REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SYMMETRY PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8324

Members:

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

Promulgated:

OCT 15 2014
cazel 4:25 p.m.

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AMENDED DECISION

***Fabon-Victorino, J.*:**

In its Motion For Reconsideration dated July 1, 2014, petitioner seeks to reverse the Decision dated June 10, 2014, which affirmed with modifications the assessments issued by respondent for deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and Final Withholding VAT (FWV) for taxable year 2004 in the total amount of ₱25,981,782.71, inclusive of surcharges.

According to petitioner the Court should not have disregarded the testimonies of its witnesses Elizabeth Añana, and Lito Chan for being self-serving. Their testimonies were under oath and given in open court with the opportunity for cross-examination. Further, as petitioner's General Manager and Chief Accountant, respectively, they had complete knowledge of the business operations and transactions of petitioner, hence, they can testify that petitioner pays royalties to its Licensor, Symmetry USA for the use of the latter's marketing and distribution plan. Had their testimonies that petitioner pays commissions to non-residents through Symmetry USA, as evidenced by the License Agreement between petitioner and Symmetry USA been given credence, the same would have established that respondent erred in concluding that petitioner had undeclared sales and in grossing up the amount of commissions to non-residents using the 5% rate for royalties as well.

Petitioner also insists that the Independent Certified Public Accountant (ICPA) report should be given full credence because contrary to the Court's finding, there were supporting documents presented on January 29, 2013, upon which the ICPA based his conclusions in its favor such as various invoices and receipts. The marked copies of these documents were identified in the ICPA Judicial Affidavit dated November 29, 2012. Scanned copies of the said invoices and receipts were also submitted on November 19, 2012. Although petitioner admits that these documents were not formally offered, it insists that they should be considered as they were identified by a competent witness and are part of the record of the case.

In any event, petitioner resubmitted as part of its Motion the documents examined by the ICPA as well as the disc containing scanned copies of the same for the evaluation of the Court.

This incident was deemed submitted for resolution *sans* any comment/opposition from respondent, who despite notice, failed to file any.[1]

It has been held that documents attached to a motion for reconsideration are part of the record of the case and cannot be ignored by the Court. Moreover, technicalities should not be used to defeat substantive rights, especially those that have been held as a matter of right.[2]

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[1] Record Verification dated August 8, 2014.
[2] Commissioner of Internal Revenue vs. PERF Realty Corporation, G.R. No. 163345, July 04, 2008; Filinvest Development Corporation v. CIR, G.R. No. 146941, August 9, 2007.

In the light of the foregoing, having been identified and attested to by the ICPA and forming part of the subject Motion for Reconsideration, the Court may take them into consideration in the resolution of the pending incident.

Thus, after careful evaluation and verification of the evidence submitted, the Court arrived at the following findings:

I. INCOME TAX

1. Undeclared sales

A. Undeclared sales arising from the alleged royalties paid by petitioner during the year amounting to ₱6,372,165.79

In the Final Decision on Disputed Assessment (FDDA), respondent declared that the royalty payments per BIR Form No. 1601-F (Other payments to NRFCs) amounted to ₱6,372,165.79. The FDDA cited Note 12 of the Financial Statements (FS) which stated: "In consideration thereof, Symmetry Philippines, Inc., shall pay five (5%) per cent of the monthly Philippine net sales of the product". The above amount was grossed up by respondent resulting in the amount of ₱127,443,316.00 net sales, which served as the basis of royalty payments. The difference between the derived amount was compared by respondent against petitioner's income tax return (ITR), resulting in undeclared sales of ₱49,167,727.00.

Respondent failed to consider that only ₱3,900,000.00 was claimed as royalty expense in the ITR since payments per BIR Form No. 1601-F (Other payments to NRFCs) reflect ₱6,300,000.00. Respondent claimed that the inclusion of the tax base of the ₱6,300,000.00 remittance as part of royalty payments was anchored on the provision in the License Agreement that 5% of net sales was the basis of royalty payments. There was no mention of additional compensation for Symmetry Corporation in the form of commissions, in any documents submitted to refute the assessment. Hence, it was proper to consider the same as royalty payments, in the absence of any proof to the contrary.[3]

On the matter, petitioner explains that respondent erroneously assumed that the amount of ₱6,372,165.79 indicated as "Other payments to NRFCs" in BIR Form 1601-F also represented royalty fees paid under the License Agreement between petitioner and Symmetry Corporation (USA). Consequently, respondent erred in grossing up the said amount, assuming that it was 5% of the net sales, as agreed upon in the License Agreement. Said amount, however, represented the commissions billed by Symmetry Corporation (USA) for the sales made by Philippine down lines of its sales people. Further, the royalty fees were in payment for the use of petitioner of Symmetry Corporation (USA)'s Marketing and Distribution Plan, while the commissions were for the sales made in the Philippines of the down lines of Symmetry Corporation (USA) and/or its sales people.

The Court finds for petitioner.

As discussed in the assailed Decision, the royalty and commission payments are distinct payments to Symmetry Corporation which are referred to separately in the License Agreement, thus:

> Section 3.2 of Article III of the License Agreement between petitioner and Symmetry Corporation[4] provides that any commission due to non-resident Filipinos on sales generated in the Philippines as well as all expenses incurred in connection with the training and assistance provided for by Symmetry Corporation, shall be for the account of petitioner in addition to the

[3] Exhibit "A-1", Docket, Vol. 1, p. 29.
[4] Exhibit "B-2-b".

> consideration referred to in Section 3.1 of the License Agreement. Section 3.1 of the License Agreement pertains to the royalty fee to be paid by petitioner to Symmetry Corporation for the use of the product plan and rights and privileges granted by virtue of the License Agreement, the sum equivalent to 5% of the monthly Philippine net sales of the product.[5]

An examination of the Schedule of Foreign Commission[6], credit memo and invoices shows that the alleged royalty payments in the amount of ₱6,372,165.79 pertain to the commissions billed by Symmetry Corporation for the sales made by Philippine down lines, as detailed in the table below:

Date (2004)	**Particulars**	**Commission billed by Symmetry Corp., USA** *a*	**Final Withholding Tax (in USD)** *b=a*32%*	**SPI Billing to USA** *c*	**Net Billings** *d=a-b-c*	**Exhibits (Credit Memo and Invoice)**	**Foreign Commission (PhP)**	**Final Withholding Tax (PhP)**
31-Jan	Weekly Commission	$ 48.26	$ 15.44	$ 231.80	$ (198.98)	"K.1.1-ICPA", "K.1.2-ICPA"	₱ 2,654.30	₱ 849.38
31-Jan	Monthly Volume Bonus	90.50	28.96	1,364.89	(1,303.35)		4,977.50	1,592.80
31-Jan	Weekly Commission	81.08	25.95	263.21	(208.08)	"K.2.1-ICPA", "K.2.2-ICPA"	4,459.40	1,427.01
31-Jan	Monthly Volume Bonus	8,374.56	2,679.86	1,928.42	3,766.28	"K.3.1-ICPA", "K.3.2-ICPA"	460,600.80	147,392.26
29-Feb	Weekly Commission	109.89	35.16	378.13	(303.40)	"K.4.1-ICPA", "K.4.2-ICPA"	6,043.95	1,934.06
29-Feb	Monthly Volume Bonus	58.74	18.80	1,464.79	(1,424.85)		3,230.70	1,033.82
29-Feb	Weekly Commission	37.99	12.16	151.94	(126.11)	"K.5.1-ICPA", "K.5.2-ICPA"	2,089.45	668.62
29-Feb	Monthly Volume Bonus	8,646.90	2,767.01	1,926.73	3,953.16	"K.6.1-ICPA", "K.6.2-ICPA"	475,579.50	152,185.44
31-Mar	Weekly Commission	28.99	9.28	248.71	(229.00)	"K.7.1-ICPA", "K.7.2-ICPA"	1,594.45	510.22
31-Mar	Monthly Volume Bonus	62.71	20.07	1,259.88	(1,217.24)		3,449.05	1,103.70
31-Mar	Weekly Commission	149.16	47.73	77.98	23.45	"K.8.1-ICPA", "K.8.2-ICPA"	8,203.80	2,625.22
31-Mar	Monthly Volume Bonus	9,109.52	2,915.05	1,802.74	4,391.73		501,023.60	160,327.55
30-Apr	Weekly Commission	54.07	17.30	179.82	(143.05)	"K.9.1-ICPA", "K.9.2-ICPA"	2,973.85	951.63
30-Apr	Monthly Volume Bonus	30.44	9.74	1,255.73	(1,235.03)		1,674.20	535.74
30-Apr	Weekly Commission	43.24	13.84	65.40	(36.00)	"K.10.1-ICPA", "K.10.2-ICPA"	2,378.20	761.02
31-Aug	Weekly Commission	9.73	3.11	167.15	(160.53)	"K.11.1-ICPA", "K.11.2-ICPA"	535.15	171.25
31-Aug	Monthly Volume Bonus	60.53	19.37	902.99	(861.83)		3,329.15	1,065.33
31-May	Weekly Commission	16.55	5.30	270.25	(259.00)	"K.12.1-ICPA", "K.12.2-ICPA"	910.25	291.28
31-May	Monthly Volume Bonus	14.16	4.53	1,257.39	(1,247.76)		778.80	249.22
31-May	Weekly Commission	161.93	51.82	82.41	27.70	"K.13.1-ICPA", "K.13.2-ICPA"	8,906.15	2,849.97
31-May	Monthly Volume Bonus	10,144.56	3,246.26	2,086.74	4,811.56		557,950.80	178,544.26

[5] Docket, Vol. 2, p. 561.
[6] Annex "A-ICPA", Docket, Vol. 1, pp. 311-312.

30-Jun	Weekly Commission	24.66	7.89	217.35	(200.58)	"K.14.1-ICPA", "K.14.2-ICPA"	1,356.30	434.02
30-Jun	Monthly Volume Bonus	79.12	25.32	1,180.04	(1,126.24)		4,351.60	1,392.51
30-Jun	Weekly Commission	109.31	34.98	48.54	25.79	"K.15.1-ICPA", "K.15.2-ICPA"	6,012.05	1,923.86
30-Jun	Monthly Volume Bonus	10,126.74	3,240.56	2,214.87	4,671.31		556,970.70	178,230.62
31-Jul	Weekly Commission	25.39	8.12	264.54	(247.27)	"K.16.1-ICPA", "K.16.2-ICPA"	1,396.45	446.86
31-Jul	Monthly Volume Bonus	38.16	12.21	880.06	(854.11)		2,098.80	671.62
31-Jul	Weekly Commission	234.68	75.10	170.93	(11.35)	"K.17.1-ICPA", "K.17.2-ICPA"	12,907.40	4,130.37
30-Sep	Weekly Commission	72.63	23.24	42.51	6.88	"K.18.1-ICPA", "K.18.2-ICPA"	3,994.65	1,278.29
30-Sep	Monthly Volume Bonus	9,221.10	2,950.75	2,156.72	4,113.63		507,160.50	162,291.36
30-Sep	Weekly Commission	16.55	5.30	208.20	(196.95)	"K.19.1-ICPA", "K.19.2-ICPA"	910.25	291.28
30-Sep	Monthly Volume Bonus	49.47	15.83	1,036.68	(1,003.04)		2,720.85	870.67
31-Oct	Weekly Commission	75.34	24.11	35.58	15.65	"K.20.1-ICPA", "K.20.2-ICPA"	4,143.70	1,325.98
31-Oct	Monthly Volume Bonus	9,777.11	3,128.68	2,012.85	4,635.58		537,741.05	172,077.14
30-Nov	Weekly Commission	16.55	5.30	245.78	(234.53)	"K.21.1-ICPA", "K.21.2-ICPA"	910.25	291.28
30-Nov	Monthly Volume Bonus	10.28	3.29	1,092.12	(1,085.13)		565.40	180.93
30-Nov	Weekly Commission	725.84	232.27	90.00	403.57	"K.22.1-ICPA", "K.22.2-ICPA"	39,921.20	12,774.78
30-Nov	Monthly Volume Bonus	9,295.90	2,974.69	2,075.42	4,245.79		511,274.50	163,607.84
31-Dec	Weekly Commission	11.75	3.76	124.40	(116.41)	"K.23.1-ICPA", "K.23.2-ICPA"	646.25	206.80
31-Dec	Monthly Volume Bonus	16.11	5.16	1,042.29	(1,031.34)		886.05	283.54
31-Dec	Weekly Commission	274.14	87.72	57.99	128.43	"K.24.1-ICPA", "K.24.2-ICPA"	15,077.70	4,824.86
31-Dec	Monthly Volume Bonus	8,909.60	2,851.07	1,940.88	4,117.65		490,028.00	156,808.96
31-Jul	Monthly Volume Bonus	9,841.54	3,149.29	2,159.31	4,532.94	"K.17.1-ICPA", "K.25.2-ICPA"	541,284.70	173,211.10
31-Oct	Weekly Commission	7.71	2.47	174.60	(169.36)	"K.26.1-ICPA", "K.26.2-ICPA"	424.05	135.70
31-Oct	Monthly Volume Bonus	26.01	8.32	1,032.65	(1,014.96)		1,430.55	457.78
31-Aug	Weekly Commission	54.54	17.45	-	37.09	"K.27.1-ICPA", "K.27.2-ICPA"	2,999.70	959.90
31-Aug	Monthly Volume Bonus	9,514.11	3,044.52	2,315.49	4,154.10		523,276.05	167,448.34
30-Apr	Monthly Volume Bonus	9,656.71	3,090.15	2,029.56	4,537.00	"K.10.1-ICPA", "K.28.2-ICPA"	531,119.05	169,958.10
	Total	**$115,544.56**	**$36,974.29**	**$42,216.46**	**$36,353.81**		**₱6,354,950.80***	**₱2,033,584.26***

**Difference due to conversion.*

These findings are consistent with the Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F) and Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF), all of which show that petitioner duly remitted a total final tax of ₱2,039,093.05 equivalent to 32% of the income payments of ₱6,372,165.79, as shown below:

Taxable Month	Income Payment	Taxes Withheld	Exhibit
January	₱ 458,760.16	₱ 146,803.25	"C.2-ICPA"
February	474,335.47	151,787.35	"C.3-ICPA"
March	486,944.22	155,822.15	"C.4-ICPA"
April	515,211.56	164,867.70	"C.5-ICPA"

May	538,145.78	172,206.65	"C.6-ICPA"
June	568,548.44	181,935.50	"C.7-ICPA"
July	568,693.13	181,981.80	"C.8-ICPA"
August	557,687.97	178,460.15	"C.9-ICPA"
September	530,141.56	169,645.30	"C.10-ICPA"
October	514,787.97	164,732.15	"C.11-ICPA"
November	543,738.59	173,996.35	"C.12-ICPA"
December	615,170.94	196,854.70	"C.13-ICPA"
Total	**₱ 6,372,165.79**	**₱ 2,039,093.05**	

The foregoing proves that said ₱6,372,165.79 income payments were for commissions billed by Symmetry Corporation (USA) for the sales made by Philippine down lines.

On the other hand, to account for claimed royalties, petitioner presented the Schedule Computation of the Royalties[7], accompanied by their Monthly and Quarterly VAT Returns, as summarized below:

Taxable Month	Payee	Net Sales	Royalty	Tax Remitted	Exhibits (VAT Returns)
January	Symmetry Corp. (USA)	₱ 6,511,564.00	₱ 325,578.20	₱ 32,557.82	"E"; "E-1"
February	Symmetry Corp. (USA)	6,884,760.00	344,238.00	34,423.80	"F"; "F-1"
March	Symmetry Corp. (USA)	6,918,318.00	345,915.90	34,591.59	"G"; "G-1"
April	Symmetry Corp. (USA)	7,105,132.00	355,256.60	35,525.66	"H"; "H-1"
May	Symmetry Corp. (USA)	7,647,758.00	382,387.90	38,238.79	"I"; "I-1"
June	Symmetry Corp. (USA)	7,766,768.00	388,338.40	38,833.84	"J"; "J-1"
July	Symmetry Corp. (USA)	7,965,760.00	398,288.00	39,828.80	"K"; "K-1"
August	Symmetry Corp. (USA)	5,935,114.00	296,755.70	29,675.57	"L"; "L-1"
September	Symmetry Corp. (USA)	5,482,418.00	274,120.90	27,412.09	"M"; "M-1"
October	Symmetry Corp. (USA)	5,878,400.00	293,920.00	29,392.00	"N"; "N-1"
November	Symmetry Corp. (USA)	6,267,204.00	313,360.20	31,336.02	"O"; "O-1"
December	Symmetry Corp. (USA)	5,477,308.00	273,865.40	27,386.54	
Total		**₱79,840,504.00**	**₱3,992,025.20**	**₱399,202.52**	

Pertinently, the License Agreement provides that the licensee (herein petitioner) shall pay to the licensor [Symmetry Corporation (USA)], for the use of the product plan and rights and privileges set forth, the sum equivalent to 5% of the monthly Philippine **net sales** of the product which shall be computed as follows:

[7] Annex "E-ICPA", Docket, Vol. 1, p. 372.

Net Sales = Invoice value based on actual sales minus
a) trade, quantity or cash discounts, if any;
b) return credits and allowances;
c) tax, excise or other government charges;
d) freight, insurance and packaging cost

Following petitioner's argument, using respondent's computation but this time the royalty expense of ₱3,992,025.00 shall be the basis in grossing up to arrive on the sales for the year, the discrepancy is ₱1,564,915.00, computed as follows:

Royalty expense	₱ 3,992,025.20
Royalty rate	5%
Net Sales	79,840,504.00
Sales per audited FS	78,275,589.00
Difference	**₱ 1,564,915.00**

Per petitioner, the difference represents discounts given to customers which are not deductible for royalty computation.[8] This is evidently contrary to the provision in the License Agreement that the 5% royalty fee shall be based on the invoice value less discounts. In other words, the net sales that should have been reported in the ITR and FS should be the amount of ₱79,840,504.00. Considering that only the amount of ₱78,275,589 was reported thereon, there was an under declaration of petitioner's sales in the amount of ₱1,564,915.00.

B. Undeclared sales arising from importations in the amount of ₱1,650,134.00

[8] Docket, Vol. 1, p. 105.

In the assailed Decision, the Court cancelled the assessment for the alleged undeclared sales arising from importations in the amount of ₱1,650,134.00 in view of respondent's failure to establish the kind of importation which petitioner purportedly failed to declare in its ITR.[9]

2. Disallowed expenses not subjected to withholding tax

Respondent compared the amounts of the following expenses reflected in the ITR *vis-à-vis* the amount shown in its Alphalist of income payments subject to expanded withholding tax, and a deficiency resulted therefrom: part of commission expense, professional fees, purchases of goods and services were not subjected to the requisite withholding tax, hence, the same were disallowed.[10] The disallowed expenses are as follows:

Commission	₱ 410,336.00
Professional fees	60,000.00
Purchases of services	2,200,847.00
Purchases of goods	1,040,153.00
Total	**₱ 3,711,336.00**

A. Commission

The discrepancy of ₱410,336.00 was arrived at by respondent as follows:

Per 1702 Return	₱ 24,516,744.00
Less: per Alphalist	24,106,407.90
Not subjected to EWT	**₱ 410,336.10**

The record indicates that the amount of ₱24,106,407.90 per alphalist pertains only to Commission Expense reflected in the Monthly Remittance Return of

[9] Docket, Vol. 2, pp. 562-564.
[10] Exhibit "A-1", Docket, Vol. 1, p. 29.

Creditable Income Taxes Withheld (Expanded) [BIR Form 1601-E]. Respondent failed to consider the Commission Expense of ₱6,372,165.79 that was subjected to final withholding tax as reflected in the Monthly Remittance Return of Final Income Taxes Withheld [BIR Form 1601-F] when it compared the income payments with that of the amount reflected in the Annual ITR and Audited FS for taxable year 2004. Thus, the total Commission Expense that was subjected to withholding tax actually amounts to ₱30,431,126.99, to wit:

Taxable Month	1601-E	Exhibit	1601-F	Exhibit	Total
January	₱ 1,826,392.10	"B.2-ICPA"	₱ 458,760.16	"C.2-ICPA"	₱ 2,285,152.26
February	1,705,707.80	"B.3-ICPA"	474,335.47	"C.3-ICPA"	2,180,043.27
March	1,943,394.90	"B.4-ICPA"	486,944.22	"C.4-ICPA"	2,430,339.12
April	1,666,148.50	"B.5-ICPA"	515,211.56	"C.5-ICPA"	2,181,360.06
May	2,167,095.60	"B.6-ICPA"	538,145.78	"C.6-ICPA"	2,705,241.38
June	2,642,586.20	"B.7-ICPA"	568,548.44	"C.7-ICPA"	3,211,134.64
July	2,662,402.90	"B.8-ICPA"	568,693.13	"C.8-ICPA"	3,231,096.03
August	2,810,600.70	"B.9-ICPA"	557,687.97	"C.9-ICPA"	3,368,288.67
September	1,566,609.50	"B.10-ICPA"	530,141.56	"C.10-ICPA"	2,096,751.06
October	1,606,312.30	"B.11-ICPA"	514,787.97	"C.11-ICPA"	2,121,100.27
November	1,735,353.50	"B.12-ICPA"	543,738.59	"C.12-ICPA"	2,279,092.09
December	1,726,357.20	"B.13-ICPA"	615,170.94	"C.13-ICPA"	2,341,528.14
TOTAL	**₱ 24,058,961.20**		**₱6,372,165.79**		**₱30,431,126.99**

Considering that a higher commission income was actually subjected to proper withholding taxes as compared to the audited FS and per Annual ITR, it is incorrect to say that petitioner failed to withhold part of its commission expense.

B. Professional fees

Record as well shows that professional fees originally assessed at the amount of ₱313,364.12[11], include payments made to the following:

Alonso-Antonio and Partners/Lawyers	₱ 60,000.00
Auditor/VRS & Co. Certified Public Accountant	120,000.00

[11] Annexes "H" and "I-2", Docket, Vol. 1, p. 79, 83.

Professional Payroll Specialist, Inc. (PPSI)	78,600.00
Susan Ligeralde	60,000.00
Adjustment	(5,236.00)
Total	**₱ 313,364.00**

Of the foregoing, the payments to Alonso-Antonio and Partners and VRS & Co. Certified Public Accountant in the respective amounts of ₱60,000.00 and ₱120,000.00 are not subject to withholding tax as they pertain to payments to general professional partnerships which are exempt from income tax, *vis-à-vis* the expanded withholding tax, pursuant to Section 26 of the NIRC of 1997 and Section 2.57.5(B) of Revenue Regulations No. 2-98, as amended.

As to the payments made to PPSI in the amount of ₱78,600.00, it shall be considered as valid deduction from petitioner's gross income for taxable year 2004 given that the related withholding taxes in the amount of ₱7,860.00 were duly withheld and remitted by petitioner.

On the other hand, of the income payments of ₱60,000.00 to Susan Ligeralde, record reveals that only the amount of ₱40,000.00 was subjected to withholding taxes of ₱4,000, thus, shall be considered as valid deduction from petitioner's gross income for taxable year 2004. The remaining ₱20,000.00 shall be disallowed as valid deduction.

C. Purchases of goods and services

Petitioner avers that the amounts of purchases of goods and services were from non-regular suppliers of goods and services and over-the-counter purchases which are not subject to expanded withholding tax.

However, respondent maintains that Revenue Regulations No. 17-2003 dated March 31, 2003 requires the withholding of 1% and 2% for every income payment made to local/resident regular suppliers for purchases of goods and services, respectively. The term "local/resident supplier" excludes casual purchases of goods or the purchases made from non-regular suppliers and oftentimes involve single purchases, which are exempt from the requisite withholding tax. However, a single purchase which involves ten thousand pesos (₱10,000.00) or more shall be subject to withholding tax. Respondent claims that in this case, petitioner failed to prove that these purchases of goods and services subject of the assessment were made from non-regular suppliers and/or did not involve single purchases of ten thousand pesos (₱10,000.00) or more.[12] Precisely respondent disallowed the following as deductible expense:

Purchases of services	₱ 2,200,847.00
Purchases of goods	1,040,153.00
Total	**₱ 3,241,000.00**

Per ICPA's verification, the aggregate disallowed amount of ₱3,241,000.00 is the result of the timing difference and purchases from non-regular suppliers of goods and services. But citing Revenue Regulations No. 2-98 which provides that the Top 20,0000 Private Corporation/Large Taxpayers are required to withhold a tax of 1% or 2% on all its purchases of goods and services that are not covered with specific rates of withholding, the ICPA noted exceptions on the income payments without the corresponding withholding taxes, which include the following:[13]

Accounts	**Amount**	**Annex**
Income payments by large taxpayers		
Supplier of services:		
Janitorial expense	₱ 5,201.10	Annex C-ICPA
Insurance	78,661.54	Annex C-ICPA
Communication expense	1,084,962.70	Annex C-ICPA
Utilities expense	100,352.52	Annex C-ICPA
Telephone expense	1,076,180.63	Annex C-ICPA
Supplier of goods:		
Office supplies	64,829.28	Annex C-ICPA
Literature inventory	48,207.27	Annex C-ICPA
Property and equipment	133,777.98	Annex C-ICPA
Store inventory	56,650.00	Annex C-ICPA
Pin inventory	12,336.50	Annex C-ICPA
Total	**₱2,661,159.52**	

[12] Exhibit "A-4", Docket Vol. 1, p. 32.
[13] Exhibit "Q-2", Docket, Vol. 1, pp. 306-307.

To reach such conclusion, the ICPA examined various items of (1) goods - office supplies, official receipts, flyers, literature inventory, newsletter, SD-CGS food supplement, property and equipment, store inventory, pin inventory, and warehouse inventory; and (2) services - security services, janitorial services, repairs and maintenance, insurance, communication expense, utilities expense, and telephone expense.[14]

To refute respondent's assertion, it is necessary for petitioner to establish first the disallowed amount, however, petitioner failed. Following the ICPA's analysis, petitioner should have accounted first all the purchases of goods and services and provided the related schedules of expenses which have been claimed per Annual ITR and Audited FS to fully account the same. But the ICPA merely enumerated various expenses mentioned above without classifying them in the same fashion that the expenses were presented in the Annual ITR and Audited FS. Had the ICPA done so, tracing the said amounts in the Annual ITR and Audited FS would have been possible and the determination of expenses that should or should not be subjected to withholding taxes would be easier. On this account, the Court cannot rely on the ICPA's findings on the matter.

3. Disallowed various expenses amounting to ₱3,364,471.73

Respondent assessed petitioner for deficiency income tax arising from disallowance of alleged various expenses in the amount of ₱3,364,471.73 for petitioner's inability to submit a breakdown of the expenses.

Petitioner claims that it was not given an itemized listing of the expenses amounting to ₱3,364,471.73, thus, it deemed it best to submit a list of all expenses included under the account title "Various Expenses", as reflected in its Annual ITR, with a total amount of ₱11,708,987.00, details of which are as follows:

[14] Annex "C.1-ICPA", Docket, Vol. 1, pp. 315-320.

Appearance Fee – International	₱ 4,339,500.00
Appearance Fee	165,000.00
Uniforms	180,625.00
Dues & Subscription	91,892.09
Freight Out	878,888.69
Product Registration Fee	15,500.00
Postage	297,759.34
Bank Charges	73,062.58
Outside warehouse facilities	97,757.39
Mentor, car, Q.S., achievement bonus - SD	1,708,384.60
BDS - SD	82,106.09
Meeting Rooms - SD	179,992.64
Recognition pins - SD	24,071.24
Contest Prizes - SD	1,065,844.22
Advertising and promotional - SD	116,827.50
Convention - SD	267,693.48
Annual trip	(32,648.59)
Distributor health insurance	(233,059.46)
Flyers	71,111.23
Newsletter	469,979.16
Credit Card fees	1,848,699.86
TOTAL	**₱ 11,708,987.06**

However, further verification and examination of the record divulge that petitioner was not able to fully substantiate with valid supporting documents the amount of ₱3,364,471.73, more so the full amount of ₱11,708,987.00. Hence, respondent's assessment shall be sustained.

4. Net Operating Loss Carry Over (NOLCO)

As declared in the assailed Decision, adding back the net loss amount of ₱2,888,813.00 to petitioner's taxable income for the year 2004 is erroneous.

After taking into account all the valid disallowances from petitioner's claimed deductions from gross income for taxable year 2004, petitioner would still be in a net loss position and would not result to any deficiency tax, as shown below:

Net Taxable Income (Loss) per ITR			₱ (2,888,813.00)
Add: Undeclared Sales from Royalties		₱ 1,564,915.00	
Expenses not subjected to EWT			
Professional Fees	₱ 20,000.00		
Purchase of Services	2,200,847.00		
Purchase of Goods	1,040,153.00	3,261,000.00	
Unsupported Various expenses		3,364,471.73	8,190,386.73
Net Taxable Income per Audit			**₱ 5,301,573.73**
Tax Due thereon			₱ 1,696,503.59
Less: Tax Credits			
Prior year's excess credits		₱ 2,520,548.00	
Creditable tax withheld for the 4th quarter		297,086.00	2,817,634.00
Total Amount Due			**₱ (1,121,130.41)**

In sum, respondent's deficiency income tax assessment against petitioner for taxable year 2004 should be cancelled and/or withdrawn.

II. VALUE-ADDED TAX

1. Undeclared sales arising from payment of royalties

As earlier discussed, only the assessment on the undeclared sales arising from royalty payments shall be partially sustained but in the reduced amount of ₱1,564,915.00.[15] Consequently, petitioner is liable to pay the corresponding deficiency VAT of ₱156,491.50.

2. Disallowed input tax from purchase of capital goods in the amount of ₱44,345.94 and disallowed input tax from alleged non-VAT suppliers in the amount of ₱429,779.16

The BIR assessed petitioner for deficiency VAT arising from disallowed input tax from purchases of capital goods

[15] See discussion in item I.1.A.

due to discrepancy per VAT Returns and Statement of Cash Flows. Petitioner was likewise assessed by respondent for deficiency VAT due to alleged input tax claimed from suppliers not registered in the ITS database.

On the disallowed input tax claimed on capital goods in the amount of ₱44,345.94, the ICPA found that petitioner had erroneously filled up the VAT return which resulted to the said discrepancy. The ICPA likewise found that the input taxes claimed in 2004 were supported by either VAT invoice or VAT official receipt.[16] Be that as it may, the vouchers and VAT official receipts[17] are not sufficient proof of its claim of input tax on capital goods. In line with the invoicing requirement under Section 113 of the NIRC of 1997, petitioner should have presented VAT invoices.

On the disallowed input tax from alleged non-VAT suppliers in the amount of ₱429,779.16, a revisit of the VAT returns[18] and the pertinent schedules[19] shows that the input taxes reported in the former do not coincide with that in the latter, as illustrated below:

Input Tax	Input VAT per Return	Input VAT per Schedule	Difference
Domestic purchases - capital goods	₱ 58,023.74	₱ 68,636.11	(₱ 10,612.37)
Domestic purchases - goods other capital goods	126,128.28	214,073.60	(87,945.32)
Domestic purchases - services	1,408,708.93	777,922.24	630,786.69
Importations – capital goods	1,612,276.34	-	1,612,276.34
Others	-	431,657.32	(431,657.32)
Total	**₱3,205,137.29**	**₱1,492,289.27**	

3. Discrepancy between input VAT on importation per return and input VAT per summary of importation

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[16] Exhibit "Q-2", Docket, Vol. 1, p. 308.
[17] Exhibits "EE.3.1.1-ICPA" to "EE.3.35.1-ICPA".
[18] Exhibits "D.1.3-ICPA", "D.1.6-ICPA", "D.1.9-ICPA" and "D.1.12-ICPA".
[19] Annexes "D-ICPA" and "D.1-ICPA" to "D.4-ICPA".

To reiterate, the assessment with regard to the discrepancy in the amount of ₱780.07 was sustained by the Court since petitioner did not dispute the factual and legal bases of the assessed amount.[20]

In sum, petitioner is found to be liable for the following basic deficiency VAT:

Undeclared sales (₱1,564,915.00 x 10%)	₱ 156,491.50
Disallowed excess input tax claimed on capital goods	44,345.94
Disallowed input tax from non-VAT suppliers	429,779.16
Discrepancy between input VAT on importation per return and input VAT per summary of importation	780.07
Deficiency VAT	**₱631,396.67**

III. FINAL WITHHOLDING VAT

The deficiency final withholding VAT arose from the royalties and commissions allegedly paid by petitioner in the respective amounts of ₱3,992,025.00 and ₱6,372,166.00.

Record shows that petitioner made a timely and appropriate remittance to the BIR of the final withholding VAT on royalty expense in accordance with Section 114(C) of the NIRC of 1997, though using a wrong tax return.[21] Thus, petitioner shall be held liable only for the deficiency withholding VAT on commission payments as fully discussed and explained in the assailed Decision,[22] as computed below:

	Income Payment	**Rate**	**Deficiency Final Withholding VAT**
Non-resident foreign corporations	₱6,372,166.00	10%	**₱637,216.60**

IV. EXPANDED WITHHOLDING TAX

[20] Docket, Vol. 2, p. 575.
[21] See discussion in item I.1.A.
[22] Docket, Vol. 2, pp. 576-577.

As held, petitioner failed to withhold and remit the corresponding withholding taxes due on certain income payments during the year[23], thus, assessment for the deficiency withholding tax shall be upheld but in the reduced amount of ₱56,418.48, as computed below:

Expenses not subjected to EWT	Income Payment	Rate	EWT Due
Professional fees	₱ 20,000.00	10%	₱ 2,000.00
Purchase of services	2,200,847.46	2%	44,016.95
Purchase of goods	1,040,153.00	1%	10,401.53
Deficiency EWT	**₱3,261,000.46**		**₱56,418.48**

WHEREFORE, the Motion for Reconsideration dated July 1, 2014 filed by petitioner is hereby **PARTIALLY GRANTED**.

The assessment issued by respondent against petitioner covering taxable year 2004 for deficiency income tax is hereby **CANCELLED** and **SET ASIDE**.

On the other hand, respondent's assessments for deficiency VAT, FWVAT and EWT for the same taxable year are **UPHELD** with modification. Accordingly, petitioner is ordered to pay the amount of ₱1,656,289.69, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic	25% Surcharge	TOTAL
Value-added Tax	₱ 631,396.67	₱ 157,849.17	₱ 789,245.84
Final Withholding VAT	637,216.60	159,304.15	796,520.75
Withholding Tax-Expanded	56,418.48	14,104.62	70,523.10
Total	**₱ 1,325,031.75**	**₱ 331,257.94**	**₱ 1,656,289.69**

In addition, petitioner is ordered to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT, final

[23] See discussion in item I.2.

withholding VAT and expanded withholding tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

Tax Type	Deficiency Interest Computed From
VAT	January 25, 2005
Final Withholding VAT	January 10, 2005
EWT	January 13, 2005

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱1,656,289.69 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from July 31, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice