher between SALES per SUBASTA BK & per OR
GAIN/LOSS

Based on the above data, the balance between the loss on auction sale per financial statement and the loss per respondent's examination represents the overstatement of loss amounting to P4,781,910.00 (P4,914,967.50-P133,057.50).

In arriving at the alleged actual loss on auction sale, respondent compared the amounts found in the *Rematado* and *Subasta* Books. Based on his evaluation, the *Rematado* Book is a record of the items foreclosed by the pawnshop while the *Subasta* Book is a record of the auction sale of pawned items foreclosed. *(TSN, December 12, 2002, pp. 33-34)*

In order to prove that it has indeed incurred a loss on auction sale in the sum of P4,914,967.50, petitioner submitted in evidence its *Subasta* Book *(Exhs. E-1 to E-123)* and the Schedule of Losses on Auction Sale *(Exh. E)*. Petitioner explains that the gain or loss on auction sale represents the difference between the capital (the amount loaned to the pawnee and other expenses incurred in connection with such loan) and the price for which the pawned articles were sold. Petitioner further expounds that the amounts appearing in the *Rematado* Book reflect only the amounts loaned by petitioner to the pawnee. It does not include the interest that has accrued from the failure of the pawnee to redeem the pawned article and pay his loan until the time that the pawned article is foreclosed and offered for sale to answer for the total amount due. Still, further, petitioner clarifies that the conduct of a *subasta* of foreclosed articles does not guarantee that all articles are eventually sold and disposed of. Hence, respondent erred when he based his examination merely on the difference between the amounts reflected in the *Rematado* and *Subasta* Books. *(Memorandum for the Petitioner, pp. 9-10)* and considered the amounts in the *Rematado* Book as petitioner's cost of foreclosed items.

We cannot subscribe to petitioner's assertions.

A careful perusal of the records discloses that petitioner failed to adduce evidence to substantiate the other expenses incurred in connection with the sale of the pawned items. The remaining evidence is neither conclusive to sustain its claim of loss on auction sale in the aggregate amount of P4,914,967.50. While it appears that the basis of respondent is not strong, petitioner, nevertheless, should not rely on the weakness of such evidence but on the strength of its own documents. The facts essential for the proper disposition of the said controversy were available to the petitioner. Petitioner should have endeavored to make the facts clear to this court. Sad to say, it failed to dispute the same with clear and convincing proof.

It is hardly necessary to add that the burden of proof is on the taxpayer contesting the validity or correctness of assessment to prove not only that the Commissioner of Internal Revenue is wrong but that he (taxpayer) is right. ***(Lino Gutierrez vs. Collector of Internal Revenue, CTA Case No. 504, January 28, 1962)*** Petitioner failed to present evidence as proof in support of its allegations in the petition for review. Hence, the correctness of the tax assessment is presumed. ***(Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue vs. Bohol Land Transportation, Co., L-13099 and L-13462, April 29, 1960, 107 Phil. 965).*** For failure of petitioner to satisfactorily refute the findings of the revenue examiners, the presumption of correctness of the assessments subsists. 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 tax assessments. ***(Bonifacio Sy Po vs. Court of Tax Appeals, 164 SCRA 524)***

On the disallowed security/janitorial services amounting to P1,824,773.02, petitioner presented the Schedule of Security/Pathfinder Services for 1997 *(Exh. F)* and the vouchers and official receipts supporting its security and janitorial services in the total amount of P2,183,573.02 *(Exhs. F-1 to F-258)*. However, the schedule shows that petitioner's expenses for security and janitorial services amounted only to P1,395,883.91. The balance in the amount of P787,689.11 does not pertain to security/janitorial services rather, it represents the following accounts, to wit:

Office Supplies	P400,175.27
Advertising	145,013.84
Leasehold Improvement	242,500.00
Total	P787,689.11

In addition, out of the entire amount of P1,395,883.91 which corresponds to security/janitorial services, the sum of P659,839.65 is not substantiated by evidence. The accounts and their respective amounts are shown below:

CONTRACTOR	**AMOUNT**
PATHFINDER INVESTIGATION	P 2,600.00
PATHFINDER INVESTIGATION	2,600.00
PATHFINDER INVESTIGATION	2,600.00
EJM INVESTIGATION	2,600.00
PATHFINDER INVESTIGATION	2,600.00
PATHFINDER INVESTIGATION	646,839.65
TOTAL	**P 659,839.65**

Only the balance of P736,044.26 (P1,395,883.91-P659,839.65) has been supported by official receipts to prove that expenses are incurred. Consequently, they are allowable as deductions from gross income for income tax purposes pursuant to Section 238 of the old NIRC provides, *viz*:

> SEC. 238. *Issuance of receipts or sales or commercial invoices.* — All persons subject to an internal revenue tax shall for each sale or transfer of merchandise or for services rendered valued at P25.00 or more, issue receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service; *Provided*, That in the case of sales, receipts or transfers in the amount of P100.00 or more, or, regardless of amount, where the sale or transfer is made by persons subject to value-added tax to other persons also subject to value-added tax; or, where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client. The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of 3 years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

> The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this section. (As amended by E.O. No. 273)

To prove the rental expenses amounting to P1,859,224.36, petitioner presented various cash vouchers, Contracts of Lease, Certifications from Lessees and official receipts *(Exhs. G-1 to G-136, inclusive of submarkings)*. Upon verification, only the amount of P642,619.10 was supported by official receipts, detailed as follows:

BRANCH	**EXHIBIT**	**AMOUNT**
Legarda	G-2	P 32,093.00
Sta. Maria	G-4	10,890.00
Malolos	G-11	80,000.00
Legarda	G-14	32,093.00
Sta. Maria	G-16	10,890.00
Navotas	G-20	6,600.00
Balic-Balic	G-21	9,680.00
Malolos	G-23	8,000.00
Legarda	G-26	32,093.00
Sta. Maria	G-28	10,890.00
Divisoria	G-29	36,300.00
Navotas	G-32	6,600.00
Malolos	G-36	8,000.00
Legarda	G-39	32,093.00
Sta. Maria	G-42	10,890.00
Navotas	G-46	7,260.00
Legarda	G-53	32,093.00
Blumentritt	G-54	19,965.00
Sta. Maria	G-56	10,890.00
Navotas	G-60	7,260.00
Balic-Balic	G-63	10,648.00
Legarda	G-68	32,093.00
Sta. Maria	G-70	10,890.00
Navotas	G-74	7,260.00
Balic-Balic	G-75	10,648.00
Legarda	G-80	32,093.00
Navotas	G-87	7,260.00
Balic-Balic	G-89	10,648.00
Paco	G-95	32,283.16
Navotas	G-96	7,260.00
Sta. Maria	G-101	11,978.94
Navotas	G-104	7,260.00
Sta. Maria	G-109	11,979.00
Navotas	G-115	7,260.00
Sta. Maria	G-120	11,979.00

Navotas	G-123	7,260.00
Sta. Maria	G-130	11,979.00
Navotas	G-133	7,260.00
TOTAL		**P 642,619.10**

With regard to petitioner's deduction of interest expense amounting to P1,155,154.23, it formally offered in evidence the official receipts representing payments of interest to Equitable Bank [EQB], Bank of Commerce [BOC], and Philippine Commercial International Bank [PCIB] *(Exhs. H-1 to H-31),* to wit:

BANK	**EXHIBIT**	**AMOUNT**
PCIB	H-1	P 6,027.78
PCIB	H-2	4,686.67
PCIB	H-3	6,750.00
PCIB	H-4	6,027.78
PCIB	H-5	6,300.00
PCIB	H-5	6,673.61
PCIB	H-6	4,791.67
PCIB	H-7	7,204.17
PCIB	H-8	6,625.00
PCIB	H-9	7,395.84
PCIB	H-10	1,750.00
PCIB	H-11	7,879.17
PCIB	H-12	7,427.08
PCIB	H-13	9,000.00
PCIB	H-14	13,000.00
PCIB	H-15	11,666.67
PCIB	H-16	12,000.00
PCIB	H-17	9,583.33
BOC	H-18	4,333.34
BOC	H-19	367,188.89
BOC	H-20	30,955.56
PCIB	H-21	9,722.22
EQB	H-22	9,961.11
PCIB	H-23	10,733.33
PCIB	H-24	10,150.00
PCIB	H-25	11,680.56
EQB	H-26	12,500.00
PCIB	H-27	15,466.67
PCIB	H-28	12,271.00
PCIB	H-29	13,950.00
BOC	H-30	147,375.00
BOC	H-31	364,077.78
TOTAL		**P 1,155,154.23**

Upon review of the above-listed documents, this court finds that the amounts reflected therein were indeed for the payments of interest expense incurred by petitioner in connection with its business. Thus, allowable as deductions from gross income.

We agree with respondent though that petitioner's Management and Professional Fees amounting to P96,761.00 were merely supported by various cash vouchers *(Exhs. I-1 to I-136)* which have little probative value. As previously mentioned, the evidence required to support an expense is the official receipt and sales invoice. Therefore, the disallowance of petitioner's management and professional fees as deduction from gross income was proper.

On petitioner's deduction of repairs and maintenance, it submitted in evidence various invoices and receipts in the amount of P348,221.68 *(Exhs. J-1 to J-47)*. However, some of these invoices and receipts were not issued under the name of the company, and others were supported by provisional and delivery receipts in the total amount of P18,822.50, detailed as follows:

SUPPLIER	EXHIBIT	AMOUNT
TRICON	J-17	P 60.00
LEXILENE GEN. MDSE	J-18	1,457.00
RGC CONSTRUCTION	J-20	753.00
RGC CONSTRUCTION	J-21	520.00
LEXILENE GEN. MDSE	J-22	405.00
RGC CONSTRUCTION	J-23	360.00
LEXILENE GEN. MDSE	J-24	176.00
HARCA TRADING CORP	J-27	1,092.00
HARCA TRADING CORP	J-28	532.00
LEXILENE GEN. MDSE	J-32	517.50

TRADEWELL BUILDERS	11,700.00
TELTRONICS	1,250.00
TOTAL	**P 18,822.50**

It follows that only the amount of P329,399.18 which is validly supported by invoices and official receipts is allowable as deduction from gross income.

Regarding the 13th month pay and bonus expenses, this court observes that petitioner was able to fully substantiate said expenses with pay slips signed by the respective employees and officers of the company *(Exhs. K-1 to K-41),* hence, a valid deduction from gross income for the year 1997.

Petitioner's deduction due to loss on fire and theft was likewise disallowed by respondent for failure to substantiate the same. In order to prove that such expense was actually incurred, petitioner submitted in evidence the following documents:

DOCUMENT	**EXHIBIT**
1. Certification from DILG Bureau of Fire Protection Malolos Fire Station	L
2. Certification from National Police Commission PNP Malolos Police Station	L-1
3. Accounting entry for the loss	L-1-a
4. List of property loss	L-1-b to L-1-g

To determine whether the foregoing documents are proper for the purpose of substantiating petitioner's losses from fire and theft, we refer to Revenue Regulations No. 12-77, which provides:

> SUBJECT: *Substantiation requirement for losses arising from casualty, robbery, theft or embezzlement.*
>
> TO : *All Internal Revenue Officers and Others Concerned.*
>
> Pursuant to the provisions of Section 326 in relation to Section 4 of the National Internal Revenue Code of 1977, these regulations are hereby

promulgated to govern the manner of reporting losses arising from casualty, robbery, theft, or embezzlement, for income tax purposes.

xxx xxx xxx

Sec. 2. *Requirements of substantiation.* – The taxpayer bears the burden of proving and substantiating his claim for deduction for losses allowed under Section 30(d) and should comply with the following substantiation requirements:

(a) A declaration of loss which must be filed with the Commissioner of Internal Revenue or his deputies within a certain period prescribed in these regulations after the occurrence of the casualty, robbery, theft or embezzlement.

(b) Proof of the elements of the loss claimed, such as the actual nature and occurrence of the event and amount of the loss.

Sec. 3. *Declaration of loss.*- Within forty-five days after the occurrence of casualty or robbery, theft or embezzlement, a taxpayer who sustained loss therefrom and who intends to claim the loss as a deduction for the taxable year in which the loss was sustained shall file a sworn declaration of loss with the nearest Revenue District Officer. The sworn declaration of loss shall contain among other things, the following information:

(a) The nature of the event giving rise to the loss and the time of its occurrence;
(b) A description of the damaged property and its location;
(c) The items needed to compute the loss such as cost or other basis of the property; depreciation allowed or allowable if any; value of property before and after the event; cost of repair;
(d) Amount of insurance or other compensation received or receivables.

Evidence to support these items should be furnished, if available. Examples are purchase contracts and deeds, receipted bills for improvements, and pictures and competent appraisals of the property before and after the casualty.

Sec. 4. *Proof of loss.*- (a) *In general.*- The declaration of loss, being one of the essential requirements of substantiation of a claim for a loss deduction, is subject to verification and does not constitute sufficient proof of the loss that will justify its deductibility for income tax purposes.

Therefore, the mere filing of a declaration of loss does not automatically entitle the taxpayer to deduct the alleged loss from gross income. The failure, however, to submit the said declaration of loss within the period prescribed in these regulations will result in the disallowance of the casualty loss claimed in the taxpayer's income tax return. The taxpayer should therefore file a declaration of loss and should be prepared to support and substantiate the information reported in the said declaration with evidence which he should gather immediately or as soon as possible after the occurrence of the casualty or event causing the loss.

(b) *Casualty loss.* – Photographs of property as it existed before it was damaged will be helpful in showing the condition and value of the property prior to the casualty. Photographs taken after the casualty which show the extent of damage will be helpful in establishing the condition and value of the property after it was damaged. Photographs showing the condition and value of the property after it was repaired, restored or replaced may also be helpful.

Furthermore, since the valuation of the property is of extreme importance in determining the amount of loss sustained, the taxpayer should be prepared to come forward with documentary proofs, such as cancelled checks, vouchers, receipts and other evidence of cost.

The foregoing evidence should be kept by the taxpayer as part of his tax records and be made available to a revenue examiner, upon audit of his income tax return and the declaration of loss.

(c) *Robbery, theft or embezzlement losses.* – To support the deduction for losses arising from robbery, theft or embezzlement, the taxpayer must prove by credible evidence all the elements of the loss, the amount of loss, and the proper year of the deduction. The taxpayer bears the burden of proof, and no deduction will be allowed unless he shows the property was stolen, rather than misplaced or lost. A mere disappearance of property is not enough, nor is a mere error or shortage in accounts.

Failure to report theft or robbery to the police may be a factor against the taxpayer. On the other hand, a mere report of alleged theft or robbery to the police authorities is not a conclusive proof of the loss arising therefrom.

Evidently, petitioner failed to comply with the required documents to prove its claim of losses due to fire and theft.

In view of all the foregoing verification, petitioner's allowable deductions are summarized below:

Particulars	Per Petitioner's Financial Statement	Per BIR's Examination	Per Court's Verification
Loss on Auction Sale	P 4,914,967.50	P 133,057.40	P 133,057.40
Security & Janitorial Services	2,183,573.02	358,800.00	736,044.26
Rent Expense	2,293,631.13	434,406.77	642,619.10
Interest Expense	1,155,154.28	-	1,155,154.28
Professional & Management Fees	96,761.00	-	-
Repairs & Maintenance	348,074.68	-	329,399.18
13th Month Pay & Bonuses	317,730.73	-	317,730.73
Loss on Fire	906,560.00	-	-
Total	**P12,216,452.34**	**P 926,264.17**	**P3,314,004.95**

Apparently, petitioner is still liable for deficiency income tax in the reduced amount of P4,536,687.15, computed as follows:

Net Income Per Return		P 54,107.36
Add: Overstatement of Gain/Loss on Auction Sales		
Gain/Loss on Auction Sales per F/S	P 4,914,967.50	
Gain/Loss on Auction Sales per Court's Verification	133,057.40	4,781,910.00
Unsupported Security/Janitorial Services		
Security, Janitorial Services per F/S	P 2,183,573.02	
Security, Janitorial Services per Court's Verification	736,044.26	1,447,528.76
Unsupported Rent Expenses		
Rent Expenses per F/S	P 2,293,631.13	
Rent Expenses per Court's Verification	642,619.10	1,651,012.03
Unsupported Management & Professional Fees		96,761.00
Unsupported Repairs & Maintenance (P348,074.68 – P329,399.18)		18,675.50
Disallowed Loss on Fire & Theft		906,560.00
Net Income		P 8,956,554.65
Income Tax Due Thereon		P 3,134,794.13
Less: Amount Paid		18,937.57
Balance		P 3,115,856.56
Add: 20% Interest until 7-26-00		1,420,830.59
TOTAL INCOME TAX DUE		**P 4,536,687.15**

WHEREFORE, petitioner is **ORDERED** to **PAY** the respondent the amount of P4,536,687.15 representing deficiency income tax for the year 1997, plus 20%

delinquency interest computed from August 29, 2000 until full payment thereof pursuant to Section 249 (C) of the National Internal Revenue Code. However, the compromise penalties in the sum of P49,000.00 is hereby CANCELLED for lack of legal basis.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice