Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

ACE/SAATCHI & SAATCHI ADVERTISING, INC.,
Petitioner,

-versus-

THE HON. COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8439
For*:* Assessment

Members:

DEL ROSARIO, *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
APR 30 2015 ; 11:00 a.m.

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition For Review filed by Ace/Saatchi & Saatchi Advertising, Inc., as petitioner, against the Honorable Commissioner of Internal Revenue (CIR), as respondent, with the Court in Division, pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2].

1 Sec. 7. *Jurisdiction.* –The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(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 Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x

2 Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

Petitioner seeks the reversal and setting aside of the Final Decision on Disputed Assessment (FDDA) issued by the Commissioner of Internal Revenue, finding it liable for deficiency income tax, value-added tax (VAT), withholding tax - compensation (WTC), withholding tax - expanded (EWT), and final withholding tax (FWT) in the total amount of ₱403,438,088.46 for the taxable year 2006.

Petitioner Ace/Saatchi & Saatchi Advertising, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office located at Saatchi House, 2296 Don Chino Roces Avenue Extension, Makati City.[3]

Respondent Commissioner of Internal Revenue is the chief of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. She holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 25, 2007, respondent, through her Head Revenue Executive Assistant (HREA) Cesar Charlie C. Lim,

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> (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 Code or other laws administered by the Bureau of Internal Revenue;
> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* -

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] Par. 1, Admitted Facts, Pre-Trial Order, Docket, p. 188.

issued Letter of Authority No. 00012267[4], for the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2006 to December 31, 2006.

On December 14, 2007, respondent released a Memorandum[5] to Revenue Officers Reynoso Bravo and Daniella Gabaon referring the case of petitioner for their investigation, and petitioner was informed of the same via letter[6] dated December 21, 2007.

Subsequently, respondent issued a First Notice for Presentation and Submission of Documents and Records[7] dated October 19, 2007, as well as a Second Request for Presentation of Records[8] dated January 3, 2008. Likewise, a letter[9] dated February 1, 2008 was issued by Mitchell L. Yu, reiterating the request for petitioner to present its records.

On August 15, 2008, Romulo L. Aguila, the HREA of the Large Taxpayers Service-Regular issued a Notice of Informal Conference[10].

On October 15, 2008, Revenue Officers Reynoso Bravo, Walter Batoon, and Daniella Gabaon recommended to HREA Romulo L. Aguila the issuance of the Preliminary Assessment Notice (PAN).[11] On the same date, the latter issued the PAN[12], which petitioner received on November 7, 2008 through Leonardo C. Visto.

Petitioner protested the PAN on November 24, 2008 by filing its Position Paper[13] dated November 21, 2008.

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[4] Exhibit "A", Docket, p. 773; Exhibit "2", BIR records, p. 3.
[5] Exhibit "1", BIR records, p. 4.
[6] Exhibit "4", BIR records, p. 6.
[7] Exhibit "A-1", Docket, pp. 774-775; Exhibit "3", BIR records, pp. 1-2.
[8] Exhibit "5", BIR records, p. 7.
[9] Exhibit "A-2", Docket, pp. 776-777; Exhibit "6", BIR records, pp. 8-9.
[10] Exhibit "A-3", Docket, p. 778; Exhibit "7", BIR records, p. 283.
[11] Exhibit "8", BIR records, pp. 365-372.
[12] Exhibit "9", BIR records, pp. 400-406.
[13] Exhibit "A-4", Docket, pp 780-789.

On December 15, 2008, Revenue Officers Reynoso Bravo, Walter Batoon, and Daniella Gabaon recommended anew to HREA Romulo L. Aguila the issuance of assessment notices against petitioner for its failure to submit or present documents refuting or rebutting the findings stated in the PAN.[14]

Respondent, through HREA Romulo L. Aguila, issued the Formal Letter of Demand[15] (FLD) and the assessment notices all dated December 15, 2008,[16] assessing petitioner for alleged deficiencies in income tax, VAT, creditable withholding on VAT, WTC, EWT, FWT, and fringe benefits tax (FBT); which petitioner received on January 20, 2009.

Petitioner protested the FLD and the assessment notices through a letter[17] dated February 8, 2009 and received by respondent on February 18, 2009.

On March 5, 2009, respondent sent a Tax Verification Notice[18], which petitioner received through a certain Leonardo C. Visto on March 11, 2009.

Petitioner then filed its Supplemental Position Paper and its supporting documents on April 17, 2009 with respondent.[19]

After evaluation of petitioner's supporting documents, Revenue Officer Bravo recommended the issuance of a Final Decision on Disputed Assessment.[20]

Respondent, through Alfredo V. Misajon, OIC-Assistant Commissioner-Large Taxpayers Service, issued the FDDA[21] on January 24, 2012, upholding the deficiency tax

[14] Exhibit "10", BIR records, pp. 420-426.
[15] Exhibits "A-5" and "11", BIR records, pp. 630-636.
[16] Par. 8, Admitted Facts, Pre-Trial Order, Docket, p. 189.
[17] Exhibit "A-6", BIR records, pp. 605-618.
[18] Exhibit "12", BIR records, p. 638.
[19] Exhibit "A-7" Docket, pp. 820-825.
[20] Exhibit "A-8", Docket, pp. 826-835; Exhibit "15", BIR records, pp. 694-702.
[21] Exhibit "A-8", Docket, pp. 826-835; Exhibit "15", BIR records, pp. 694-702.

assessments against petitioner. The FDDA was received by petitioner on February 7, 2012.

On March 8, 2012[22], petitioner filed the instant Petition for Review.

However, on March 13, 2012, petitioner paid its tax liabilities, except for income tax, VAT, and final tax assessments.[23]

In her Answer[24] filed on May 3, 2012, respondent interposed the following special and affirmative defenses:

> "On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent CIR respectfully alleges as her defense that:
>
> **The Assessment on Deficiency Income Tax, Value-Added Tax, Creditable Withholding Tax, Withholding Tax on Compensation, Expanded Withholding Tax, Final Withholding Tax and Final Fringe Benefit Tax was issued in accordance with law, rules and jurisprudence.**
>
> 7. The assessment for the taxable year 2006 deficiency Income Tax, Value-Added Tax, Creditable Withholding Tax, Withholding Tax on Compensation, Expanded Withholding Tax, Final Withholding Tax and Final Fringe Benefit Tax in the aggregate amount of Four Hundred Three Million Four Hundred Thirty-Eight Thousand Eighty-Eight and 46/100 pesos (Php403,438,088.46) was issued in accordance with law, rules and jurisprudence.

[22] Docket, p. 7.
[23] Exhibit "F", Docket, pp. 891-919.
[24] Docket, pp. 118-138.

8. Under Revenue Regulations No. 12-99, a valid assessment is accomplished following the stages of Notice of Informal Conference, Preliminary Assessment Notice and Final Assessment Notice. The procedure prescribed under RR No. 12-99 have been complied with by respondent as can be deduced from the following narration of facts.

9. Foremost, petitioner acknowledged that it received the Letter of Authority No. 200700012267 dated 25 September 2007 on 22 October 2007, authorizing the revenue examiners named therein to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period January 1, 2006 to December 31, 2006.

10. Various request for presentation of records were issued and duly received by petitioner. A Notice of Informal Conference was received by petitioner on 27 August 2008 informing petitioner of its findings and giving the latter the opportunity to offer explanation, present objections and submit documentary evidence to refute the said findings.

11. The Preliminary Assessment Notice with Details of Discrepancy dated 15 October 2008 was issued to petitioner and received on 7 November 2008. Subsequently, the Formal Letter of Demand with Final Assessment Notices dated 15 December 2008 was issued to the petitioner as well.

12. On 24 January 2012, respondent issued Final Decision on Disputed Assessment with Computation of Deficiency Taxes and received by the petitioner on 7 February 2012. The details thereof is *(sic)* as follows:

INCOME TAX

Comparison between sales per re-investigation of P225,107,397.85 and Sales/Revenue subjected to income tax of P224,420,627.00 showed discrepancy of **P686,770.85**. Applying the gross profit margin ratio (GPMR) of 40.49% yielded a taxable gross profit of P278,073.52. Hence, deficiency income tax is hereby assessed pursuant to Section 32 of the National Internal-Revenue Code.

Sales per Schedule-VATABLE (VAT-SLS)	201,379,194.35	
-ZERO RATED (VAT-SLS)	39,869,791.00	
Total Sales per Schedule	241,248,985.35	
Decrease in AR-Trade (Collection)	16,141,587.50	225,107,397.85
Sales per Income Tax Return (ITR)	222,110,442.00	
Non-Operating & Taxable Other Income	2,310,185.00	224,420,627.00
Difference (unreported income)		686,770.85
Taxable Gross Profit (686,770.85 X.4049-GPM)		**278,073.52**

Comparison made between the sales (per Certificate of Withholding Tax At Source-2307) from selected company's customers amounting to Php364,292,707.10 and schedule of sales (SLS) submitted (VAT returns attachment) amounting to Php127,559,000.61 showed unreported sales/revenue of **Php236,733,706.49**. Applying the gross profit margin ratio (GPMR) of 40.49% yielded a taxable gross profit of Php95,853,477.76. Hence, deficiency income tax is assessed pursuant to Section 32 of the Tax Code.

Sales per Withholding Tax Certificates-2307	364,292,707.10
Sales per SLS	127,559,000.61
Unreported Sales (Difference)	236,733,706.49
Taxable Gross Profit (237,420,477.34 x .4049-GPM)	**95,853,477.76**

Comparison made between interest income subject to regular income tax per re-investigation of P378,144.00 and interest income subject to regular income tax rate per return of P276,094.00 showed a discrepancy of **P102,500.00**. Hence, deficiency income tax amounting **to P35,717.50** (35%) is hereby assessed pursuant to Section 32 of the National Internal Revenue Code (NIRC).

Interest income – per audited FS		917,994.00	
Interest income subjected to final tax	539,850.00		
Interest income subjected to regular income tax	276,094.00	815,944.00	
Undeclared interest income – subject to regular rate			**102,050.00**
Income Tax (35%)			**35,717.50**

Disallowance of Interest Expense amounting to **P46,203.00** to conform to Section 34(B) of the NIRC, as amended. Disallowed Salaries & Wages amounting to **P7,828,343.96** were not subjected to withholding tax on compensation and Purchases or Services amounting to **P3,943,512.01** were not subjected to expanded withholding tax for a total amount of P11,771,855.97. Hence, were disallowed for failure to withhold taxes pursuant to Section 34 (k) of the NIRC, as amended.

Non-deductible interest expense		
Interest income subjected to final tax	431,880.00	
Gross-up value (divide by 80%)	539,850.00	
Non-deductible interest expense (multiply by 42%)		226,737.00
Deducted portion	180,534.00	
Additional deduction (Disallowed)		**46,203.00**

Total Compensation subject to WHT	153,551,500.00
Less amount per alpha list	145,723,156.54
Amount not subjected to withholding tax	**7,828,343.96**

Amount subjected to 2% withholding tax-per alpha list	474,288.493.64
Amount subjected to withholding tax per 1601E	473,624,055.03
Amount not subjected to 2% withholding	664,438.61
Rentals of Personal Property Subject to 2% (BPI Leasing)	3,279,073.40
Total amount not subjected to 2% withholding	**3,943,512.01**

Claimed creditable withholding taxes (CWT) aggregating **P19,062.73** were not allowed for failure of the taxpayer to submit photocopies of certificates in violation of Section 2.58.3 of Revenue Regulations 2-98. ℓ

Creditable Tax claimed per Return (ITR)	7,791,522.00
Creditable Tax per Certificate (2307)	7,772,459.27
Difference	**19,062.73**

VALUE ADDED TAX

Rate of 10% and 12% output tax amounting to **P28,537,234.29** was imposed on the said unreported income pursuant to Sections 106 and 108 of the National Internal Revenue Code, as amended. Computation showed hereunder how we arrived at the said deficiency.

Taxable Sales per Schedule (SLS)			201,379,194.35
Unreported Sales per CWT Certificates (2307)			236,733,706.49
Non-Operating & Taxable Other Income			2,310,185.00
Total Transaction Subject to Output Tax			440,423,085.84
Output Tax for January-2006 (10%)	82,689,185.70	8,268,918.57	
Output Tax for February-December 2006 (12%)	357,733,900.14	42,928,068.02	51,196,986.59
Output Tax per VAT returns			22,659,752.30
Output Tax payable per re-investigation			**28,537,234.29**

Output Tax amounting to **P88,845,615.66** billed and collected from various agencies/customers was not reported for Value Added Tax (VAT) purposes. Hence, deficiency Value added Tax is hereby assessed pursuant to Sections 106 and 108 of the National Internal Revenue Code, as amended. -

Total Output Tax Billed and Collected			116,859,104.26
Output tax imposed on Unreported sales	236,733,706.49		
January output tax (1/12)-10%	19,727,808.87	1,972,780.89	
February –Dec. output tax (11/12) -12%	217,005,897.62	26,040,707.71	28,013,488.60
Unreported Output Tax			**88,845,615.66**

Claimed input taxes for both domestic goods and services aggregating **P507,893.26** were disallowed pursuant to Sections 110 and 113 (A) and (B) of the NIRC, as amended – Invoicing and

Accounting Requirements for VAT Registered Persons.

CREDITABLE WITHHOLDING ON VAT

Withholding tax rate of 12% on VAT amounting to **P33,467.15** were imposed on income payments made to Patrick Brett, a non-resident alien. The gross amount of P278,892.91 was subjected to creditable withholding VAT pursuant to Section 78, 79 and 80 of the National Internal Revenue Code, as amended.

Payments made to Patrick Brett		278,892.91
Basic Deficiency Tax (12%)		33,467.15
Add: Surcharge (25%)	8,366.79	
Interest (20% per annum)	34,022.70	
Compromise penalty	8,500.00	50,889.49
Total Deficiency Withholding Tax on VAT		**84,356.64**

WITHHOLDING TAX - COMPENSATION (WC)

Claimed Salaries and Wages aggregating P153,551,500.50 is **P7,828,343.96** higher than the Alpha List submitted amounting to P145,723,156.54. Discrepancy amounting to P7,828343.96 is therefore subjected to deficiency withholding tax to conform with (sic) Sections 78, 79 and 80 of the NIRC, as amended.

Total Compensation and Benefits	156,163,985.58
Less: 2006 profit sharing and bonuses payable in 2007	12,623,288.08
Total	143,540,697.50
Add: 2005 profit sharing and bonuses paid in 2006	10,010,803.00
Total Compensation subject to WHT	153,551,500.50
Amount per Alpha List	145,723,156.54
Amount not subjected to Withholding Tax	**7,828,343.96**

Comparison made between amount withheld per alphabetical list (compensation) of P37,221,406.99 versus the amount remitted per monthly remittance return (1601 C) of P37,187,282.45 showed a difference of **P34,124.54**. Said discrepancy is therefore subjected to deficiency withholding tax to conform to Sections 78, 79 and 80 of the NIRC, as amended.

Total Compensation subject to WHT	153,551,500.50	
Less amount per alpha list	145,723,156.54	
Amount not subjected to Withholding Tax	7,828,343.96	
Withholding tax due (32%)		2,505,070.07
Amount withheld per alpha list	37,221,406.45	
Amount remitted per 1601C	37,187,282.45	
Amount unremitted		34,124.54
Basic deficiency withholding tax - compensation		2,539,194.61
Add: Interest (20% per annum)	2,581,345.24	
Compromise penalty	25,000.00	2,606,345.24
Total deficiency withholding tax - compensation		**5,145,539.84**

EXPANDED WITHHOLDING TAXES (EWT)

Reconciliation made between claimed expenses (purchases of services) subject to 2% EWT versus the amount subjected to the same rate per alpha list showed a difference of P3,943,512.01. Verification also reveals that a tax amounting to P3,781,391.69 withheld from talents, suppliers and BPI Leasing were not remitted. Hence, subjected to deficiency EWT to comply with Section 57(B) of the NIRC, as amended. Computation of expanded withholding tax deficiency is shown hereunder, to wit:

Amount per 2% withholding tax-per alpha list	474,288,493.64	
Amount subjected to withholding tax per 1601E	473,624,055.03	
Amount not subjected to 2% withholding	664,438.61	
Rentals of Personal property subject to 2% (BPI Leasing)	3,279,073.40	
Total amount not subjected to 2% withholding	3,943,512.01	
Withholding tax due (2%)		78,870.24
Unremitted tax withheld from talents & suppliers	3,747,081.07	
BPI Leasing – amount withheld & unremitted	34,310.62	3,781,391.69
Basic deficiency withholding tax - expanded		3,860,261.93
Add: Interest (20% per annum)	3,924,342.28	
Compromise penalty	25,000.00	3,949,342.28
Total deficiency withholding tax - Expanded		**7,809,604.21**

FINAL WITHHOLDING TAX (FT)

Final Withholding Tax rate of 35% was applied to the payments made to Saatchi & Saatchi – London with tax exposure amounting to **P788,517.77** were imposed on the amount payable to Saatchi & Saatchi-London (as an affiliate share amounting to P2,252,907.91 on a certain income received by the company) pursuant to Section 33 (57) of the National Internal Revenue Code, as amended.

Payable to Saatchi & Saatchi - London		
JV No. 06-L0070	1,046,867.91	
JV No. 06-J0045	1,206,040.00	
Total	2,252,907.91	
Withholding tax due (final) – 35%		788,517.77
Add: Surcharge (25%)	197,129.44	
Interest (20% per annum)	801,607.16	
Compromise penalty	20,000.00	1,018,736.61
Total deficiency withholding tax - Final		**1,807,254.37**

FRINGE BENEFITS TAX (FBT)

FBT amounting to P672,597.59 were imposed on the income payments (P2,858,539.75) made to BPI Leasing (as company share on the employee's car plan) pursuant to Section 33 of the National Internal Revenue Code, as amended.

FBT-Agency Share – BPI Leasing	1,429,269.88	
Gross-Up Value	2,101,867.46	
Fringe benefits tax due (32%)		672,597.59
Add: Interest (20% per annum)	683,762.71	
Compromise penalty	20,000.00	703,762.71
Total deficiency FBT		**1,376,360.30**

Income Payment to BPI Leasing	2,858,539.75
Company Share (50%) – amount of benefits	1,429,269.88
Gross up amount (.68)	2,101,867.46
Fringe benefits Tax (32%)	672,597.59

13. Admittedly, petitioner filed a protest to the Preliminary Assessment Notice as well as to the Formal Letter of Demand with Final Assessment Notices. Hence, there is no denying that petitioner was informed of the factual and legal bases of the deficiency assessment.

14. The fact that petitioner filed protest means that it was informed of the findings of the Revenue Officer. The protest although erroneous and self-serving was accomplished with meticulous details trying in vain to overthrow the findings of underdeclaration.

15. In view of the foregoing, petitioner is liable to pay the assessed deficiency taxes. The examiner's assessment should be given full weight and credit, in the absence of proof submitted by petitioner to the contrary. This is in line with the High Court's ruling in several cases wherein the Court said that **tax assessments by tax examiners are prima facie 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.** The case of *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.*, where the Court cited 51 Am. Jur. pp. 620-621, states the principle in detail, thus:

> All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the State in the various counties who have to do with the assessment of property for taxation will

> knowingly violate the duties imposed upon them by law.

16. In another case decided by the Supreme Court, the Honorable Court espouse:

> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. **Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties.** This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC. (Emphasis supplied)

17. Unfortunately, petitioner failed to overcome the presumption of correctness of the respondent's assessment.

BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) is the best proof that the income earner is ACE/Saatchi & Saatchi £

18. Petitioner alleged that 'upon payment to ACE, the advertisers withhold creditable withholding tax on the total amount billed and not only on the commission due to ACE. But how can mere weightless words ever destroy a clear, concise and well-informed assessment. The BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) submitted by the petitioner shows that the payee is 'ACE/SAATCHI & SAATCHI ADVERTISING, INC.' Thus, it can only be concluded that the income earner is the petitioner itself.

19. The BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) as described by the Bureau of Internal Revenue, **is a certificate to be accomplished and <u>issued to recipients of income</u> subject to expanded withholding tax paid by a Payor/Withholding Agent including government money payments made by a government office showing therein the monthly breakdown of the total income payments made and the total taxes withheld and remitted during the quarter/period.**

20. It is therefore crystal clear that the payee named in the said BIR form is the recipient of the income or the income earner itself, which in the case at bar is the petitioner.

21. Other than its own bare allegations, however, petitioner offers no other proof to the effect that indeed the withholding of tax by the payor/withholding agent includes the portion corresponding to the media and production suppliers.

22. No other evidence was presented to support such allegation. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules of Court. It is a basic rule of evidence that the party making an allegation has the burden of proving it by preponderance of evidence.

23. The documents submitted by petitioner are conclusive to sustain respondent's findings that it has liability to pay the assessed deficiency taxes. Therefore, the original theory stands that the Final Assessment Notice is binding on the petitioner.

24. Again, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.

Petitioner is liable to pay VAT.

25. Petitioner is liable to pay VAT pursuant to Section 105 of the NIRC, as amended [which], provides:

> **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 valued-added tax (VAT) imposed in Sections 106 to 108 of this Code. (Emphasis supplied)

26. The phrase **'sale or exchange of services'** is defined by Section 108 of the NIRC, as amended, as **'performance of all kinds of services for others for a fee, remuneration or considerations.'** It includes 'similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.'

27. Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payment for services rendered to its affiliates or a reimbursement on-cost-basis only, without realizing profit, for purposes of determining liability for VAT or services rendered. **As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.**

28. In view of the foregoing, petitioner is liable to pay the deficiency assessment on VAT.

Petitioner as withholding agent has the legal duty to collect the tax for the government.

29. Furthermore, in the assessment for deficiency withholding tax on compensation, expanded withholding tax, fringe benefit tax and final tax, what is being sought to be collected from petitioner are penalties for failure to withhold the tax. **The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.**

30. In *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue*, this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:

> 'The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary

> income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law.'

31. Hence, petitioner as withholding agent has the legal duty to collect the tax for the government particularly the Bureau of Internal Revenue.

32. Also without merit is the contention of the petitioner that amount paid by petitioner to Saatchi London as negotiator's fees for services rendered by said company is considered income earned in London and not subject to Philippine Withholding Tax.

33. Such allegation is dearth of merit. As provided in Section 28 (B) of the NIRC, as amended – a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income and capital gains.

34. Correlatively, Section 42 (A) of the NIRC, as amended provides:

> Gross income from Sources Within the Philippines. – The following items of gross income shall be treated as gross income from sources within the Philippines:
>
> (1) Interests – x x x
> (2) Dividends – x x x

(3) Services – Compensation for labor or personal services performed in the Philippines;
(4) x x x

35. However, in a Court of Appeals case, Philam Insurance vs. CTA and CIR, CA-GR No. 31283, 25 April 1995, the Honorable Court states that **a non-resident foreign corporation is taxed on compensation derived from sources within the Philippines even if the services are performed abroad**. While it is true that a non-resident foreign corporation has no properties here in the Philippines, in entering into a management contract with a domestic corporation here in the Philippines, the non-resident foreign corporation's income from said contract is well within the ambit of Section 37(a)(7) of the 1980 Tax Code. **In our jurisprudence, the test of taxability is the 'source' and the 'source' of an income is that activity which produced the income.**

36. Petitioner's view that it is beyond the ambit of the authority of the Bureau of Internal Revenue to tax income considered earned outside the territorial limits of the Philippines must be set aside. What is important to consider is that there is an income earned and the necessary tax must be imposed thereon.

37. Accordingly, petitioner cannot claim that it is not liable to withhold taxes on the negotiator's fees because it was income derived by Saatchi London, a non-resident foreign corporation, from sources within the Philippines.

38. Following the law, rules and jurisprudence Saatchi London must pay the tax for its income earned and the petitioner must withheld the said tax as collector of the government.

39. To our mind, petitioner has not pointed out any provision or item in the assessment notice which bears a trace of falsity. Its averments were based on

conjectures, surmises and speculations. These cannot supply the basis for the charge of impropriety in the assessments made.

40. At any rate, it is worthy to stress that the power to tax, an inherent prerogative, has to be availed of to assure the performance of vital state functions. It is the source of the bulk of public funds. To paraphrase a recent decision, a tax being the lifeblood of the government, its prompt and certain availability is of the essence. The state will be deprived of the taxes validly due it and the public will suffer if taxpayers will not be held liable for the proper taxes assessed against them.

41. Well-settled is the principle that taxes are imposed for the support of the government in return for the general advantage and protection which the government affords to taxpayers and their property. Taxes are the lifeblood of the government. It is imperative that the power to impose them to be clothed with the implied authority to devise the ways and means to accomplish their collection in the most effective manner. Without this implied power the end of government may falter or fail."

Petitioner filed a Reply[25] to respondent's Answer on May 18, 2012.

Respondent's Pre-Trial Brief and the Pre-Trial Brief (For the Petitioner) were filed on June 1, 2012 and June 5, 2012, respectively.[26]

The Court issued the Pre-Trial Order[27] on July 17, 2012.

During trial, petitioner presented Felipe Barcelon, Jr., Maria Luisa M. Podador, Ma. Gigi M. Garcia, Ma. Milagros Padernal, and Ruby F. Reyes as its witnesses. On the other

[25] Docket, pp. 140-146.
[26] Docket, pp. 149-157 and 159-171, respectively.
[27] Docket, pp. 188-195.

hand, respondent presented her sole witness, Reynoso C. Bravo.

The parties formally offered their respective documentary and testimonial evidence.

Petitioner offered the following exhibits:

Exhibit	Description
A	Letter of Authority from the Bureau of Internal Revenue (BIR) dated 25 September 2007
A-1	First Notice for Presentation and Submission of Documents and Records from the BIR dated 19 October 2007
A-2	Letter from the BIR dated 01 February 2008
A-3	Notice of Informal Conference from the BIR dated 15 August 2008
A-4	ACE's Position Paper dated 21 November 2008, stamped received by the BIR on 24 November 2008
A-5	BIR Formal Letter of Demand dated 15 December 2008
A-6	ACE's Protest Letter dated 08 February 2009, stamped received on 18 February 2009
A-7	Supplemental Position Paper dated 17 April 2009, stamped received on 17 April 2009
A-8	Final Decision on Disputed Assessment dated 24 January 2012, received by ACE on 07 February 2012
B	ACE Invoice No. 06-C0283 dated 13 July 2006 for General Mills Foods, Inc.
B-1	Cutting Edge Productions, Inc. Invoice No. 0350 dated 29 June 2006
B-2	Red Eye, Inc. Invoice No. 235 dated 07 July 2006
C	Standards of Trade Practices and Conduct in the Advertising Industry of the ADBOARD. (Fourth Revision, 2006) ["ADBOARD Standards" hereafter]
C-1	Paragraph 3.10 of ADBOARD Standards (p. 20)

C-2	Definition of "Gross Amount" and "Gross Billings" (ADBOARD Standards, p. 6)
C-3	Applicability of Coverage (ADBOARD Standards, p. 2)
C-4	Definition of "Advertising Agency" or "Agency" (ADBOARD Standards, p. 3)
C-5	Definition of "Advertising Services Suppliers" (ADBOARD Standards, p. 4)
C-6	Definition of "Commissions" (ADBOARD Standards, p. 6)
C-7	Definition of "Net Amount" and "Net Billing" (ADBOARD Standards, p. 8)
C-8	Paragraph 2.9 of ADBOARD Standards (p. 16)
C-9	Paragraph 3.4 of ADBOARD Standards (p. 18)
D	ACE Invoice No. 06-B0044 dated 15 May 2006 for Boehringer Ingelheim
D-1	R.S. Video & Film Productions Sales Invoice No. 3076 dated 05 May 2006
D-2	R.S. Video & Film Productions Sales Invoice No. 3077 dated 05 May 2006
E	ACE's Audited Financial Statement for the year ended 2006
E-1	Note 21, par. B of ACE's Audited Financial Statement for the year ended 2006 (p. 22)
E-2	Note 21, par. a of ACE's Audited Financial Statement for the year ended 2006 (p. 22)
F	ACE Letter to BIR dated 13 March 2012 with eFPS payment slips stamped received by the BIR on 14 March 2012
G	Certification from Ms. Rina R. Manuel, Tax Department Head of SMART Communications, Inc. dated 23 July 2012
H	Association of Accredited Advertising Agencies – Philippines (4As) Letter to BIR Commissioner Kim S. Jacinto-Henares dated 25 May 2011
H-1	Laya Mananghaya & Co. Letter to Assistant Commissioner James Roldan dated 17 June 2005
H-2	Draft Revenue Memorandum Circular on "Clarification of Issues Affecting the Advertising Industry" attached to

	Laya Mananghaya & Co. Letter to Assistant Commissioner James Roldan dated 17 June 2005
H-3	Letter of OIC-Commissioner Internal Revenue Jose Mario C. Bunag to 4As dated 06 September 2005
H-4	4As Letter to Commissioner Bunag dated 30 August 2005, together with Minutes of Meeting of 24 August 2005, and Power Point presentation on "The Treatment of Gross Receipts and Value-Added Taxes of Advertising Agencies
H-5	Manubat San Agustin & Co. Letter to Department of Finance Secretary Margarito B. Teves dated 28 March 2008
H-6	4As Letter to BIR Law Division Chief Mapemaroma M. Cantillep dated 06 February 2009
H-7	4As Letter to BIR Commissioner Joel L. Tan-Torres dated 16 December 2009
H-8	BIR/Office of the Commissioner stamp "RECEIVED" dated 25 May 2011
I	Judicial Affidavit (Amended) of Mr. Felipe M. Barcelon, Jr., Finance Director of petitioner, dated 01 August 2012
I-1	Signature of Mr. Barcelon on his Judicial Affidavit (Amended) dated 01 August 2012
J	Judicial Affidavit of Ms. Maria Luisa M. Podador, Billing Department Head of petitioner, dated 07 September 2012
J-1	Signature of Ms. Podador on her Judicial Affidavit dated 07 September 2012
K	ACE Invoice No. 06-E0288 dated 17 April 2006 for Smart Communications
K-1	ACE Commprod Television Cost Estimate No. 06-UDD-TP-002 dated 11 April 2006
K-2	"CONFORME" of ACE Commprod Television Cost Estimate No. 06-UDD-TP-002 dated 11 April 2006, signed by a representative of Smart Communications
K-3	Production Village Corporation Invoice No. 7773 form dated 11 April 2006
L	ACE Invoice No. 06-E0343 dated 15 May 2006 for Smart Communications
L-1	Photocopy of ACE Commprod Television Cost Estimate No. 06-UDD-TP-002 dated 11 April 2006

L-2	Production Village Invoice No. 7811 dated 11 May 2006
L-3	Production Village Certification of Completion dated 03 May 2006
L-4	ACE Supplies Issue Slip dated 04 May 2006
M	ACE Invoice No. 06-E0343 dated 15 May 2006 for Smart Communications
M-1	Photocopy of ACE Commprod Television Cost Estimate No. 06-UDD-TP-002 dated 11 April 2006
M-2	ADBOARD Official Receipt No. 66924 dated 05 May 2006
M-3	ACE Check Voucher No. 0000016262 dated 05 May 2006
N	ACE Invoice No. 06-E0446 dated 13 June 2006 for Smart Communications
N-1	Photocopy of ACE Commprod Television Cost Estimate No. 06-UDD-TP-002 dated 11 April 2006
N-2	Contract for voice over talent Ms. Ma. Fe F. Ferma dated 03 May 2006
N-3	Contract for voice over talent Ms. Myleen San Pedro dated 03 May 2006
N-4	Audio Dyn FARM Productions, Inc. Sales Invoice No. 3924 dated 22 May 2006
N-5	Statement of Account by Mr. Tristan Suguitan for musical score for 'Smart "Parlor" TVC 30's' dated 25 May 2006
O	ACE Invoice No. 06-E0515 dated 05 July 2006 for Smart Communications
O-1	Photocopy of ACE Commprod Television Cost Estimate No. 06-UDD-TP-002 dated 11 April 2006
O-2	Statement of Account by Mr. Tristan Suguitan for musical score for 'Smart "Parlor" TVC 30's' dated 25 May 2006
P	ACE Invoice No. 06-E0646 dated 14 August 2006 for Smart Communications
P-1	Photocopy of ACE Commprod Television Cost Estimate No. 06-UDD-TP-002 dated 11 April 2006
P-2	ADBOARD Official Receipt No. 67190 dated 18 May 2006

Q	ACE Invoice No. 06-E0638 dated 09 August 2006 for Roche (Phils.) Inc.
R	ACE Invoice No. 06-E0758 dated 12 September 2006 for Roche (Phils.) Inc.
R-1	Television Budget Summary dated 16 June 2006
R-2	Television Cost Estimate dated 16 June 2006
R-3	GMA Network, Inc. Invoice No. C-00083125 dated 02 September 2006
R-4	GMA Network, Inc. Certificate of Performance No. C-00114004 dated 01 September 2006
S	ACE Invoice No. 06-E0759 dated 12 September 2006 for GMA Network, Inc.
S-1	Photocopy of Television Budget Summary dated 16 June 2006
S-2	Photocopy of Television Cost Estimate dated 16 June 2006
S-3	GMA Network, Inc. Invoice C-00083125A dated 02 September 2006
S-4	GMA Network, Inc. Certificate of Performance No. C-00114004 dated 01 September 2006
T	Judicial Affidavit of Ms. Ma. Gigi R. Garcia, Vice President and Client Services Director of ACE and former Director and President of the 4As (Association of Accredited Advertising Agencies of the Philippines), dated 06 September 2006
T-1	Signature of Ms. Garcia on her Judicial Affidavit dated 06 September 2006
U	Judicial Affidavit of Ms. Ma. Milagros F. Padernal dated 02 October 2012
U-1	Signature of Ms. Padernal on her Judicial Affidavit dated 02 October 2012
U-2	Resume' of Ms. Padernal containing Summary of Work Experience and List of CTA Cases Handled
V	Judicial Affidavit of Ms. Ruby F. Reyes, Treasury Cashier and former Billing Section Unit Head of GMA Network, Inc. dated 30 October 2012
V-1	GMA Network, Inc. Official Receipt dated 27 October 2006

V-2	ACE Check Voucher No. 0000017419 dated 26 October 2006 for GMA Network, Inc.
V-3	Signature of Ms. Reyes on her Judicial Affidavit dated 30 October 2012
W	Schedule of ACE Billings for 2006
W1-1 to W1-4011	ACE Billing Invoices for 2006
W2-26 to W2-3998	Media Supplier Invoices for 2006
W3-1 to W3-4009	ACE Check Vouchers for 2006
X	Schedule of ACE Billings without supporting invoices
Y	Schedule of Accruals and Adjustments
Z	Schedule of ACE Collections in Peso for 2006
AA	Schedule of ACE Collection in Dollars for 2006
BB	Schedule of ACE Receivables offset against payables
CC	Schedule of ACE Accounts Receivable At 01 January 2006
DD	Schedule of ACE Accounts Receivable At 31 December 2006
EE	BIR Receipt for Payment of Unremitted Tax on Rental and Other Payments dated 07 March 2012
FF	Certification from Ms. Rina R. Manuel, Tax Department Head of SMART Communications, Inc. dated 23 July 2012
GG	"REPORT TO THE COURT OF TAX APPEALS: ACE/SAATCHI & SAATCHI ADVERTISING, INC.: PETITION FOR REVERSAL OF DEFICIENCY TAX ASESSMENT (sic) (CTA CASE NO. 8439) For the Taxable Year Ended December 31, 2006 (Part 1 of 3)" dated 16 November 2012 [the "ICPA Report"]
GG-1	Signature of Ms. Padernal on the ICPA Report dated 16 November 2012
HH	Judicial Affidavit of Independent CPA Ms. Padernal dated 31 January 2013
HH-1	Signature of Ms. Padernal on her Judicial Affidavit dated 31 January 2013

KK	Judicial Affidavit of Mr. Felipe M. Barcelon, Jr. dated 20 February 2014
KK-1	Signature of Mr. Barcelon on his Judicial Affidavit dated 20 February 2014
LL to LL-8	ACE's Annual Income Tax Return (BIR Form No. 1702) for the year 2006, with the attached schedules, and Quarterly Income Tax Returns (BIR Form 1702Q) for the 1st to 3rd quarters of 2006

Respondent's formal offer of documentary evidence is as follows:

Exhibit	Description
1	Memorandum dated 14 December 2007 with referral No. D-07-12-07
2	Letter of Authority No. 00012267 dated 25 September 2007 issued by Cesar Charlie C. Lim, Head Revenue Executive Assistant and received by Leonardo C. Visto on 22 October 2007
3	First Notice for Presentation and Submission of Documents and Records dated 19 October 2007
4	Letter dated 21 December 2007 addressed to the President/Gen. Manager of Ace/Saatchi & Saatchi Advertising
5	Second Request for Presentation of Records dated 3 January 2008
6	Letter dated 1 February 2008 reiterating request for presentation of records issued by Mitchell L. Yu
7	Notice of Informal Conference dated 15 August 2008 issued by Romulo L. Aguila, Jr., Head Revenue Executive Assistant, Large Taxpayers Service-Regular
8	Memorandum dated 15 October 2008 by Reynoso C. Bravo, Walter A. Batoon and Daniella S. Gabaon for Romulo L. Aguila, Jr., Head Revenue Executive Assistant, Large Taxpayers Service-Regular
9	Preliminary Assessment Notice dated 15 October 2008 issued by Romulo L. Aguila, Jr., Head Revenue Executive Assistant, Large Taxpayers Service-Regular

10	Memorandum dated 15 December 2008 by Reynoso C. Bravo, Walter A. Batoon and Daniella S. Gabaon for Romulo L. Aguila, Jr., Head Revenue Executive Assistant, Large Taxpayers Service-Regular
11	Formal Letter of Demand and Assessment Notices dated 15 December 2008 issued by Romulo L. Aguila, Jr., Head Revenue Executive Assistant, Large Taxpayers Service-Regular
12	Tax Verification Notice dated 5 March 2009 issued by Romulo L. Aguila, Jr., OIC - Head Revenue Executive Assistant, Large Taxpayers Service-Regular
14	Memorandum dated 24 January 2012 by Reynoso C. Bravo for Alfredo V. Misajon, OIC-Assistant Commissioner, Large Taxpayers Service
15	Final Decision on Disputed Assessment dated 24 January 2012 issued by Alfredo V. Misajon, OIC-Assistant Commissioner, Large Taxpayers Service
16	Judicial Affidavit of Reynoso C. Bravo submitted on 7 June 2013
16-A	Signature of Reynoso C. Bravo

The case was submitted for decision on May 22, 2014,[28] considering respondent's Memorandum[29] filed on May 14, 2014 and petitioner's Memorandum[30] submitted through registered mail on May 12, 2014 and received by the Court on May 15, 2014.

The parties submitted the following issue[31] for this Court's disposition:

> **Whether or not petitioner is liable to pay deficiency assessment for income tax, value-added tax, withholding tax on compensation, expanded withholding tax, and final withholding tax for taxable year 2006.** ꞇ

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[28] Docket, p. 1575.
[29] Docket, pp. 1504-1521.
[30] Docket, pp. 1523-1572.
[31] Stipulated Issue, Pre-Trial Order, Docket, p. 190.

The Court shall determine first if it has jurisdiction over the present case.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, states:

> "SEC. 228. *Protesting 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 taxpayers 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 his 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."

Records reveal that respondent issued the Formal Letter of Demand and Assessment Notices on December 15, 2008, which petitioner received on January 20, 2009. On February 18, 2009, petitioner protested the said letter of demand and assessment notices through a letter dated February 8, 2009, and subsequently submitted its supporting documents on April 17, 2009.

On January 24, 2012, respondent issued the FDDA[32], which petitioner received on February 7, 2012. On the thirtieth day after receipt of the FDDA or on March 8, 2012[33], petitioner filed the Petition for Review. Accordingly, the Court has jurisdiction over the instant Petition for Review.

The Court shall now proceed to determine whether or not petitioner is liable to pay deficiency assessment for income tax, value-added tax, withholding tax on compensation, expanded withholding tax, and final withholding tax for the taxable year 2006.

Respondent issued the FDDA[34] on January 24, 2012, demanding payment of petitioner's deficiency taxes in the aggregate amount of ₱406,264,841.62, broken down as follows:

Income Tax	₱ 93,332,881.91
Value-added Tax	296,683,844.35
Withholding on VAT	84,356.64
Withholding - Compensation	5,145,539.84
Withholding Tax - Expanded	7,809,604.21
Withholding Tax - Final	1,807,254.37
Fringe Benefits Tax	1,376,360.30
Compromise Penalty	25,000.00
Total	**₱406,264,841.62**

c

[32] Exhibit "A-8", Docket, pp. 826-835; Exhibit "15", BIR records, pp. 694-702.
[33] Docket, p. 7.
[34] Exhibit "A-8", Docket, pp. 826-835; Exhibit "15", BIR records, pp. 694-702.

However, in a letter dated March 13, 2012, petitioner informed respondent that relative to the FDDA for the year 2006, it had made the following payments amounting to ₱2,368,539.33, as shown below:[35]

Date Paid	Tax Type	Assessment	Interest	Surcharge	Compromise Penalty	Total
3/2/2012	FBT	₱ 672,597.59	₱ 788,433.83		₱ 20,000.00	₱ 1,481,031.42
3/7/2012	VT	123,110.42	146,021.27			269,131.69
3/7/2012	CWTV	33,467.15	39,695.38	₱ 8,366.79	8,500.00	90,029.33
3/2/2012	WC	34,124.54	40,001.54			74,126.08
3/2/2012	EWT	34,310.62	40,219.67			74,530.29
3/2/2012	IT	16,171.05	18,956.06			35,127.11
3/7/2012	IT	54,780.23	64,974.83	27,390.12		147,145.18
3/7/2012	EWT	78,870.24	93,547.99			172,418.23
3/7/2012					25,000.00	25,000.00
Total		**₱1,047,431.84**	**₱1,231,850.57**	**₱35,756.91**	**₱53,500.00**	**₱2,368,539.33**

Due to the said payments, petitioner is seeking the reversal of the FDDA with respect to the alleged deficiency taxes in the amount of ₱403,438,088.46, details of which are as follows:

Income Tax	₱ 93,188,430.71
Value-added Tax	295,715,499.85
Withholding Tax – Compensation	5,145,539.84
Withholding Tax – Expanded	7,581,363.69
Final Withholding Tax	1,807,254.37
Total	**₱403,438,088.46**

Using the assessed amounts indicated in the FDDA as reference, the Court shall now discuss the validity of the assessments in the following sequence:

Deficiency Tax		Amount
I.	Withholding on VAT	₱ 84,356.64
II.	Fringe Benefits Tax	1,376,360.30
III.	Withholding Tax - Final	1,807,254.37
IV.	Withholding - Compensation	5,145,539.84

[35] Exhibit "F", Docket, pp. 891-919.

V.	Withholding Tax - Expanded	7,809,604.21
VI.	Income Tax	93,332,881.91
VII.	Value-Added Tax	296,683,844.35
VIII.	Compromise Penalty	25,000.00
Total		**₱406,264,841.62**

I. DEFICIENCY WITHHOLDING ON VAT - ₱84,356.64

Pursuant to Section 57 of the NIRC of 1997, as amended, respondent imposed twelve percent (12%) VAT on the amount of ₱278,892.91 representing income payments made by petitioner to Patrick Brett, a non-resident alien. Below is the computation of the assessment, inclusive of surcharge, interest and compromise penalty:

Payments made to Patrick Brett			₱278,892.91
Basic Deficiency Tax (12%)			33,467.15
Add:	Surcharge (25%)	₱ 8,366.79	
	Interest (20% per annum)	34,022.70	
	Compromise penalty	8,500.00	50,889.49
Total Deficiency Withholding Tax on VAT			**₱84,356.64**

Since petitioner paid the amount of ₱90,029.33 on March 7, 2012, it admitted its deficiency liability on this assessment, which comprised of the following:[36]

Basic Tax	₱ 33,467.15
Surcharge	8,366.79
Interest	39,695.39
Compromise Penalty	8,500.00
Total	**₱90,029.33**

Upon computation of the twenty-five percent (25%) surcharge and twenty percent (20%) deficiency and delinquency interests due on the basic deficiency withholding VAT of ₱33,467.15 pursuant to Sections 248(A)(3) and 249(B) and (C) of the NIRC of 1997, as amended, petitioner made an excess payment of ₱3,959.59, as computed below:

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[36] Exhibit "F", Docket, pp. 891 and 898-901.

Payments made to Patrick Brett			₱278,892.91
Basic Deficiency Tax (12%)			₱ 33,467.15
Add:	Compromise penalty	₱ 8,500.00	
	25% Surcharge	8,366.79	
	20% Deficiency Interest		
	from Jan. 10, 2007 to Feb. 7, 2012		
	(₱33,467.15 x 20% x 1854/365 days)	33,998.96	
	from Feb. 7, 2012 to March 7, 2012		
	(₱33,467.15 x 20% x 29/365 days)	531.81	
	20% Delinquency Interest from Feb. 7, 2012 to March 7, 2012		
	on basic deficiency Withholding on VAT and surcharge		
	[(₱33,467.15 + ₱8,366.79) x 20% x 29/365 days)]	664.76	
	on deficiency interest due for Jan. 10, 2007 to Feb. 7, 2012		
	(₱33,998.96 x 20% x 29/365 days)	540.26	52,602.58
Total Amount Due			₱ 86,069.73
Less:	Payment on March 7, 2012		
	Basic Tax	₱33,467.15	
	25% Surcharge	8,366.79	
	20% Interest	39,695.38	
	Compromise Penalty	8,500.00	90,029.32
Amount Still Due			**(₱3,959.59)**

II. DEFICIENCY FRINGE BENEFITS TAX - ₱1,376,360.30

Invoking Section 33 of the NIRC of 1997, as amended, respondent assessed petitioner for basic deficiency FBT in the amount of ₱672,597.59 on the income payments made by the latter to BPI Leasing in the amount of ₱2,858,539.75 (as company share on the employees car plan). Respondent computed the deficiency FBT assessment as follows:[37]

FBT - Agency Share - BPI Leasing	₱1,429,269.88	
Gross-Up Value	2,101,867.46	
Fringe Benefits tax due (32%)		₱ 672,597.59[38]
Add: Interest (20% per annum)	₱ 683,762.71	
Compromise penalty	20,000.00	703,762.71
Total deficiency FBT		**₱1,376,360.30**

[37] Exhibit "15", BIR records, p. 697.

[38] Respondent computed the amount ₱672,597.59 instead of ₱672,597.58.

Petitioner likewise conceded to the assessment on FBT by paying on March 2, 2012 the amount of ₱1,481,031.42, which consisted of the following:[39]

Basic Tax	₱ 672,597.59
Interest	788,433.83
Compromise Penalty	20,000.00
Total	**₱1,481,031.42**

Nevertheless, pursuant to Sections 248(A)(3) and 249(B) and (C) of the NIRC of 1997, as amended, petitioner is still liable to pay the amount of ₱90,021.24, representing 25% surcharge and 20% deficiency and delinquency interests, computed as follows:

FBT - Agency Share - BPI Leasing	₱1,429,269.88	
Gross-Up Value	₱2,101,867.46	
Fringe Benefits tax due (32%)		₱ 672,597.59
Add: Compromise penalty	20,000.00	
25% Surcharge	168,149.40	
20% Deficiency Interest		
from Jan. 15, 2007 to Feb. 7, 2012		
(₱672,597.59 x 20% x 1849/365 days)	681,442.71	
from Feb. 7, 2012 to March 2, 2012		
(₱672,597.59 x 20% x 24/365 days)	8,845.12	
20% Delinquency Interest from Feb. 7, 2012 to March 2, 2012		
on basic deficiency Withholding on VAT and surcharge		
[(₱672,597.59 + ₱168,149.40) x 20% x 24/365 days)	11,056.40	
on deficiency interest due for Jan. 15, 2007 to February 7, 2012		
(₱681,442.71 x 20% x 24/365 days)	8,961.44	898,455.07
Total Amount Due		₱1,571,052.66
Less: Payment made on March 2, 2012		
Basic Tax	₱ 672,597.59	
Interest	788,433.83	
Compromise Penalty	20,000.00	1,481,031.42
Amount Still Due		**₱ 90,021.24**

III. DEFICIENCY FINAL WITHHOLDING TAX - ₱1,807,254.37

Citing Section 33 of the NIRC of 1997, as amended, respondent assessed petitioner for basic deficiency FWT

[39] Exhibit "F", Docket, pp. 891-893.

amounting to ₱788,517.77, which is thirty-five percent (35%) of income payments made to Saatchi & Saatchi – London, a non-resident foreign corporation not engaged in trade or business in the Philippines, amounting to ₱2,252,907.91. Below is the computation of the deficiency FWT assessment of ₱1,807,254.37:[40]

Payable to Saatchi & Saatchi - London		
JV No. 06-L0070	₱1,046,867.91	
JV No. 06-J0045	1,206,040.00	
Total	₱2,252,907.91	
Withholding tax due (final) - 35%		₱ 788,517.77
Add: Surcharge (25%)	₱ 197,129.44	
Interest (20% per annum)	801,607.16	
Compromise penalty	20,000.00	1,018,736.60
Total deficiency withholding tax - Final		**₱1,807,254.37**

The Court finds Section 33 of the NIRC of 1997, as amended, inapplicable as the said NIRC provision governs the imposition of tax on Special Treatment of Fringe Benefit. Upon examination of the factual circumstances of this case, the Court finds nothing which will make it fall within the purview of the cited provision.

As pointed out in the Petition for Review, the amount pertains to negotiator's fee paid by petitioner in consideration of the services of Saatchi London to refer advertisers in England to petitioner for their promotional and marketing needs in the Philippines, and to enter and conclude negotiations with such advertisers for the engagement of petitioner.

Petitioner did not withhold taxes on the negotiator's fees because it is an income derived for services performed outside the Philippines by Saatchi London, a non-resident foreign corporation. On this position, petitioner relied on Section 23(F) of the NIRC of 1997, as amended, which provides that "a foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines."

[40] Exhibit "15", BIR records, pp. 697-698.

To further support its claim, petitioner cited *Commissioner of Internal Revenue vs. Baier-Nickel*[41], where the Supreme Court ruled that "source of income" relates to the property, activity or service that produced the income. With respect to rendition of labor or personal service that produced the income, it is the place where the labor or service was performed that determines the source of the income. The Supreme Court explained that:

> "The important factor therefore which determines the source of income of personal services is not the residence of the payor, or the place where the contract for service is entered into, or the place of payment, but the place where the services were actually rendered."

Petitioner likewise argued that the taxing power of the State does not extend beyond its territorial limits. In other words, respondent cannot tax income considered outside the territorial limits of the Philippines.

Citing the case of *Philippine American Life Insurance Company, Inc., et al. vs. Hon. Court of Tax Appeals, et al.*[42], respondent pointed out that the Court of Appeals ruled that a non-resident foreign corporation is taxed on compensation derived from sources within the Philippines even if the services are performed abroad. Respondent added that while it is true that a non-resident foreign corporation has no properties here in the Philippines, in entering into a management contract with a domestic corporation here in the Philippines, the non-resident foreign corporation's income from said contract is well within the ambit of Section 37(a)(7) of the 1980 Tax Code. According to respondent, in our jurisprudence, the test of taxability is the "source" and the "source" of an income is that activity which produced the income. Respondent asserted that what is important to

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[41] G.R. No. 153793, August 29, 2006.
[42] CA-G.R. SP No. 31283, April 25, 1995.

consider is that there is an income earned and the necessary tax must be imposed.

The Court does not agree with petitioner.

Petitioner failed to present any evidence to prove the nature of the transaction and the place where it was actually rendered. In the report, the Court-commissioned Independent Certified Public Accountant (CPA) even indicated that petitioner merely explained that the amounts paid to Saatchi London were for services performed outside the Philippines, but was not able to show any document to support such explanation.[43] Thus, the deficiency final withholding tax assessment shall stand. Petitioner is liable to pay basic deficiency FWT for the taxable year 2006 in the amount of ₱788,517.77.

IV. DEFICIENCY WITHHOLDING TAX ON COMPENSATION - ₱5,145,539.84

Upon comparison of petitioner's claimed salaries and wages in the amount of ₱153,551,500.50 with those reflected in its Alphalist in the amount of ₱145,723,156.54, respondent found that the discrepancy of ₱7,828,343.96 pertained to salaries and wages not subjected to withholding tax, as computed below:[44]

Total Compensation and Benefits	₱156,163,985.58
Less: 2006 Profit sharing and bonuses payable in 2007	12,623,288.08
Total	₱143,540,697.50
Add: 2005 Profit sharing and bonuses payable in 2006	10,010,803.00
Total Compensation subject to withholding tax	₱153,551,500.50
Amount per Alphalist	145,723,156.54
Amount not subjected to withholding tax	**₱ 7,828,343.96**

Invoking Sections 78, 79, and 80 of the NIRC of 1997, as amended, respondent assessed petitioner for deficiency

[43] Par. 22, Part 1 of 3, Exhibit "GG", p. 7.
[44] Exhibit "15", BIR records, p. 699.

withholding tax on compensation for the taxable year 2006 in the amount of ₱5,145,539.84, computed as follows:[45]

Salaries & Wages - Direct Charges		₱113,466,338.50	
Salaries & Wages - OPEX		30,074,359.00	
Profit sharing, bonus others-2005 (Note 15d FS)		10,010,803.00	
Total Compensation subject to WHT		₱153,551,500.50	
Less amount per alpha list		145,723,156.54	
Amount not subjected to withholding tax		₱ 7,828,343.96	
Withholding tax due (32%)			₱ 2,505,070.07
Amount withheld per alpha list		₱ 37,221,406.99	
Amount remitted per 1601C		37,187,282.45	
Amount unremitted			34,124.54
Basic deficiency withholding tax - compensation			₱ 2,539,194.61
Add:	Interest (20% per annum)	₱ 2,581,345.24	
	Compromise penalty	25,000.00	2,606,345.24
Total deficiency withholding tax – compensation			**₱5,145,539.84** [46]

In disputing the alleged deficiency, petitioner invoked Section 2.83.6 of Revenue Regulations (RR) No. 02-98, which respondent failed to consider. Petitioner explained that the said Revenue Regulation requires withholding of tax on compensation only upon actual or constructive payment of compensation to the employee, and that respondent once again disregarded the fact that petitioner is using the accrual basis of accounting. This would mean that not all amounts claimed as expense in 2006 were necessarily paid during the same year.

According to petitioner, the amount assessed for failure to withhold arose from the profit sharing incentives and Directors' bonuses accruing in 2006, but was actually paid out in 2007. The same would be the instance where incentives and bonuses, which already accrued in 2005, were only paid in 2006. Hence, there would be an expected difference between the amounts claimed as compensation expense and the amounts declared in the alphalist attached to the withholding tax on compensation returns.

[45] Exhibit "15", BIR records, p. 695.
[46] Respondent computed the amount ₱5,145,539.84 instead of ₱5,145,539.85.

In assessing petitioner for alleged deficiency withholding tax on compensation, respondent insisted that petitioner as withholding agent has the legal duty to collect the tax for the government. Respondent likewise asserted that what is being sought to be collected from petitioner are penalties for failure to withhold the tax. Respondent emphasized that the Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.[47]

It must be noted that Section 53 of the Tax Code pertains to *Extension of Time to File Returns* which is not involved in this issue. But since the main bases for the assessment are Sections 78, 79, and 80 of the NIRC of 1997, as amended, the Court shall proceed in resolving the issue.

The cited legal bases for this assessment are implemented by RR No. 02-98, wherein the following pertinent provisions govern:

> "SECTION 2.78. *Withholding Tax on Compensation*. – The withholding of tax on compensation income is a method of collecting the income tax at source **upon receipt of the income**. It applies to all employed individuals whether citizens or aliens, deriving income from compensation for services rendered in the Philippines. The employer is constituted as the withholding agent." *(Emphasis supplied)*

The term "receipt" may either be actual or constructive receipt pursuant to Section 2.83.6 of RR No. 02-98.

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[47] Answer, Docket, p. 131.

Relative thereto, Section 2.79 of RR No. 02-98 states that:

> "SECTION 2.79. *Income Tax Collected at Source on Compensation Income.*
>
> (A) *Requirement of Withholding.* – Every employer must **withhold from compensations paid**, an amount computed in accordance with these regulations. xxx" *(Emphasis supplied)*

While the foregoing provisions of Sections 2.78 and 2.79 of RR No. 02-98, as amended, require the withholding of tax upon payment of the compensation and not upon accrual thereof; however, no sufficient evidence was presented by petitioner to explain that the noted discrepancy arose from mere accruals. Petitioner should have presented documentary evidence to show that there was valid accrual, and that the accrued compensation was actually paid and the related withholding tax was remitted in 2007. Hence, the Court finds no reason to disturb the findings of respondent.

However, the tax rate to be used should be the effective rate computed based on the total withholding tax on compensation divided by the total amount of taxable compensation reported during the taxable year 2006, as shown below:

Total withholding tax on compensation	₱ 37,221,406.99	**25.5425479%**
Total taxable compensation	₱145,723,156.54	

Therefore, petitioner's basic deficiency withholding tax on compensation for the taxable year 2006 amounts to ₱2,033,683.04, computed as follows:

Salaries & Wages - Direct Charges	₱113,466,338.50	
Salaries & Wages - OPEX	30,074,359.00	
Profit Sharing, Bonus, Others-2005 (Note 15d FS)	10,010,803.00	
Total Compensation Subject to Withholding	153,551,500.50	

Less: Amount Per Alphalist	145,723,156.54	
Amount Not Subjected to Withholding Tax	7,828,343.96	
Withholding Tax Due (25.5425479%)		₱ 1,999,558.50
Amount Withheld Per Alphalist	₱ 37,221,406.99	
Amount Remitted Per 1601C	37,187,282.45	
Amount Unremitted		34,124.54
Basic Deficiency Withholding Tax – Compensation		**₱2,033,683.04**

On March 2, 2012, petitioner paid the basic deficiency WTC in the amount of ₱34,124.54 plus interest of ₱40,001.54, totaling ₱74,126.08[48].

However, pursuant to Sections 248(A)(3) and 249(B) and (C) of the NIRC of 1997, as amended, petitioner is still liable to pay the amount of ₱4,472.54 representing surcharge and 20% deficiency and delinquency interests, computed as follows:

Amount withheld per alphalist	₱37,221,406.99	
Amount remitted per 1601C	37,187,282.45	
Basic deficiency withholding tax - compensation		₱34,124.54
Add: 25% Surcharge	₱ 8,531.13	
20% Deficiency Interest		
from Jan. 20, 2007 to Feb. 7, 2012		
(₱34,124.54 x 20% x 1849/365 days)	34,479.81	
from Feb. 7, 2012 to March 2, 2012		
(₱34,124.54 x 20% x 24/365 days)	448.76	
20% Delinquency Interest from Feb. 7, 2012 to March 2, 2012		
on basic deficiency w/holding tax on compensation and surcharge		
[(₱34,124.54+₱8,531.13) x 20% x 24/365 days]	560.95	
on deficiency interest due for Jan. 20, 2007 to Feb 7, 2012		
(₱34,479.81 x 20% x 24/365)	453.43	44,474.08
Total Amount Due		₱78,598.62
Less: Payment on March 2, 2012		
Basic Tax	₱ 34,124.54	
Interest	40,001.54	74,126.08
Amount Still Due		**₱4,472.54**

[48] Exhibit "F", Docket, pp. 891 and 902-903.

Considering the said payment, petitioner's basic deficiency WTC for the taxable year 2006 only amounts to ₱1,999,558.50.

V. DEFICIENCY EXPANDED WITHHOLDING TAX – ₱7,809,604.21

Respondent's reconciliation between petitioner's claimed expenses for purchases of services subject to 2% EWT versus the amount subjected to the same rate per alphalist showed a difference of ₱3,943,512.01. Respondent's verification also revealed that a tax amounting to ₱3,781,391.69 withheld from talents, suppliers, and BPI Leasing were not remitted. As a result, respondent assessed petitioner for the corresponding deficiency EWT pursuant to Section 57(B) of the NIRC of 1997, as amended. Below is the computation of the deficiency EWT assessment of ₱7,809,604.21:[49]

Amount per 2% withholding tax - per alphalist	₱474,288,493.64	
Amount subjected to withholding tax per 1601 E	473,624,055.03	
Amount not subjected to 2% withholding	₱ 664,438.61	
Rentals of Personal Property Subject to 2% (BPI Leasing)	3,279,073.40	
Total amount not subjected to 2% withholding	₱ 3,943,512.01	
Withholding tax due (2%)		₱ 78,870.24
Unremitted tax withheld from talents & suppliers	₱ 3,747,081.07	
BPI Leasing - amount withheld & unremitted	34,310.62	3,781,391.69
Basic deficiency withholding tax – expanded		₱ 3,860,261.93
Add: Interest (20% per annum)	₱ 3,924,342.28	
Compromise Penalty	25,000.00	3,949,342.28
Total deficiency withholding tax – Expanded		**₱7,809,604.21**

Since petitioner paid the assessed amount of ₱78,870.24 plus interest of ₱93,547.99 in the total amount of ₱172,418.23 on March 7, 2012[50], it effectively admitted the deficiency. However, the settlement was done after the FDDA was issued. Section 2.58.5 of RR No. 02-98 states that:

[49] Exhibit "15", BIR records, p. 698.
[50] Exhibit "F", Docket, pp. 891 and 912-915.

> "SECTION 2.58.5. *Requirement for Deductibility.* – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.
>
> A deduction will also be allowed in the following cases where no withholding of tax was made:
>
>> (A) The payee reported the income and the withholding agent/taxpayer pays the tax, including the interest incident to the failure to withhold the tax, and surcharges, if applicable, **at the time of the original audit and investigation**;
>>
>> (B) The recipient/payee failed to report the income on the due date thereof, but the withholding agent/taxpayer pays the tax, including the interest incident to the failure to withhold the tax and surcharges, if applicable, **at the time of the original audit and investigation**;
>>
>> (C) The withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, **at the time of the original audit and investigation**."
>> *(Emphasis supplied)*

In view of the fact that the payment was made after the issuance of the FDDA, which is already far beyond the time of original audit and investigation, the related expense shall still be disallowed for income tax purposes.

Of the remaining deficiency EWT, petitioner only disputed the unremitted tax withheld from talents and suppliers amounting to ₱3,747,081.07[51], while the amount of ₱34,310.62 was already included in the prior settlement of deficiency taxes as evidenced by petitioner's letter to the BIR dated March 13, 2012, accompanied by Electronic Filing and Payment System (EFPS) payment confirmation slip and BIR Form No. 0605[52].

Petitioner pointed out that of the ₱3,747,081.07, ₱3,629,363.06 was remitted by its client-advertiser, Smart Communication, Inc. (SMART), in the name of the media-supplier.

Petitioner's witness, Mr. Felipe Barcelon, Jr., testified that as exceptions to the rule, a few client-advertisers of petitioner such as SMART correctly withheld the 2% tax on petitioner's commission exclusive of payments to media-suppliers. Such clients separately withheld applicable taxes on payments to media-suppliers. Accordingly, they issued separate CWT Certificates in the name of petitioner, and to each media-supplier paid. Mr. Barcelon further stated that a certification was issued by the Tax Department Head of SMART, Ms. Rina R. Manuel, certifying that, in connection with advertising services rendered by petitioner, SMART had already withheld and paid taxes in 2006 for amounts paid to media-suppliers in the total amount of ₱3,629,363.06[53].

As such, petitioner did not withhold taxes on the amounts it paid to media-suppliers because it was previously subjected to taxes by the client-advertisers as shown in the CWT Certificates issued directly by the said client-advertisers in the names of such media-suppliers.

Petitioner likewise asserted that its records and books would show that it did not withhold any tax from the said talents and suppliers because the client-advertisers already withheld from the corresponding payments. Petitioner presented a Certification from SMART's Tax Department

[51] Memorandum, Docket, p. 1565.
[52] Exhibit "F", Docket, pp. 891 and 904-905.
[53] Exhibit "G", Docket, pp. 920-922.

Head as proof that all income payments made to media-suppliers through petitioner were detailed.

However, the Court finds this Certification insufficient for being self-serving. The Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) [BIR Form No. 1601-E] would be sufficient to prove the remittance of taxes withheld from income payments by SMART, but which petitioner failed to furnish for those listed in the said Certification. Thus, the basic deficiency EWT assessment of ₱3,747,081.07 representing unremitted tax withheld shall be upheld.

As regards petitioner's payment of the basic deficiency EWT of ₱78,870.24 plus interest of ₱93,547.99, in the total amount of ₱172,418.23 on March 7, 2012, the same does not represent full payment of the deficiency taxes due. Pursuant to Sections 248(A)(3) and 249(B) and (C) of the NIRC of 1997, as amended, petitioner is still liable to pay the amount of ₱10,538.31, computed as follows:

Basic deficiency EWT		₱ 78,870.24
Add: 25% Surcharge	₱19,717.56	
20% Deficiency Interest		
from Jan. 20, 2007 to Feb. 7, 2012		
(₱78,870.24 x 20% x 1844/365 days)	79,691.36	
from Feb. 7, 2012 to March 7, 2012		
(₱78,870.24 x 20% x 29/365 days)	1,253.28	
20% Delinquency Interest from Feb. 7, 2012 to March 7, 2012		
on basic deficiency EWT and surcharge		
[(₱78,870.24+₱19,717.56) x 20% x 29/365 days]	2,157.77	
on deficiency interest due for Jan. 20, 2007 to Feb. 7, 2012		
(₱79,691.36 x 20% x 29/365)	1,266.33	104,086.30
Total Amount Due		₱ 182,956.54
Less: Payment on March 7, 2012		
Basic Tax	₱78,870.24	
Interest	93,547.99	172,418.23
Amount Still Due		**₱10,538.31**

The same holds true with regard to petitioner's payment of the basic deficiency EWT of ₱34,310.62.

Petitioner is still liable to pay the amount of ₱4,496.95, as computed below:

BPI Leasing – amount withheld & unremitted		₱34,310.62
Add: 25% Surcharge	₱ 8,577.66	
20% Deficiency Interest		
from Jan. 20, 2007 to Feb. 7, 2012		
(₱34,310.62 x 20% x 1844/365 days)	34,667.83	
from Feb. 7, 2012 to March 2, 2012		
(₱34,310.62 x 20% x 24/365 days)	451.21	
20% Delinquency Interest from Feb. 7, 2012 to March 2, 2012		
on basic deficiency EWT and surcharge		
[(₱34,310.62+₱8,577.66) x 20% x 24/365 days]	564.01	
on deficiency interest due for Jan. 20, 2007 to Feb. 7, 2012		
(₱34,667.83 x 20% x 24/365)	455.91	44,716.62
Total Amount Due		₱79,027.24
Less: Payment on March 2, 2012		
Basic Tax	₱34,310.62	
Interest	40,219.67	74,530.29
Amount Still Due		**₱4,496.95**

VI. DEFICIENCY INCOME TAX – ₱93,332,881.91

Respondent computed the deficiency income tax assessment as follows:[54]

Taxable Income per return				₱ 17,940,582.00
Add :	Adjustment			
	Total Sales per Schedule	₱225,107,397.85		
	Sales per Income Tax Return	224,420,627.00		
	Difference (unreported income)		686,770.85	
	Sales per Creditable Certificate-2307	₱364,292,707.10		
	Sales per Schedule (SLS)	127,559,000.61	236,733,706.49	
Total Unreported Revenue			₱237,420,477.34	
Taxable Income-Gross Profit (237,420,477.34 x .4049) GPM			96,131,551.27	
Unreported Interest Income			102,050.00	96,233,601.27
Disallowed Cost & Expenses				
	Non Deductible Interest expense		₱ 46,203.00	
	Income Payments not subjected to WHT			
	Compensation	₱ 7,828,343.96		

[54] Exhibit "15", BIR records, p. 695.

	Purchases of Services (2%)	3,943,512.01	11,771,855.97	11,818,058.97
Taxable Income per re-investigation				₱ 125,992,242.24
Income Tax Due (35%)				₱ 44,097,284.79
Payment per return				
Total Tax Credit Claimed			₱ 7,791,552.00	
Carried Over to next period		₱ 1,512,318.00		
Disallowed Creditable Tax – 2307		19,062.73	1,531,380.73	6,260,141.27[55]
Deficiency Income Tax				**₱37,837,143.52**
Add :	Surcharge (50%)		₱ 18,918,571.76	
	Interest (20% per annum)		36,577,166.64	55,495,738.39
Total Deficiency Income Tax				**₱93,332,881.91**

The Court shall delve into the propriety of the income imputed, as well as the expense deductions and tax credits disallowed by respondent, namely:

A.	Unreported revenues		
	1. Arising from the difference in sales based on creditable withholding taxes (CWT) – BIR Form No. 2307 as compared with the sales reflected in the schedules of sales submitted as VAT return attachments	₱236,733,706.79	
	2. Arising from the difference in sales per reinvestigation *vis-à-vis* the sales and non-operating & taxable other income per income tax return	686,770.85	₱237,420,477.34
B.	Unreported interest income		102,050.00
C.	Disallowed interest expense		46,203.00
D.	Disallowed income payments not subjected to withholding tax		
	Compensation	₱ 7,828,343.96	
	Purchases of services (2%)	3,943,512.01	11,771,855.97
E.	Tax credits carried over to next period		1,512,318.00
F.	Disallowed Creditable Tax – 2307		19,062.73

A. Unreported revenues in the amounts of ₱236,733,706.49 and ₱686,770.85, totaling ₱237,420,477.34

A.1. Unreported revenues – ₱236,733,706.49

[55] Respondent computed the amount ₱6,260,141.27 instead of ₱6,260,171.27.

Since the unreported revenue in the amount of ₱236,733,706.49 is also one of the assessment items under the deficiency VAT assessment, the resolution of this issue shall extend to the deficiency VAT assessment on the said amount.

Petitioner was assessed for underdeclaration of income amounting to ₱236,733,706.49, which allegedly arose from sales based on CWT Certificates - BIR Form No. 2307 in the amount of ₱364,292,707.10 as compared with the amount of ₱127,559,000.61 reflected in the schedules of sales submitted as VAT Return attachments.[56]

Petitioner explained that when it billed the client-advertisers of the total amount (100%), it consisted of its commission (15%) and media and production cost (85%), in accordance with the industry practice. The amount received for media and production cost was mere pass-through cost held in trust for payment of media-suppliers. Thus, petitioner's gross sales pertained only to the portion (15%) of the total amounts paid or remitted by the advertisers to petitioner.

Further, the fees paid by petitioner to the media-suppliers were not claimed by petitioner as part of its cost.

It is petitioner's stand that VAT is payable only on the total amount of money it received as payment for services rendered and advance payments actually or constructively received for the services performed or to be performed for its client-advertisers. In other words, petitioner is liable to pay VAT only on amounts received as commission and not on amounts received in trust for media-suppliers.

According to petitioner, holding it liable for VAT on amounts received in trust for media-suppliers and not on the payment of services it rendered is excessive and oppressive. The talents, production and media-suppliers was rendered

[56] Exhibit "15", BIR records, pp. 701-702.

directly to the advertisers and not to petitioner, which merely acted as conduit of the client-advertisers in the transaction.

Petitioner cited BIR Ruling [DA-473-07] dated August 31, 2007, wherein the BIR explained:

> "The gross receipts in the foregoing transaction refers to the commission or fee for services rendered which does not include money received from the advertisers as such amounts are earmarked for payment for media and production suppliers, amount of which are subsequently liquidated and accounted for. *(BIR Ruling No. DA-316-2003 dated September 29, 2003)*
>
> Such being the case, considering that Lowe, Inc. merely holds the payment for media and production suppliers for and in behalf of its clients (the advertisers), the same should not be included in its gross receipts for purposes of value-added tax and income tax. It is only the commission/service fee at an average rate of 10% based on the total advertising costs and expenses paid to media and production suppliers that should be recognized as revenue for Lowe, Inc. includible in its gross receipts."

In his judicial affidavit[57], petitioner's witness Mr. Felipe Barcelon, Jr. testified as follows:

Q6: The Petition which you verified states that ACE is an advertising agency. What does ACE do as an advertising agency?

A: ACE renders services for the companies and individuals who want to promote their ideas, products and services to the public through advertisements. These companies or individuals are known in the advertising

[57] Exhibit "I", Docket, pp. 409-423.

industry as "client-advertisers" or simply "advertisers".

Q7: What are the services that ACE performs for the said client-advertisers?

A: ACE conceptualizes and creates advertisements for client-advertisers, and acts as their agent in the production and placement of the said advertisements in television, radio, print and other media.

Production and placement of the advertisements involve the selection and hiring of the necessary talents, models, directors, production houses, graphic designers, audio-recording studios, printers, photographers, videographers, television stations, radio stations, broadsheets, etc. They are collectively known in the advertising industry as "media suppliers", "advertising services suppliers" or simply "suppliers". ACE selects and hires these media suppliers on behalf of its client-advertisers.

Q8: How is ACE compensated for its services?

A: In consideration for services rendered, ACE receives compensation or income in the form of a commission or agency service fee or "ASF". The said commission or ASF is usually in the amount equivalent to fifteen percent (15%) of the total amount billed to the client-advertiser.

Q9: You said that only 15% of the total amount billed is usually received by ACE as its commission or ASF. What is the other 85% for?

A: The other 85% is the total cost of production and placement billed by media suppliers.

Q10: How does ACE bill its clients for the total cost of production and placement and ASF?

A: As a peculiar yet normal practice in the advertising industry, advertising agencies such as ACE usually bill their clients for the total cost of production and placement (85%) plus commission or ASF (15%). This is because client-advertisers prefer to make a single payment for an advertisement, and not have to worry about paying each and every media supplier directly. The responsibility to pay media suppliers is given to advertising agencies like ACE which receive the amounts for total cost of production and placement in trust for the said media suppliers, and pays such media suppliers on behalf of client-advertisers.

To illustrate the peculiar billing process of the advertising industry, Mr. Barcelon presented one invoice of petitioner issued to its client-advertiser, General Mills Foods, Inc., and explained it in the following manner:

Q11: I am showing to you an Invoice No. 178937A of ACE dated 13 July 2006, a faithful reproduction of which was earlier marked as **Exhibit "B"**[58] (copy attached), can you please look at this Invoice and tell us what relation this Invoice has to ACE and the peculiar way of billing clients that you just mentioned?

A: This is an invoice of ACE for a television advertisement entitled *"Gusto Ko Maging (TV30s/15s)"* for client-advertiser General Mills Foods, Inc. ("General Mills") for its product "Flavored Hotcake". This shows the peculiar way of billing clients that I mentioned earlier, that is,

[58] Docket, p. 836.

the invoice separately shows the amount payable to media suppliers and ACE's commission or ASF, as follows:

1) Musical score		
Cutting Edge Productions, Inc. 0350	₱	65,000.00
2) Plus: 12% VAT		
Cutting Edge Productions, Inc. 0350	₱	7,800.00
3) Mock-Up		
Red Eye, Inc. 235	₱	35,714.29
4) Plus: 12% VAT		
Red Eye, Inc. 235	₱	4,285.71
	₱	112,800.00
A.S.F. (17.65% of 1,3)	₱	17,776.07
VAT: 12% of ASF of 1,3	₱	2,133.33
Total		**₱132,709.20**

Q12: Earlier, you said that the commission or ASF is 15%, but this particular Invoice shows the ASF to be 17.65%. Why is this so?

A: The usual ASF is fifteen percent (15%) of the gross amount or the total amount billed, i.e. the total amounts payable to media suppliers and the said ASF (₱132,709.20). To be able to obtain this equivalent 15% of the gross amount, we multiply the amount paid for the media suppliers by 17.65%. You will note that the ASF of ₱17,776.07 is more or less 15% of the total paid to the media suppliers, exclusive of VAT (₱100,714.29).

Q13: This particular Invoice shows amounts across Musical Scores and Mock-up with VAT, totaling Php112,800.00. What are the said amounts for?

A: They are services and supplies which are provided by the media suppliers Cutting Edge Productions, Inc. ("Cutting Edge") and Red Eye, Inc. ("Red Eye") and are paid directly by ACE to Cutting Edge and Red Eye from the gross amounts paid by client General Mills.

Q14: What are the amounts corresponding to VAT on the said services and supplies?

A: These are Value Added Taxes applicable on the said compensation for services and supplies provided by the media suppliers and which are passed-on to the client-advertisers.

Q15: In this particular instance or work, what was the basis of ACE for charging the said amounts and VAT for services provided by Cutting Edge and Red Eye?

A: The said amounts are based on the invoices of Cutting Edge and Red Eye themselves. They were pre-approved by client advertiser based on cost estimates.

Q16: I am showing you certain Invoices of Cutting Edge dated 29 June 2006 and Red Eye dated 07 July 2006, faithful reproductions of which were earlier marked as **Exhibits "B-1" and "B-2"**[59] (copies attached) what relation do these Invoices have to the said invoices which support the amounts indicated in the Invoice of ACE?

A: Those are the Invoices of Cutting Edge and Red Eye which indicate the amounts due to them and which were sent to General Mills together with the Invoice of ACE.

Q17: What is this VAT on the ASF indicated in this particular Invoice?

A: That is the Value Added Tax liability of ACE for this particular services which ACE passed-on to the client-advertiser and which ACE pays to the BIR.

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[59] Docket, pp. 837-838.

To further strengthen Mr. Barcelon's statements on this peculiarity in the billing process in the advertising industry, he presented The Standards of the Trade Practices and Conduct in the Advertising Industry of the ADBOARD. As explained in his judicial affidavit:

> **Q18:** You mentioned that this billing practice is peculiar but normal in the advertising industry. What is your basis for saying this?
>
> **A:** This practice is part of The Standards of Trade Practices and Conduct in the Advertising Industry of the ADBOARD ("ADBOARD Standards") which is the basic guidebook for trade practices and the conduct of business in Philippine advertising.
>
> **Q19:** What is this ADBOARD?
>
> **A:** ADBOARD means Advertising Board, which is a self-regulating Board of advertising agencies, advertisers, media suppliers and the consumers of which ACE is a member.
>
> **Q20:** I am showing you this document entitled Standards of Trade Practices and Conduct in the Advertising Industry of the ADBOARD, 2006 Fourth Revision, faithful reproductions of the relevant portions of which were earlier marked as **Exhibit "C"**[60] (copy attached). What relation, if any, does this document have to the ADBOARD Standards that you just mentioned?
>
> **A:** That is the same ADBOARD Standards which I cited that contained the billing practice of advertising agencies like ACE.

[60] Docket, pp. 839-855.

Q21: Where is it in this ADBOARD Standards which provide for this normal billing practice of advertising agencies?

A: That is in Chapter VI, Section 3.10 which provides:

"The compensation standard for Advertising Agency commission shall be set at 15% of gross billings from Media and Advertising Services Suppliers, and/or 17.65% of net billings from agreed items except in cases wherein an alternative compensation method is specified in the Advertiser and Advertising Agency agreement." (Page 18 of Annex "D"; previously marked as **Exhibit "C-1"**[61])

In relation to Chapter IV, page 7: Glossary of Terms which states:

The term "Gross Billing" is defined in the ADBOARD Standards as: "...the bills or invoices or statements of account covering the full cost of specific order delivered or services rendered, inclusive of agency commission." (Page 7 of Annex "D"; previously marked as **Exhibit "C-2"**[62])

Q22: The ADBOARD Standards provision you cited provides, in addition to the normal billing method that you cited, an "alternative compensation method". Does ACE use such alternative compensation method with its client-advertisers?

A: Yes. ACE also has contracts with client-advertisers for *less than* 15% commission or ASF of the total amount billed for services rendered.

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[61] Docket, p. 855.
[62] Docket, p. 848.

In addition, some client-advertisers have advertising service agreements with ACE where ACE is paid a fixed monthly fee or ASF, regardless of whether or not ACE actually renders services. Under this arrangement, ACE bills the client-advertiser monthly and bills the client-advertiser separately for any advertisement produced. In such instance, the ACE Invoice for the advertisement produced reflects only the total amount payable to media suppliers for production and placement, together with the supporting invoices of media suppliers.

Q23: I am showing you an Invoice of ACE no. 06-B0044 dated May 15, 2006, a faithful reproduction of which was earlier marked as **Exhibit "D"**[63] (copy attached), together with supporting invoices of media suppliers, faithful reproductions of which were previously marked as **Exhibits "D-1" to "D-2"**[64] (copies attached), can you please look at these invoices and inform us what relation these invoices have to the alternative billing method that you just described?

A: This invoice of ACE for a project refers to that instance where ACE billed the client monthly so the invoice includes only the amount payable to media suppliers, as supported by these other invoices that you showed me.

Now with regard to the payment of the client-advertisers to petitioner and its manner of recording in its books, Mr. Barcelon further testified that:

Q24: How do client-advertisers pay ACE?

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[63] Docket, p. 856.
[64] Docket, pp. 858-859.

> **A:** Regardless of the billing arrangement, most client-advertisers pay ACE the total amount billed, including those for payment of the media suppliers, *net of the creditable expanded withholding tax of* 2% on the total amount, which they remit to the BIR.
>
> **Q25:** How do you know that clients of ACE withhold the said 2% tax?
>
> **A:** Because we actually receive from them only the net amounts and **they provide us with the Certificates of Creditable Tax Withheld at Source [BIR Form No. 2307] ("CWT Certificates") issued by the client-advertisers <u>in the name of ACE.</u>** *(Emphasis supplied)*
>
> xxx xxx xxx
>
> **Q30:** How does ACE record amounts payable to media suppliers in its books?
>
> **A:** The amounts paid or payable to media suppliers are not recognized in ACE's books as income because they are merely held in trust for media suppliers and therefore do not form part of ACE's gross receipts. Neither are they booked as expenses when they are paid to the media suppliers. The amounts payable to media suppliers are instead recorded in the books of ACE as liabilities inclusive of the 12% VAT as applicable.

The afore-quoted testimony shows that even if 85% of petitioner's billings were attributable to or on account of media-suppliers and was only billed by petitioner on its behalf, the paying client-advertiser had remitted 100% of the bill to petitioner together with the corresponding CWT Certificates, which were also named under petitioner.

Respondent opposed petitioner's averments, arguing that the BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) submitted by petitioner showed that the payee was "ACE/SAATCHI & SAATCHI ADVERTISING, INC." Thus, respondent assessed petitioner since the income earner that appeared in the said certificates was the petitioner.

Respondent explained that BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) is a certificate to be accomplished and issued to recipients of income subject to expanded withholding tax paid by a payor/withholding agent including government money payments made by a government office, showing therein the monthly breakdown of the total income payments made and the total taxes withheld and remitted during the quarter/period. Accordingly, the payee named in the said BIR form is the recipient of the income or the income earner itself, which in this case is the petitioner.

It is respondent's belief that bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules of Court. It is a basic rule of evidence that the party making an allegation has the burden of proving it by preponderance of evidence. As such, respondent asserted that other than petitioner's own bare allegations, the latter offered no other proof to the effect that indeed the withholding of tax by the payor/withholding agent had included the portion corresponding to the media and production suppliers.

Respondent further explained that since petitioner provides service for a fee, remuneration or consideration, then the service it rendered is subject to VAT.

The Court finds merit in respondent's arguments.

Petitioner presented the CWT Certificates representing the 2% tax withheld from 100% billed amount (composed of the 85% attributable to media-suppliers and 15% of ASF), which are under the name of "ACE/SAATCHI & SAATCHI ADVERTISING, INC.".

Considering the foregoing, the CWT Certificates under the name of petitioner prove that the income recipient of the whole amount collected is petitioner.

It is stated under Section 4.108-1 of Revenue Regulations No. 16-2005 dated September 1, 2005, implementing Section 108(A) of the NIRC of 1997, as amended, that the sale or exchange of services is subject to VAT equivalent to 12% of the gross receipts, excluding VAT. Further, Section 4.113-1 of the same Revenue Regulation, implementing Section 113(A)(2) of the NIRC of 1997, as amended, sets out that a VAT official receipt shall be issued by a VAT-registered person for every sale, barter or exchange of services. Thus, as a recipient of income from services, a taxpayer issues a VAT official receipt to its payor as the acceptable proof of the transaction and not the issued invoice.

The Court has considered the testimonies of Independent CPA Ms. Ma. Milagros Padernal with regard to petitioner's process on the issuance of official receipts upon collection from client-advertisers, to wit:

> JUSTICE UY
> So, whenever the OR is issued by the petitioner, what is reflected in the OR?
>
> MS. PADERNAL
> When they collect from the advertisers, your Honors, Saatchi collects from the clients, they debit of course the cash and then there's a tax credit receivable for the withholding taxes that the client made and then correspondingly, the credit to accounts receivable for the billing invoice amount, your Honors.

JUSTICE UY
Does it mention who are the suppliers? Does the OR mention? Because the theory is, petitioner only collects commission and the other amounts collected are given to suppliers.

MS. PADERNAL
Eventually, your Honors.

JUSTICE UY
Is it reflected in the OR that they are collecting really for and on behalf of the suppliers?

MS. PADERNAL
Yes, your Honors.

JUSTICE UY
It's reflected there in the OR?

MS. PADERNAL
The billings as well as the collections are very specific as to the particular detail of that collection which includes the commission, the VAT as well as the pass-through cost to media and the corresponding VAT that they collected.

JUSTICE UY
Would this be more as official acknowledgment receipt or just an official receipts?

MS. PADERNAL
Just an official receipts, your Honors, because they are collecting already the invoices which net of the withholding taxes that the clients have made.

JUSTICE UY
Yes, because there are requirements if you are merely collecting for and on behalf of a supplier.

MS. PADERNAL
Yes, your Honors.

JUSTICE UY
So, they receiving it and they issue an official receipt?

MS. PADERNAL
Yes, your Honors.[65]

In support of these statements, the Independent CPA included in the report Exhibits "Z" to "AA", which pertain to petitioner's Schedule of Collections, containing a record of CWT withheld by client-advertiser in 2006.

Upon examination of the said schedule, indeed, there was a separate column for "Pass Through Cost". However, it must be noted that a schedule or mere summary of data is self-serving. Hence, it is not, in itself, sufficient to prove the said allegation, unless it is accompanied by the actual supporting documents; which petitioner failed to submit to the Court.

Consequently, the Court cannot verify if the collections by petitioner have separate presentation as to that attributable to the media-supplier and to that pertaining to its commission in its OR for this Court to determine if 85% of the collection was not actually received as income by petitioner and to warrant the latter's protest that respondent made an erroneous assumption.

Further, it must be noticed from the statements of the Independent CPA and the schedule of ORs presented by petitioner that only one (1) OR was issued for the collection of pass-through costs and commission. This document is not in compliance with Revenue Memorandum Circular (RMC) No. 04-96 issued on January 15, 1996, which clarifies issues affecting Media under Republic Act No. 7716,

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[65] TSN for the hearing held on February 5, 2013, pp. 15-17.

otherwise known as the "Expanded VAT Law". Pertinent provisions of RMC No. 04-96 are quoted as follows:

> Q-4 What is the basis of computing VAT in the case of media?
>
> A-4 The basis for computing VAT payable on transactions of media shall be the gross receipts.
>
> To illustrate: Assume that an advertiser pays an advertising agency the amount of P100,000 to create a commercial and run the same on print and/or broadcast media with the advertising agency getting 15% of such amount as commission/service fee.
>
> Assumption 1:
>
> (a) **The advertising agency issues a VAT official receipt to the advertiser** for P15,000 **and a provisional receipt** for the P85,000 **as share of the Media**. The VAT payable by the advertising agency shall be computed as follows:

Commission/Service Fee (15% x P100,000)	<u>P15,000.00</u>
Output VAT (1/11 of P15,000)	P 1,363.63
Less: Applicable Input VAT Credits	(xxx)
VAT Payable	P xxx

> (b) The print/broadcast media issues a VAT official receipt to the advertiser for P85,000. The VAT shall be computed as follows:

Amount received for Advertising Space, Radio/TV Spots/Airtime (85% x P100,000)	<u>P85,000.00</u>
Output VAT (1/11 of P85,000)	P 7,727.27
Less: Applicable Input VAT Credits	(xxx)
VAT Payable	P xxx

(Emphasis Supplied)

Based on the alleged manner of recording of its sale transactions, petitioner's case falls under Assumption 1 of the said RMC. Thus, petitioner should have issued two (2) types of receipt upon collection from the client-advertisers – one (1) VAT official receipt for the commission and one (1) provisional receipt for the pass-through cost.

BIR Ruling No. DA-473-07, as correctly pointed out by petitioner, provides that the amounts received from advertisers, which are earmarked for payments of media and production suppliers, are not included as gross receipts for VAT and income tax purposes.

In *McCann-Erickson (Philippines), Inc. vs. Commissioner of Internal Revenue, et al.*[66], this Court held that:

> "xxx Since these customer credit balances of P12,006,245.00 do not pertain to advance payments for the services performed or to be performed by petitioner but are merely held in trust for payment to the media networks, the same do not fall within the definition of gross receipts under Section 102 of the 1995 Tax Code, to wit:
>
>> 'The term "gross receipts" means the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged for materials supplied with the services and deposits and *advance payments actually or constructively received during the taxable quarter for the service performed or to be performed for another person, excluding value-added tax*.' xxx"

Notwithstanding, it is incumbent upon petitioner to prove that it has not obtained benefit from the claimed pass-through costs, which petitioner failed to do.

[66] CTA Case No. 5966, March 13, 2003.

Petitioner did not record the income from the billings made to client-advertiser and did not recognize any cost from the billings made by the media-suppliers, based on the illustration of entries made by Mr. Barcelon, to wit:

a) At the time of billing of client-advertiser:

Accounts Receivable - Client-Advertiser	100%	
Liability to Media Suppliers		85%
Commission Income		15%

b) At the time of collection from client-advertiser:

Cash	xxx	
Tax Receivable - Media Supplier		xxx
Tax Receivable - ACE		xxx
Accounts Receivable - Advertiser		xxx

c) At the time of payment to media suppliers:

Liability to Media Suppliers	xxx	
Cash		xxx
Expanded Withholding Tax - Media Supplier		xxx

However, the foregoing remains only an illustration unless it can be established by petitioner that it was consistently followed in all transactions via general ledgers with supporting documents, but which petitioner failed to present. Neither did the Independent CPA mention any verification on the matter in her report.

Thus, the Court finds no compelling evidence to disregard the deficiency income tax and deficiency VAT assessments on the unreported revenues amounting to ₱236,733,706.49.

As regards petitioner's arguments on the supposed failure of respondent to issue a specific regulation to be used considering the peculiarity in the billing process of the advertising industry, the same is not the issue stipulated by the parties to be resolved by this Court. Nevertheless, Section 2.57.2(E)(4)(h) of RR No. 02-98 dated April 7, 1998, as amended by RR No. 17-2003 dated March 31, 2003, states:

> "Sec. 2.57.2. *Income payment subject to creditable withholding tax and rates prescribed thereon.* - Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (E) *Income payments to certain contractors* - On gross payments to the following contractors, whether individual or corporate — Two percent (2%).
>
> xxx xxx xxx
>
> (4) *Other contractors* -
>
> (h) **Advertising agencies, exclusive of gross payments to media**;" *(Emphasis supplied)*

As for the part of Mr. Barcelon's statement that the BIR gets paid twice due to this peculiarity, it was verified by the Independent CPA that from the schedule of collections in Exhibit "Z", a total of ₱11,166,214.66 creditable tax was actually withheld by the customers for the year ended December 31, 2006, to wit:[67]

Particulars	**Amount**
Revenue collections – peso	₱ 185,578,294.30
Pass-through collections – peso	608,262,995.46
	₱ 793,841,289.76
Withholding tax rate	2%
Withholding tax at 2%	₱ 15,876,825.80

[67] Exhibit "GG", pp. 2-3.

Tax not withheld by clients	(4,710,611.14)
Tax actually withheld by clients	**₱11,166,214.66**

4. Petitioner explained that as an industry practice, clients withhold the 2% tax on their total payments, which include not only the revenue component but also the pass through component. Petitioner explained that at the time of the filing of the 2006 Annual Income Tax Return, they did not have in their possession ₱3,374,692.27 worth of BIR Form No. 2307. Accordingly, only the amount of ₱7,791,522.39 (supported by BIR Form No. 2307) was reported in the 2006 Annual Income Tax Return.

As can be gleaned from the foregoing, it is clear that petitioner also claimed as tax credits the pass-through component of the tax withheld by its client-advertisers. Thus, even if petitioner has remitted the corresponding withholding tax on the payments to the media-suppliers, on behalf of its client-advertisers, it was only offset when petitioner benefited from the tax credit that it claimed in its returns arising from the CWT Certificates issued by its client-advertisers. Accordingly, there was no double taxation despite such peculiar collection process.

In fine, the deficiency income tax and deficiency VAT assessments on the unreported revenues of ₱236,733,706.49 should be sustained.

With respect to the alleged unreported revenues of ₱686,770.85, petitioner averred that it was erroneous for respondent to simply assume that there was an unreported revenue arising from the difference amounting to ₱686,770.85 between sales per re-investigation which pertains to actual collections during the taxable year 2006 amounting to ₱225,107,397.85 and sales and non-operating and taxable income subjected to income tax based on the Annual ITR amounting to ₱222,420,627.00 and ₱2,310,185.00, respectively.

Petitioner follows the accrual method of accounting where income is reported in the period earned, regardless of when it is received. As such, it was incorrect for respondent to compute sales based on actual collections.

It must be pointed out that the resolution of this issue shall extend to the underdeclaration of income amounting to ₱236,733,706.49 since the same was only based on actual collections.

There is no question as to the usage of accrual method of accounting for income tax purposes as it has been expressly and impliedly recognized by the Tax Code and the Income Tax Regulations.[68]

In this regard, petitioner specifically questions how respondent arrived at the amount of ₱225,107,397.85 actual collections in 2006. Records indicate that the amount was computed as the total of sales declared per VAT Returns amounting to ₱241,248,985.35[69] less decrease in AR-Trade amounting to ₱16,141,587.50, as shown below:

Sales per Schedule - VATABLE (VAT-SLS)	₱201,379,194.35	
- ZERO RATED (VAT-SLS)	39,869,791.00	
Total Sales per Schedule	₱241,248,985.35	
Decrease in AR-Trade (Collection)	16,141,587.50	₱225,107,397.85
Sales per Income Tax Return (ITR)	₱222,110,442.00	
Non-Operating andTaxable Other Income	2,310,185.00	224,420,627.00
Difference (unreported income)		**₱ 686,770.85**

To reiterate, entities selling services are VATable on their gross receipts, or actual collections, for the period. Thus, the amounts declared in petitioner's VAT Returns are from actual collections.

Contrary to the allegations of petitioner, respondent properly computed the *should be* income of petitioner based

[68] *Solidbank Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 6096, March 10, 2003.
[69] Exhibit "14", BIR records, pp. 684-685.

on the accrual method as it considered the effects of movement in the accounts receivable (AR) during the year. A decrease in AR-Trade shows that there was lower outstanding balance by the end of 2006 as compared with the beginning of 2006. It is implied that a larger portion from the beginning AR-Trade was collected during the year. The AR-Trade at the beginning of 2006 arose from sale transactions of the prior year, 2005. Thus, deducting the decrease in AR-Trade from the sales based on sales declared per VAT Returns properly arrives at the *should be* income of petitioner according to the accrual method of accounting or in the amount of ₱225,107,397.85; which is comprised of all income "earned but not yet collected" during 2006.

However, the Court has to specifically highlight the manner as to how the decrease in AR-Trade amounting to ₱16,141,587.50 was derived by respondent. The Court finds no basis in the BIR Records or in any of the testimonies to uphold the computation of respondent. The amount does not tie up if we derive the decrease in AR-Trade from the audited balances[70] in 2006 and 2005 as follows:

Commission and fees receivable, 2006	₱ 46,329,828.00
Commission and fees receivable, 2005	65,267,998.00
Decrease in AR-Trade	**₱18,938,170.00**
Add: Effect of allowance for doubtful accounts	657,401.00
Actual decrease in AR-Trade	**₱19,595,571.00**
Decrease in AR-Trade per BIR's computation	**16,141,587.50**
Difference	**₱ 3,453,983.50**

Based on the above computation, the Court cannot find any amount that would reconcile with the difference. As such, by following respondent's computation of the unreported income of ₱686,770.85 but using the actual decrease in AR-Trade of ₱19,595,571.00, there will be no unreported income on the part of petitioner. Therefore, the deficiency income tax assessment on the amount of ₱686,770.85 should be cancelled, as shown below:

[70] Exhibit "E", Docket, pp. 861-890.

Total Sales per Schedule	₱241,248,985.35
Less: Decrease in AR-Trade	19,595,571.00
Should Be Income per ITR	₱221,653,414.35
Less: Sales per ITR	224,420,627.00
Difference	**(₱2,767,212.65)**

As for the underdeclaration of income amounting to ₱236,733,706.49, since there was no provided reconciliation from the actual collections to the accrued amount of income, the Court is compelled to assume that all of the collections pertained to the income earned in 2006.

It was observed that respondent's imputation of 40.49% gross profit margin on the undeclared/unreported income amounting to ₱96,131,551.27, which was subjected to income tax at 35%, was obtained from the Total Gross Income under Item 19C in the Annual Income Tax Return[71] amounting to ₱89,932,420.00 divided by the Sales/Revenues/Receipts/Fees of ₱222,110,442.00 under Item 15C.

The Court finds this overstated. The computation of gross profit margin rate by respondent includes the Non-operating and Taxable Other Income[72]. This should not be the case as this type of income is merely incidental to the operations of an entity and does not, in any way, affect the actual operations. Based on the Court's recomputation, the gross profit margin rate to be used should be 39.4498495% based on Gross Income from Operations (Item No. 17C) in the amount of ₱87,622,235.00[73] divided by Sales/Revenues/Receipts/Fees amounting to ₱222,110,442.00[74].

In sum, the deficiency income tax assessment on the unreported revenues in the amount of ₱686,770.85 should be cancelled for lack of factual basis.

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[71] Exhibit "LL", Docket, p. 1437.
[72] Exhibit "LL", line 18B, Docket, p. 1437.
[73] Exhibit "LL", line 17C, Docket, p. 1437.
[74] Exhibit "LL", line 15C, Docket, p. 1437.

However, petitioner failed to overcome respondent's findings on the unreported revenues of ₱236,733,706.49. As a result, petitioner shall be liable to pay the corresponding deficiency income tax and deficiency VAT.

The deficiency income tax on the unreported revenues of ₱236,733,706.49 shall be based on the recomputed gross profit of ₱93,391,090.83, as shown below:

Total Unreported Revenues		₱ 236,733,706.49
Taxable Gross Profit Rate		
Gross Income from Operations	₱ 87,622,235.00	
Sales/Revenues/Receipts/Fees	222,110,442.00	39.44984946%
Taxable Gross Profit		**₱93,391,090.83**

B. Unreported interest income - ₱102,050.00
F. Disallowed creditable tax withheld - ₱19,062.73

Petitioner had admitted its deficiency income tax liability on the unreported interest income of ₱102,050.00 and disallowed creditable tax withheld of ₱19,062.73 by paying on March 7, 2012 the amount of ₱147,145.18, broken down as follows:[75]

Basic Tax		
Unreported interest income of ₱102,050.00 multiplied by 35%	₱35,717.50	
Disallowed Creditable Tax Withheld	19,062.73	₱ 54,780.23
Surcharge		27,390.12
Interest		64,974.83
Total Amount Paid on March 7, 2012 per BIR Form No. 0605		**₱147,145.18**

C. Disallowed interest expense - ₱46,203.00

Similarly, petitioner had admitted its deficiency liability relative to the disallowed interest expense of ₱46,203.00, as

[75] Exhibit "F", Docket, pp. 891 and 908-911.

it paid on March 2, 2012 the following basic deficiency income tax and interest in the amount of ₱35,127.11:[76]

Basic Tax (₱46,203.00 x 35%)	₱ 16,171.05
Interest	18,956.06
Total Amount Paid on March 2, 2012 per BIR Form No. 0605	**₱35,127.11**

D. Disallowed income payments not subjected to withholding tax - ₱11,771,855.97

1. Compensation not subjected to withholding tax - ₱7,828,343.96

Finding that petitioner's claimed salaries and wages in the amount of ₱153,551,500.50 were higher than those reflected in petitioner's Alphalist in the amount of ₱145,723,156.54, respondent disallowed the difference of ₱7,828,343.96; which was allegedly not subjected to withholding tax pursuant to Sections 78, 79, and 80 of the NIRC of 1997, as amended.[77]

As earlier stated under the deficiency WTC assessment, petitioner failed to prove that it withheld and remitted the withholding tax due on the salaries and wages of ₱7,828,343.96. As a consequence, the same cannot be deducted by petitioner from its taxable gross income pursuant to Section 34(K) of the NIRC of 1997, as amended, which states:

> "(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

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[76] Exhibit "F", Docket, pp. 891 and 906-907.
[77] Exhibit "15", BIR records, p. 699.

Internal Revenue in accordance with this Section, sections 58 and 81 of this Code."

2. Purchases of services in the amount of ₱3,943,512.01 not subjected to 2% EWT

Based on the finding that petitioner failed to withhold and remit the 2% EWT on purchase of services in the amount of ₱3,943,512.01 pursuant to Section 57(B) of the NIRC of 1997, as amended, respondent disallowed the said amount as deduction from petitioner's taxable gross income for the year 2006.

As discussed earlier under the deficiency EWT assessment (see item V), petitioner paid the deficiency EWT liability on the income payments of ₱3,943,512.01. However, since the settlement of the deficiency EWT was made after the issuance of the FDDA, the related expenses of ₱3,943,512.01 shall still be disallowed as deductions from petitioner's taxable gross income, pursuant to Section 2.58.5 of RR No. 02-98.

E. Tax credit carried over to next period - ₱1,512,318.00

Respondent disallowed petitioner's excess tax credits for the taxable year 2006 in the amount of ₱1,512,318.00 but gave no explanation in the FDDA[78] or in the Formal Letter of Demand[79]. The Court could only surmise that the excess tax credits carried over to the succeeding year was disallowed in order to recapture the tax benefit realized by petitioner in carrying the said amount to the succeeding year.

However, 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 amount redounds to the succeeding year 2007. Since the tax benefit

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[78] Exhibit "15", BIR records, pp. 694-702.
[79] Exhibit "11", BIR records, pp. 630-636.

will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

In fine, petitioner is liable to pay basic deficiency income tax for the taxable year 2006 in the amount of ₱35,346,571.63, computed as follows:

Taxable Income per return			₱ 17,940,582.00
Add:	Adjustments		
	Sales per Creditable Certificate-2307	₱364,292,707.10	
	Sales per Schedule (SLS)	127,559,000.61	
	Unreported Sales	₱236,733,706.49	
	Multiply by Gross Profit Rate	39.44984946%	
	Unreported Taxable Gross Profit on Unreported Sales of ₱236,733,706.49		93,391,090.83
	Unreported Interest Income		102,050.00
	Disallowed Cost and Expenses		
	Non Deductible Interest Expense		46,203.00
	Income Payments not subjected to withholding		
	Compensation	₱ 7,828,343.96	
	Purchases of Services (2%)	3,943,512.01	11,771,855.97
Taxable Income per re-investigation			**₱123,251,781.80**
Income Tax Due (35%)			₱ 43,138,123.63
Less:	Payment per return		
	Total Tax Credit Claimed	₱ 7,791,552.00	
	Disallowed Creditable Tax - 2307	19,062.73	7,772,489.27
Basic Deficiency Income Tax Due			₱ 35,365,634.36
Less:	Tax paid on		
	Non-Deductible Interest Expense (₱46,203.00 x 35%)	₱ 16,171.05	
	Unreported Interest Income (₱102,050.00 x 35%)	35,717.50	
	Disallowed Creditable Tax - 2307	19,062.73	70,951.28
Basic Deficiency Income Tax Still Due			**₱ 35,294,683.08**

With reference to petitioner's settlement of the basic deficiency income tax due of ₱16,171.05 on the ₱46,203.00 non-deductible interest expense, pursuant to Sections 248(A)(3) and 249(B) and (C) of the NIRC of 1997, as amended, petitioner is still liable to pay the amount of ₱1,356.39, computed as follows:

Basic Deficiency Income Tax			₱16,171.05
Add:	25% Surcharge	₱ 4,042.76	
	20% Deficiency Interest		
	from April 15, 2007 to Feb. 7, 2012		
	(₱16,171.05 x 20% x 1759/365 days)	15,586.23	
	from Feb. 7, 2012 to March 2, 2012		
	(₱16,171.05 x 20% x 24/365 days)	212.66	
	20% Delinquency Interest from Feb. 7, 2012 to March 2, 2012		
	on basic deficiency EWT and surcharge		
	[(₱16,171.05+₱4,042.76) x 20% x 24/365 days]	265.83	
	on deficiency interest due for Jan. 20, 2007 to Feb. 7, 2012		
	(₱15,586.23 x 20% x 24/365)	204.97	20,312.45
Total Amount Due			₱36,483.50
Less:	Payment on March 2, 2012		
	Basic Tax	₱16,171.05	
	Interest	18,956.06	35,127.11
Amount Still Due			**₱1,356.39**

As regards petitioner's payment of the deficiency income tax due of ₱35,717.50 on the unreported interest income of ₱102,050.00 and deficiency income tax due of ₱19,062.73 representing disallowed creditable withholding taxes, the Court finds that petitioner made an overpayment of ₱23,073.17 largely because of the 50% surcharge erroneously imposed by respondent, as shown below:

Basic Deficiency Income Tax			
	On unreported interest income of ₱102,050.00		₱ 35,717.50
	On disallowed creditable taxes withheld		19,062.73
Total Basic Deficiency Income Tax			₱ 54,780.23
Add:	25% Surcharge	₱13,695.06	
	20% Deficiency Interest		
	from April 15, 2007 to Feb. 7, 2012		
	(₱54,780.23 x 20% x 1759/365 days)	52,799.14	
	from Feb. 7, 2012 to March 7, 2012		
	(₱54,780.23 x 20% x 29/365 days)	870.48	
	20% Delinquency Interest from Feb. 7, 2012 to March 7, 2012		
	on basic deficiency income tax and surcharge		
	[(₱54,780.23 + ₱13,695.06) x 20% x 29/365 days)	1,088.10	
	on deficiency interest due for Jan. 10, 2007 to Feb. 7, 2012		
	(₱52,799.14 x 20% x 29/365 days)	839.00	69,291.78
Total Amount Due			₱ 124,072.01
Less:	Payment		
	Basic Tax	₱54,780.23	
	Surcharge (50%)	27,390.12	

	Interest	64,974.83	147,145.18
Amount Still Due			**(₱23,073.17)**

VII. DEFICIENCY VALUE-ADDED TAX – ₱295,715,499.85

Respondent computed the deficiency VAT assessment of ₱296,683,844.35 as follows:[80]

Taxable Sales per Schedule			₱ 201,379,194.35
Unreported revenue/sales			236,733,706.49
Non-Operating & Taxable Other Income			2,310,185.00
Total Transaction Subject to Output Tax			440,423,085.84
Output Tax for January (10%)	₱82,689,185.70	₱ 8,268,918.57	
Output Tax for February - December (12%)	357,733,900.14	42,928,068.02	
Output Tax Due (10/12%)			51,196,986.59
Output Tax-billed & collected from Agencies/Customers			88,845,615.66
Total Output Tax per re-investigation			140,042,602.25
Input Tax Claimed per Return		4,533,807.18	
Less: Disallowed Input Tax		507,893.26	4,025,913.92
Output Tax Payable			136,016,688.33
Less: Payments per return			18,125,945.12
Deficiency VAT			117,890,743.21
Add: Surcharge (50%)		58,945,371.60	
Interest (20% per annum)		119,847,729.54	178,793,101.14
Total Deficiency VAT			**₱296,683,844.35**

As can be gleaned from the above computation, the assessment arose from the following items:

A.	Unreported Revenues/Sales	₱236,733,706.49
B.	Non-Operating and Taxable Other Income	2,310,185.00
C.	Output Tax Billed and Collected from Agencies/Customers	88,845,615.66
D.	Disallowed Input Tax	507,893.26

The Court shall discuss each item.

A. Unreported revenue/sales - ₱236,733,706.49

[80] Exhibit "15", BIR records, pp. 694 to 695.

This assessment was based on the same finding under the deficiency income tax assessment (see discussion in item VI.A.1) that petitioner had unreported revenues/sales in the amount of ₱236,733,706.49 representing the discrepancy between the sales based on CWT Certificates - BIR Form No. 2307 in the amount of ₱364,292,707.10 and the amount of ₱127,559,000.61 sales reflected in the schedules of sales submitted as VAT Return attachments.

The Court finds the assessment in order. As stated earlier, petitioner had unreported sales collections in the amount of ₱236,733,706.49, which shall be subjected to VAT.

B. Non-Operating & Taxable Other Income - ₱2,310,185.00

Respondent imposed 12% VAT on the "Non-Operating & Taxable Other Income" declared by petitioner in its Annual ITR for the taxable year 2006 in the amount of ₱2,310,185.00, which comprised of the following:[81]

Prompt payment discount	₱ 22,655.00
Interest Income - stock options	276,094.00
Miscellaneous	2,011,436.00
Total Non-Operating & Taxable Other Income	**₱2,310,185.00**

Petitioner did not refute or offer evidence to counter the findings of the BIR examiner. The Independent CPA also did not mention the said income in the report[82]. Consequently, respondent's assessment should remain. The amount of ₱2,310,185.00 shall be considered to have been received by petitioner in the ordinary course of its trade or business and is subject to VAT pursuant to Section 105 in relation to Section 108(A) of the NIRC of 1997, as amended.

C. Output Tax Billed and Collected from Agencies/Customers - ₱88,845,615.66

[81] Exhibits "LL", line 18B, Docket, p. 1437; Exhibit "LL-1", Section A, Schedule 4, Docket, p. 1438.
[82] Exhibit "GG", p. 5.

Respondent found that output tax amounting to ₱88,845,615.66 was not reported for VAT purposes, which was billed and collected by petitioner from various agencies/customers; hence, petitioner was assessed for deficiency VAT pursuant to Sections 106 and 108 of the NIRC of 1997, as amended, as computed below:[83]

Total Output Tax Billed and Collected			₱ 116,859,104.26
Output tax imposed on unreported sales	₱236,733,706.49		
January output tax (1/12) - 10%	19,727,808.87	₱ 1,972,780.89	
February - December output tax (11/12) - 12%)	217,005,897.62	26,040,707.71	28,013,488.60
Unreported Output Tax			**₱88,845,615.66**

As stated earlier (see discussion in item VI.A.1), based on the Independent CPA's verification and the schedule of ORs presented by petitioner, only one OR was issued for the collection of pass-through costs and commission, including the 12% VAT. As a result, petitioner shall be liable for the unremitted VAT amounting to ₱88,845,615.66 pursuant to Section 108(A) in relation to Section 113(A)(2) of the NIRC of 1997, as amended.

D. Disallowed Input Tax - ₱507,893.26

Respondent disallowed petitioner's claimed input taxes for both domestic purchases of goods and services in the amount of ₱507,893.26, pursuant to Sections 110 and 113(A) and (B) of the NIRC of 1997, as amended.

For petitioner's failure to refute respondent's finding, the disallowance of the ₱507,893.26 input VAT shall be upheld.

In fine, this Court upholds the deficiency VAT assessment. Petitioner is liable to pay basic deficiency VAT in the amount of ₱117,890,743.21, reduced by the amount of ₱123,110.42 which was paid by petitioner on March 7,

[83] Exhibit "15", BIR records, p. 700.

2012, leaving an amount of ₱117,767,632.79 basic deficiency VAT still due, computed as follows:

Taxable Sales per Schedule			₱201,379,194.35
Unreported revenue/sales			236,733,706.49
Non-Operating and Taxable Other Income			2,310,185.00
Total Transaction Subject to Output Tax			₱440,423,085.84
Output Tax for January (10%)	₱ 82,689,185.70	₱ 8,268,918.57	
Output Tax for February - December (12%)	357,733,900.14	42,928,068.02	
Output Tax Due (10/12%)			₱ 51,196,986.59
Output Tax-billed and collected from Agencies/Customers			88,845,615.66
Total Output Tax per re-investigation			₱140,042,602.25
Input Tax Claimed per Return		₱ 4,533,807.18	
Less: Disallowed Input Tax		507,893.26	4,025,913.92
Output Tax Payable			₱136,016,688.33
Less: Payments per return			18,125,945.12
Deficiency VAT			₱117,890,743.21
Less: Payment made on March 7, 2012			123,110.42
Deficiency VAT Still Due			**₱117,767,632.79**

As regards the ₱123,110.42 deficiency VAT paid by petitioner on March 7, 2012, pursuant to Sections 248(A)(3) and 249(B) and (C) of the NIRC of 1997, as amended, petitioner is still liable to pay the amount of ₱15,184.07, computed as follows:

Basic Deficiency VAT		₱ 123,110.42
Add: 25% Surcharge	₱ 30,777.61	
20% Deficiency Interest		
from Jan. 25, 2007 to Feb. 7, 2012		
(₱123,110.42 x 20% x 1,839/365 days)	124,054.83	
from Feb. 7, 2012 to March 7, 2012		
(₱123,110.42 x 20% x 29/365 days)	1,956.28	
20% Delinquency Interest from Feb. 7, 2012 to March 7, 2012		
on basic deficiency VAT and surcharge		
[(₱123,110.42+₱30,777.61) x 20% x 29/365 days]	2,445.34	
on deficiency interest due for Jan. 25, 2007 to Feb. 7, 2012		
(₱ 124,054.83 x 20% x 29/365 days)	1,971.28	161,205.34
Total Amount Due		₱ 284,315.76
Less: Payment on March 7, 2012		
Basic Tax	₱123,110.42	
Interest	146,021.27	269,131.69
Amount Still Due		**₱15,184.07**

VIII. COMPROMISE PENALTIES

Respondent imposed compromise penalties against petitioner in the amount of ₱123,500.00, broken down below:

	Tax Type	Compromise Penalty
a.	Penalty for failure to file Summary of Alphabetical list of Withholding Taxes (SAWT), alpha list of income payments not subjected to withholding tax, Monthly Alphabetical List of Payees (MAP), list of regular suppliers	₱ 25,000.00
b.	Withholding on VAT	8,500.00
c.	Fringe Benefits Tax	20,000.00
d.	Withholding Tax – Final	20,000.00
e.	Withholding Tax – Compensation	25,000.00
f.	Withholding Tax – Expanded	25,000.00
	Total	**₱123,500.00**

Petitioner paid the compromise penalties under letters a, b and c in the respective amounts of ₱25,000.00, ₱8,500.00 and ₱20,000.00 on March 2 and 7, 2012. However, petitioner did not pay the remaining compromise penalties imposed under the assessments for final withholding tax, withholding tax on compensation and expanded withholding tax totaling ₱70,000.00 (under letters d, e and f), thus, petitioner did not agree to settle the same. It has been held that the imposition of compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[84] Consequently, the compromise penalties of ₱70,000.00 should be cancelled.

Anent the 50% surcharge on the alleged deficiency income tax and VAT[85], the Court finds no reason to warrant the imposition of the same, pursuant to Section 248(B) of the NIRC of 1997, as amended.

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the

[84] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. and the Court of Tax Appeals,* G.R. No. L-35266, January 21, 1991.
[85] Exhibit "15", BIR records, pp. 694-695.

assessment pertaining to the imposition of compromise penalties for basic deficiency creditable withholding VAT, basic deficiency withholding tax – compensation, basic deficiency withholding tax – expanded, final withholding tax, and the fringe benefits tax due are hereby **CANCELLED**. However, petitioner is **ORDERED TO PAY** respondent the modified amount of **₱199,496,841.52** representing basic deficiency final withholding tax, withholding tax on compensation, expanded withholding tax, income tax, and value-added tax, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and the amount of **₱99,036.74** representing 25% surcharge and 20% deficiency and delinquency interests on the partial deficiency tax payments of ₱2,368,539.33 or in the aggregate sum of **₱199,595,878.26**, computed as follows:

Tax Type	**Basic Tax**	**25% Surcharge**	**Total Amount**
Final Withholding Tax	₱ 788,517.77	₱ 197,129.44	₱ 985,647.21
Withholding Tax on Compensation	1,999,558.50	499,889.63	2,499,448.13
Expanded Withholding Tax	3,747,081.07	936,770.27	4,683,851.34
Income Tax	35,294,683.08	8,823,670.77	44,118,353.85
Value-added Tax	117,767,632.79	29,441,908.20	147,209,540.99
Subtotal	**₱159,597,473.21**	**₱39,899,368.31**	**₱199,496,841.52**
25% Surcharge, 20% deficiency and delinquency interest on the partial deficiency tax payments made by petitioner on March 2 and 7, 2012 totaling ₱2,368,539.33			
			Amount
Final Withholding on VAT			₱ (3,959.59)
Fringe Benefits Tax			90,021.24
Withholding Tax - Compensation			4,472.54
Expanded Withholding Tax			15,035.26
Income Tax			(21,716.78)
Value-added Tax			15,184.07
Subtotal			**₱ 99,036.74**
Total			**₱199,595,878.26**

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

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

	Basic Tax	20% Deficiency Interest Computed from
Final Withholding Tax	₱ 788,517.77	January 20, 2007
Withholding Tax - Compensation	1,999,558.50	January 20, 2007
Expanded Withholding Tax	3,747,081.07	January 20, 2007
Income Tax	35,294,683.08	April 15, 2007
Value-added Tax	117,767,632.79	January 25, 2007

b) Delinquency interest at the rate of 20% per annum on the total amount of **₱199,496,841.52** and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from February 7, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairperson, 1st Division