REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MT. BLANC MOTORS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8588

Present:
BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
JAN 04 2017
10:05 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

THE CASE

Before the Court is a Petition for Review[1] filed by Mt. Blanc Motors, Inc. on December 17, 2012, seeking to set aside the Final Decision on Disputed Assessment (FDDA) issued by the Commissioner of Internal Revenue that found it liable for alleged deficiency income tax, value-added tax (VAT), and withholding tax on compensation (WTC) in the total amount of ₱1,549,603.83, inclusive of interest, for taxable year 2008, computed as follows:

Deficiency	Basic	Interest	Total
Income Tax	₱ 106,973.58	₱ 58,498.43	₱ 165,472.01
Value-added Tax	758,145.77	447,409.86	1,205,555.63
Withholding Tax on Compensation	111,878.32	66,697.87	178,576.19
Total	**₱976,997.67**	**₱572,606.16**	**₱1,549,603.83**

[1] Docket, pp. 6-35.

THE FACTS

Petitioner Mt. Blanc Motors, Inc. is a corporation duly organized and existing under Philippine laws, with principal office address at No. 721-729 Quezon Avenue, Sto. Domingo, Quezon City.[2] It is primarily engaged in the sale, maintenance, and repair of motor vehicles.[3]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), who is the officer duly appointed and empowered by law to act on national internal revenue tax assessments. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 3, 2011, petitioner received a Notice of Informal Conference dated March 31, 2011 issued by Revenue Officer Ramer D. Narvaez of BIR Revenue District Office (RDO) No. 38.[4]

On November 22, 2011, petitioner received a Preliminary Assessment Notice (PAN) dated November 16, 2011, assessing it of deficiency income tax, VAT, and WTC.[5]

On December 7, 2011, petitioner submitted a position paper dated December 5, 2011, refuting the assessment for alleged deficiency income tax, VAT, and WTC for taxable year 2008.[6]

On December 9, 2011, respondent issued a Final Assessment Notice (FAN)[7] and Formal Letter of Demand (FLD)[8], assessing petitioner of deficiency income tax, VAT, and WTC for taxable year 2008.

On March 9, 2012, petitioner received a letter from respondent dated February 23, 2012, informing the former that a FAN has been issued against it and directing petitioner to file a protest within fifteen (15) days from receipt of said notice.[9] Petitioner responded to said letter on March 22, 2012, stating that

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[2] Par. 1.2, Joint Stipulation of Facts and Issues (JSFI), docket, p. 488.
[3] Par. 1.3, JSFI, docket, p. 489.
[4] Par. 1.5, JSFI, docket, p. 489.
[5] Par. 1.6, JSFI, docket, p. 489.
[6] Par. 1.7, JSFI, docket, p. 489.
[7] Exhibit "R-4".
[8] Exhibit "R-4-a".
[9] Exhibit "P-2".

it has not received any FAN or FLD and as such was not able to reply to the assessment.[10]

Petitioner requested and received a photocopy of the FLD from respondent on March 26, 2012, assessing it of deficiency income tax, VAT, and WTC in the aggregate amount of ₱1,549,603.83, inclusive of interest as of January 9, 2012.[11]

On April 4, 2012, petitioner filed with respondent its protest addressed to Officer-in-Charge (OIC) Regional Director of Revenue Region No. 7, Quezon City, Mr. Jonas DP. Amora, on the above assessments.[12]

On November 16, 2012, petitioner received respondent's FDDA dated October 22, 2012, denying petitioner's protest.[13]

Accordingly, petitioner filed the instant Petition for Review before the Court on December 17, 2012[14]. The case was raffled to the Third Division, which issued Summons[15] to respondent on December 27, 2012.

In the Answer[16] filed on February 18, 2013, respondent interposed the following special and affirmative defenses:

> "4. All presumptions are in favor of the correctness of the assessment. 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;
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> 5. Moreover, the assessment was already made and it is upon the Petitioner to prove that such assessment was made on mere assumptions;
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> 6. Furthermore, on the allegation of the Petitioner that the employees listed under Schedules 7.1 and 7.2 are Minimum Wage Earners are not subject to income tax, and subsequently to

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[10] Exhibit "P-3".
[11] Exhibit "P-4".
[12] Exhibit "P-5".
[13] Exhibit "P-6".
[14] Docket, p. 6.
[15] Docket, p. 180.
[16] Docket, pp. 186-188.

> withholding tax on its compensation income is bereft of any merit at all.
>
> 7. Tax exemptions are to be construed *strictissimi juris* against the entity claiming the same. Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

Petitioner then filed its Reply[17], pursuant to the Court's Resolution[18] dated March 20, 2013 granting petitioner's Motion for Leave to File Reply[19] filed on March 8, 2013.

In an Order[20] issued on April 5, 2013, the Court transferred the case to the Second Division, pursuant to CTA Administrative Circular No. 01-2013 dated March 26, 2013 that re-organized the three (3) divisions of the Court of Tax Appeals.

Petitioner filed its Pre-Trial Brief[21] on April 15, 2013; while respondent filed his Pre-Trial Brief[22] on May 31, 2013.

On June 5, 2013, the Court again issued an Order[23] transferring the case to the Third Division, pursuant to Section 5 of Rule V of the Internal Rules of the Court of Tax Appeals.

The pre-trial conference was held on July 18, 2013.[24]

On August 2, 2013, the parties filed their Joint Stipulation of Facts and Issues[25], which was adopted by the Court in its Pre-Trial Order[26] dated August 23, 2013.

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[17] Docket, pp. 201-207.
[18] Docket, p. 198.
[19] Docket, pp. 190-196.
[20] Docket, p. 432.
[21] Docket, pp. 419-430.
[22] Docket, pp. 443-446.
[23] Docket, p. 481.
[24] Minutes of the Hearing dated July 18, 2013, docket, p. 485.
[25] Docket, pp. 488-491.
[26] Docket, pp. 498-505.

During trial, petitioner presented the following witnesses: (1) Ms. Maricar L. Supan,[27] petitioner's Accounting Supervisor; (2) Ms. Marie Ann A. Bejare,[28] petitioner's Accounting Assistant; (3) Mr. Gilbert S. Tan,[29] petitioner's Corporate Secretary; and (4) Ms. Idessa Fiona A. Marohom,[30] Tax Specialist of Ford Group Philippines, Inc. (FGPI). It formally offered its documentary evidence on April 11, 2014.[31]

The Court issued a Resolution[32] on May 30, 2014, admitting, as petitioner's evidence, Exhibits "P-1", "P-2", "P-3 and submarkings", "P-5", "P-6", "P-7", "P-8 and submarkings", "P-9", "P-10 and submarkings", "P-12", "P-14", "P-17" to "P-17-b", "P-18 series (P-18 to P-18-d)", "P-18 series (P-19 to P-19-e)", "P-20" to "P-20-a", "P-21" to "P-21-b", "P-23", "P-24 series (P-24 to P-24-z)", "P-25", "P-25-a", "P-27 and submarkings", "P-28 and submarkings", "P-29 and submarkings", and "P-30". In a Resolution dated April 7, 2015, the Court further admitted Exhibits "P-4 series", "P-11 series (P-11 to P-11-n)", "P-13", "P-15", "P-16", "P-22", "P-22-a", "P-22-b", and "P-22-c".

Respondent presented BIR Group Supervisor Victoria L. Evangelista[33] and Revenue Officer Florencia S. Brocka[34] as his witnesses. He filed his Formal Offer of Evidence[35] on July 24, 2015.

On September 9, 2015, the Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-4-A", "R-5", "R-6", "R-7", "R-8", "R-8-A", "R-9", "R-10", "R-10-A", "R-11", and "R-11-A" as respondent's evidence.[36]

As directed by the Court, petitioner filed its Memorandum[37] on October 15, 2015. Meanwhile, respondent failed to file a Memorandum.[38] Hence, the case was declared submitted for decision on January 6, 2016.[39]

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[27] Minutes of the Hearing dated August 22, 2013, docket, p. 496.
[28] Minutes of the Hearing dated September 19, 2013, docket, p. 506.
[29] Minutes of the Hearing dated October 17, 2013, docket, p. 510.
[30] Minutes of the Hearing dated February 20, 2014, docket, p. 849; dated March 27, 2014, docket, p. 852.
[31] Formal Offer of Documentary Exhibits, docket, pp. 856-872.
[32] Docket, pp. 1250-1251.
[33] Minutes of the Hearing dated May 19, 2015, docket, p. 1374.
[34] Minutes of the Hearing dated June 29, 2015, docket, p. 1387.
[35] Docket, pp. 1429-1433.
[36] Resolution, docket, p. 1469.
[37] Docket, pp. 1484-1522.
[38] Records Verification Report of the CTA Judicial Records Division dated December 17, 2015, docket, p. 1527.
[39] Resolution, docket, p. 1529.

THE ISSUES

The parties submitted the following issues[40] for this Court's disposition:

1. Whether or not the assessment for deficiency income tax in the amount of One Hundred Sixty Five Thousand Four Hundred Seventy Two and 01/100 Pesos (₱165,472.01), inclusive of interest, is bereft of any factual and legal basis.

2. Whether or not the assessment of deficiency VAT in the amount of One Million Two Hundred Five Thousand Five Hundred Fifty Five and 63/100 Pesos (₱1,205,555.63), inclusive of interest is baseless and unfounded and whether or not the assessment of deficiency withholding tax on compensation is without factual and legal basis as Petitioner's minimum wage earners are not subject to income tax, and consequently, to withholding tax on compensation.

Petitioner's Arguments

Petitioner claims that the alleged assessment for deficiency income tax against petitioner in the amount of ₱165,472.01, inclusive of interest, is bereft of factual and legal bases.[41] It avers that the imposition of deficiency income tax on the alleged additional taxable sales of petitioner on account of the discrepancy of ₱5,068,152.52 between the purchases of petitioner from FGPI per summary list of purchases vis-à-vis third-party information has no basis in fact and in law and is based on mere inferences and assumptions and is not supported by clear and convincing proof.[42] Moreover, it contends that the imposition of deficiency income tax on the alleged unaccounted source of cash in the amount of ₱23,123.55 is unsupported by clear and convincing evidence, considering that the assessment is the result of making a rudimentary comparison of figures in petitioner's financial statements vis-à-vis its alphalists and returns, without clearly establishing that petitioner has unreported income.[43]

Petitioner also claims that the imposition of VAT on the alleged additional taxable sales on account of the discrepancy of ₱5,068,152.52 in the purchases of petitioner from FGPI as per summary list of purchases vis-à-vis as per third-party information is based on mere inferences and assumptions and is

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[40] Statement of Issues, JSFI, docket, p. 489.
[41] Memorandum, docket, p. 1491.
[42] Memorandum, docket, p. 1492.
[43] Memorandum, docket, p. 1503.

unsupported by clear and convincing proof.[44] It further asserts that the imposition of VAT on its miscellaneous income of ₱944,090.00 is without basis as it already included said amount in its third (3rd) quarter VAT Return and paid the corresponding VAT thereon.[45] Finally, petitioner argues that the imposition of deficiency WTC has no factual and legal bases as Minimum Wage Earners (MWEs) are not subject to income tax, and consequently, not subject to WTC.[46]

Respondent's Arguments

Respondent, on the other hand, maintains that all presumptions are in favor of the correctness of the assessment and that in the absence of proof of any irregularity in the performance of duties, an assessment duly made by a BIR examiner and approved by his superior officers will not be disturbed.[47] He contends that the assessment was already made and it is upon petitioner to prove that such assessment was made on mere assumptions.[48]

With regard to petitioner's allegation that the employees listed under Schedules 7.1 and 7.2 are Minimum Wage Earners and are not subject to income tax, and subsequently to withholding tax on its compensation income, respondent posits that such is bereft of merit.[49] Respondent further elaborates that tax exemptions are to be construed *strictissimi juris* against the entity claiming the same.[50]

THE RULING OF THE COURT

Jurisdiction of the Court of Tax Appeals

The Court of Tax Appeals is a court of special or limited jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[51] The jurisdiction of the CTA is conferred by Republic Act (RA) No. 1125, as amended by RA No. 9282. The pertinent provision is quoted hereunder for ready reference:

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[44] Memorandum, docket, pp. 1508-1509.
[45] Memorandum, docket, pp. 1510-1512.
[46] Memorandum, docket, pp. 1513-1519.
[47] Par. 4, Special and Affirmative Defenses, Answer, docket, p. 187.
[48] Par. 5, Special and Affirmative Defenses, Answer, docket, p. 187.
[49] Par. 6, Special and Affirmative Defenses, Answer, docket, p. 187.
[50] Par. 7, Special and Affirmative Defenses, Answer, docket, p. 187.
[51] *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010; *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 717 (CTA Case No. 7876), April 17, 2012; *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, Resolution dated April 24, 2007.

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> > (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
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> x x x

A taxpayer aggrieved by an assessment must administratively file a valid protest by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt thereof, and submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest. Otherwise, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the CIR or his duly authorized representative, or is not acted upon within one hundred eighty (180) days from date of submission of the required documents, the taxpayer may appeal before the Court within thirty (30) days from date of receipt of the said decision or from the lapse of the said 180-day period, as the case may be.

In the instant case, the records show that the subject assessments were received by petitioner on March 26, 2012. Petitioner had until April 25, 2012 within which to file its administrative protest. On April 4, 2012, petitioner filed its protest. Hence, the administrative protest was timely filed, and the assessments duly disputed.

On November 16, 2012, petitioner received the assailed FDDA. Thirty days therefrom is December 16, 2012, which fell on a Sunday. Hence, petitioner's judicial claim was timely filed on December 17, 2012.

Imposition of Deficiency Income Tax, VAT, and Withholding Tax on Compensation

I. Deficiency Income Tax – ₱165,472.01

Petitioner was assessed by respondent of deficiency income tax for taxable year 2008 in the amount of ₱165,472.01, computed as follows:[52]

Taxable Income per Income Tax Return (ITR)		₱2,503,844.00
Add: Adjustments per investigation		
Additional taxable income	₱282,515.26	
Unaccounted source of cash	23,123.55	305,638.81
Taxable income per investigation		2,809,482.81
Income tax due thereon		983,318.98
Less: Allowed tax credits/payments		
Prior year's excess tax credits	747,461.00	
Creditable withholding tax	421,436.00	
Payments	-	
Total	1,168,897.00	
Less: Excess tax credits to be carried over to next period	₱292,551.60	876,345.40
Deficiency Income Tax		106,973.58
Add: 20% Interest p.a. (4.16.09 to 1.9.12)		58,498.43
TOTAL AMOUNT DUE		**₱165,472.01**

The deficiency income tax assessment of respondent is hinged on the following:

a. Additional taxable income	₱282,515.26
b. Unaccounted source of cash	₱ 23,123.55
c. Excess tax credits to be carried over to next period	₱292,551.60

a. Additional taxable income

In the verification of the Reconciliation of Listing for Enforcement System (RELIEF) – Summary List of Sales and Purchases (SLSP) Data submitted by FGPI to the BIR, respondent found a discrepancy of ₱5,068,152.52 on petitioner's purchases from FGPI, hence, assessed the corresponding deficiency income tax in the amount of ₱282,515.26, pursuant to Sections 31 and 32 of the NIRC of 1997, as amended, to wit:[53]

[52] Exhibit "P-4".
[53] Exhibit "P-4-a".

Purchases per third-party information - Ford Group Philippines, Inc.	₱324,092,344.43
Purchases from Ford per schedule of purchases	319,024,191.91
Discrepancy in purchases	5,068,152.52
Divided by cost of goods sold rate (₱338,768,673.00/₱357,655,069.00)	94.72%
Additional taxable sales	5,350,667.78
Multiply by gross profit rate (₱18,886,396.00/₱357,655,069.00)	5.28%
Additional taxable income	**₱ 282,515.26**

Petitioner asserts that these findings of respondent are erroneous and not supported by any factual or legal basis. Petitioner claims that it reported all of its purchases from FGPI in its Summary List of Purchases attached to its VAT Returns for taxable year 2008 in the total amount of ₱335,646,484.14. The amount of ₱319,024,191.91 alleged by respondent as its purchases from FGPI pertains only to its vehicle purchases and does not include purchases of vehicle parts.

The Court finds for petitioner.

Based on the Details of Discrepancy, the amount of ₱5,068,152.52 was arrived at by comparing petitioner's schedule of purchases from FGPI as against third-party information generated by respondent through its RELIEF system based on the data submitted by the third-party, FGPI.

However, a perusal of the said third-party information, particularly, the Summary List of Sales (SLS)[54] of FGPI to petitioner, reveals that the total sales of the former to the latter is ₱334,764,228.76 and not ₱324,092,344.43, as found by the BIR. Records also show that the purchases from FGPI, in the amount of ₱319,024,191.91,[55] that was used by respondent in the comparison, pertain only to petitioner's purchases of unit vehicle and did not include purchases of vehicle parts and accessories from FGPI. This amount approximates (and is even higher than) petitioner's vehicle purchases per record of FGPI in the amount of ₱319,015,294.65, as confirmed by Ms. Idessa Fiona A. Marohom, FGPI's Tax Specialist, in her Judicial Affidavit[56], to wit:

> 6. **Q**: For the period 1 January 2008 to 31 December 2008, what was the total amount of Mazda vehicle purchases of Mt. Blanc Motors, Inc. from Ford Group Philippines, Inc.?

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[54] Exhibit "R-9".
[55] BIR Records, pp. 327-370, 502-527, and 533.
[56] Exhibit "P-29".

> **A**: Per our records, the total Mazda vehicle purchases of Mt. Blanc Motors, Inc. for the period 1 January 2008 to 31 December 2008 was ₱319,015,294.65, exclusive of value-added tax.
>
> xxx xxx xxx
>
> 9. **Q**: What do you mean by total vehicle purchases?
>
> **A**: This means the total number of Mazda vehicles purchased by Mt. Blanc Motors, Inc. from Ford Group Philippines, Inc., excluding vehicle parts and accessories.

On the other hand, the Summary List of Purchases (SLP)[57] reveals that petitioner's total amount of purchases from FGPI is ₱335,646,484.09, broken down as follows:

Period	**Purchases from FGPI**
January	₱ 24,396,635.62
February	36,669,689.58
March	29,011,147.15
April	34,258,934.82
May	32,251,396.69
June	32,184,059.22
July	32,678,959.98
August	19,040,573.38
September	32,237,861.38
October	21,161,456.60
November	21,712,744.83
December	20,043,024.84
Total	**₱335,646,484.09**

Considering that petitioner's total amount of purchases from FGPI per SLP of ₱335,646,484.09 is more than FGPI's total sales to petitioner per SLS of ₱334,764,228.76, there is no under-declared purchase that may result in additional taxable income.

But even granting that there was under-declaration of purchase on the part of petitioner, the same is of no consequence. As held in the case of *Commissioner of Internal Revenue vs. Agrinurture, Inc.*[58], a finding of under-declaration of purchase does not by itself result in the imposition of income tax and VAT.

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[57] Exhibit "P-11".
[58] CTA EB No. 1054 (CTA Case No. 8345), January 13, 2015.

The three (3) elements in the imposition of income tax are: (1) there must be gain or profit; (2) the gain or profit is realized or received, actually or constructively; and (3) it is not exempted by law or treaty from income tax.[59] Income tax is assessed on income received from any property, activity or service that produced the income.[60]

Hence, it is not when there is an under-declared purchase, but only when there is an income, and such income was received or realized by the taxpayer, that an imposition or assessment of income tax is proper.

In this case, said elements are not present. Respondent merely presumed that the alleged discrepancy/under-declared purchase constitutes an undeclared income. Hence, respondent's assessment was not based on undeclared income actually received by petitioner.

Moreover, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[61] Hence, even granting that there is an undeclared purchase, the same is not prohibited by law.

Therefore, respondent's deficiency income tax on the alleged additional taxable income of ₱282,515.26 should be cancelled.

b. Unaccounted source of cash

Respondent's verification disclosed that petitioner's Purchases, Salaries and Wages, and other benefits were not fully reported in its Financial Statements (FS) and Income Tax Return (ITR). Citing *Perez vs. The Court of Tax Appeals, et al.*[62], respondent concluded that the discrepancy, as determined below, was considered as unaccounted source of cash, and that part of its income has not been declared:[63]

Unaccounted source of cash from analysis of purchases:			
Purchases per alphalist:			

[59] *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[60] *Supra.*
[61] *The Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.*, G.R. Nos. L-19727 and L-19903, May 20, 1965.
[62] G.R. No. L-10507, May 30, 1958.
[63] Exhibit "P-4-a".

Purchases of goods		₱340,802,398.93	
Purchases of services		7,594,355.00	
Rent		2,758,112.67	₱ 351,154,866.60
Purchases per F/S:			
Units		₱318,941,508.95	
Parts		19,421,594.51	
Office equipment, furniture and fixtures		99,575.00	
Transportation and equipment		1,777,527.00	
Service tools and equipment		55,114.00	
Shop supplies		33,713.00	
Office supplies		174,073.00	
Repairs and maintenance-materials		299,294.00	
Sub-con (outside services)		3,369,311.00	
Security and janitorial		290,935.06	
Light, power and water		778,093.00	
Communication		521,681.00	
Insurance		100,163.00	
Advertising and promotion		39,682.00	
Transportation and travel		35,156.50	
Employee benefits		31,019.00	
Financing charges		1,009,699.00	
Interest		1,124,165.00	
Repairs and maintenance–labor		206,824.00	
Bank charges		40,628.25	
Miscellaneous		32,500.00	
Rent		2,753,626.00	₱ 351,135,882.27
Total			₱ 18,984.33
	Per Alphalist	**Per FS/ITR**	
Unaccounted source of cash from analysis of salaries, wages and other benefits:			
Schedule 7.1-Terminated before yearend			
Salaries and other forms of compensation	₱ 810,347.22		
13th month pay and other bonuses	70,664.73		
SSS, GSIS, PHIC and PAG-IBIG Contribution and Dues	52,015.60		
Schedule 7.2-Exempt from withholding			
Salaries and other forms of compensation	2,379,462.99		
13th month pay and other bonuses	210,075.03		
SSS, GSIS, PHIC and PAG-IBIG Contribution and Dues	147,703.80		
De minimis			
Schedule 7.3-No previous employer			
Salaries and other forms of compensation	1,009,027.30		
13th month pay and other bonuses	89,016.95		
SSS, GSIS, PHIC and PAG-IBIG Contribution and Dues	56,792.40		
Salaries, wages and benefits-Cost of services		₱ 1,573,908.00	
Salaries, wages and benefits-Operating expenses		3,682,050.00	
Total		5,255,958.00	
Less: Employer share-SSS Contribution		333,463.70	
Employer share-PHIC Contribution		55,037.50	

Employer share-Pag-ibig Contribution		46,490.00	
Total	₱ 4,825,106.02	₱ 4,820,966.80	₱ 4,139.22
Unaccounted source of cash			**₱ 23,123.55**

Petitioner posits that the assessment of deficiency income tax on account of the alleged unaccounted source of cash is unsupported by any clear and convincing evidence, considering that the assessment is the result of simply making a rudimentary comparison of figures in petitioner's FS vis-à-vis petitioner's alphalists and returns, without clearly establishing that petitioner has unreported income.

Petitioner further asserts that respondent's witness, Revenue Officer Florencia Brocka, during her cross-examination, confirmed respondent's position that since the amount of expenses reported in petitioner's Income Tax Return and Audited Financial Statements is lower than the amount of expenses reported in the alphalist subjected to withholding tax, she concluded that there is a corresponding under- declaration by petitioner of income subject to tax.

The Court finds the assessment unmeritorious.

Respondent compared petitioner's income payments, as reported in its alphalist, with its expenses, as reported in its ITR and FS. He found that the former was greater than the latter by ₱23,123.55. Based on this difference, respondent concluded that, since there are undeclared expenses, there must be an unaccounted source of cash or undeclared income in the same amount. Consequently, he assessed petitioner for the said amount.

Respondent's conclusion is untenable. Apart from the comparison of the alphalist with the ITR and FS, respondent has no other basis to support his conclusion that petitioner has an unaccounted source of cash or undeclared income in the amount of ₱23,123.55. Indeed, the amount claimed by respondent as petitioner's undeclared income would be offset by deducting the same amount, as it corresponds to income payments reflected in the alphalist. This results in no taxable income.

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[64]

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[64] *Collector of Internal Revenue vs. Benipayo*, G.R. No. L-13656, January 31, 1962.

For lack of factual basis, the deficiency income tax assessment arising from petitioner's alleged undeclared income from unaccounted source of cash of ₱23,123.55 should be cancelled.

c. Excess tax credits to be carried over to next period

Respondent disallowed the excess tax credits of ₱292,551.60 reflected in petitioner's 2008 Annual ITR. Respondent, however, did not explain the basis for the disallowance of the excess tax credit, thus, pursuant to Section 228 of the NIRC of 1997, as amended, this item of assessment shall be considered void.

Furthermore, it was improper for respondent to disallow the said 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.

In fine, petitioner is not liable for any deficiency income tax.

II. Deficiency Value-added Tax – ₱1,205,555.63

Respondent assessed petitioner of deficiency VAT for taxable year 2008 in the amount of ₱1,205,555.63, inclusive of interest, computed as follows:

Taxable sales/receipts per VAT returns		₱359,449,604.90
Add: Adjustments per investigation		
Additional taxable sales	₱5,350,667.78	
Unaccounted source of cash	23,123.55	
Miscellaneous income not subjected to VAT	944,090.00	6,317,881.33
Taxable sales/receipts per investigation		365,767,486.23
Output tax due thereon		43,892,098.35
Less: Allowed tax credits/payments		
Input tax-current purchases	41,714,579.66	
Payments	1,531,076.73	
Total	43,245,656.39	
Less: Deferred input tax on purchase of capital goods exceeding ₱1M	₱ 111,703.81	43,133,952.58
Deficiency Value-added Tax		758,145.77
Add: 20% interest p.a. (1.27.09 to 1.9.12)		447,409.86
TOTAL AMOUNT DUE		**₱1,205,555.63**

The deficiency VAT assessment is comprised of the following:

a. Additional taxable sales	₱5,350,667.78
b. Unaccounted source of cash	23,123.55
c. Miscellaneous Income not subjected to VAT	₱ 292,551.60

a. Additional taxable sales

As previously discussed under the deficiency income tax, respondent's verification disclosed a discrepancy of ₱5,068,152.52 on petitioner's purchases from FGPI. Additional taxable sales of ₱5,350,667.78 was attributed thereto, as determined below, and was assessed of the corresponding VAT pursuant to Sections 106 and 108 of the NIRC of 1997:

Discrepancy in purchases	₱ 5,068,152.52
Divided by cost of goods sold rate	94.72%
Additional taxable sales	**₱5,350,667.78**

It must be pointed out that under Section 106(A) of the NIRC of 1997, as amended, VAT is assessed on the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged and is to be paid by the seller or transferor. Relative thereto, the law defines "gross selling price" as –

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

What is critical to be shown in the imposition or assessment of VAT in the sale of goods or properties is that the taxpayer is paid or ought to be paid in an amount of money or its equivalent, in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. Simply put, the VAT is imposed when one sells, not when one purchases.

Thus, considering that petitioner had no undeclared sales, the imputed deficiency VAT thereon should be cancelled.

b. Unaccounted source of cash

This assessment was based on the same finding under the deficiency income tax assessment that, since there were expenses per petitioner's alphalist, the sources of which were not accounted for in its ITR/FS, it had earned income which it failed to declare.

As discussed above, the assessment is bereft of merit as it was based merely on respondent's inference that the difference between the expenses reflected per petitioner's alphalist vis-à-vis the amounts reported in its ITR and FS represents petitioner's alleged undeclared income.

Even if these alleged unaccounted expenses/costs are to be treated as unaccounted sources of income, which are subject to output VAT, the same will be offset by recording the equivalent payments as expenses or purchases from which input tax credits may be claimed. Hence, no additional VAT will result from the said transactions.

c. Miscellaneous Income not subjected to VAT

Respondent points out that petitioner's Miscellaneous Income of ₱944,090.00 was not subjected to 12% VAT, therefore assessed pursuant to Section 106 of the NIRC of 1997, as amended.

Petitioner contends that its Miscellaneous Income was already included in its third quarter VAT Return and the corresponding VAT was paid thereon.

In support of its contention, petitioner submitted its VAT Return for the month of July 2008[65]. Based on the said return, petitioner reported gross sales/receipts of ₱30,305,280.06 with the corresponding output VAT of ₱3,636,633.61. The details of which were presented by petitioner as follows:[66]

Description	Sales	Output VAT
Unit-Goods	₱ 24,309,607.21	₱ 2,917,152.87
Parts-Goods	256,083.33	30,730.00
CRB-services	5,739,589.52	688,750.74
Total	**₱30,305,280.06**	**₱3,636,633.61**

[65] Exhibit "P-15".
[66] Exhibit "P-16".

Petitioner traced the above amounts of output VAT to the amounts posted in its General Ledger (GL) and in its Books for the month of July, as follows:

Particulars	Output Tax	
	Per GL[67]	Per Books[68]
Cash Receipts Book Book	₱ 347,814.33	₱ 347,814.33
Cash Receipts Book-Service	340,936.41	340,936.41
Sales Book-Units/Vehicles	2,917,152.87	2,917,152.87
Sales Book-Parts	30,729.97	30,729.97
Total	**₱3,636,633.58**	**₱3,636,633.58**

A perusal of the Cash Receipts Book (CRB) of petitioner reveals that a portion of the output VAT of ₱347,814.33 arose from items of "Other Income". The composition of the ₱347,814.33 output VAT and the related sales is presented hereunder:[69]

Account Title	Sales Amount	Output VAT
Accounts Receivable-service (net of deferred output tax payable)	₱ 807,241.15	₱ 96,868.94
Accounts Receivable-service (net of deferred output tax payable)	796,189.88	95,542.79
Other Income	68,941.89	8,273.03
Other Income	685,586.76	82,270.41
Other Income	205,579.08	24,669.49
Other Income	334,913.92	40,189.67
Total	**₱2,898,452.68**	**₱347,814.33**

Petitioner notes that every entry for "Other Income" account has a corresponding output VAT payable, hence, the "Other Income", which is reported as Miscellaneous Income in its Annual ITR is consistently being subjected to VAT.

The Court is not convinced.

The fact that petitioner filed and paid the corresponding output tax of ₱3,636,633.61 on the reported gross sales/receipts of ₱30,305,280.06 for the month of July 2008 is not disputed. What is put to issue is whether the subject Miscellaneous Income of ₱944,090.00 already forms part of the gross sales/receipts of ₱30,305,280.06, the corresponding output VAT of which

[67] Exhibit "P-17-a".
[68] Exhibits "P-18 series (P-18 to P-18-d)" to "P-21-b".
[69] Exhibit "P-18-b".

amounts to ₱3,636,633.61. Worthy of emphasis is that the Other Income, which includes Miscellaneous Income of ₱944,090.00, per petitioner's Audited FS, disclosed a total amount of ₱1,163,897.00[70]; while the Other Income per petitioner's CRB totaled ₱1,295,021.65,[71] which it asserts to be properly subjected to VAT.

Considering that Other Income per Audited FS differs from the Other Income per CRB, it cannot be determined with certainty whether the Miscellaneous Income of ₱944,090.00 forms part of the Other Income per CRB. Since petitioner is implying that the subject Miscellaneous Income of ₱944,090.00 is included in the Other Income of ₱1,295,021.65, it is incumbent upon petitioner to prove the same. Inasmuch as petitioner failed to clearly establish its claim, findings of respondent shall be sustained.

It bears stressing that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[72]

In sum, petitioner is liable to pay the basic deficiency VAT of ₱113,290.81, computed as follows:

Taxable sales/receipts per VAT returns		₱359,449,604.90
Add: Miscellaneous income not subjected to VAT		944,090.00
Adjusted Taxable sales/receipts		360,393,694.90
Output tax due (₱360,393,694.90 x 12%)		43,247,243.39
Less: Allowed tax credits/payments		
Input tax-current purchases	₱41,714,579.66	
Payments	1,531,076.73	
Total	43,245,656.39	
Less: Deferred input tax on purchase of capital goods exceeding ₱1M	₱ 111,703.81	43,133,952.58
Deficiency Value-added Tax		**₱ 113,290.81**

III. Deficiency Withholding Tax on Compensation – ₱178,576.19

Respondent's verification allegedly disclosed that the withholding tax on compensation was not fully withheld and remitted by petitioner, hence, assessed pursuant to Sections 251 and 255 of the NIRC of 1997, as amended, and

[70] Exhibit "P-13", Note 11 of the Notes to Financial Statements.
[71] Total of ₱68,941.89, ₱685,586.76, ₱205,579.08, and ₱334,913.92.
[72] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

Revenue Regulations (RR) No. 2-98, as amended. The deficiency WTC of ₱111,878.32 was computed as follows:

Withholding tax due per Alphalist:		
Schedule 7.1 (Terminated before December 31)	₱39,512.92	
Schedule 7.2 (Compensation income are exempt from withholding tax but subject to income tax)	72,365.40	
Schedule 7.3 (With no previous employer within the year)	72,055.92	₱ 183,934.24
Less: Allowance tax credits/payments:		
Payments	31,002.56	
Prior year adjustment carried over this period	42,462.45	
Total	73,465.01	
Less: Adjustment this period to be carried over to next period	₱ 1,409.09	72,055.92
Deficiency withholding tax due on compensation		**₱111,878.32**

Petitioner posits that it correctly withheld taxes of ₱72,055.92 on salaries paid to employees enumerated under Schedule 7.3 as proven by its Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF)[73]. However, the amounts in Schedules 7.1 and 7.2 allegedly pertain to salary payments made to Minimum Wage Earners (MWEs), and considering that the salaries of these MWEs do not exceed the threshold amount of ₱30,000.00 pursuant to RR No. 10-08, petitioner rightfully did not withhold taxes from the said salary payments to MWEs.

Section 1 of RA No. 9504[74], which amended the pertinent provision of Section 22 of the NIRC of 1997, defines an MWE in this manner:

> SEC. 22. *Definitions.* – When used in this Title:
>
> xxx xxx xxx
>
> (HH) the term 'minimum wage earner' shall refer to a worker in the private sector paid the statutory minimum wage, or to an employee in the public sector with compensation income of not more than the statutory minimum wage in the non-agricultural sector where he/she is assigned.

Section 2.78.1 of RR No. 2-98, as amended by RR No. 10-08, which implements the above statutory provision, provides for exemption with respect to withholding tax on compensation income of MWEs, to wit:

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[73] Exhibit "P-22"; ₱72,055.92 = ₱78,224.98 (taxes withheld) less ₱6,169.06 (adjustment).

[74] An Act Amending Sections 22, 24, 34, 35, 51 and 79 of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue of 1997 (June 17, 2008).

> Sec. 2.78.1. *Withholding of Income Tax on Compensation Income.* –
>
> xxx xxx xxx
>
> (B) *Exemptions from Withholding Tax on Compensation.* – The following income payments are exempted from the requirements of withholding tax on compensation:
>
> xxx xxx xxx
>
> (13) Compensation income of MWEs who work in the private sector and being paid the Statutory Minimum Wage (SMW), as fixed by Regional Tripartite Wage and Productivity Commission (RTWPB)/National Wages and Productivity Commission (NWPC), applicable to the place where he/she is assigned.
>
> The aforesaid income shall likewise be exempted from income tax.
>
> xxx xxx xxx
>
> Holiday pay, overtime pay, night shift differential pay and hazard pay earned by the aforementioned MWE shall likewise be covered by the above exemption. Provided, however, that an employee who receives/earns additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of ₱30,000.00, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, hazard pay and night shift differential pay shall not enjoy the privilege of being a MWE and, therefore, his/her entire earnings are not exempt from income tax and, consequently, from withholding tax.

Based on the foregoing provisions, petitioner posits that basic pay, holiday pay, overtime pay, night shift differential pay, hazard pay, and other benefits that do not exceed the ₱30,000.00 threshold earned by its employees are not subject to income tax, and consequently, withholding tax on compensation.

To prove that the employees listed under Schedules 7.1 and 7.2 are MWEs, petitioner submitted a Schedule of Salary Payments made to MWEs (Alphalist of MWEs)[75] and copies of its Employment Contracts[76] of said MWEs.

An examination of the Alphalist of MWEs shows that the employees listed therein are the same employees included in Schedules 7.1 or 7.2, which petitioner claims to be exempt from withholding. Also, the said Alphalist of MWEs reveals the amounts of 13th Month Pay and Other Benefits, Deductions (SSS, GSIS, PHIC, Pag-ibig and Union Dues), and Salaries and Other Forms of Compensation of each of the alleged MWEs for the whole year 2008. However, petitioner failed to present the details or composition of the "Salaries and Other Forms of Compensation" received by its employees.

It may be recalled that pursuant to Section 2.78.1(B)(13) of RR No. 2-98, as amended by RR No. 10-08, an employee who receives/earns additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of ₱30,000.00, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, hazard pay, and night shift differential pay shall not enjoy the privilege of being a MWE and, therefore, his/her entire earnings are not exempt from income tax and, consequently, from withholding tax. Hence, without showing the details of the "Salaries and Other Forms of Compensation" earned by its employees, the Court cannot ascertain whether the same includes other forms of compensation which may affect the enjoyment of the privilege of being a MWE as far as the exemption from withholding tax is concerned.

Meanwhile, in computing the deficiency withholding tax, respondent disallowed the adjustment to be carried over to next period in the amount of ₱1,409.09. The Court finds it improper for respondent to disallow the subject amount since any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2009.

Therefore, petitioner is still liable to pay deficiency withholding tax on compensation in the amount of ₱110,469.23, computed as follows:

Withholding tax due per Alphalist:		
Schedule 7.1 (Terminated before December 31)	₱39,512.92	
Schedule 7.2 (Compensation income are exempt from withholding tax but subject to income tax)	72,365.40	
Schedule 7.3 (With no previous employer within the year)	72,055.92	₱ 183,934.24
Less: Allowance tax credits/payments:		
Payments	31,002.56	

[75] Exhibit "P-23".
[76] Exhibits "P-24" to "P-24-z".

Prior year adjustment carried over this period	₱42,462.45	73,465.01
Deficiency withholding tax on compensation		**₱110,469.23**

WHEREFORE, premises considered, the instant Petition for Review filed by Mt. Blanc Motors, Inc. is **PARTIALLY GRANTED**. The assessment covering the alleged deficiency income tax for taxable year 2008 in the amount of ₱165,472.01, inclusive of interest, is **CANCELLED AND WITHDRAWN**. However, the assessments for deficiency VAT and withholding tax on compensation for taxable year 2008 shall be **UPHELD** but in the reduced amount of ₱279,700.05, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended. Accordingly, petitioner is **ORDERED TO PAY** the amount of ₱279,700.05, inclusive of surcharge, computed as follows:

Type of Tax	Basic	25% Surcharge	Total
Value-added Tax	₱ 113,290.81	₱ 28,322.70	₱ 141,613.51
Withholding Tax on Compensation	110,469.23	27,617.31	138,086.54
Total Deficiency Taxes	**₱223,760.04**	**₱55,940.01**	**₱279,700.05**

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

(a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱113,290.81 and on the basic deficiency withholding tax on compensation of ₱110,469.23, computed from January 25, 2009 and January 13, 2009, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) delinquency interest at the rate of 20% per annum on the total amount of ₱279,700.05, and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from November 16, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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