REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

JVC (PHILIPPINES), INC., Petitioner,	**CTA Case No. 8646**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUL 03 2017 ; 10:37am

x - x

DECISION

UY, *J.*:

Before this Court is the *Petition for Review* filed on April 24, 2013 by JVC (Philippines), Inc., petitioner, against the Commissioner of Internal Revenue, respondent, seeking the cancellation and declaration of nullity of the following deficiency tax assessments for fiscal year ending March 31, 2007 in the total amount of ₱151,471,763.14, including interests:

1. Assessment Notice No. LTDO-122-IT-2006-00018 for deficiency income tax amounting to ₱67,356,132.66;
2. Assessment Notice No. LTDO-122-VT-2006-00018 for deficiency value-added tax (VAT) amounting to ₱67,784,646.39;
3. Assessment Notice No. LTDO-122-WE-2006-00013 for deficiency expanded withholding tax (EWT) amounting to ₱12,316,707.47;
4. Assessment Notice No. LTDO-122-WF-2006-00005 for deficiency final withholding tax (FWT) amounting to ₱263,007.10;

mg

5. Assessment Notice No. LTDO-122-FBT-2006-00005 for deficiency fringe benefit tax (FBT) amounting to ₱2,596,267.47;
6. Assessment No. LTDO-122-DST-2006-00003 for deficiency documentary stamp tax (DST) in the amount of ₱1,130,002.05;
7. Assessment No. LTDO-122-PEN (MAP/SAWT)-2006-00006 for compromise penalties in the amount of ₱24,000.00; and
8. Assessment No. LTDO-122-PEN (WC)-2006-00007 for compromise penalty in the amount of ₱1,000.00.

THE FACTS

Petitioner JVC (Philippines), Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at Unit 2103, One Global Place, 5th Avenue, Bonifacio Global City, Taguig City.[1] It is operating on a fiscal year basis that ends on the 31st day of March each year.[2]

On the other hand, respondent Commissioner of Internal Revenue is vested with authority to exercise the functions of said office, including the power to abate or cancel a tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[3]

On September 7, 2007, petitioner received Letter of Authority (LOA) No. 2007-00006749 dated August 31, 2007 issued by respondent, authorizing certain revenue officers to examine petitioner's books of accounts and other accounting records for fiscal year ending March 31, 2007.[4]

Thereafter, on August 27, 2010, petitioner received a letter dated August 15, 2010 from respondent, requesting for an informal conference.[5]

---

[1] Par. 1.1, Admitted Facts/Documents, Joint Stipulation of Facts and Simplification of Issues (JSFSI), Docket—Vol. I, p. 520; Exhibit "P-63", Docket—Vol. II, pp. 1094 to 1105.
[2] Par. 1.2, Admitted Facts/Documents, JSFSI, Docket—Vol. I, p. 521.
[3] Par. 1.3, Admitted Facts/Documents, JSFSI, Docket—Vol. I, p. 521.
[4] Exhibit "R-1", BIR Records, p. 1741; *Cf.* Par. 1.4, Admitted Facts/Documents, JSFSI, Docket—Vol. I, p. 521.
[5] Exhibit "R-7", BIR Records, p. 2055.

On March 7, 2011, petitioner received a Preliminary Assessment Notice (PAN) with Details of Discrepancies issued by respondent,[6] assessing petitioner for deficiency taxes in the amount of ₱414,760,540.36, inclusive of interests and compromise penalties, for fiscal year ending March 31, 2007, detailed as follows:

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	₱119,277,566.74	0.00	₱88,559,508.45	₱50,000.00	₱207,887,075.19
VAT	97,405,604.82	0.00	76,643,533.44	50,000.00	174,099,138.26
Withholding Tax – Compensation (WTC)	10,527,030.19	0.00	8,369,710.03	50,000.00	18,946,740.22
EWT	5,586,908.19	0.00	4,441,974.68	50,000.00	10,078,882.87
FWT	352,500.12	0.00	280,261.74	16,000.00	648,761.86
FBT	1,171,091.37	0.00	931,097.85	25,000.00	2,127,189.22
DST	455,000.00	₱113,750.00	363,002.74	16,000.00	947,752.74
Penalties- Non-filing of MAP/SAWT/LN			0.00	25,000.00	25,000.00
Total	₱234,775,701.43	₱113,750.00	₱179,589,088.93	₱282,000.00	₱414,760,540.36

Petitioner then filed a Reply to the said PAN on March 21, 2011.[7]

On March 30, 2011, petitioner received a Final Assessment Notice (FAN), with Assessment Notices and Details of Discrepancies, issued by respondent, assessing petitioner for deficiency taxes for fiscal year ending March 31, 2007 in the total amount of ₱418,619,866.96, broken down as follows:[8]

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	₱119,277,566.74	0.00	₱90,520,235.58	₱50,000.00	₱209,847,802.32
VAT	97,405,604.82	0.00	78,244,721.46	50,000.00	175,700,326.28
WTC	10,527,030.19	0.00	8,542,757.10	50,000.00	19,119,787.29
EWT	5,586,908.19	0.00	4,533,814.27	50,000.00	10,170,722.46
FWT	352,500.12	0.00	286,056.26	16,000.00	654,556.38
FBT	1,171,091.37	0.00	950,348.67	25,000.00	2,146,440.04
DST	455,000.00	₱113,750.00	370,482.19	16,000.00	955,232.19
Penalties- Non-filing of MAP/SAWT/LN			0.00	25,000.00	25,000.00
Total	₱234,775,701.43	₱113,750.00	₱183,448,415.53	₱282,000.00	₱418,619,866.96

On April 28, 2011, petitioner filed its Administrative Protest to the FAN with the BIR, to dispute the deficiency tax assessments against it.[9] Subsequently, on June 27, 2011, petitioner filed a

[6] Par. 1.6 (*Cf.*, Par. 1.5), Admitted Facts/Documents, JSFSI, Docket—Vol. I, p. 521; Exhibit "R-11", BIR Records, pp. 2114 to 2131.
[7] Exhibit "P-8", ICPA Report, Binder No. 1.
[8] Par. 1.8 (*Cf.*, Par. 1.7), Admitted Facts/Documents, JSFSI, Docket—Vol. I, p. 521; BIR Records, pp. 2196 to 2233.
[9] Exhibit "P-2", ICPA Report, Binder No. 1; BIR Records, pp. 2307 to 2324; and *Cf.* Par. 1.9, Admitted Facts/Documents, JSFSI, Docket—Vol. I, p. 521.

Supplemental Protest with the BIR.[10]

Thereafter, on March 25, 2013, petitioner received the Final Decision on Disputed Assessment (FDDA) dated March 21, 2013.[11] In the said FDDA, petitioner's tax liability was reduced from ₱418,519,866.96 to ₱151,471,763.14, inclusive of interests and compromise penalties, computed as follows:[12]

Tax Type	Amount Due
Income Tax	₱ 67,356,132.66
VAT	67,784,646.39
EWT	12,316,707.47
FWT	263,007.10
FBT	2,596,267.47
DST	1,130,002.50
Compromise Penalty	25,000.00
TOTAL	**₱ 151,471,763.14**

Thus, petitioner filed the instant *Petition for Review* on April 24, 2013 docketed as CTA Case No. 8646.[13]

Within the extended time granted by the Court,[14] respondent filed his *Answer* on June 24, 2013,[15] interposing the following special and affirmative defenses, *viz*:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

5. Respondent hereby reiterates and re-pleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.

6. The right of respondent to assess petitioner for deficiency taxes did not prescribe in view of the execution of timely waivers extending the period of assessment.

6.1 Petitioner anchors its claim on Section 203 of the NIRC of 1997, as amended, which provides:

[10] Exhibit "P-3", ICPA Report, Binder No. 1.; BIR Records, pp. 2285 to 2287; and *Cf.* Par. 1.10, Admitted Facts/Documents, JSFSI, Docket—Vol. I, p. 522.
[11] Exhibit "P-61", Docket—Vol. II, pp. 1090 to 1093; and Par. 1.13 (*Cf.* Par. 1.11), Admitted Facts/Documents, JSFSI, Docket—Vol. I, p. 522.
[12] Par. 1.12, Admitted Facts/Documents, JSFSI, Docket—Vol. I, p. 522; Exhibits "P-61-1" to "P-61-4", Docket—Vol. II, pp. 1090 to 1093.
[13] Docket—Vol. I, pp. 6 to 32.
[14] Order dated May 29, 2013, Docket—Vol. I, p. 150.
[15] Docket—Vol. I, pp. 151 to 166.

> '**Section 203**. *Period of Limitation Upon Assessment and Collection.*
>
> Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, x x x x x.'

However, Section 222 of the NIRC of 1997, as amended, is further instructive on this matter, which partly provides:

> '**Section 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*
>
> x x x x x x x
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

Nevertheless, petitioner alleges that the waiver executed between the petitioner and the respondent to extend the period of assessment is void and has no legal force and effect.

6.2 Contrary to petitioner's claim, the right of respondent to assess petitioner deficiency taxes for fiscal year ending March 31, 2007 did not prescribe in view of petitioner's execution of two (2) Waiver of the Statute of Limitations under the NIRC of 1997, as amended, ('waiver', for brevity), which extended the period of assessment.

Respondent had until July 15, 2010 to assess the subject deficiency taxes since petitioner's fiscal year ended on March 31, 2007 and it filed its income tax returns on July 13, 2007. Petitioner pointed out that a waiver was executed last September 1, 2010, **after** the 3-year prescriptive period had already expired. This waiver, extending the period within which to assess petitioner not later than March 31, 2011, was signed by Mr. Ronaldo Narciza in his capacity as Treasurer of the petitioner. But petitioner's reliance on this particular waiver to support their claim that the subject assessment is already barred by prescription is rather ***misplaced***. The BIR Records shows that petitioner executed an earlier waiver dated January 27, 2010 extending the period within which to assess petitioner not later than September 30, 2010. The waiver was signed by Ms. Nimpha U. Villaluna, in her capacity as Treasurer of the petitioner at that time. Apparently, the waiver dated September 1, 2010 that petitioner referred to was to further extend the prescriptive period since the first waiver was about to expire on September 30, 2010.

Having executed a waiver **before** the expiration of the ordinary prescriptive period for assessment, petitioner can no longer bank on their defense of prescription and impugn the validity of the waiver(s) executed.

6.3 What is more, petitioner is estopped from assailing the validity of the waiver. A perusal of the BIR Records will show that petitioner did not raise the issue of validity of the waiver in its alleged Administrative Protest nor did it raise the said defense in its alleged Supplemental Protest Letter. Undoubtedly, petitioner is now questioning the validity of the waiver for the first time on appeal. It will be utterly unfair to put weight on petitioner's afterthought since it will be able to defeat the validity of the very same thing that it utilized for its own advantage as, through which, it was able to submit additional documents that enabled them to reverse some discrepancies found after the audit.

Article 1431 of the New Civil Code is quite instructive in providing that an admission or representation is rendered conclusive upon the person making it and cannot be denied against the person relying upon it. As the Supreme Court opined in one case: 'Petitioner, having performed affirmative acts upon which the respondents based their subsequent actions, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter. To allow him to do so would be tantamount to conferring upon him the liberty to limit his liability at his whim and caprice, which is against the very principles of equity and natural justice as abovestated.

Therefore, the waiver(s) executed by petitioner are valid, thus extending respondent's period to assess petitioner until March 31, 2011. In view thereof, the Final

mb

Assessment Notice received by petitioner on March 30, 2011 was issued within the prescriptive period.

7. The Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN) and Final Decision on Disputed Assessment (FDDA) are valid since they were issued in accordance with law, rules and jurisprudence.

Contrary to petitioner's claim that the PAN, FAN and FDDA are void for failure to comply with paragraph 3.1.4 of Revenue Regulations No. 12-99, these assessment notices indicated not merely the tax, compromise penalty, an interest due thereon but likewise sufficiently stated the facts, the law, rules and regulations on which assessment is based. The subject notices were issued on different dates which afforded the petitioner enough time to be apprised of the Revenue Officers' assessments/findings. The BIR records show that all of the subject assessment notices were issued with attached details of discrepancies which specified the factual and legal bases of the deficiency tax assessments. Thus, petitioner cannot impugn the validity of the assessment on the supposed omission.

8. Petitioner JVC (Philippines), Inc., ('JVC', for brevity) is liable to pay its deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, fringe benefit tax, documentary stamp tax and compromise penalty in the total amount of One Hundred Fifty-One Million, Four Hundred Seventy-One Thousand, Seven Hundred Sixty Three Pesos and 14/100 (Php151,471,763.14) for the fiscal year ending March 31, 2007 for the following reasons:

8.1 Petitioner is liable to pay for income tax in the total amount of Php67,356,132.66 for the fiscal year ending March 31, 2007. After verification and evaluation of the documents submitted by petitioner in protest to the final assessment notice, such failed to refute and cancel the assessments totally. The findings of revenue officers who conducted the comparison and analysis of the additional documents presented by petitioner revealed that it is liable for deficiency income tax as explained below:

8.1.1 *Undeclared Income.* – This item pertained to a discrepancy between sales/receipts declared per VAT versus total sales/receipts for income tax purposes. Pursuant to Section 32(A)(2) of the National Internal Revenue Code (NIRC) of 1997, all income from whatever source should form part of gross income.

ᴹᵂ

Petitioner stated at its Administrative Protest that this tax issue will require enough time to evaluate voluminous tax documents so it pledged to submit the needed documents in due course. However, it failed to comply with the submission of the required documentary evidence and therefore, the discrepancy is still sustained pursuant to same section above-stated.

8.1.2 *Unaccounted balance involving the amount of Php5,610,096.60.* – While it is admitted that the manner of computing this unaccounted amount is through the comparison of Income Tax Return (ITR)/Audited Financial Statement (AFS) vis-à-vis the BIR Form 1601E and disallowed the said unaccounted balance for income tax purposes, it was ruled under the case of *Perez vs. CTA and CIR L-10507 dated May 30, 1958 that unreflected sources of funds not accounted for in the taxpayer's tax returns led to the inference that part of his income had not been reported.*

In the instant case, petitioner failed to account the aforesaid unaccounted balance or explain the details of certain expenses whether the same was reclassified to any accounts. In particular, the explanations or reasons for every item of discrepancies will clearly shed light and justify the unaccounted amount herein mentioned. Thus, assessment of this discrepancy is maintained, per Section 27(A) of the NIRC that all income from whatever source should form part of gross income.

8.1.3 *Unaccounted income payments/local purchases of goods – Php64,406,234.00.* - This item of discrepancy *(Php64,406,234.00)* pertained to various amounts paid or payable, which are otherwise deductible from or taken into account in computing gross income, that petitioner cannot account for as part of the expenses or local purchases of goods during the year under audit. Since Section 27(A) of the NIRC provides that all income from whatever source should form part of gross income, this unaccounted items shall be considered part of petitioner's income.

To express an opinion that respondent's alleged method of arriving at a discrepancy through the comparison of the Income Tax Return (ITR)/Audited

M

Financial Statement (AFS) with that in the BIR Form 1601E is simplistic and will not result in the correct figure is baseless. The method used is reflective of the final entry of petitioner's books as reflected per ITR/AFS. Unless reconciliation of this item is presented and pertinent documentary evidence are offered to shed light on the amount in question, then the assessment hereof is retained.

Moreover, a reconciliation was submitted together with the supplementary protest letter on June 27, 2011. Cursory evaluation of the schedule showed the following:

	FAN	FDDA
Cost of Sales		
Purchases	1,381,259,396.00	1,381,259,396.00
Operating Expense and Charges		
Office Supplies	1,081,551.00	1,081,551.00
Advertising – (reclassified from 2% to 1%)	0.00	102,374,659.85
Total	1,382,340,947.00	1,484,715,606.85
Less Importations per VAT returns	1,340,150,246.00	1,340,150,246.00
Net Purchases	42,190,701.00	144,565,360.85
Less: Income payments made by top 10000 Corp on goods (BIR Form 1601-E)	106,596,935.00	106,596,935.00
Discrepancy – still subject to 1% EWT	Php-64,406,234.00	Php 37,968,425.85

Based on the table above, the unaccounted income payments/local purchases of goods for Php64,406,234.00 was already wiped out, thus, the same unaccounted income payments/local purchases of goods is thus reversed.

On the other hand, the discrepancy amounting to Php37,968,425.85 due to the reclassification of certain advertising expense account from 2% EWT to 1% EWT, as a result of such adjustment/reclassification same income payments/local purchases of goods is likewise disallowed due to non-withholding of proper taxes. Moreover, during the re-investigation there still a balance of Php34,323,784.45 remained to be disallowed for not being fully substantiated by documentary evidence pursuant to Section 34(K) of NIRC which provides that any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income shall be allowed only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue (BIR). Thus, petitioner is still assessed for this discrepancy.

8.1.4 *Disallowed expenses due to non-withholding of proper taxes (Total amount of income payments/purchases of services for Php151,537,003)* – A reconciliation together with the supplementary protest letter was submitted. Cursory evaluation of the schedule has resulted in the following:

	PER BOOK	FORM 1601E	FAN	ALLOWED	RECLASSIFIED	FDDA
Warranty	10,683,165.00	427,821.25	10,255,343.75	0.00		10,255,343.75
Advertising	227,767,452.00	125,392,792.15	102,374,659.85		102,374,659.85	0.00
Insurance	3,421,838.00	0.00	3,421,838.00	0.00		3,421,838.00
Representation & Entertainment	148,284.00	0.00	148,284.00	148,284.35		-0.35
Travel & transportation	10,387,423.00	592,492.25	9,794,930.75	0.00		9,794,930.75
Communication, light & water	10,862,962.00	8,750.00	10,854,212.00	0.00		10,854,212.00
Delivery charges	37,814,548.00	37,307,098.85	507,449.15	507,449.03		.12
Miscellaneous expenses	22,095,291.00	7,915,005.50	14,180,285.50	14,180,285.50		0.00
Total	323,180,963.00	171,643,960.00	151,537,003.00	14,836,018.88	102,374,659.85	**34,326,324.27**

As gleaned above, the total disallowed expenses for non-withholding of proper taxes was reduced to Php34,326,324.27. Pursuant to Section 34(K) of NIRC, any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income shall be allowed only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue (BIR). Hence, petitioner is still assessed for Php34,326,324.27.

8.1.5 *Disallowed interest expense Php40,957,892.00* – Per Section 34(K) of NIRC, any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income shall be allowed only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue (BIR). However, JVC still failed to submit supporting documents. Even if a supplemental letter was filed on June 27, 2011, JVC consistently failed to submit a reconciliation and further explanation under this item. Thus, discrepancy is still retained.

8.1.6 *Disallowed income payments due to non-withholding of Fringe Benefit Tax (FBT) – Php2,488,569.17* – Any amount paid or payable which is otherwise deductible from, or taken into

ND

account in computing gross income shall be allowed only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue (BIR) as prescribed by Section 34(K) of NIRC. While JVC have thoroughly explained this discrepancy saying that the overseas travelling and company housing expenses incurred are not in the nature of fringe benefit granted to its employees, it also added that the same are regular and business expenses for the travelling expense and rental for shared home and office space used by the provincial sales people. It stressed that same expenses were incurred by rank and file employees as well as reimbursable expenses, hence, to impose a deficiency FBT on the same will have no legal basis. Even though this is a convincing explanation, JVC failed to submit supporting document in due course and a reconciliation of this item so discrepancy hereof is retained.

8.1.7 *Disallowed losses – Php4,345,251.00* – This item was disallowed for the reason that it was not supported by documentary evidence as prescribed under Section 34(D) of the Tax Code. Yet JVC still failed to submit supporting documents, hence, assessment hereof is sustained.

8.1.8 *Disallowed Creditable Withholding Tax for Php23,324,170.00* – JVC failed to submit supporting document for this. Hence, assessment hereof is sustained as prescribed under Section 34(D) of the Tax Code.

8.2 Petitioner is liable to pay for value added tax in the total amount of Php67,784,646.39 for the fiscal year ending March 31, 2007. After verification and evaluation of the documents submitted by petitioner in protest to the final assessment notice, the documents failed to refute and cancel the assessments totally. The findings of revenue officers who conducted the comparison and analysis of the additional documents presented by petitioner reveals that it is liable for deficiency value added tax as explained below:

8.2.1 *Undeclared Income/Receipts for Php5,248,075.00.* – Verification of the accounting records and documents disclosed that JVC has undeclared income or receipts with an aggregate amount of Php5,248,075.00 still subject to the 12%

output tax for VAT purposes, so the same will be part of the gross receipts for the year pursuant to Section 108(B) of the NIRC. JVC disputed that respondent's findings are just based on interpretation thereby construing these items as sales in the ordinary course of trade or business. It added that same income should not be subjected to VAT since it arose not from 'in the ordinary course or trade' to which respondent do not agree since the assessment is based on factual issue. Nevertheless, JVC still failed to submit supporting document to overturn findings hereof. Hence, assessment is still sustained.

8.2.2 *Unaccounted balances per reconsideration - Php64,406,234.00.* – Another item for VAT assessment is the unaccounted balances which stemmed from certain expenses found subjected to expanded withholding taxes amounting to Php70,016,330.60. Pursuant to Sections 106(A) and 108(A) of the NIRC, same will be part of the gross receipts for the year subject to the 12% output tax.

As earlier explained in paragraph 8.1.3, the unaccounted income payments/local purchases of goods for Php64,406,234.00 was already wiped out, hence, discrepancy of which is cancelled.

However, the remaining item under the unaccounted balance that pertained to professional fees amounting to Php5,610,096.60 was left unsubstantiated, hence, discrepancy hereof is still retained. Pursuant to Sections 106(A) and 108(A) of the NIRC, same will be part of the gross receipts for the year subject to the 12% output tax.

8.3 Petitioner is liable for deficiency expanded withholding tax in the total amount of Php12,316,707.47 for the fiscal year ending March 31, 2007. Audit and examination conducted by revenue officers disclosed that the documents/explanation submitted by petitioner to refute the findings in the final assessment notice were not sufficient to cancel the assessments. Therefore, petitioner is found liable for deficiency expanded withholding tax as explained below:

8.3.1 The tax assessed arises from income payments from which petitioner failed to withhold the corresponding tax due thereon as per RR Nos. 2-98; 6-2001; 12-2001; 14-2002; 17-2003 and 30-2003.

JVC refuted that respondent derived the deficiency so general that they cannot decipher the items being referred to either so haphazardly and vaguely described to which respondent does not agree. JVC did not consider the BIR's working papers arising from JVC GL 2007, Schedule 'G', presented together with the FAN. The said worker papers showed that certain transactions/income payments were not subjected to EWT. JVC failed to submit proofs and documentary evidences showing the same were already subjected to EWT, thus, assessment is retained.

8.4 Petitioner is liable for deficiency final withholding tax in the total amount of Php263,007.10 for the fiscal year ending March 31, 2007. Audit and examination conducted by revenue officers disclosed that the documents/explanation submitted by petitioner to refute the findings in the final assessment notice were not sufficient to cancel the assessments. Therefore, petitioner is found liable for deficiency final withholding tax as explained below:

8.4.1 *Dividend payment not subjected to WF at 15% - Php1,750,002.25.* JVC presented Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) showing dividend payment of Php1,750,002.25 were properly subjected to 15% and the tax withheld amounted to Php262,500.00.

It revealed that the actual remittance of final withholding tax was already considered under the computation of deficiency final withholding per FAN. While the discrepancy arising from verification of dividend payment with that of the actual remittance per WF return was not taken into account under JVC'S protest letter, therefore, assessment is still sustained.

8.5 Petitioner is liable for deficiency fringe benefits tax in the total amount of Php2,596,267.47 for the fiscal year ending March 31, 2007. Audit and examination conducted by revenue officers disclosed that the documents/explanation submitted by petitioner to refute the findings in the final assessment notice were not sufficient to cancel the assessments. Therefore,

ND

petitioner is found liable for deficiency fringe benefits tax as explained below:

8.5.1 *Income payments subject to FBT – Php2,488,569.17.* Verification with JVC'S books and source documents disclosed that it reported income payments in behalf of its officers fringe benefits during the period found not subjected to FBT. Thus, a deficiency FBT assessment is sustained due to failure to collect the corresponding FBT and remit the same to the BIR pursuant to RR 3-98. It disclosed further that assessment hereof is still maintained due to failure of JVC to present documentary evidence that will controvert respondent's findings.

8.6 Petitioner is liable for deficiency documentary stamp tax in the total amount of Php1,130,002.05 for the fiscal year ending March 31, 2007. Audit and examination conducted by revenue officers disclosed that the documents/explanation submitted by petitioner to refute the findings in the final assessment notice were not sufficient to cancel the assessments. Therefore, petitioner is found liable for deficiency documentary stamp tax as explained below:

8.6.1 *Proceeds from loans - net.* JVC acquired interest bearing loans from local banks in the total amount of Php91,000,000.00. However, no proofs of payments of certain DST due corresponding to the total proceeds of the said loans were presented, hence, a deficiency DST hereof is hereby assessed pursuant to Section 179 of NIRC. Re-investigation disclosed further the JVC still failed to submit supporting documents to prove that proper DST was already declared and remitted to the BIR by the other party of the loan agreement. Hence, assessment hereof is still sustained.

8.7 Petitioner is liable for various penalties amounting to Php25,000.00 imposed on certain violations against the pertinent provisions of the NIRC as implemented by RMO 19-2007 and pursuant to RR 2-2006, such as:

Failure to make/file/submit summary list of sales and local purchases and importations:

1.1 For all months and quarters - MAP	12,000
1.2 For all months and Quarters - SAWT	12,000
2.1 On WC penalty for late filing and failure	1,000

NO

to comply with the year-end adjustment, per LN Assessment - Nos. 122-WE-N-06-00-00020.

Total Penalties	25,000

8.8 From all of the foregoing, petitioner clearly failed to controvert the subject deficiency assessments. As the court correctly ruled in the case of Camara Steel Industries, Inc. vs. Commissioner of Internal Revenue,

> 'We have often ruled that in case of disputed assessments, the burden of proof is on the taxpayer to establish the fact that it is indeed not liable for any deficiency taxes subject of the assessment. Thus, for failure of the petitioner to show documents that would substantiate its arguments then the assessment for deficiency income tax should be upheld.'

9. Clearly, the deficiency assessments issued against petitioner have factual and legal bases.

9.1 Under Revenue Regulations No. 12-99, a valid assessment is accomplished following the stages of Notice of Informal Conference, PAN and FAN. The procedure above-prescribed have been complied with by respondent as can be deduced from the following narration of facts.

9.1.1 On August 27, 2010, petitioner received a Notice of Informal Conference, informing it in this wise:

> 'This is to inform you that the results of investigation of your all internal revenue tax liabilities for the fiscal year period ending March 31, 2007 under **Letter of Authority No. 2000-00006749** dated August 31, 2007 have been submitted by Revenue Officers **Romualdo I. Plocios, Matias D. Fadri III, Rene Vicente S. De Veyra and Josephine M. Gaerlan** under Group Supervisor **Juvy S. Dela Peña**.
>
> In accordance with the policy of the Bureau to give taxpayers every opportunity to present their side of the case, you or your duly authorized representative is hereby requested to come to our Office x x x x for an informal conference to enable you to go over our

findings and present objections thereto, if any, as well as to submit whatever evidence you may have in your favor.'

9.1.2 On March 7, 2011, petitioner received a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies informing it of deficiency taxes found to be due for the fiscal year period ending March 31, 2007, as summarized below:

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	119,277,566.74	0.00	88,559,508.45	50,000.00	207,887,075.19
Value-added Tax	97,405,604.82	0.00	76,463,533.44	50,000.00	174,099,138.26
Withholding tax – Compensation	10,527,030.19	0.00	8,369,710.03	50,000.00	18,946,740.22
Expanded withholding tax	5,586,908.19	0.00	4,441,974.68	50,000.00	10,078,882.87
Final withholding tax	352,500.12	0.00	280,261.74	16,000.00	648,761.86
Fringe benefit tax	1,171,091.37	0.00	931,097.85	25,000.00	2,127,189.22
Documentary stamp tax	455,000.00	0.00	363,002.74	16,000.00	947,752.74
Penalties-Non-filing of MAP/SAWT/LN		0.00	0.00	25,000.00	25,000.00
Total	234,775,701.43	113,750.00	179,589,088.93	282,000.00	414,760,540.36

9.1.3 On March 30, 2011, petitioner received a Formal Assessment Notice (FAN) with attached Details of Discrepancies informing it of deficiency taxes found to be due from them for the fiscal year period ending March 31, 2007, as summarized below:

Tax Type	Basic	Surcharge	Interest	Compromise	Total
Income Tax	119,277,566.74	0.00	90,520,235.58	50,000.00	209,847,802.32
Value-added Tax	97,405,604.82	0.00	78,244,721.46	50,000.00	175,700,326.28
Withholding tax – Compensation	10,527,030.19	0.00	8,542,757.10	50,000.00	19,119,787.29
Expanded withholding tax	5,586,908.19	0.00	4,533,814.27	50,000.00	10,170,722.46
Final withholding tax	352,500.12	0.00	286,056.26	16,000.00	654,556.38
Fringe benefit tax	1,171,091.37	0.00	950,348.67	25,000.00	2,146,440.04
Documentary stamp tax	455,000.00	0.00	370,482.19	16,000.00	955,232.19
Penalties-Non-filing of MAP/SAWT/LN			0.00	25,000.00	25,000.00
Total	234,775,701.43	113,750.00	183,448,415.53	282,000.00	418,619,866.96

ᵐᵍ

10. Based on all of the foregoing, the finding of deficiency tax liabilities against petitioner is proper in all respects. It is a well-settled principle that:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

After the Pre-Trial Conference held on August 30, 2013[16], the parties filed their *Joint Stipulation of Facts and Simplification of Issues* on November 8, 2013[17] which was approved by the Court in the Resolution dated November 26, 2013,[18] thereby terminating the Pre-Trial. Subsequently, the Court issued the Pre-Trial Order on January 13, 2014.[19]

During trial, petitioner presented the following witnesses: Nimpha U. Villaluna, a director of petitioner;[20] Maria Georgina J. Soberano, a Tax Principal of R.G. Manabat and Co.;[21] Roehl P. Bautista, Business Process Outsourcing (BPO) Head of Millenium Business Services, Inc.;[22] and Enrico Targa Pizarro, the Court commissioned Independent Certified Public Accountant (ICPA).[23] Thereafter, petitioner filed its *Formal Offer of Evidence* (FOE) [24] on

[16] Resolution dated August 30, 2013, Docket—Vol. I, p. 455.
[17] Docket—Vol. I, pp. 520 to 540.
[18] Docket—Vol. I, p. 545.
[19] Docket—Vol. I, pp. 566 to 576.
[20] Minutes of the Hearing held on January 14, 2014, Docket—Vol. I, pp. 577 to 581; and Exhibit "P-31", Docket—Vol. I, pp. 207 to 225.
[21] Minutes of the Hearing held on February 6, 2014, Docket—Vol. I, pp. 585 to 586; Exhibit "P-53", Docket—Vol. I, pp. 594 to 604.
[22] Minutes of the Hearing held on March 4, 2014, Docket—Vol. I, pp. 715 to 716; and Exhibit "P-62", Docket—Vol. I, pp. 197 to 202.
[23] Minutes of the Hearings held on April 22, 2014, September 23, 2014 and February 3, 2015, Docket—Vol. I, pp. 791 to 794, 889 to 890 and 938 to 940; and Exhibits "P-56" and "P-60", Docket—Vol. I, pp. 866 to 883 and 915 to 921.
[24] Docket—Vol. II, pp. 985 to 1043.

March 17, 2015. Upon final resolution thereof[25], petitioner rested its case.

For his part, respondent presented Revenue Officer Romualdo I. Plocios as his lone witness.[26] Thereafter, respondent filed his *Formal Offer of Documentary Evidence* on January 25, 2016.[27] Upon resolution thereof in the Resolution dated March 8, 2016,[28] respondent rested his case and the Court directed the parties to file their respective Memorandum within thirty (30) days from notice.

Respondent's *Memorandum*[29] and petitioner's *Memorandum*[30] were separately filed on May 10, 2016. In the Resolution dated May 19, 2016,[31] the instant Petition for Review was declared submitted for decision.

Hence, this Decision.

THE ISSUES

The parties submitted the following issues for resolution of this Court, to wit:[32]

> "2.1 Whether the tax deficiency assessments for fiscal year ending 31 March 2007 have already prescribed;
>
> 2.2 Whether the Final Decision on Disputed Assessment (FDDA) dated 21 March 2013, together with Assessment Notice Nos.: a) LTDO-122-IT-2006-00018; b) LTDO-122-VT-2006-00018; c) LTDO-122-WE-206-00013; d) LTDO-122-WF-2006-00005; e) LTDO-122-FBT-2006-00005; f) LTDO-122-DST-2006-00003; g)LTDO-122-PEN(MAP/SAWT)-2006-00006; and h) LTDO-122-PEN(WC)-2006-00007 and details of discrepancies are void;

---

[25] Resolution dated September 22, 2015, Docket —Vol. II, pp. 1168 to 1170.
[26] Minutes of the Hearing held on December 8, 2015, Docket—Vol. II, pp. 1171 to 1173; and Exhibit "R-17", Docket—Vol. I, pp. 175 to 183.
[27] Docket—Vol. II, pp. 1188 to 1199.
[28] Docket—Vol. II, pp. 1227 to 1228.
[29] Docket—Vol. II, pp. 1242 to 1263.
[30] Docket—Vol. II, pp. 1265 to 1309.
[31] Docket—Vol. II, p. 1311.
[32] Simplification of Issues, JSFSI, Docket—Vol. I, pp. 522 to 523.

> 2.3 Whether petitioner is liable to pay the total amount of Php151,471,763.14 as alleged deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, fringe benefit tax, documentary stamp tax and compromise penalty for the fiscal year ending March 31, 2007."

Petitioner's arguments:

Petitioner argues that respondent's right to assess petitioner for deficiency taxes for fiscal year ending March 31, 2007 has already prescribed, pursuant to Section 203 of the Tax Code because the waiver signed by petitioner and respondent did not extend the period for assessment until March 31, 2011. Allegedly, the waiver was executed on September 1, 2010, or after the 3-year prescriptive period had already expired.

Petitioner claims that the PAN, FAN and the FDDA issued by respondent are based on mere conjectures and presumptions, unsupported by the facts, tax laws, rules and regulations; and there being no factual and legal basis supporting the PAN, FAN and FDDA, the same are consequently null and void.

In addition, petitioner contends that it is not liable to pay the alleged deficiency income tax in Assessment No. LTDO-122-IT-2006-000018. Relative thereto, petitioner points out the following:

a) Contrary to respondent's FDDA, the alleged undeclared income of ₱3,213,667.59 is duly accounted for;
b) Respondent failed to take into consideration that the alleged unaccounted balance of ₱5,610,096.60 refers to professional fees and other expenses;
c) In computing the alleged unaccounted income payments/local purchases of goods amounting to ₱37,968,425.85, respondent failed to consider other accounts that would affect the "Purchases" item;
d) Disallowance of the alleged income payments/purchases of services amounting to ₱34,323,784.25 as deductions from petitioner's gross income;
e) Disallowance of interest expense amounting to ₱40,957,892.00 as deduction from petitioner's gross income; and

MD

f) Disallowance of income payments for non-withholding amounting to ₱2,488,569.17 as deduction from petitioner's gross income.

As for the payment of the alleged deficiency VAT in Assessment No. LTDO-122-VT-2006-00018, petitioner likewise submits that it is not liable therefor, based on the following grounds:

a) Petitioner had no undeclared income/receipts in the amount of ₱5,248,075.00 subject to 12% VAT; and
b) The unaccounted balance representing professional fees amounting to ₱5,610,096.60 is not subject to 12% VAT.

With reference to the alleged deficiency EWT in Assessment No. LTDO-122-WE-2006-00013 and deficiency FWT in Assessment No. LTDO-122-WF-2006-00005, petitioner contends that it is not liable for the payment therefor, because of respondent's failure to establish specific items and explanations upon which the deficiency taxes are being assessed is equivalent to a violation of petitioner's right to be informed of the nature and basis of the assessment.

With regard to the deficiency FBT in Assessment No. LTDO-122-FBT-2006-00005, petitioner also avers that it is not liable therefor, because the income payment being subjected to FBT actually consists of overseas travelling expenses and expenses incurred for company housing which are not in the nature of fringe benefits granted to its employees; and that these are regular business expenses incurred for the travelling expenses and rentals for shared home and office space used by petitioner's provincial sales people. Petitioner further alleges that these expenses were incurred for rank and file employees.

As regards the deficiency DST in Assessment No. LTDO-122-DST-2006-00003, petitioner claims that it is not liable for payment thereof because the proper DST was already declared and remitted to respondent by the other parties to the loan agreements it entered into from local banks in fiscal year 2007.

Lastly, petitioner argues that respondent's imposition of penalties in Assessment Nos. LTDO-122-PEN(MAP/SAWT)-2006-00006 and LTDO-122-PEN(WC)-2006-00007 has no factual or legal basis.

Respondent's counter-arguments:

Respondent counter-argues that the right of respondent to assess petitioner for deficiency taxes did not prescribe in view of the execution of timely waivers extending the period of assessment.

According to respondent, petitioner is liable to pay its deficiency income tax, VAT, EWT, FWT, FBT, DST and compromise penalty in the total amount of ₱151,471,763.14 for the fiscal year ending March 31, 2007 for the reasons it stated in his *Answer*.

THE COURT'S RULING

We partially grant the instant *Petition for Review*.

Petitioner argues that the final assessments by respondent against it for alleged deficiency taxes are void, invalid and of no legal effect whatsoever, because they were issued beyond the 3-year prescriptive period provided by law for assessment and collection of taxes.

Petitioner's argument is partly meritorious.

Sections 203 and 222 of the National Internal Revenue Code (NIRC) of 1997 state the periods of limitation upon the assessment and collection of taxes, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment.*— Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."
>
> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collections of Taxes.*—
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be

> assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx."

Section 203 of the NIRC of 1997 mandates the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective.

However, exceptions to the three-year prescriptive period are provided under Section 222 of the NIRC of 1997,[33] to wit: (1) **in the case of a false or fraudulent return with intent to evade tax or of failure to file a return**, and (2) **when the three-year period is extended upon a valid written agreement between the Commissioner of Internal Revenue and the taxpayer executed before the expiration thereof, and this may be extended by a subsequent written agreement made before the expiration of the period previously agreed upon.** In relation to the second exception, the phrase "valid written agreement" is commonly known as a "waiver of the statute of limitations", which is defined as "an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain."[34]

In this case, petitioner executed a *Waiver of the Statute of Limitations under the National Internal Revenue Code* (First Waiver) **on January 27, 2010**, wherein petitioner consented to the

---

[33] *Commissioner of Internal Revenue vs. Kudos Metal Corporation,* G.R. No. 178087, May 5, 2010.

[34] *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

assessment of taxes on or before September 30, 2010.[35] Thereafter, on September 1, 2010, petitioner executed another *Waiver of the Statute of Limitations under the National Internal Revenue Code* (Second Waiver) extending further the period to assess until March 31, 2011.[36]

The instant case involves assessments for deficiency income tax, EWT, FBT, FWT, VAT, and DST for the fiscal year ending March 31, 2007. The dates of filing of petitioner's relevant returns and the corresponding dates within which respondent should assess petitioner for deficiency taxes for the above-stated period under the aforequoted Section 203, are the following:

INCOME TAX RETURN (BIR FORM 1702)			
Period	**Date Filed**	**Last Day to File Return[37]**	**Last Day to Assess under Section 203**
Fiscal year ending March 31, 2007	July 17, 2007[38]	July 16, 2007[39]	July 17, 2010

QUARTERLY VAT RETURNS (BIR FORM 2550-Q)			
Period (Fiscal year ending March 31, 2007)	**Date Filed**	**Last Day to File Return[40]**	**Last Day to Assess under Section 203**
1st Quarter	July 22, 2006[41]	July 25, 2006	July 25, 2009
2nd Quarter	October 23, 2006[42]	October 25, 2006	October 25, 2009
3rd Quarter	January 25, 2007[43]	January 25, 2007	January 25, 2010
4th Quarter	April 24, 2007[44]	April 25, 2007	April 25, 2010

EWT RETURNS (BIR FORM 1601-E)			
Period (Fiscal year ending	**Date Filed**	**Last Day to File Return[45]**	**Last Day to Assess under Section 203**

---

[35] Exhibit "R-5", BIR Records, p. 1756.
[36] Exhibit "R-8", BIR Records, p. 2056.
[37] Pursuant to Section 77 of the NIRC of 1997, a corporate taxpayer shall file its final adjustment return (annual income tax return) on or before the fifteenth (15th) day of the fourth month following the close of the fiscal year.
[38] Exhibit "P-21", ICPA Report, Binder No. 5.
[39] July 15, 2007 fell on a Sunday.
[40] Section 114(A) of the NIRC of 1997, as amended by Republic Act No. 9337, requires that Quarterly VAT Returns should be filed within twenty-five (25) days following the close of each taxable quarter.
[41] Exhibits "P-9.1.1" to "P-9.1.2", ICPA Report, Binder No. 1.
[42] Exhibits "P-9.2.1" to "P-9.2.3", ICPA Report, Binder No. 1.
[43] Exhibits "P-9.3.1" to "P-9.3.2", ICPA Report, Binder No. 1.
[44] Exhibits "P-9.4.1" to "P-9.4.3", ICPA Report, Binder No. 1.
[45] For both large and non-large taxpayers, the withholding tax return, whether creditable or final shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year,

March 31, 2007)			
April 2006	May 12, 2006[46]	May 10, 2006	May 12, 2009
May 2006	June 9, 2006[47]	June 10, 2006	June 10, 2009
June 2006	July 11, 2006[48]	July 10, 2006	July 11, 2009
July 2006	August 10, 2006[49]	August 10, 2006	August 10, 2009
August 2006	September 12, 2006[50]	September 11, 2006[51]	September 12, 2009
September 2006	October 11, 2006[52]	October 10, 2006	October 11, 2009
October 2006	November 14, 2006[53]	November 10, 2006	November 14, 2009
November 2006	December 13, 2006[54]	December 10, 2006[55]	December 13, 2009
December 2006	January 12, 2007[56]	January 15, 2007	January 15, 2010
January 2007	February 13, 2007[57]	February 12, 2007[58]	February 13, 2010
February 2007	March 12, 2007[59]	March 12, 2007[60]	March 12, 2010
March 2007	April 12, 2007[61]	April 10, 2007	April 12, 2010

FWT RETURNS (BIR FORM 1601-F)			
Period (Fiscal year ending March 31, 2007)	**Date Filed**	**Last Day to File Return[62]**	**Last Day to Assess under Section 203**
April 2006	May 10, 2006[63]	May 10, 2006	May 10, 2009
May 2006	June 8, 2006[64]	June 10, 2006[65]	June 10, 2009
June 2006	July 10, 2006[66]	July 10, 2006	July 10, 2009
July 2006	August 10, 2006[67]	August 10, 2006	August 10, 2009
August 2006	September 8, 2006[68]	September 11, 2006[69]	September 11, 2009

which shall be filed on or before January 15 of the following year. (Section 2.58(A)(2)(a), Revenue Regulations (RR) No. 2-98, as amended by RR No. 17-03).

[46] Exhibit "P-40-2", Docket—Vol. II, p. 1066.
[47] Exhibit "P-41-2", Docket—Vol. II, p. 1068.
[48] Exhibit "P-42-2", Docket—Vol. II, p. 1070.
[49] Exhibit "P-43-2", Docket—Vol. II, p. 1072.
[50] Exhibit "P-44-2", Docket—Vol. II, p. 1074.
[51] September 10, 2006 fell on a Sunday.
[52] Exhibit "P-45-2", Docket—Vol. II, p. 1076.
[53] Exhibit "P-46-2", Docket—Vol. II, p. 1078.
[54] Exhibit "P-47-2", Docket—Vol. II, p. 1080.
[55] December 10, 2006 fell on a Sunday.
[56] Exhibit "P-48-2", Docket—Vol. II, p. 1082.
[57] Exhibit "P-49-2", Docket—Vol. II, p. 1084.
[58] February 10, 2007 fell on a Saturday.
[59] Exhibit "P-50-2", Docket—Vol. II, p. 1086.
[60] March 10, 2007 fell on a Saturday.
[61] Exhibit "P-51-2", Docket—Vol. II, p. 1088.
[62] See Footnote no. 56.
[63] Exhibit "P-79-2", BIR Records, p. 1895.
[64] Exhibit "P-80-2", BIR Records, p. 1893.
[65] June 10, 2006 fell on a Saturday.
[66] Exhibit "P-81-2", BIR Records, p. 1892.
[67] Exhibit "P-82-2", BIR Records, p. 1891.
[68] Exhibit "P-23-2", BIR Records, p. 1890; Exhibit "P-22", ICPA Report, Binder No. 5.
[69] September 10, 2006 fell on a Sunday.

September 2006	October 10, 2006[70]	October 10, 2006	October 10, 2009
October 2006	November 10, 2006[71]	November 10, 2006	November 10, 2009
November 2006	December 11, 2006[72]	December 11, 2006[73]	December 11, 2009
December 2006	January 10, 2007[74]	January 15, 2007	January 15, 2010
January 2007	(none)	February 12, 2007[75]	(not applicable)
February 2007	(none)	March 12, 2007[76]	(not applicable)
March 2007	(none)	April 10, 2007	(not applicable)

QUARTERLY REMITTANCE RETURNS OF FINAL INCOME TAXES WITHHELD ON FRINGE BENEFITS (BIR FORM 1603)			
Period (Fiscal year ending March 31, 2007)	**Date Filed**	**Last Day to File Return[77]**	**Last Day to Assess under Section 203**
April to June 2006	July 6, 2006[78]	July 5, 2006	July 6, 2009
July to September 2006	October 5, 2006[79]	October 5, 2006	October 5, 2009
October to December 2006	January 9, 2007[80]	January 5, 2007	January 9, 2010
January to March 2007	April 10, 2007[81]	April 5, 2007	April 10, 2010

Considering that the First Waiver was executed only on January 27, 2010, the deficiency VAT and FBT assessments for the 1st (April to June), 2nd (July to September), and 3rd (October to December) quarters; and the deficiency EWT and FWT assessments for the months April to December; all for the fiscal year ending March 31, 2007, were issued beyond the 3-year prescriptive period under Section 203 of the NIRC of 1997. Thus, the said assessments are deemed invalid.

As a corollary, the deficiency income tax assessment, the deficiency VAT and FBT assessments for the 4th quarter (January to March), and the deficiency EWT assessment for the months from January to March, likewise all for the fiscal year ending March 31, 2007, were issued within the extended period to assess under

---

[70] Exhibit "P-24-2", BIR Records, p. 1889.
[71] Exhibit "P-25-2", BIR Records, p. 1888.
[72] Exhibit "P-26-2", BIR Records I, p. 1887.
[73] December 10, 2006 fell on a Sunday.
[74] Exhibit "P-27-2", BIR Records, p. 1886.
[75] February 10, 2007 fell on a Saturday.
[76] March 10, 2007 fell on a Saturday.
[77] Pursuant to Section 5 of Revenue Regulations (RR) No. 04-02, requires that the Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits should be filed on or before the 10th day of the month following the calendar quarter in which the fringe benefits were granted. However, the deadline for e-filing shall be five (5) days later than the deadline set therein.
[78] Exhibits "P-19.1.1" to "P-19.1.2", ICPA Report, Binder No. 5.
[79] Exhibits "P-19.2.1" to "P-19.2.2", ICPA Report, Binder No. 5.
[80] Exhibits "P-19.3.1" to "P-19.3.2", ICPA Report, Binder No. 5.
[81] Exhibits "P-19.4.1" to "P-19.4.2", ICPA Report, Binder No. 5.

Section 222(b) in relation to Section 203, both of the NIRC of 1997 vis-à-vis the First and Second Waivers and receipt by petitioner of the FAN, together with the Assessment Notices and Details of Discrepancies on March 30, 2011.[82] Correspondingly, these assessments are considered valid.

Be that as it may, notwithstanding this Court's finding that there are certain periods which have prescribed, petitioner has not shown as to which portion of the assessments pertain to the prescribed period. In light however of the doctrine that all presumptions are in favor of the correctness of tax assessments,[83] this Court is constrained to treat all of the subject tax assessments as referring to the unprescribed portions.

Anent the DST assessment, and deficiency FWT assessment corresponding to the periods from January to March 2007, since there is no showing that petitioner filed any DST return for the fiscal year ending March 31, 2007, and the Monthly Remittance Returns of Final Income Taxes Withheld for the said months, respectively, the 10-year prescriptive period under Section 222(a) of the NIRC of 1997 applies. Correspondingly, petitioner was validly assessed within the 10-year prescriptive period to assess therefor.

We shall now look into the merits of each assessment items.

I. DEFICIENCY INCOME TAX – ₱67,356,132.66

Respondent assessed petitioner for deficiency income tax in the amount of ₱67,356,132.66,[84] computed as follows:

Net taxable income per return		₱ (77,020,241.00)
Add / deduct: Adjustments		
1. Undeclared income – discrepancy between VAT & ITR	₱ 3,213,667.59	
2. Discrepancies – (FS vs. ITR), unaccounted balance:		
a. Professional fees	5,610,096.60	
b. Income payments (purchases of goods)	0.00	
3. Discrepancies – (FS vs. ITR) still subject to certain w/taxes:		

[82] Par. 1.8 (*Cf.*, Par. 1.7), Admitted Facts/Documents, JSFSI, Docket—Vol. I, p. 521; BIR Records, pp. 2196 to 2233.
[83] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 134062, 17 April 2007; *Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue,* G.R. No. 168498, 24 April 2007.
[84] Exhibits "P-61-1" to "P-61-2", Docket—Vol. II, pp. 1090 to 1091.

a. Salaries & wages		0.00	
b. Rental expense		0.00	
c. Income payments (purchases of services)	₱ 151,537,003.00		
Add/(deduct): Already supported with documents	(117,213,218.55)	34,323,784.45	
Income payments on purchases of goods		37,968,425.85	
d. Interest expense		40,957,892.00	
4. Disallowed income payments subject to FBT (due to non-withholding):			
a. Overseas traveling expenses		2,056,324.17	
b. Rental expense		432,245.00	
5. Disallowed sales promotion expense (due to non-withholding – WF)		0.00	
6. Losses not supported by documents		4,345,251.00	
7. Understatement of inventory, end (COS vs. Inventory list)		0.00	128,907,686.66
Taxable income per reinvestigation			51,887,445.66
Basic tax due			18,160,605.98
Add: Tax credits not supported by certificates/documents			23,324,170.00
Total			41,484,775.98
Less: Tax paid per return			10,077,542.00
Deficiency income tax			31,407,233.98
Add: Interest (7-15-07 to 3-15-13)		35,898,898.68	
Compromise penalty		50,000.00	35,948,898.68
Total Amount Due			**₱ 67,356,132.66**

1. Undeclared income – ₱3,213,667.59

Respondent found that there is discrepancy between the sales/ receipts declared per VAT returns and that per ITR/FS, hence, the same was assessed pursuant to Section 32(A)(2) of the NIRC of 1997, as shown below:

Total sales/receipts per VAT returns	₱ 2,028,154,424.59
Total sales/receipts per ITR/FS	2,024,940,757.00
Undeclared income	**₱ 3,213,667.59**

Petitioner contends that it is not unusual that the gross sales/receipts between the ITR and VAT returns would vary in a particular taxable year. The resulting difference may be attributable to disposal of assets such as plant, property and equipment or other assets. The said disposal does not form part of the gross sales/receipts for financial reporting purposes, but is nevertheless subject to VAT.[85]

[85] Memorandum, Docket, Vol. II, p. 1291.

In his report, the Court-Commissioned Independent CPA (ICPA), Enrico T. Pizarro of P and D Consultants and Partners Co., further explained the discrepancy in this wise:

> "Based on the schedule presented, we have examined the Company's sales per VAT returns filed as against the financial statement for the fiscal year March 31, 2007. Our findings are as follows:
>
> a) Based on our examination of the Company's general ledger (GL), we have noted that the sale of other asset costing P2,685,460.00 were sold for P1,580,580.50 and subjected by the Company to VAT amounting to P189,669.66 as shown in the GL.
>
> b) We have noted that the difference amounting to P1,633,087.09 between the VAT return and financial statement cannot be properly accounted for as there are no summary list of sales attached to the VAT return declaration."[86]

Verily, the gross sales/receipts per FS/ITR differ from that per VAT returns. It is to be noted that per VAT Returns, what is recorded as gross sales/receipts is the proceeds from the sale of certain asset, while per FS/ITR, what is recorded is the related gain or loss from such sale. Understandably, they are not comparable.

In this case, however, We cannot ascertain whether the discrepancy of ₱1,580,580.50 indeed pertains to the alleged proceeds from sale of its other asset costing ₱2,685,460.00. Petitioner should have shown, among others, its summary list of sales so that the amount of ₱1,580,580.50 and the remaining balance of ₱1,633,087.09 could be verified if indeed these amounts formed part of its gross sales/receipts per VAT returns.

Thus, for petitioner's failure to convincingly prove the same, respondent's finding of undeclared income in the amount of ₱3,213,667.59 shall be upheld.

2. Unaccounted balance – ₱5,610,096.60

Respondent found that there is discrepancy in professional fees, as that declared per ITR/FS and that per BIR Form No. 1601-E. Hence, the unaccounted balance, as shown below, was assessed and subjected to income tax, pursuant to Section 27(A) of the NIRC of 1997, as amended, to wit:

---

[86] Exhibit "P-55", Docket—Vol. I, p. 848.

Professional fees per ITR/FS	₱	3,664,743.00
Professional fees per BIR Form No. 1601-E		9,274,839.60
Discrepancy – unaccounted balance	**₱**	**5,610,096.60**

Petitioner avers that respondent failed to consider other expenses reflected in BIR Form No. 1601-E. According to petitioner, the amount of ₱9,274,839.60 includes advertising, sales and promotion expenses, and payments to third-party contractors, to wit:

Amounts paid to certain brokers and agents(corporation)	₱	2,519,947.50
Professionals, lawyers, CPAs		59,800.00
Management & technical consultancy fees		1,920,000.00
Amounts paid to certain brokers and agents (individual)		1,057,279.90
Professional, talent fees paid to juridical persons		3,717,812.20
Total	**₱**	**9,274,839.60**

Respondent is certainly mistaken.

The three (3) elements on the imposition of income tax are: (1) there must be gain or profit, (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.[87] Income tax is assessed on income received from any property, activity or service.[88] Such being the case, in the imposition or assessment of income tax, it is not when there is an *"unaccounted balance"* of an expense, but only when there was an income, and such income was received or realized by the taxpayer.

In this case, said elements are not present. The BIR merely imposed income tax on petitioner simply because there was an *"unaccounted balance"* of professional fees, nothing more.

It must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[89] Hence, even granting that there is an *"unaccounted balance"* of professional fees, the same is not prohibited by law.

The Court finds that respondent's imposition or assessment of

---

[87] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[88] *Supra.*
[89] *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.*, G.R. No. L-19727, May 20, 1965.

MO

the income tax thereto does not hold water as he simply relied on the fact that there was an *"unaccounted balance"* of professional fees,. Being so, the deficiency income tax assessment pertaining to the *"unaccounted balance"* of professional fees in the amount of ₱5,610,096.60 shall be cancelled.

3. Unaccounted income payments – ₱113,250,102.30

Respondent found the alleged unaccounted income payments in the amount of ₱113,250,102.30 must be subject to withholding tax, broken down as follows:

a) Purchase of goods and services		
a.1) Income payments on purchase of goods	₱1,382,340,947.00	
Less: Income payments per BIR returns and documents already provided	1,344,372,521.15	₱ 37,968,425.85
a.2) Income payments on purchase of services	₱ 323,180,963.00	
Less: Income payments per BIR returns and documents already provided	288,857,178.55	34,323,784.45
b) Interest expense		40,957,892.00
Total		**₱113,250,102.30**

a) Purchase of goods – ₱37,968,425.85

Respondent computed the alleged unaccounted income payments/ local purchases of goods in the amount of ₱37,968,425.85 as follows:

Cost of sales	
Purchases	₱1,381,259,396.00
Operating expense and charges	
Office supplies	1,081,551.00
Advertising	102,374,659.85
Total	₱1,484,715,606.85
Less: Importations per VAT returns	1,340,150,246.00
Net purchases	
Income payments made by top 10000 corporations	₱ 144,565,360.85
Less: Goods per BIR Form No. 1601-E	106,596,935.00
Discrepancy – still subject to 1% EWT	**₱ 37,968,425.85**

M

Petitioner argues that this simplistic method failed to take into consideration other accounts that would affect the Purchases account and therefore, this method did not result in the correct figure.

According to petitioner, the purchases per ITR/AFS will not always reconcile with that per BIR Form No. 1601-E; that the latter include income payments that were not solely "Purchases", but such also include acquisition of assets subject to 1% EWT; that its AFS shows several accounts subject to withholding tax but were not considered by respondent in reconciling the purchases of goods subject to 1% EWT; and that any net change in these accounts from the previous year could result in 1% EWT, to wit:

Account Name	Amount
Prepaid expenses and other current assets	₱ 17,345,116.00
Property and equipment	₱ 39,095,775.00
Other assets	₱ 6,743,766.00
Miscellaneous	₱ 14,009,692.00

Petitioner adds that respondent computed the EWT based on reconciliation of limited accounts such as purchases, importations and office supplies; and thus, respondent's assessment allegedly has no factual and legal bases.

The Court disagrees with petitioner.

Indeed, the accounts per ITR/AFS vary with those per BIR Form No. 1601-E. However, no corroborative evidence was adduced by petitioner to establish its assertion and to show the reconciliation of the differing accounts. Thus, the Court cannot ascertain the veracity of petitioner's claim. Consequently, the subject finding of respondent must perforce be upheld.

b) Purchases of services – ₱34,323,784.45

Respondent disallowed the amount of ₱34,323,784.45 for petitioner's failure to subject the same to proper withholding taxes, pursuant to Section 34(K) of the NIRC of 1997, as amended.

For its part, petitioner avers that it submitted documents to show that it properly withheld and remitted taxes on all its income payments/purchases of services from third-party regular suppliers during the fiscal year ended March 31, 2007. According to petitioner, it is not required to deduct tax on its income payments made to non-regular suppliers of services.

Petitioner further alleges that respondent failed to present in its PAN/FAN/FDDA an accurate schedule of the unaccounted income of ₱34,323,784.45, as well as, to provide factual basis in assessing petitioner's purchase of services subject to 2% EWT; respondent did not prove that it excluded the payments made by petitioner to its non-regular supplier of services in computing the subject deficiency assessment; and thus, respondent's assessment of undeclared income payment of services is null and void.

The Court finds petitioner's arguments untenable.

Pursuant to Revenue Regulations (RR) No. 17-2003, which further amended RR No. 2-98, large taxpayers classified and duly notified shall be required to withhold 1% from regular suppliers of goods and 2% from regular suppliers of services, to wit:

> "Sec. 2.57.2. *Income payments subject to creditable withholding tax and rates prescribed thereon.* – x x x
>
> x x x x x x x x x
>
> (M) Income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax. – Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines
>
> Supplier of goods - One percent (1%)
> Supplier of services - Two percent (2%)
>
> x x x x x x x x x
>
> The term 'local/resident supplier of goods' pertains to a supplier from whom any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, regularly makes its purchases of goods. As a general rule, this term does not include a casual purchase of goods, that is, purchases made from non-regular suppliers and oftentimes involving single purchases. However, a single purchase which involves ten thousand pesos (P10,000.00) or more shall be subject to a withholding tax. The term 'regular suppliers' refers to suppliers who are engaged in business or exercise of profession/calling with whom the taxpayer-buyer has transacted at least six (6) transactions, regardless of amount

ꟿ

per transaction, either in the previous year or current year. The same rules apply to local/resident supplier of services other than those covered by separate rates of withholding tax."

In the instant case, petitioner provided the ICPA the pertinent official receipts, sales invoices and vouchers to determine the nature of the expenses. The ICPA's findings and observations relating thereto are as follows:

"[W]e have examined the check vouchers and official receipts issued by the Company's suppliers and identified whether these expenses should be subjected to 1% and 2% withholding tax. The results are summarized as follows:"

Particulars	Purchase of goods	Purchase of services	Total
Purchase of goods and services per financial statement	₱ 42,190,701.00	₱ 323,180,963.00	₱ 365,371,664.00
Purchases with supporting documents	5,453,272.25	127,178,577.77	132,631,850.02
Unaccounted purchase of goods and services	**₱ 36,737,428.75**	**₱ 196,002,385.23**	**₱ 232,739,813.98**

Based on our examination of the vouchers and receipts provided by the Company, we noted that purchases amounting to P132,631,850.02 are regular purchase of goods and services of the Company that should be subjected to 1% and 2% withholding tax based on the regulation mentioned above. However, not all the supporting documents were provided by the Company, thus, we are not able to conclude whether the remaining expenses amounting to P232,739,813.98 comply with the requirement of regularity of purchases as addressed in the previous paragraph. x x x

Our reconciliation of the purchases identified as regular purchase of goods and services against the EWT returns filed is as follows:

Particulars	Supported purchases	Tax rate	EWT due per audit	EWT withheld per BIR returns	Difference
a. Purchase of goods	₱ 5,453,272.25	1%	₱ 54,532.72	₱ 1,071,953.30	(₱ 1,017,420.58)
b. Purchase of services	127,178,577.77	2%	2,543,571.56	3,370,791.72	(827,220.16)
Total	**₱ 132,631,850.02**		**₱ 2,598,104.28**	**₱ 4,442,745.02**	**(₱ 1,844,640.74)**

Nonetheless, the sales invoices and official receipts merely prove petitioner's purchases of goods and services during the fiscal year ending March 31, 2017. In other words, the said documents do not prove that each of the items of the said income payments were indeed subjected to withholding tax. Specifically, petitioner failed to present its alphalist of payments subject to EWT and the documents

pd

supporting the same, and thus, this Court is unable to ascertain whether or not the assessed income payments were already subjected to EWT.

As a corollary, the mere fact that the EWT declared per tax returns is higher than that per audit does not disprove respondent's finding of petitioner's failure to withhold the pertinent tax, for it is possible that the composition of the amount of purchases, as found by respondent, does not include that which were declared by petitioner. Consequently, this finding of respondent shall be sustained.

c) Interest expense – ₱40,957,892.00

Respondent disallowed the interest expense in the amount of ₱40,957,892.00 as deduction from petitioner's gross income, pursuant to Section 34(K) of the NIRC of 1997, as amended.

Petitioner contends that it presented documents to show that it properly withheld and remitted taxes on all its income payments to third persons.

In the report of the ICPA, the latter's findings show that petitioner was not liable to deficiency EWT. Accordingly, petitioner was entitled to claim interest expense as a deduction, to wit:

> "Based on the foregoing, the Company had filed and remitted EWT amounting to P6,821,679.07 for the Period Covered. Thus, the Company should not be subject to deficiency expanded withholding tax."[90]

We do not agree.

As can be gleaned from the ICPA's report, the alleged EWT per BIR returns in the amount of ₱6,821,679.07 does not include withholding on payments of interest expenses. Furthermore, a perusal of the tax returns[91] discloses that petitioner withheld tax on the following income payments: *(i)* professional fees, *(ii)* management fees, *(iii)* talent fees, *(iv)* rental, *(v)* prime/subcontractors, *(vi)* commission, and *(vii)* purchase of goods. Clearly, petitioner failed to withhold tax on the interest expenses. These negate petitioner's

---

[90] Exhibit "P-55", Docket—Vol. I, p. 856.
[91] Exhibits "P-12.1.1" to "P-12.12.1".

claim that it properly withheld and remitted taxes on its interest payments. And absent any other documentary evidence, the instant finding of respondent must be sustained.

4. Disallowed income payments for non-withholding of FBT – ₱2,488,569.17

Respondent disallowed the following income payments as deduction from petitioner's gross income pursuant to Section 34(K) of the NIRC of 1997, as amended:

Overseas travelling expense	₱	2,056,324.17
Rent due for company housing		432,245.00
Total income payments subject to FBT	**₱**	**2,488,569.17**

In its protest letter,[92] petitioner asserted that the assessment on its overseas travelling and company housing expenses has no legal basis, to wit:

> "Overseas travelling expenses and expenses incurred for company housing shall only be subject to Fringe Benefits Tax provided the fringe benefit is not required "by the nature of x x x, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer" under Section 33(A) of the Tax Code.
>
> The overseas travelling and company housing expenses incurred by JVC are not in the nature of fringe benefit granted to its employees. These are regular business expenses incurred for the travelling expense and rental for shared home and office space used by provincial sales people. In addition, these expenses were incurred by rank and file employees. Under the Revenue Regulations 3-98, the regulations on FBT shall cover only to those fringe benefits given or furnished to managerial or supervisory employees and not to the rank and file employees. Finally, there is no benefit granted to its employees since these are reimbursable expenses. As such, to impose a deficiency Fringe Benefit Tax on the same would have no legal basis."

Petitioner further avers, in its Memorandum, that it properly withheld and remitted taxes on all its income payments to third persons, as confirmed by the ICPA, to wit:

> "The BIR disallowed expenses amounting to P2,488,569.17 due to non-withholding of fringe benefit tax computed as follows:

---

[92] Exhibit "P-34", Docket—Vol. I,, p. 650.

Particulars	Per BIR assessment	Per BIR returns	Difference
Overseas travelling expenses	P 2,056,324.17		
Rent due to company housing	432,245.00		
Income payments subject to FBT	2,488,569.17	P 2,821,213.94	(P 332,644.77)
Percentage divisor	68%	68%	68%
Tax base grossed-up monetary value	3,659,660.54	4,148,844.03	(489,183.49)
FBT rate	32%	32%	32%
FBT due	**P 1,171,091.37**	**P 1,327,630.09**	**(P 156,538.72)**

Therefore, based on the results of performing procedure no. 8, we noted that the tax base or the grossed-up monetary value of the fringe benefit for the purposes of computing the fringe benefit tax (FBT) is higher by P332,644.77 based on Company's declaration return for FBT.

Therefore, the Company should not be assessed for non-withholding of income payments subject to FBT because the Company withheld the appropriate related tax thereon."[93]

Certainly, Section 33(A) of the NIRC of 1997, as implemented by Revenue Regulations No. 3-98, provides that a final withholding tax of thirty-two percent (32%) shall be imposed on the grossed-up monetary value of fringe benefit furnished, granted or paid to the employee, except rank and file, by the employer, unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer.

Nonetheless, petitioner failed to submit documents to support its assertion that the subject expenses are not in the nature of fringe benefits. It is the basic rule that mere allegation is not evidence and is not equivalent to proof.[94]

Moreover, petitioner certainly had paid FBT (in the amount of ₱1,327,630.09) on the monetary value of fringe benefit (in the amount of ₱2,821,213.94), as shown below:

Taxable Period / Exhibit	Monetary Value of Fringe Benefit a	Tax Base Grossed-Up Monetary Value b = a / 68%	Tax Required To Be Withheld C = b * 32%
1st Quarter	₱ 693,771.55	₱ 1,020,252.28	₱ 326,480.73

---

[93] Exhibit "P-55", Docket—Vol. I,, p. 852

[94] *ECE Realty and Development Inc. vs. Rachel G. Mandap*, G.R. No. 196182, September 1, 2014, citing *Hector C. Villanueva vs. Philippine Daily Inquirer, Inc., et. al*, G.R. No. 164437, May 15, 2009.

"P-19.1.1"			
2nd Quarter "P-19.1.2"	822,730.96	1,209,898.47	387,167.51
3rd Quarter "P-19.1.3"	667,647.84	981,835.06	314,187.22
4th Quarter "P-19.1.4"	637,063.59	936,858.22	299,794.63
Total	**₱ 2,821,213.94**	**₱ 4,148,844.03**	**₱ 1,327,630.09**

However, no inference can be made as that drawn by the ICPA. Absent any supporting schedules, the mere fact that the monetary value of fringe benefit per quarterly remittance returns is higher than that per assessment does not prove that the latter forms part of, or is included in, the former. With only the returns at hand, the Court cannot ascertain whether the income payments of ₱2,488,569.17 subject of the present assessment already formed part of the fringe benefit that were already subjected to withholding tax. Hence, the finding of respondent thereon must likewise be sustained.

5. Unsupported losses – ₱4,345,251.00

Respondent disallowed the losses because the same were not supported by documentary evidence as prescribed under Section 34(D) of the NIRC of 1997, as amended.

In its protest letter, petitioner pointed out that the losses in the amount of ₱4,345,251.00 were due to disposal of inventories and retirement of intangible assets.[95] However, the Court agrees with the findings of the ICPA that only a portion thereof was actually supported by documentary evidence, to wit:

> "The losses amounting to P4,345,251.00 are actually Company's losses through disposal of obsolete inventory and retirement of intangible assets. On June 15, 2006, the physical destruction of inventories amounting to P1,238,543.69 was conducted witnessed by BIR officers. The details are as follows:

Particulars	Amount
Losses per BIR assessment	P 4,345,251.00
Losses with BIR certification	1,238,543.69
Unsupported losses	**P 3,106,707.31**

> The Company provided supporting documents like BIR certification evidencing the destruction of these inventories as required by the regulations. However, losses amounting to P3,106,707.31 were not supported by documents.

---
[95] Exhibits "P-2" and "P-34", Docket—Vol. I,, p. 646

> Therefore, we can conclude that the amounts which are not covered by the certification is not deductible for tax purposes."[96]

Again, absent any other documentary evidence, the assessment on the remaining amount of ₱3,106,707.31 must be upheld.

6. Unsupported tax credit – ₱23,324,170.00

Respondent disallowed the unsupported tax credit in the amount of ₱23,324,170.00 as deduction from petitioner's income tax due.

In the Report of the ICPA, petitioner allegedly was not able to provide copies of the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307). In view thereof, the same shall be disallowed. Consequently, petitioner is precluded from claiming the unsupported tax credit in the amount of ₱23,324,170.00 as deduction from petitioner's income tax due.

Moreover, it must be noted that respondent inadvertently deducted the amount of ₱10,077,542.00 as tax payment per return, which is in fact the minimum corporate income tax (MCIT) due of petitioner, as reflected in its Annual ITR for year ended March 31, 2007. Considering that no actual payments were made, as the same were only credited against the tax credit of petitioner, which this Court finds to be unsupported, the same cannot be deducted from petitioner's deficiency income tax liability.

In fine, petitioner is liable for deficiency income tax in the amount of ₱15,763,581.88 as computed below:

Net taxable income per return		₱ (77,020,241.00)
Add: Adjustments per this Court's audit		
Undeclared income		3,213,667.59
Unaccounted income payments		
Purchase of goods	₱ 34,323,784.45	
Purchase of services	37,968,425.85	
Interest expense	40,957,892.00	113,250,102.30
Disallowed income payments for non-withholding of FBT		
Overseas traveling expenses	2,056,324.17	
Rental expense	432,245.00	2,488,569.17
Unsupported losses		3,106,707.31

96 Exhibit "P-55", Docket—Vol. I,, p. 853

M

Taxable income per audit	**₱ 45,038,805.37**
Basic Deficiency Income Tax	**₱ 15,763,581.88**

II. VALUE-ADDED TAX – ₱67,784,646.39

Respondent assessed petitioner for deficiency VAT in the amount of ₱67,784,646.39, computed as follows:

Gross sales/receipts per returns		₱2,028,154,424.59
Add/deduct: Adjustments		
1. Undeclared income/receipts:		
a. Miscellaneous income	₱ 2,330,472.00	
b. Gain on sale on property & equipment	232,143.00	
c. Disposal of other assets	2,685,460.00	5,248,075.00
2. Unaccounted balance per BIR reconciliation		
a. Professional fees	5,610,096.00	
b. Income payments (purchases of goods)	0.00	5,610,096.00
Total sales/receipts per reinvestigation		₱2,039,012,596.19
Output tax thereon		₱ 244,681,511.54
Less: Input Taxes Claimed per VAT Returns		213,715,647.40
Less: Disallowed input tax per investigation		
a. Discrepancy in input tax per verification/audit		0.00
b. Discrepancy in input tax ITS verification		0.00
c. Importations – discrepancy (BOC data vs. SLSP)/NSD		0.00
Total disallowance		-
Net available input taxes		₱ 213,715,647.40
Basic VAT due		₱ 30,965,864.14
Less: VAT paid per return		-
Deficiency VAT		₱ 30,965,864.14
Add: Interest (4-25-07 to 3-31-13)	36,768,782.25	
Compromise penalty	50,000.00	36,818,782.25
Total Amount Due		**₱ 67,784,846.39**

1. Undeclared income/receipts – ₱5,248,075.00

Respondent's verification of the accounting records and documents disclosed that petitioner had undeclared income/receipts in the aggregate amount of ₱5,248,075.00. Thus, the following items were assessed pursuant to Section 108(B) of the NIRC of 1997, as amended:

Miscellaneous income	₱ 2,330,472.00
Gain on sale of property & equipment	232,143.00
Disposal of other assets	2,685,460.00
Total	**₱ 5,248,075.00**

M

In its protest letter, petitioner contends that, since these incomes did not arise "in the course of business", the assessment has no legal basis, explaining in this wise:

> "The RO automatically assessed a deficiency VAT on miscellaneous income, gain on sale of property & equipment, and disposal of other assets, apparently construing these items as sales in the ordinary course of trade or business. We disagree with the RO as these incomes arose not from 'in the ordinary course of trade or business' and therefore, should not be subjected to VAT.
>
> Section 105 of the Tax Code, as amended, provides that 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 VAT imposed in Sections 106 to 108 of the Tax Code, as amended. The phrase 'in the course of trade or business' means regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonst[o]ck, nonprofit private organization, or government entity.
>
> Since these incomes did not arise 'in the course of trade or business', the RO has no legal basis for assessing deficiency VAT on the same."[97]

On the part of the ICPA, he stated in his Report that the assessed amounts, except that of gain on sale of property & equipment, should not be subject to VAT, to wit:

> "a) We were not able to account the miscellaneous income amounting to P2,330,472.00 because the Company has not provided any breakdown or schedule for miscellaneous income. However, we noted that the miscellaneous income was subjected to income tax as shown in the Company's ITR. Therefore, we noted the amount should not be assessed as undeclared income.
>
> b) The Company was also not able to explain provide invoices and official receipt for the sale of property and equipment amounting to P232,143.00. We were also not able to account whether this amount was presented in ITR or not. Thus, we can conclude that the amount should be subject to VAT due to lack of factual evidence.
>
> c) We have noted by examining the Company's ledger that the disposal of other asset costing P2,685,460.00 were sold for P1,580,580.50. The gross selling price amounting to P1,580,580.50 was subjected to VAT amounting to P189,669.66. Thus, we can conclude that the amount should not be subjected to VAT."[98]

---

[97] Exhibit "P-34", Docket—Vol. I,, p. 647
[98] Exhibit "P-55", Docket—Vol. I,, p. 854-855.

M

Petitioner's contention, as well as the ICPA's findings, are untenable.

A reading of Section 105 of the NIRC of 1997 defines the phrase "in the course of trade or business" as to include "transactions incidental thereto", to wit:

> "SEC. 105. *Persons Liable.* – Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> **The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto**, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business." *(Emphasis supplied)*

Besides its marketing and servicing of electronic products, petitioner is engaged in the purchase and sale of machineries, equipment and other personal properties as may be necessary or incidental to the conduct of the corporate business.[99]

Apparently, the sale of property & equipment (*e.g.* machinery and equipment, vehicles, and tools, furniture & fixtures) and disposal of other assets (*e.g.* software) are incidental transactions made in the course of its business which are subject to VAT.

---

[99] Exhibit "P-5", p. 3.

Moreover, petitioner failed to substantiate its contention that the assessed items did not arise from the ordinary course of its trade or business. Hence, petitioner's contention must fail.

As regards to the ICPA's finding on the disposal of other assets, the general ledger contains an entry of VAT payable in the amount of ₱189,669.66. Nevertheless, absent any other documentary evidence, the Court is unable to ascertain whether the proceeds from the disposal of other assets already formed part of the vatable sales/receipts declared per VAT returns.

Likewise, the Court finds no merit in the ICPA's supposition that since the miscellaneous income was subjected to income tax as shown in the petitioner's ITR, the same should not be assessed as undeclared income. It may be true that for income tax purposes, the miscellaneous income amounting to ₱2,330,472.00 was subjected to income tax, but no document was adduced to prove that indeed the same was reported as gross sales/receipts per VAT Returns. Hence, the finding of respondent of undeclared income/receipts in the amount of ₱5,248,075 must be upheld.

2. Unaccounted balance – ₱5,610,096.00

In relation to the deficiency income tax, respondent found that there is discrepancy in professional fees, as that declared per ITR/FS and that per BIR Form No. 1601-E. Hence, the unaccounted balance, of ₱5,610,096.00 was assessed and subjected to VAT, pursuant to Sections 106(A) and 108(A) of the NIRC of 1997, as amended.

The Court finds for petitioner.

In the same vein with the Court's findings on respondent's deficiency income tax assessment, no deficiency VAT assessment should arise from the said *"unaccounted balance"* of ₱5,610,096.00.

It must be remembered that VAT is imposed on the seller of the goods, pursuant to the same Section 105 of the NIRC of 1997, to wit:

> "SEC. 105. *Persons Liable.* — **Any person who, in the course of trade or business, sells,** barters, exchanges, leases **goods or properties**, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of the Code.

My

---

xxx xxx xxx." *(Emphases supplied)*

Furthermore, VAT is assessed on the *"gross selling price or gross value in money of the goods or properties sold"* and is *"to be paid by the seller or transferor."*[100] In this connection, the law defines *"gross selling price"* as follows:

> "... the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price."[101] *(Emphasis supplied)*

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

Correspondingly, VAT should not be imposed on the supposed *"unaccounted balance"* of professional fees amounting to ₱5,610,096.00.

In fine, petitioner is liable to pay the deficiency VAT in the amount of ₱7,633,313.53, as computed below:

Gross sales/receipts per returns		₱ 2,028,154,424.59
Add/deduct: Undeclared income/receipts		
Miscellaneous income	₱ 2,330,472.00	
Gain on sale of property & equipment	232,143.00	
Disposal of other assets	2,685,460.00	5,248,075.00
Total sales/receipts per reinvestigation		2,033,402,499.59
Output VAT thereon		₱ 244,008,299.95
Less: Total available input VAT		213,715,647.40
Net VAT payable		30,292,652.55
Less: VAT paid per returns		22,659,339.02
Basic Deficiency Value-Added Tax		**₱ 7,633,313.53**

III. EXPANDED WITHHOLDING TAX – ₱12,316,707.47

---

[100] Section 106(A), NIRC of 1997, as amended by RA No. 9337.
[101] *Supra.*

Respondent assessed petitioner of deficiency EWT in the amount of ₱12,316,707.47, pursuant to RR Nos. 2-98, 6-2001, 12-2001, 14-2002, 17-2003 and 30-2003, as computed below:

Tax due per return			₱ -
	Tax Base	Tax Due	
Add/deduct: Income payments not subjected to EWT	₱ 262,714,236.44	₱ 5,586,908.19	5,586,908.19
Basic EWT due			₱ 5,586,908.19
Add: Increments			
Surcharge		-	
Interest (4-10-07 to 3-31-13)		6,679,799.28	
Compromise penalty		50,000.00	6,729,799.28
Total Amount Due			**₱ 12,316,707.47**

Petitioner argues that the deficiency EWT was imposed on items which were vaguely described by respondent (*e.g.*, "various assets still subject to 1% EWT" and "income payments still subject to 10% EWT"), which makes it difficult for petitioner to determine the specific items of expense or income being questioned.

Allegedly, respondent's failure to provide the specific items upon which the deficiency EWT is being assessed is equivalent to a violation of petitioner's right to be informed of the nature and basis of the assessment.

We find for the respondent.

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

> "3.1.4. Formal Letter of Demand and Assessment Notice. –The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.** The same shall be sent to the taxpayer only by registered mail or by personal delivery. x x x" *(Emphasis supplied)*

It is clear from the foregoing that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.[102]

The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. Merely notifying the taxpayer of his or her tax liabilities without details or particulars is not enough.[103]

The following information are stated in the Details of Discrepancies in the FAN,[104] regarding the deficiency EWT assessment, to wit:

"Assessment No. LTDO-122-WE-2006-00013

Deficiency Expanded Withholding Tax (EWT) – P10,170,722.46

The deficiency expanded withholding taxes assessed arises from income payments from which you failed to withhold the corresponding tax due thereon as per RR Nos. 2-98; 6-2001; 12-2001; 14-2002; 17-2003 and 30-2003. These income payments not subjected to EWT include:

	Particulars	Rate	Base	Tax
a.	Various assets still subject to 1% EWT	1%	3,807,623.83	38,076.24
	Add: additions in vehicle per review finding	1%	1,147,321.27	11,473.21
b.	For various purchases of goods subject to 1% EWT	1%	28,865,104.17	288,651.04
c.	Various income payments subject to 2% EWT	2%	165,946,766.63	3,318,935.33
	Add: construction in progress per review finding	2%	98,125.00	1,962.50
d.	Income payments still subject to 5% EWT	5%	18,148,915.29	907,445.76
e.	Income payments still subject to 10% EWT	10%	206,000.00	20,600
f.	Income payments still subject to 15% EWT	15%	1,118,939.89	167,840.98
g.	Payment of interest expenses	2%	41,596,156.00	831,923.12
			260,934,952.08	5,586,908.19

Basic Deficiency EWT	5,586,908.19
Add Increments	

---

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

[103] *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.

[104] Exhibit "R-13", BIR Records, at pp. 2225 and 2226.

Interest (4-10-07 to 4-30-11 or 1481 days)	4,533,814.27	
Compromise penalty	50,000.00	4,583,814.27
Total Deficiency EWT		10,70,722.46

- Income payments made by the top 10,0000 private corporations to their local/resident supplier of goods and local/resident supplier of services are subject to 1% and 2% EWT pursuant to Section 2.57.2(M) of RR 2-98 as amended by RR 17-2003.
- In similar situations, income payments made to suppliers of goods and services in the amounts of P18,148,915.29, P206,000.00 and P1,118,939.89 with the corresponding EWT rates at 5%, 10% and 15%, respectively. It disclosed from verifications that these payments represent sales promotion expenses made to individuals still subject to EWT same under Section 2.57.2(M) of the above RR 2-98 as amended by RR 17-2003.

- Verification disclosed that the you acquired loans from local banks and as a result incurred certain interest expenses amounting to P41,596,156.00 subject 2%EWT pursuant to RR 2-98 as amended by RR 17-2003; and,

- Per review finding, additions on certain vehicle and constructions in progress in the amounts of P1,147,321.27 and P98,125.00, respectively, were not subjected to EWT at 1% & 2%, pursuant to Section 2.57.2(M).

Based on the foregoing statements, it is clear that: (1) the amounts which were being subjected to the 1% and 2% rates (*i.e.*, ₱3,807,623.83, ₱28,865,104.17, and ₱165,946,766.63) pertain to income payments made by petitioner, as one belonging to the top 10,000 private corporations, to its local/resident supplier of goods and services; (2) as for the other income payments subject to the same rates (*i.e.*, ₱1,147,321.27 and ₱98,125.00), they refer to *"additions on certain vehicle"* and *"construction in progress"*, respectively; (3) the amounts of ₱18,148,915.29, ₱206,000.00, and ₱1,118,939.89 represent *"sales promotion expenses made to individuals"*; and the amount of ₱41,596,156.00 refers to the interest expenses incurred in relation to the loans from local banks.

In addition, as to the supposed vague description of certain items (which was raised by petitioner as early as in its Administrative Protest to the FAN),[105] to this effect: *"Various assets…"*, *"For various purchases of goods…"*, *"Various income payments…"*, respondent addressed the same in this wise in his FDDA, to wit:

[105] Exhibit "P-2" (page 16 of 18), ICPA Report, Binder No. 1.

"**4. EXPANDED WITHHOLDING TAX**

xxx xxx xxx

- JVC refuted that we derived our deficiency EWT so general that they cannot decipher the items being referred to neither so haphazardly and vaguely described.

  We do not agree. **JVC did not consider the BIR's working papers arising from JVC GL 2007, Schedule "G", presented to you together with our FAN. The said working papers showed that certain transactions/income payments not subjected to EWT. Due to your failure to submit proofs and documentary evidences showing the same were already subjected to EWT, assessment hereto is retained.**"[106] *(Emphasis and underscoring supplied)*

Respondent even reiterated the foregoing statements in his *Answer*[107] filed on June 24, 2013.

For easy reference,[108] the said Schedule "G" states the following:

JVC (PHILIPPINES), INC.
SUMMARY OF INCOME PAYMENTS NOT SUBJECTED TO CERTAIN TAXES (EWT, FBT & WC)
FOR THE PERIOD APRIL 2006 TO MARCH 2007

Account Code Description	Debit	Rate	EWT
VEHICLES	2,791,024.73	1%	27,910.25
TOOLS, FURNITURES/COMPUTERS	1,016,599.10	1%	10,166.00
COMPUTER EXPENSE	1,448,261.31	1%	14,482.62
OFFICE SUPPLIES	26,486.80	1%	264.89
LIBRARY EXPENSE	19,541.67	1%	195.42
SMALL EQUIPMENT	76,276.33	1%	762.79
SALES PROMOTION EXPENSE	26,906,115.28	1%	269,061.26
MISCELLANEOUS EXPENSE	388,422.78	1%	3,884.36
	32,672,728.00		326,727.59
UTILITY EXPENSE	34,426.97	2%	688.53
ELECTRICITY	4,806,414.77	2%	96,128.29
WATER	52,520.57	2%	1,050.42
TRAVELLING EXPENSE	1,186,929.69	2%	23,738.62
RELOCATION EXPENSE	45,646.43	2%	912.94
AUTOMOBILE EXPENSE	3,809,730.07	2%	76,194.77
COMMUNICATIONS	8,909,313.35	2%	178,186.66
ENTERTAINMENT	171,397.62	2%	3,427.96
FREIGHT	2,159,250.96	2%	43,185.03
MEMBERSHIP DUES	42,974.03	2%	859.48
SALES PROMOTION EXPENSE	109,224,688.82	2%	2,184,493.93
SERVICE CHARGES	1,125,868.16	2%	22,517.34
CASUALTY INSURANCE	1,438,557.14	2%	28,771.18
REPAIRS & MAINTENANCE	262,517.97	2%	5,250.39

---

[106] Exhibit "R-16", BIR Records, p. 2405
[107] Docket—Vol. I, at p. 160.
[108] BIR Records, pp. 2031 to 2032.

FREIGHT: GROUND TRANSPORTATION	3,132,344.11	2%	62,646.88
PRODUCT WARRANTY EXPENSE	13,922,885.12	2%	278,457.76
ADVERTISING EXPENSE	10,322,792.15	2%	206,455.79
MISCELLANEOUS EXPENSE	5,298,508.70	2%	105,970.15
	165,946,766.63		3,318,936.12
RENT	1,736,019.31	5%	86,800.96
FREIGHT: STORAGE	99,835.46	5%	4,991.78
MISCELLANEOUS EXPENSE	8,664.29	5%	433.21
SALES PROMOTION EXPENSE	16,304,396.23	5%	815,219.85
	18,148,915.29		907,445.80
SALES PROMOTION EXPENSE	206,000.00	10%	20,600.00
PROFESSIONAL FEES	1,118,939.89	15%	167,840.99
SALES PROMOTION EXPENSE	1,200,000.00	20%	240,000.00
OVERSEAS TRAVELLING EXPENSE	2,056,324.17	FBT	967,681.92
RENT DUE FOR COMPANY HOUSING	432,245.00	FBT	203,409.44
	2,488,569.17		1,171,091.36
SALARIES	5,324,671.73	WC	
BONUSES	4,030,000.00	WC	
OTHE SALARY-PART TIME EMP	9,277,833.77	WC	
OTHER SALARY-TEMPORARY HELP	10,635.57	WC	
MISCELLANEOUS EXPENSE	37,374.85	WC	
SALES PROMOTION EXPENSE	35,867,848.82	WC	
	54,548,364.74		0.00
MISCELLANEOUS EXPENSE	301,884.14	0%	0.00
SALES PROMOTION EXPENSE	3,500,000.00	0%	0.00
	3,801,884.14		0.00
GRAND TOTAL	280,132,167.86		6,152,641.86
TOTAL PER SCHEDULE	280,132,167.86		

Relative thereto, petitioner cannot feign ignorance of the existence of the said Schedule "G". This is so because a copy thereof was even attached to the instant *Petition for Review.*[109] Furthermore, notably in the course of the proceedings, petitioner did not contradict or reject respondent's assertion that the same Schedule "G" was presented to petitioner with the FAN, as stated in the FDDA. Thus, such statement in the said FDDA is *prima facie* evidence of such fact.[110] Correspondingly, there can be no merit in petitioner's assertion that it has been denied of its right to due process on the basis that it was not informed of the factual basis/bases of the deficiency EWT assessment.

As to the merits of the subject assessment, the ICPA submits that petitioner is not liable for the deficiency EWT assessment, to wit:

[109] Docket—Vol. I, at pp. 106 to 107.
[110] Refer to Section 44, Rule 130, Rules of Evidence.

"Based on the FDDA, the Company was assessed for deficiency EWT for non-withholding of income payments subject to certain rates. In relation to procedure no. 7 mentioned in the previous paragraph, we have examined vouchers and official receipts to ascertain that the Company's expenses were properly subjected to EWT. We have also examined BIR returns for EWT filed and remitted by the Company during the Period Covered. The results of our procedure are summarized as follow:

Particulars	Per BIR assessment	Tax rate	EWT due per assessment	EWT withheld per BIR returns	Difference
c. Income payments and purchase of goods subject to 1% EWT	P 33,820,049.27	1%	P 338,200.49	P 1,071,953.30	(P 733,752.81)
d. Income payments and purchase of services subject to 2% EWT	166,044,891.63	2%	3,320,897.83	3,370,791.72	(49,893.89)
e. Income payments still subject to 5% EWT	18,148,915.29	5%	907,445.76	1,302,982.15	(395,536.39)
f. Income payments still subject to 10% EWT	206,000.00	10%	20,600.00	1,075,951.90	(1,055,351.90)
g. Income payments still subject to 15% EWT	1,118,939.89	15%	167,840.98	-	167,840.98
h. Payment of interest expenses	41,596,156.00	2%	831,923.12	-	831,923.12
Total	**P 260,934,952.08**		**P 5,586,908.18**	**P 6,821,679.07**	**(P 1,234,770.89)**

Based on the foregoing, the Company had filed and remitted EWT amounting to P6,821,679.07 for the Period covered. Thus, the Company should not be subject to deficiency expanded withholding tax."[111]

The Court does not agree with the ICPA.

The mere fact that the EWT declared per tax returns is higher than that per audit does not disprove respondent's assessment. The said per audit findings cannot be offset against that declared per tax returns, without a clear indication that the former is included in the latter.

Moreover, petitioner failed to present the alphalist of payments subjected to EWT. Thus, the Court cannot ascertain whether the assessed income payments were part of the income payments already subjected by petitioner to EWT. Hence, the subject assessment must likewise be sustained.

---

[111] Exhibit "P-55", Docket—Vol. I, at page 856.

In sum, petitioner is liable for deficiency EWT in the amount of ₱5,586,908.19, as computed below:

Particulars	Rate	Income Payment	Tax Due
a. Various assets	1%	₱ 3,807,623.83	₱ 38,076.24
Add: Additions in vehicle	1%	1,147,321.27	11,473.21
b. Various purchases of goods	1%	28,865,104.17	288,651.04
c. Various income payments	2%	165,946,766.63	3,318,935.33
Add: Construction in progress	2%	98,125.00	1,962.50
d. Income payments still subject to 5%	5%	18,148,915.29	907,445.76
e. Income payments still subject to 10%	10%	206,000.00	20,600.00
f. Income payments still subject to 15%	15%	1,118,939.89	167,840.98
g. Payment of interest expenses	2%	41,596,156.00	831,923.12
Basic Deficiency Expanded Withholding Tax			**₱ 5,586,908.19**

IV. FINAL WITHHOLDING TAX – ₱263,007.10

Respondent assessed petitioner for deficiency FWT in the amount of ₱263,007.10, computed as follows:

Declaration of cash dividends		₱ 2,500,003.00
Final tax rate		15%
Final tax due		₱ 375,000.45
Less: Final tax paid per return		262,500.33
Deficiency final withholding tax		₱ 112,500.12
Add: Increments		
Interest	₱ 134,506.98	
Compromise penalty	16,000.00	150,506.98
Total Amount Due		**₱ 263,007.10**

It is unclear for petitioner why it is still liable for deficiency FWT, despite proving that it had properly withheld the corresponding tax. Petitioner argues that respondent's failure to establish the specific items and the explanation upon which the deficiency tax is being assessed for is equivalent to a violation of its right to be informed of the nature and basis of the assessment. Thus, the determination of the tax due is without rational or legal basis.[112]

We disagree with petitioner.

[112] Petitioner's Memorandum, Docket, Vol. II, pp. 1303 to 1304.

As reflected in the FAN and FDDA, the payment subject of assessment for FWT pertains to dividends declared and given to NRFC.

A perusal of its Statement of Changes in Equity and Statement of Cash Flows[113] discloses that petitioner declared and paid cash dividends to its stockholders in the amount of ₱2,500,003.00. The details of which were further disclosed in its Notes to Financial Statements[114], to wit:

> "On August 18, 2006, the Board of Directors declared cash dividends of P2.5 million (P0.27 per share), payable on or before September 8, 2006 to stockholders of record as of August 15, 2006."

An examination of the remittance return (BIR Form No. 1601-F)[115] for the month of August 2006 shows that petitioner paid tax in the amount of ₱262,500.34 only. Clearly, petitioner is liable for deficiency FWT in the amount of ₱112,500.12, as computed below:

Declaration of cash dividends	₱	2,500,003.00
Final tax rate		15%
Final tax due	₱	375,000.45
Less: Final tax paid		262,500.34
Basic Deficiency Final Withholding Tax	**₱**	**112,500.12**

V. FRINGE BENEFIT TAX – ₱2,596,267.47

Respondent assessed petitioner for deficiency FBT in the amount of ₱2,596,267.47, as computed below:

Fringe benefit tax per return		₱	1,985,749.68
Add/deduct: Adjustment			
Income payments subject to FBT	₱ 2,488,569.17		1,171,091.37
Total fringe benefit tax due		₱	3,156,841.05
Less: Fringe benefit tax per return			1,985,749.68
Basic fringe benefit tax due		₱	1,171,091.37
Add: Increments			
Surcharge	-		
Interest (4-10-07 to 3-31-13)	₱ 1,400,176.10		
Compromise penalty	25,000.00		1,425,176.10
Total Amount Due		**₱**	**2,596,267.47**

---

[113] Exhibit "P- 10", pp. 6-7

[114] Exhibit "P-10", p. 16.

[115] Exhibit "P-22".

As held earlier, petitioner failed to submit sufficient evidence to prove that the income payments of ₱2,488,569.17 are not in the nature of fringe benefit. To reiterate, mere allegation is not evidence and is not equivalent to proof. Accordingly, the assessment on the income payments in the amount of ₱2,488,569.17 shall remain.

Thus, petitioner is liable for deficiency fringe benefit tax in the amount of ₱1,171,091.37, as computed below:

Income payments subject to FBT	₱	2,488,569.17
Divided by: % Divisor		68%
Grossed-up monetary value		3,659,660.54
Multiply by: Tax rate		32%
Basic Deficiency Fringe Benefit Tax	**₱**	**1,171,091.37**

VI. DOCUMENTARY STAMP TAX – ₱1,130,002.05

Respondent's verification disclosed that petitioner acquired interest-bearing loans from local banks in the total amount of ₱91,000,000.00. However, there was no proof of payments of DST corresponding to the total proceeds of the said loans. Hence, deficiency DST was assessed pursuant to Section 179 of the NIRC of 1997, as amended.

According to petitioner, the DST due on the loans was already declared and remitted to respondent by the other parties to the loan agreements.[116] However, petitioner did not submit a copy of the tax return filed by the other parties. Thus, without sufficient documents to refute respondent's assessment, the same shall remain.

Accordingly, petitioner is liable for deficiency DST in the amount of ₱455,000.00, as computed below:

Documentary stamp tax on the proceeds of loans		
Proceed from loans – net	₱	91,000,000.00
Divided by: DST rate		1/200
Documentary stamp tax due		455,000.00
Less: Documentary stamp tax per return		-
Basic Deficiency Documentary Stamp Tax	**₱**	**455,000.00**

VII. COMPROMISE PENALTY – ₱25,000.00

---

[116] Memorandum, Docket, Vol. II, p. 1305.

Petitioner was penalized for non-filing of necessary documents, to wit:

Particulars	Amount
1) For failure to make, file or submit summary list of sales and local purchases and importations:	
1.1 For all months and quarters – Monthly Alphalist of Payees (MAP)	₱ 12,000.00
1.2 For all months and quarters – Summary Alphalist of Withholding Taxes (SAWT)	12,000.00
2) For late filing and failure to comply with the year-end adjustment	1,000.00
Total	**₱ 25,000.00**

The compromise penalty in the total amount of ₱25,000.00 shall be cancelled, there being no mutual agreement between the parties. Settled is the rule that the imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[117] Revenue Memorandum Order No. 1-90 expressly provides that "compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalty". Since there is no showing that petitioner intends to pay the compromise penalty imposed by the respondent, it clearly did not agree to settle the same.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Petitioner is **ORDERED TO PAY THE REDUCED AMOUNT OF ₱38,402,993.86** for the fiscal year ended March 31, 2007, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax Due	25% Surcharge	Total
Income Tax	₱ 15,763,581.88	₱ 3,940,895.47	₱ 19,704,477.35
Value-Added Tax	7,633,313.53	1,908,328.38	9,541,641.91
Expanded Withholding Tax	5,586,908.19	1,396,727.05	6,983,635.24
Final Withholding Tax	112,500.12	28,125.03	140,625.15
Fringe Benefit Tax	1,171,091.37	292,772.84	1,463,864.21
Documentary Stamp Tax	455,000.00	113,750.00	568,750.00
Total	**₱ 30,722,395.09**	**₱ 7,680,598.77**	**₱ 38,402,993.86**

[117] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. and the Court of Tax Appeals*, G.R. No. L-35266, January 21, 1991.

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

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax from July 15, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997;

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱38,402,993.86, and on the 20% deficiency interest which have accrued as stated in (a) hereof, computed from March 31, 2013 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
(With Separate Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
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

FREPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

First Division

JVC (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 8646

Members:

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

Promulgated:
JUL 03 2017 ; 10:37 a.m.

x -- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in partially granting the Petition for Review; ordering petitioner to pay the reduced amount of P38,402,993.86 representing deficiency Income Tax, Value Added Tax, Expanded Withholding Tax, Final Withholding Tax, Fringe Benefit Tax, and Documentary Stamp Tax for the fiscal year ended March 31, 2007, inclusive of surcharge; and, ordering petitioner to pay the deficiency interest on the basic deficiency income tax, as well as, the delinquency interest based on the total assessed taxes, surcharge and deficiency interest pursuant to Sections 249 (B) and (C) of the National Internal Revenue Code of 1997, as amended.

I wish, however, to address the observation of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, in her Dissenting Opinion relative to the validity of the First Waiver. It is her view that the absence of the date of acceptance by OIC-Assistant Commissioner-Large Taxpayers Service Zenaida G. Garcia in the First Waiver renders the same void, hence, without force and effect.

Records reveal the following:

- First Waiver – executed by petitioner on January 27, 2010 extending the prescriptive period to issue the assessment to **not later than September 30, 2010**.

- Second Waiver – executed by petitioner on September 1, 2010 extending the prescriptive period to issue the assessment to **not later than March 31, 2011**.

Indeed, a careful evaluation of the First Waiver *vis-a-vis* the requirements set by Revenue Memorandum Order (RMO) No. 20-90 shows that it failed to strictly conform to the prescribed format as the date of acceptance by respondent's authorized representative was not indicated on its face, yet petitioner's actions subsequent thereto constitute estoppel on its part from claiming that such Waiver is invalid and that the deficiency tax assessments issued against it for the fiscal year ending March 31, 2007 were issued beyond the prescriptive period. **In truth, petitioner effectively induced respondent to defer the issuance of the FAN, thereby preventing the immediate collection of petitioner's tax liability, which circumstance justifies the application of the *"in pari delicto"* pronouncement in *Commissioner of Internal Revenue vs. Next Mobile Inc. (formerly Nextel Communications Phils., Inc.).*[1]**

As afore-stated, to extend the prescriptive period to assess petitioner for deficiency taxes for the fiscal year ending March 31, 2007, petitioner voluntarily executed two (2) Waivers. **Upon receipt of a copy of the First Waiver, petitioner remained mum - - not saying a word against the alleged infirmity as to its form. In fact, it executed the Second Waiver without raising any objection to the validity of the First Waiver. It was on the basis of these Waivers that respondent delayed the issuance of the FAN.** The FAN, assessing petitioner for deficiency taxes for the fiscal year ending March 31, 2007, was eventually received by petitioner on - March 30, 2011, within the extended period as provided for in the Second Waiver. On April 28, 2011, when petitioner filed its Administrative Protest against the FAN and requested for the cancellation of the deficiency tax assessments for lack of legal and factual basis, petitioner failed again to raise as an issue the invalidity of the Waivers and the prescription of respondent's right to assess petitioner for deficiency taxes for the fiscal year ending March 31, 2007.

---

[1] G.R. 212825, December 7, 2015.

Petitioner's general attitude in the course of the assessment proceedings depicts an admission that the said Waivers are valid. Thus, applying the pronouncement in *Next Mobile*, by the principle of estoppel, petitioner may no longer question the validity of the Waivers and raise the defense of prescription against the government's right to assess. **Impugning the validity of the Waivers from which it benefited and after persuading respondent to postpone the issuance of the FAN is palpably reprehensible.**

Further, I am not unaware of the recent pronouncement of the Supreme Court in *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*[2] Yet, I humbly stress that *Philippine Daily Inquirer* did not in any way modify, much less reverse, the doctrine laid down in *Next Mobile.* Parenthetically, *Philippine Daily Inquirer* is emphatic in its finding that the defective waivers therein pertain to the BIR's failure to comply with RMO No. 20-90 and RDAO No. 05-01. **Facts and circumstances that show an equal fault on the part of the taxpayer are absent, which could have otherwise justified a finding of "*in pari delicto.*"**

All told, I **VOTE** to **PARTIALLY GRANT** the Petition for Review. Accordingly, petitioner should be ordered to pay the assessed deficiency Income Tax, Value Added Tax, Expanded Withholding Tax, Final Withholding Tax, Fringe Benefit Tax, and Documentary Stamp Tax, inclusive of surcharge, in the reduced amount of P38,402,993.86, and the deficiency interest on the basic deficiency income tax, as well as, the delinquency interest based on the total assessed taxes, surcharge and deficiency interest.

ROMAN G. DEL ROSARIO
Presiding Justice

[2] G.R. No. 213943, March 22, 2017.

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

JVC (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8646
For*:* Assessment

Members:

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

Promulgated:

JUL 03 2017 10:37am

x- -x

DISSENTING OPINION

MINDARO-GRULLA, J.:

With due respect, while I agree that herein petitioner is liable to pay deficiency documentary stamp tax, my dissent is with respect to the assessments issued by respondent against petitioner covering deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, and fringe benefit tax for fiscal year ending March 31, 2007.

I maintain my position that the Waivers executed by respondent are void, the assessments for deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, and fringe benefits tax for FY ending March 31, 2007 are void for having been issued beyond the 3-year period mandated by law.

Respondent's right to assess petitioner for deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, and fringe

benefits tax for FY ending March 31, 2007 has already prescribed.

Petitioner argues that respondent's right to assess it for deficiency taxes for fiscal year ending March 31, 2007 has already prescribed, pursuant to Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended.

According to petitioner, it received the FAN only on March 30, 2011. Thus, the assessments for deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, fringe benefits tax and documentary stamp tax for FY ending March 31, 2007 was made beyond the 3-year period mandated by law.

Moreover, petitioner alleges that the Waiver of the Statute of Limitations it executed on September 1, 2010, to extend the period of assessment until March 31, 2011, is void and has no legal basis. Petitioner claims that the Waiver was executed beyond the 3-year prescriptive period provided by law for assessment and collection of taxes.

Respondent, on the other hand, contends that his right to assess petitioner for deficiency taxes did not prescribe in view of the execution of two (2) Waivers of the Statute of Limitations under the NIRC of 1997, as amended, which extended the period of assessment. Respondent claims that the BIR Records show that aside from the Waiver executed on September 1, 2010, petitioner executed an earlier Waiver dated January 27, 2010, which extended the period within which to assess petitioner to not later than September 30, 2010. Thus, the Waiver dated September 1, 2010 further extended the prescriptive period, since the first Waiver was about to expire on September 30, 2010.

Section 203 of the NIRC of 1997, as amended, mandates that internal revenue taxes must be assessed within three years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later, thus:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection

‹

> of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

It is clear from the foregoing that internal revenue taxes must be assessed within three (3) years from the date of actual filing of the tax return or from the last day prescribed by law for the filing of such return, whichever comes later. Accordingly, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

The exceptions to the three (3)-year prescriptive period are enumerated under Section 222(a) and (b) of the NIRC of 1997, as amended, quoted hereunder:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon." *(Emphasis supplied)*

ↄ

The instant case involves assessments for deficiency income tax, expanded withholding tax, fringe benefits tax, final withholding tax, value-added tax, and documentary stamp tax for FY ending March 31, 2007.

The dates of filing of petitioner's relevant returns and the corresponding dates within which respondent should assess petitioner for deficiency taxes for FY ending March 31, 2007 are as follows:

INCOME TAX RETURN			
Period Covered	**Date Filed**	**Last Day to File Return**[1]	**Last Day to Assess**
Annual Income Tax Return[2]	July 17, 2007	July 16, 2007[3]	July 17, 2010

QUARTERLY VAT RETURNS			
Period Covered	**Date Filed**	**Last Day to File Return**[4]	**Last Day to Assess**
1st Quarter[5]	July 22, 2006	July 25, 2006	July 27, 2009[6]
2nd Quarter[7]	October 23, 2006	October 25, 2006	October 25, 2009[8]
3rd Quarter[9]	January 25, 2007	January 25, 2007	January 25, 2010
4th Quarter[10]	April 24, 2007	April 25, 2007	April 26, 2010[11]

EWT RETURNS			
Period Covered	**Date Filed**	**Last Day to File Return**[12]	**Last Day to Assess**

[1] Pursuant to Section 77 of the NIRC of 1997, as amended, a corporate taxpayer shall file its final adjustment return (annual income tax return) on or before the fifteenth (15th) day of the fourth month following the close of the fiscal year.
[2] Exhibit "P-21", ICPA Report, Binder No. 5.
[3] July 15, 2007 fell on a Sunday.
[4] Section 114(A) of the NIRC of 1997 requires that Quarterly VAT Returns should be filed within twenty-five (25) days following the close of each taxable quarter.
[5] Exhibit "P-9.1.1" to "P-9.1.2", ICPA Report, Binder No. 1.
[6] July 25, 2009 fell on a Saturday.
[7] Exhibit "P-9.2.1" to "P-9.2.3", ICPA Report, Binder No. 1.
[8] October 25, 2009 fell on a Sunday.
[9] Exhibit "P-9.3.1" to "P-9.3.2", ICPA Report, Binder No. 1.
[10] Exhibit "P-9.4.1" to "P-9.4.3", ICPA Report, Binder No. 1.
[11] April 25, 2010 fell on a Sunday.
[12] Pursuant to Revenue Regulations (RR) No. 26-02, return must be filed on or before the fifteenth (15th) day of the month following the month of withholding.

April[13]	May 12, 2006[14]	May 15, 2006	May 15, 2009
May[15]	June 9, 2006[16]	June 15, 2006	June 15, 2009
June[17]	July 11, 2006[18]	July 17, 2006[19]	July 17, 2009
July[20]	August 10, 2006[21]	August 15, 2006	August 17, 2009[22]
August[23]	September 12, 2006[24]	September 15, 2006	September 15, 2009
September[25]	October 11, 2006[26]	October 16, 2006[27]	October 16, 2009
October[28]	November 14, 2006[29]	November 15, 2006	November 16, 2009[30]
November[31]	December 13, 2006[32]	December 15, 2006	December 15, 2009
December[33]	January 12, 2007[34]	January 15, 2007	January 15, 2010
January[35]	February 13, 2007[36]	February 15, 2007	February 15, 2010
February[37]	March 12, 2007[38]	March 15, 2007	March 15, 2010
March[39]	April 12, 2007[40]	April 16, 2007[41]	April 16, 2010

FWT RETURN			
Period Covered	**Date Filed**	**Last Day to File Return**[42]	**Last Day to Assess**
April[43]	May 10, 2006[44]	May 15, 2006	May 15, 2009
May[45]	June 8, 2006[46]	June 15, 2006	June 15, 2009

[13] Exhibit "P-40", Docket vol. II, pp. 1066-1067.
[14] Exhibit "P-40-2", Docket vol. II, p. 1066.
[15] Exhibit "P-41", Docket vol. II, pp. 1068-1069.
[16] Exhibit "P-41-2", Docket vol. II, p. 1068.
[17] Exhibit "P-42", Docket vol. II, pp. 1070-1071.
[18] Exhibit "P-42-2", Docket vol. II, p. 1070.
[19] July 15, 2006 fell on a Saturday.
[20] Exhibit "P-43", Docket vol. II, pp. 1072-1073.
[21] Exhibit "P-43-2", Docket vol. II, p. 1072.
[22] August 15, 2009 fell on a Saturday.
[23] Exhibit "P-44", Docket vol. II, pp. 1074-1075.
[24] Exhibit "P-44-2", Docket vol. II, p. 1074.
[25] Exhibit "P-45", Docket vol. II, pp. 1076-1077.
[26] Exhibit "P-45-2", Docket vol. II, p. 1076.
[27] October 15, 2006 fell on a Sunday.
[28] Exhibit "P-46", Docket vol. II, pp. 1078-1079.
[29] Exhibit "P-46-2", Docket vol. II, p. 1078.
[30] November 15, 2009 fell on a Sunday.
[31] Exhibit "P-47", Docket vol. II, pp. 1080-1081.
[32] Exhibit "P-47-2", Docket vol. II, p. 1080.
[33] Exhibit "P-48", Docket vol. II, pp. 1082-1083.
[34] Exhibit "P-48-2", Docket vol. II, p. 1082.
[35] Exhibit "P-49", Docket vol. II, pp. 1084-1085.
[36] Exhibit "P-49-2", Docket vol. II, p. 1084.
[37] Exhibit "P-50", Docket vol. II, pp. 1086-1087.
[38] Exhibit "P-50-2", Docket vol. II, p. 1086.
[39] Exhibit "P-51", Docket vol. II, pp. 1088-1089.
[40] Exhibit "P-51-2", Docket vol. II, p. 1088.
[41] April 15, 2007 fell on a Sunday.
[42] Pursuant to Revenue Regulations (RR) No. 26-02, return must be filed on or before the fifteenth (15th) day of the month following the month of withholding.
[43] Exhibit "P-79", BIR Records, pp. 1894-1895.
[44] Exhibit "P-79-2", BIR Records, p. 1895.
[45] Exhibit "P-80", BIR Records, p. 1893.
[46] Exhibit "P-80-2", BIR Records, p. 1893.

June[47]	July 10, 2006[48]	July 17, 2006[49]	July 17, 2009
July[50]	August 10, 2006[51]	August 15, 2006	August 17, 2009[52]
August[53]	September 8, 2006[54]	September 15, 2006	September 15, 2009
September[55]	October 10, 2006[56]	October 16, 2006[57]	October 16, 2009
October[58]	November 10, 2006[59]	November 15, 2006	November 16, 2009[60]
November[61]	December 11, 2006[62]	December 15, 2006	December 15, 2009
December[63]	January 10, 2007[64]	January 15, 2007	January 15, 2010

QUARTERLY REMITTANCE RETURN OF FINAL INCOME TAXES WITHHELD ON FRINGE BENEFITS			
Period Covered	**Date Filed**	**Last Day to File Return[65]**	**Last Day to Assess**
April to June 2006[66]	July 6, 2006	July 17, 2006[67]	July 17, 2009
July to September 2006[68]	October 5, 2006	October 16, 2006[69]	October 16, 2009
October to December 2006[70]	January 9, 2007	January 15, 2007	January 15, 2010
January to March 2006[71]	April 10, 2007	April 16, 2007[72]	April 16, 2010

Meanwhile, as regards the DST, petitioner did not file any return. Thus, the ten (10)-year prescriptive period for assessment applies considering the failure on the part of petitioner to file its return.

---

47 Exhibit "P-81", BIR Records, p. 1892.
48 Exhibit "P-81-2", BIR Records, p. 1892.
49 July 15, 2006 fell on a Saturday.
50 Exhibit "P-82", BIR Records, p. 1891.
51 Exhibit "P-82-2", BIR Records, p. 1891.
52 August 15, 2009 fell on a Saturday.
53 Exhibit "P-23", BIR Records, p. 1890.
54 Exhibit "P-23-2", BIR Records, p. 1890.
55 Exhibit "P-24", BIR Records, pp. 1889.
56 Exhibit "P-24-2", BIR Records, p. 1889.
57 October 15, 2006 fell on a Sunday.
58 Exhibit "P-25", BIR Records, pp. 1888.
59 Exhibit "P-25-2", BIR Records, p. 1888.
60 November 15, 2009 fell on a Sunday.
61 Exhibit "P-26", BIR Records, pp. 1887.
62 Exhibit "P-26-2", BIR Records I, p. 1887.
63 Exhibit "P-27", BIR Records, pp. 1886.
64 Exhibit "P-27-2", BIR Records, p. 1886.
65 Pursuant to Section 5 of Revenue Regulations (RR) No. 04-02, requires that the Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits should be filed on or before the 10th day of the month following the calendar quarter in which the fringe benefits were granted. However, the deadline for e-filing shall be five (5) days later than the deadline set therein.
66 Exhibit "P-19.1.1" to "P-19.1.2", ICPA Report, Binder No. 5.
67 July 15, 2006 fell on a Saturday.
68 Exhibit "P-19.2.1" to "P-19.2.2", ICPA Report, Binder No. 5.
69 October 15, 2006 fell on a Sunday.
70 Exhibit "P-19.3.1" to "P-19.3.2", ICPA Report, Binder No. 5.
71 Exhibit "P-19.4.1" to "P-19.4.2", ICPA Report, Binder No. 5.
72 April 15, 2007 fell on a Sunday.

To summarize, respondent needed to assess petitioner for deficiency taxes for FY ending March 31, 2007, on the following dates at the latest:

Tax Type	Latest Date for Assessment
Income Tax	July 17, 2010
Value-added Tax	April 26, 2010
Expanded Withholding Tax	April 16, 2010
Final Withholding Tax	January 15, 2010
Fringe Benefit Tax	April 16, 2010
Documentary Stamp Tax	10-year prescriptive period applies

Petitioner received the FAN on March 31, 2011. Thus, the assessments for deficiency income tax, value-added tax, expanded withholding tax, final withholding tax, and fringe benefit tax were issued beyond the 3-year prescriptive period. The assessment for documentary stamp tax was issued within the 10-year prescriptive period.

However, records indicate that petitioner executed two (2) Waivers of the Defense of Prescription under the Statute of Limitation of the NIRC of 1997, as amended.

The first Waiver[73] was executed by petitioner through its representative, Ms. Nimpha U. Villaluna, on January 27, 2010. It extended the period of assessment to not later than September 30, 2010.

On the other hand, the second Waiver[74] was executed by petitioner through its representative, Mr. Ronaldo Narciza, on September 1, 2010. This one extended the period of assessment to not later than March 31, 2011.

In order to determine whether respondent's right to assess petitioner had been validly extended, the Court shall now determine whether petitioner validly executed the aforesaid Waivers.

---

[73] Exhibit "R-5", BIR Records, p. 1756.
[74] Exhibit "R-8", BIR Records, p. 2056.

The procedures for the proper execution of Waivers of the Defense of Prescription under the Statute of Limitation of the NIRC of 1997, as amended, are provided by Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, to wit:

> "1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase 'but not after ______ 19 ___' should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
>
> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> 3. The following revenue officials are authorized to sign the waiver.
>
> A. In the National Office
>
> xxx xxx xxx
>
> 3. Commissioner – For tax cases involving more than ₱1M
>
> B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.
2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe regardless of amount.

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. **The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with."** *(Emphasis supplied)*

Whereas in RDAO No. 05-01, respondent enumerates the following officials who may sign and accept the Waivers:

"I. *Revenue Officials Authorized to Sign the Waiver*

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

xxx xxx xxx

A. *For National Office cases*

Designated Revenue Official

1. Assistant Commissioner (ACIR), Enforcement Service	— For tax fraud and policy cases
2. ACIR, Large Taxpayers Service	— For large taxpayers cases other than those cases falling under Subsection B hereof

xxx xxx xxx

In order to prevent undue delay in the execution and acceptance of the waiver, the assistant heads of the concerned offices are likewise authorized to sign the same under meritorious circumstances in the absence of the abovementioned officials.

The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The 'WAIVER' should not be accepted by the concerned BIR office and official unless duly notarized." *(Emphasis supplied)*

In the case of *Commissioner of Internal Revenue vs. Standard Chartered Bank*[75], the Supreme Court outlined the procedure for the proper execution of a Waiver of the Defense of Prescription Under the Statute of Limitations, to wit:

"In delineation of the same sense about the waiver of the Statute of Limitations, RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 were issued on 4 April 1990 and 2 August 2001, respectively. The said revenue orders outline the procedure for the proper execution of a waiver, *viz*:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not

[75] G.R. No. 192173, July 29, 2015.

> after __ 19 _', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
>
> 5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

Applying the foregoing revenue rules and jurisprudence, the Court finds that the first Waiver of the Statute of Limitations executed by petitioner is void.

ς

An examination of the first Waiver reveals that there is no date of acceptance by the OIC-Assistant Commissioner-Large Taxpayers Service Zenaida G. Garcia. Without this date, there is no way to determine whether such acceptance was made before the expiration of the period to assess. The absence of the date of acceptance renders the waiver void, hence, without force and legal effect.

Considering that the first Waiver is void, it did not extend the period to assess to September 30, 2010. As such, the second Waiver executed on September 1, 2010 is also void. There is no longer any period to extend at the time it was executed.

In the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[76], the Supreme Court ruled that a Waiver of the Statute of Limitations under the NIRC, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, and must be carefully and strictly construed. The Waiver of the Statute of Limitations does not mean that the taxpayer relinquishes the right to invoke the defense of prescription. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the assessment and collection of taxes. Hence, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

[76] G.R. No. 162852, December 16, 2004.