

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

**TELSTAR
MANUFACTURING
CORPORATION,**

Petitioner,

CTA Case No. 8900

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, JJ.

- versus -

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

Promulgated:

AUG 18 2017

4:30 p.m.

X-----X

DECISION

CASTAÑEDA, JR., JJ:

THE CASE

This is a Petition for Review¹ filed by petitioner Telstar Manufacturing Corporation (TMC) on September 26, 2014, pursuant to Section 228 of the National Internal Revenue Code, as amended (1997 NIRC) in relation to Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), praying that judgment be rendered ordering the cancellation and setting aside of respondent Commissioner of Internal Revenue's (CIR) assessment for alleged deficiency income tax, value-added tax (VAT), and expanded *gc*

¹ Petition for Review, Docket, Vol. I, pp. 6-26.

withholding tax (EWT) for taxable year 2009, including interests and penalties, in the total amount of SEVENTEEN MILLION ONE HUNDRED FORTY ONE THOUSAND FOUR HUNDRED SEVENTY PESOS AND 23/100 (₱17,141,470.23).

THE FACTS

Petitioner is a corporation organized under Philippine laws with principal place of business located at 103 South Science Avenue, Laguna Technopark, Sta. Rosa, Laguna.² It is engaged in the business of manufacturing, distribution, buying and selling of pharmaceutical, veterinary compounds, toilet articles and general merchandise.³

It is registered with the Securities and Exchange Commission (SEC) under SEC Registration No. 73870.⁴ It is likewise registered with the Bureau of Internal Revenue (BIR) on January 1, 1997 and was issued Tax Identification Number (TIN) 000-280-624-000 as evidenced by BIR Certificate of Registration No. OCN 0000044173.⁵

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested by law to implement and enforce the provisions of the 1997 NIRC and other tax laws.⁶

On May 27, 2010, petitioner was served with Letter of Authority No. 116-2010-00000096 dated May 14, 2010 for the examination of its internal revenue taxes pursuant to the Conglomerate Audit Program (RMC No. 36-2010) for taxable year ending December 31, 2009.⁷

On June 7, 2010, the BIR issued its First Notice for Presentation of Books of Account and Other Accounting Records, copy of which was received by petitioner on June 8, 2010.⁸ 

² Pars. 1 & 3, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. I, p. 345.

³ Par. 4, Stipulation of Facts, JSFI, Docket, Vol. I, p. 346.

⁴ Par. 3, Stipulation of Facts, JSFI, Docket, Vol. I, p. 345.

⁵ Par. 5, Stipulation of Facts, JSFI, Docket, Vol. I, p. 346.

⁶ Par. 2, Stipulation of Facts, JSFI, Docket, Vol. I, p. 345.

⁷ Par. 6, Stipulation of Facts, JSFI, Docket, Vol. I, p. 346.

⁸ Par. 7, Stipulation of Facts, JSFI, Docket, Vol. I, p. 346.

On August 5, 2010, the BIR issued its Second Notice for Presentation of Books of Account and Other Accounting Records, copy of which was received by petitioner on August 19, 2010.⁹

Petitioner submitted the documents to the BIR as evidenced by its transmittal letters with the following dates:

- June 11, 2010¹⁰
- July 7, 2010¹¹
- September 30, 2010¹²
- February 17, 2011¹³
- March 3, 2011¹⁴
- March 13, 2013¹⁵

On June 13, 2013, petitioner received from the BIR a Preliminary Assessment Notice (PAN) with attached Details of Discrepancy, assessing the company for deficiency income tax, improperly accumulated earnings tax, VAT, EWT, and documentary stamp tax.¹⁶

On July 3, 2013, petitioner filed with the Large Taxpayers Audit Division 1 its Response to the abovementioned PAN.¹⁷

On October 16, 2013, the BIR issued a Formal Letter of Demand (FLD) with Details of Discrepancy and Final Assessment Notices (FAN),¹⁸ which were received by petitioner on the same date.¹⁹

On November 13, 2013, which is within thirty (30) days from receipt of the FLD/FAN, petitioner filed its Protest to the Final Assessment Notice together with supporting documents.²⁰ *fr*

⁹ Par. 8, Stipulation of Facts, JSFI, Docket, Vol. I, p. 346.

¹⁰ Exhibit "P-12".

¹¹ Exhibit "P-14".

¹² Exhibit "P-16".

¹³ Exhibit "P-17".

¹⁴ Exhibit "P-18".

¹⁵ Exhibit "P-19".

¹⁶ Par. 10, Stipulation of Facts, JSFI, Docket, Vol. I, p. 346.

¹⁷ Par. 11, Stipulation of Facts, JSFI, Docket, Vol. I, p. 346.

¹⁸ Par. 12, Stipulation of Facts, JSFI, Docket, Vol. I, p. 347; Exhibits "R-10", "R-10-a", "R-10-b", "R-10-c", "R-10-d", and "R-10-e".

¹⁹ Par. 13, Stipulation of Facts, JSFI, Docket, Vol. I, p. 347; Exhibits "R-10", "R-10-a", "R-10-b", "R-10-c", "R-10-d", and "R-10-e".

²⁰ Par. 14, Stipulation of Facts, JSFI, Docket, Vol. I, p. 347.

On August 29, 2014, petitioner received a copy of respondent's Final Decision on Disputed Assessment (FDDA) with Details of Discrepancy.²¹

On September 26, 2014, petitioner filed the present Petition for Review.

On November 24, 2014 Respondent filed her Answer²² wherein she interposed the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

The waivers duly executed by petitioner's President and General Manager, Divina A. Puyo, extended the period to assess petitioner.

5. Petitioner claimed that respondent's right to assess has prescribed anchoring its claim on Section 203 of the National Internal Revenue Code ("Tax Code"), to wit:

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 case where a return is filed beyond the period prescribed by law, *je*

²¹ Par. 15, Stipulation of Facts, JSFI, Docket, Vol. I, p. 347.

²² Docket, Vol. I, pp. 198-213 (Citations omitted).

the three-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.

6. Respondent disagrees. The case at hand falls as an exception to Section 203 of the Tax Code – that is when both the taxpayer and the Commissioner have agreed in writing to extend the time for assessment, Section 222 of the Tax Code states:

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —

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(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).**

7. Petitioner contended that the waivers it executed were invalid because: (1) the waivers were not accompanied by a Board Resolution authorizing its President and General Manager, Divina A. Puyo, to execute the said waivers; and (2) the waivers failed to specify the taxes which are the subject thereof. *ye*

8. Respondent begs to disagree. It must be emphasized that an authority to sign the waiver is not needed when the waiver is signed by the taxpayer itself thru its responsible officials. Revenue Memorandum Order No. 20-1990 states:

The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the following procedures should be followed:

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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. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized. **(Emphasis supplied).**
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9. As here, petitioner, through its President and General Manager, Divina A. Puyo, voluntarily executed two (2) waivers of the defense of prescription to extend the period of assessment which were accepted by OIC-Assistant Commissioner Alfredo V. Misajon on 17 October 2012 and 14 June 2013, respectively.
 10. In fact, Divina Puyo, acting for and on behalf of petitioner, was the one who consistently communicated with the Bureau of Internal Revenue as regards the subject assessment. She was the signatory, on behalf of petitioner, in the following documents connected with the assessment of petitioner; *je*

- a. Waiver of the Defense of Prescription dated 17 September 2012;
 - b. Waiver of the Defense of Prescription dated 7 June 2013;
 - c. Submission of Documents dated 11 June 2010;
 - d. Submission of Documents dated 7 July 2010;
 - e. Submission of Documents dated 30 September 2010;
 - f. Submission of Documents dated 17 February 2011;
 - g. Submission of Documents dated 3 March 2011;
 - h. Submission of Documents dated 13 March 2013;
 - i. Protest to the Preliminary Assessment Notice dated 3 July 2013; and
 - j. Protest to the Final Assessment Notice and Formal Letter of Demand dated 13 November 2013.
11. Clearly, as demonstrated by her actions and dealings with the Bureau of Internal Revenue, Divina A. Puyo is undoubtedly a responsible officer of petitioner authorized to sign and execute the waivers for and on behalf of petitioner.
12. Moreover, petitioner's citation of CIR v. Kudos Metal is clearly misplaced. In the said case, the Honorable Supreme Court invalidated the waiver since it was signed by an accountant of the Corporation – an officer who cannot, without a Board Resolution, sign the waiver since the execution of the waiver is not in the ordinary course of his functions[.]
13. This is not the case here. Divina A. Puyo, being the President and General Manager of petitioner, acted for and on behalf of the petitioner in the ordinary course of her functions. In fact, the Board of Directors impliedly ratified her dealings with the 

Bureau of Internal Revenue by silence and acquiescence.

14. Accordingly, petitioner cannot now assert that Divina A. Puyo is not a responsible official to execute the waivers of the defense of prescription for lack of a notarized written authority issued by the Board of Directors.
15. Moreover, to further bolster respondent's position that petitioner's President and General Manager, Divina A. Puyo, is indeed a responsible officer, respondent wishes to point out Section 253(d) of the Tax Code – imposing criminal liabilities on responsible officials of the Corporation, to wit:

SECTION 253. General Provisions. —

- (a) **Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein:** Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

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- (d) **In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.**

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(Emphasis supplied). 

16. Therefore, the period to assess petitioner has not prescribed since there were valid agreements between petitioner and respondent, as evidenced by duly executed waivers of the defense of prescription, to extend the period of assessment.
17. Petitioner further argued that the waivers were invalid since it 'failed to specify the taxes which are the subject thereof in violation of the requirements under Revenue Memorandum [Order] No. 20-1990.'
18. Respondent disagrees with petitioner's misleading argument.
19. Revenue Delegation Authority Order No. 5-2001 provides for the form of waiver to be used by the revenue officers – amending the form provided in Revenue Memorandum Order No. 20-1990.
20. A careful perusal of the form provided in the aforementioned Order would indicate that the waivers executed by petitioner were in full compliance with the form prescribed and clearly indicates that the subject of the audit/investigation are all internal revenue taxes for the taxable year 2009 of petitioner, to wit:

First Waiver

WAIVER OF THE DEFENSE OF PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE NATIONAL INTERNAL REVENUE CODE

I, DIVINA A PUYO of TELSTAR
MANUFACTURING CORPORATION, request
for approval by the Commissioner of
Internal Revenue for more time to submit
the documents required in connection with 

the investigation/reinvestigation/re-evaluation/collection enforcement of its INTERNAL REVENUE TAXES for the taxable year 2009. I hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than December 30, 2013.

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Second Waiver

WAIVER OF THE DEFENSE OF
PRESCRIPTION UNDER THE STATUTE OF
LIMITATIONS OF THE NATIONAL
INTERNAL REVENUE CODE

I, DIVINA A PUYO of TELSTAR MANUFACTURING CORPORATION, request for approval by the Commissioner of Internal Revenue for more time to submit the documents required in connection with the investigation/reinvestigation/re-evaluation/collection enforcement of its INTERNAL REVENUE TAXES for the taxable year 2009. I hereby waive the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the National Internal Revenue Code, and consent to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by 

said sections of the National Internal Revenue Code but not later than December 31, 2013.

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21. On the other hand, petitioner's contention that the waivers were invalid since the amount of tax were not specified is misguided.
22. Respondent wishes to point out that the requirement under Revenue Memorandum Order No. 20-1990, that the amount of tax be specified, has already been amended by Revenue Delegation Authority Order No. 5-2001. In the latter Order, what needs to be specified is the kind of tax and the taxable year.
23. Thus, petitioner's reliance on the case of *Guoco v. CIR* is erroneous since the questioned assessment therein is for the taxable year ending 30 June 1995 – wherein the form prescribed is the one annexed in Revenue Memorandum Order No. 20-1990, which is not the case here.
24. Accordingly, since there were valid agreements between petitioner and respondent, as evidenced by duly executed waivers of the defense of prescription, to extend the period of assessment, petitioner's argument that the period of assessment has prescribed must fail.

**Petitioner is liable for
Deficiency Income Tax in the
aggregate amount of
P15,883,085.99.**

25. The Bureau of Internal Revenue assessed petitioner for deficiency Income Tax in the aggregate amount of P15,883,085.99, computed as follows: *Je*

Taxable Income per ITR		84,383,759.00
Add:		
Discrepancy on Sales	230,574.03	
Undeclared purchases	203,547.27	
Overclaimed expenses	26,082,570.24	
Disallowed expenses	2,326,691.88	28,843,383.42
Total Taxable Income per audit		113,227,142.42
Income Tax Due		33,968,142.73
Less:		
Tax Paid	17,722,778.85	
Creditable Withholding Tax (CWT)	7,592,348.85	
Disallowed CWT	(17,777.14)	
Overclaimed CWT	(1,291.25)	25,296,059.31
Basic Income Tax Deficiency		8,672,083.41
Add:		
Interest	7,161,002.58	
Compromise	50,000.00	7,211,002.58
Income Tax Deficiency		15,883,085.99

26. At the onset, it must be pointed out that tax assessments by tax examiners are presumed correct and made in good faith. The case of CIR v. Wyeth states:
- All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the State in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.
27. Thus, in [the] absence of proof submitted by petitioner to the contrary, the examiner's assessment should be given full weight and credit.
28. As here, petitioner claimed that it is not liable for deficiency income tax since: (a) the undeclared purchases is only a "timing difference" on the *gc*

recognition of sales and purchases of different corporations; and (b) there were no overclaimed/unaccounted expenses since it duly recorded all its expenses incurred in its operations.

29. Respondent disagrees for the following reasons:

- a. Petitioner utterly failed to explain the overstatement of its sales to Philusa Corporation ("Philusa") in the amount of P230,574.03. It bears stressing that this amount was derived at by comparing the Summary List of Sales and ledger of petitioner. Accordingly, petitioner was aware that such sales should have been subjected to Income Tax. It is notable that no reason was given by petitioner as to why this amount was not subjected to Income Tax.
- b. The alleged "timing difference" as petitioner's explanation for the undeclared purchases is insufficient. It has long been held that mere allegations on [the] part of [the] taxpayer is not proof. As here, in petitioner's letter protest and reconciliations, it was only able to explain the assessed amount of P38,834,394.18 out of the total P39,936,248.66. Thus, absent substantiation by petitioner, such assessment in the amounts of P44,536.72 and P101,854.48 must stand. The [c]ase of *Winebrenner v. CIR* states:

Failure of petitioner to present documents such as, but limited to, official receipts, sales invoices, detailed general ledger, sales register, reconciliation schedules or any other document whereby the income payments related to the claimed creditable withholding taxes may be traced and confirmed as forming part of the taxable gross income reflected in the Annual Income Tax Returns, **is** *is*

fatal to its claim. (Emphasis supplied).

- c. Moreover, the petitioner's defense that it 'duly recorded' all its expenses is but an allegation without proof. As here, the Bureau's reasons for the disallowance are simple:
 - i. that its income payments to Mercury Group of Companies ("Mercury") – booked as salaries – cannot be allowed since it was paid not in contemplation of an employer-employee relationship;
 - ii. that the alleged de minimis benefits and unsupported expenses were not substantiated by petitioner; and
 - iii. that petitioner did not subject certain income payments to withholding tax.
- d. Section 34 (A) states that reasonable allowance for salaries can be deducted from the gross income if it was granted by the employer to the employee. Clearly, this is not the case here. Petitioner and Mercury do not have an employer-employee relationship. Accordingly, respondent correctly disallowed such overclaimed salaries of petitioner.
- e. Also, it must be borne in mind that income payments not subjected to withholding tax cannot be claimed as deductions. Section 34 (K) of the Tax Code states that any amount paid or payable which is otherwise deductible in the gross income shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue. Accordingly, the disallowance of income payments not subjected to withholding tax was correct. *Je*

30. Respondent stresses that the rule that tax deductions, being in the nature of tax exemptions, are to be construed in strictissimi juris against the taxpayer is well settled. Corollary to this rule is the principle that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows.
31. As here, petitioner's failure to substantiate its claims for deduction is fatal. Hence, respondent's assessment for deficiency Income Tax in the aggregate amount of P15,883,085.99 must stand.

Petitioner is liable for deficiency Value Added Tax in the aggregate amount of P1,179,584.68.

32. Petitioner was assessed of deficiency Value Added Tax ("VAT") in the aggregate amount of P1,179,584.68, to wit:

Net Sales per VAT Return		733,791,481.66
Add:		
Undeclared Sales	230,574.03	
Undeclared Purchases	203,547.27	
Overclaimed Expenses	26,082,570.24	
Proceeds from sale of Property per Cash Flow		
	5,610.71	26,522,302.25
Taxable Sales per Audit		760,313,783.91
Output Tax		91,237,654.07
Less:		
Creditable Input Tax (IT)	(3,465,303.49)	
Add:		
IT on Purchases	(58,920,863.99)	
Disallowed IT	(2,918,401.80)	
Carry Over	1,316,194.04	(63,988,911.24)
VAT Payable		27,249,2[7]6.83
Less: VAT Paid per Return		26,642,413.69
Vat Deficiency		606,863.14
Add:		
Interest	527,721.54	<i>jk</i>

Compromise	45,000.00	572,721.51
VAT Deficiency		1,179,584.68

33. As can be seen above, several items in the assessment, such as the increase in the taxable sales is a direct result of the disallowance of expenses and undeclared sales of petitioner. Accordingly, respondent correctly adjusted the assessment for deficiency VAT.

34. Moreover, for petitioner’s failure to comply with the invoicing requirements as provided by Section 113 of the Tax Code and Revenue Regulations No. 16-2[0]05 respondent correctly disallowed the Input VAT claimed by petitioner.

35. Lastly, petitioner contended that respondent erred in imposing a compromise penalty for its violation of the Tax Code.

36. Respondent agrees with petitioner that the essence of the compromise penalty is mutuality and it cannot be imposed without agreement and conformity of the taxpayer.

37. The Honorable Supreme Court in the case of Silang Water District v. CIR held that:

The Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter compromised, and the choice of paying it or not paying it distinctly belongs to the taxpayer.

38. In fact, respondent only included such portion as a suggestion to petitioner to pay it in lieu of criminal prosecution pursuant to Revenue Memorandum Circular No. 17-1990, specifically: 

III. Guidelines and Instructions:

1. The internal revenue officers concerned shall apply the Revised Schedule of Compromise Penalties embodied in Annex "A" to ensure uniformity of action.
2. In no case shall the compromise penalty differ in amount from those specified in the aforementioned Schedule, except when duly approved by the Commissioner or, in a proper case, by the Regional Directors.
3. **Although all amounts of compromise penalties incident to violations shall be itemized in the assessment notice and/or demand letter along with the other administrative penalties like surcharge and interest, the same should not form part of the total amount assessed/demanded but should appear separately as a suggestion to the taxpayer to pay in lieu of criminal prosecution. If paid, the compromise penalties shall be collected and accounted for under the usual procedures, as internal revenue.**
4. Since 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, the violation shall be referred for criminal action as heretofore mentioned. **(Emphasis supplied).** 

39. Thus, it is well within the prerogative of petitioner to decide whether they should heed to respondent’s suggestion to pay the compromise penalty to avoid criminal prosecution.

Petitioner is liable for Expanded Withholding Tax in the aggregate amount of P78,800.27.

40. Lastly, petitioner was assessed deficiency Expanded Withholding Tax (“EWT”) in the aggregate amount of P78,800.27, as follows:

EWT Due on FS Analysis		37,736.01
Add: Under Remittance		3,000.00
Basic EWT Deficiency		35,736.01
Add:		
Interest	34,564.26	
Compromise Penalties	8,500.00	43,064.26 ²³
EWT Deficiency		[78,800.27]

41. Petitioner submitted that it ‘withheld the appropriate taxes on all its income payments for the taxable year 2009.’
42. Again, petitioner’s assertion that it withheld appropriate taxes on all its income payments is but an assertion without proof. Absent proof, it deserves no consideration at all.
43. As clearly explained above, upon careful examination of the financial statements of petitioner, it disclosed that certain income payments were not subjected to EWT. Thus, absent proof to the contrary, the EWT assessment should be held as valid. *jr*

²³ Erroneously stated in respondent’s Answer as **42,064.26**.

44. As a final note, respondent reiterates that petitioner's assessment was based on actual facts as disclosed by the regular conduct of audit pursuant to a duly issued Letter of Authority. Accordingly, since all presumptions are in favor of the correctness of tax assessments, absent substantial proof from petitioner refuting the same, the Petition for Review must be denied."

The Pre-Trial Conference²⁴ was held on February 5, 2015. Respondent's Pre-Trial Brief²⁵ was filed on January 29, 2015 while petitioner's Pre-Trial Brief²⁶ was filed on February 2, 2015.

The parties filed their Joint Stipulation of Facts and Issues²⁷ on February 25, 2015, which was approved by the Court upon issuance of the Pre-Trial Order²⁸ on March 10, 2015.

During trial, petitioner presented the following witnesses: (1) Ms. Divina A. Puyo²⁹ – petitioner's President and General Manager; (2) Ms. Regina D. Velazquez³⁰ – petitioner's Finance Manager; and (3) Mr. Michael L. Aguirre,³¹ the Court-commissioned Independent Certified Public Accountant (ICPA).

On July 27, 2015, petitioner filed its Formal Offer of Evidence.³² On even date, petitioner also filed a Supplemental Formal Offer of Evidence.³³

Respondent, in its Comment (Re: Petitioner's Formal Offer of Evidence) filed on August 3, 2015,³⁴ stated that she has no objection to the admission of petitioner's documentary exhibits inclusive of its sub-markings, but only as to the manner they were identified in open court and subject to the condition that the same have faithfully complied with the necessity of comparison with original documents, without, however, admitting the truth of the contents, relevancy, *fe*

²⁴ Minutes of the Hearing dated February 5, 2015, Docket, Vol. I, p. 331.

²⁵ Docket, Vol. I, pp. 216-221.

²⁶ Docket, Vol. I, pp. 239-247.

²⁷ Docket, Vol. I, pp. 345-353.

²⁸ Docket, Vol. I, pp. 359-368.

²⁹ Minutes of the Hearing dated March 16, 2015, Docket, Vol. I, p. 369.

³⁰ Minutes of the Hearing dated April 13, 2015, Docket, Vol. I, p. 385.

³¹ Minutes of the Hearing dated June 22, 2015, Docket, Vol. II, p. 694.

³² Docket, Vol. II, pp. 718-755.

³³ Docket, Vol. III, pp. 756-1129; Docket, Vol. IV, pp. 1130-1582; Docket, Vol. V, pp. 1583-1978.

³⁴ Docket, Vol. VI, pp. 1979-1981.

materiality, and probative value of said evidence as well as the validity of the purposes for which said exhibits were offered. On August 24, 2015, respondent filed its Comment (Re: Petitioner's Supplemental Formal Offer of Evidence),³⁵ likewise stating therein that he has no objection to the admission of petitioner's documentary exhibits inclusive of its sub-markings, but only as to the manner they were identified in open court and subject to the condition that the same have faithfully complied with the necessity of comparison with original documents, without, however, admitting the truth of the contents, relevancy, materiality, and probative value of said evidence as well as the validity of the purposes for which said exhibits were offered.

On September 15, 2015, the Court issued a Resolution³⁶ admitting as petitioner's evidence all of the documentary exhibits offered in petitioner's Formal Offer of Evidence except for Exhibit "P-9" which the Court denied for failure to present the original for comparison. With respect to petitioner's Supplemental Formal Offer of Evidence, the Court admitted all of the documentary exhibits offered therein except for Exhibits "P-9-Q-ICPA", "P-13.4-ICPA", "P-13.4-AL.1-ICPA", "P-13.6-LJ.2-ICPA", "P-13.9-AS.1-ICPA", "P-13-13.9-CG-ICPA", "P-13-13.9-CH-ICPA", "P-13-13.9-CI-ICPA", "P-13-13.9-CJ-ICPA", "P-13-13.9-CK-ICPA", "P-13-13.9-CL-ICPA", "P-13-13.9-CM-ICPA", "P13-13.9-CN-ICPA", "P-13-13.9-CO-ICPA", "P-13-13.9-CP-ICPA", "P-13-13.9-CQ-ICPA", "P-13-13.9-CR-ICPA", "P-13-13.9-CS-ICPA", "P-13-13.9-CT-ICPA", "P-13-13.9-CU-ICPA", "P-13-13.9-CV-ICPA", "P-13-13.9-CW-ICPA", "P-13-13.9-CX-ICPA", "P-13-13.9-CY-ICPA", "P-13-13.9-CZ-ICPA", "P-13-13.9-DA-ICPA", "P-13-13.9-DB-ICPA", "P-13-13.9-DC-ICPA", "P-13-13.9-DD-ICPA", "P-13-13.9-DE-ICPA", "P-13-13.9-DF-ICPA", "P-13-13.9-DG-ICPA", "P-13-13.9-DH-ICPA", "P-13-13.9-DI-ICPA", "P-13-13.9-DJ-ICPA", "P-13-13.9-DK-ICPA", "P-13-13.9-DL-ICPA", "P-13-13.9-DM-ICPA", "P-13-13.9-DN-ICPA", "P-13-13.9-DO-ICPA", "P-13-13.9-DP-ICPA", "P-13-13.9-DQ-ICPA", "P-13-13.9-DR-ICPA", "P-13-13.9-DS-ICPA", "P-13-13.9-DT-ICPA", "P-13-13.9-DU-ICPA", "P-13-13.9-DV-ICPA", "P-13-13.9-DW-ICPA", "P-13-13.9-DX-ICPA", "P-13-13.9-DY-ICPA", "P-13-13.9-DZ-ICPA", "P-13-13.9-EA-ICPA", "P-13-13.9-EB-ICPA", "P-13-13.9-EC-ICPA", "P-13-13.9-ED-ICPA", "P-13-13.9-EE-ICPA", "P-13-13.9-EF-ICPA", "P-13-13.9-EG-ICPA", "P-13-13.9-EH-ICPA", "P-13-13.9-EI-ICPA", "P-13-13.9-EJ-ICPA", "P-13-13.9-EK-ICPA", "P-13-13.9-EL-ICPA", "P-13-13.9-EM-ICPA", "P-13-13.9-EN-ICPA", "P-13-13.9-EO-ICPA", "P-13-13.9-EP-ICPA", "P-13-13.9-EQ-ICPA", "P-13-13.9-ER- 

³⁵ Docket, Vol. VI, pp. 1991-1993.

³⁶ Docket, Vol. VI, pp. 2001-2082.

ICPA", "P-13-13.9-ES-ICPA", "P-13-13.9-ET-ICPA", "P-13-13.9-EU-ICPA", "P-13-13.9-EV-ICPA", "P-13-13.9-EW-ICPA", "P-13-13.9-EX-ICPA", "P-13-13.9-EY-ICPA", "P-13-13.9-EZ-ICPA", "P-13-13.9-FA-ICPA", "P-13-13.9-FB-ICPA", "P-13-13.9-FC-ICPA", "P-13-13.9-FD-ICPA", "P-13-13.9-FE-ICPA", "P-13-13.9-FF-ICPA", "P-13-13.9-FG-ICPA", "P-13-13.9-FH-ICPA", "P-13-13.9-FI-ICPA", "P-13-13.9-FJ-ICPA", "P-13-13.9-FK-ICPA", "P-13-13.9-FL-ICPA", "P-13-13.9-FM-ICPA", "P-13-13.9-FN-ICPA", "P-13-13.9-FO-ICPA", "P-13-13.9-FP-ICPA", "P-13-13.9-FQ-ICPA", "P-13-13.9-FR-ICPA", "P-13-13.9-FS-ICPA", "P-13-13.9-FT-ICPA", "P-13-13.9-FU-ICPA", "P-13-13.9-FV-ICPA", "P-13-13.9-FW-ICPA", "P-13-13.9-FX-ICPA", "P-13-13.9-FY-ICPA", "P-13-13.9-FZ-ICPA", "P-13-13.9-GA-ICPA", "P-13-13.9-GB-ICPA", "P-13-13.9-GC-ICPA", "P-13-13.9-GD-ICPA", "P-13-13.9-GE-ICPA", "P-13-13.9-GF-ICPA", "P-13-13.9-GG-ICPA", "P-13-13.9-GH-ICPA", "P-13-13.9-GI-ICPA", "P-13-13.9-GJ-ICPA", "P-13-13.9-GK-ICPA", "P-13-13.9-GL-ICPA", "P-13-13.9-GM-ICPA", "P-13-13.9-GN-ICPA", "P-13-13.9-GO-ICPA", "P-13-13.9-GP-ICPA", "P-13-13.9-GQ-ICPA", "P-13-13.9-GR-ICPA", "P-13-13.9-GS-ICPA", "P-13-13.9-GT-ICPA", "P-13-13.9-GU-ICPA", "P-13-13.9-GV-ICPA", "P-13-13.9-GW-ICPA", "P-13-13.9-GX-ICPA", "P-13-13.9-GY-ICPA", "P-13-13.9-GZ-ICPA", "P-13-13.9-HA-ICPA", "P-13-13.9-HB-ICPA", "P-14.99-I-ICPA", "P-14.101-CR-ICPA", "P-14.101-CS-ICPA", "P-14.101-CT-ICPA", "P-14.101-CU-ICPA", "P-14.101-CV-ICPA", "P-14.101-CW-ICPA", "P-14.101-CX-ICPA", "P-14.101-CY-ICPA", and "P-14.101-CZ-ICPA" for not being found in the records.

Petitioner filed its Motion for Partial Reconsideration of the above Resolution on December 1, 2015. Respondent filed its Comment thereto on January 4, 2016. In a Resolution dated January 26, 2016, the Court set a Commissioner's Hearing for the marking of Exhibit "P-9" and for the re-marking of Exhibit "P-13.4-AL.1-ICPA" into Exhibit "P-13.4-AL-ICPA". Thereafter, the Court admitted Exhibits "P-9", "P-9-Q-ICPA", "P-13.6-LJ.2-ICPA", "P-13.9-AS.1-ICPA", and "P-14.99-I-ICPA" in a Resolution dated April 14, 2016. In the same Resolution, the Court noted that Exhibit "P-13.4-AL.1-ICPA" was already previously admitted but it was re-marked as "P-13.4-AL-ICPA". On the other hand, Exhibit "P-13.4.AL.1-ICPA" was still denied for not being found in the records.

On the other hand, respondent presented as her sole witness, Mr. Jan Andre C. Abellera, Revenue Officer I of the Large Taxpayers Audit Division 1, BIR National Office.³⁷ 

³⁷ Minutes of the Hearing dated May 11, 2016, Docket, Vol. VI, p. 2113.

On May 23, 2016, respondent filed her Formal Offer of Evidence³⁸ while petitioner's Comment on respondent's Formal Offer of Evidence³⁹ was filed on June 6, 2016. In a Resolution dated July 5, 2016, the Court admitted all of respondent's offered documentary evidence. In the same Resolution, the Court ordered the parties to file their Memoranda within a period of thirty (30) days from receipt thereof.

Petitioner filed its Memorandum⁴⁰ on August 31, 2016 while respondent filed a Manifestation⁴¹ on August 15, 2016 stating that in lieu of filing a Memorandum, she is adopting her Answer to the Petition for Review as her Memorandum. Consequently, the case was declared submitted for decision on September 6, 2016.⁴²

THE ISSUES

The parties submitted the following stipulated issues⁴³ for the Court's resolution:

"II. ISSUES TO BE RESOLVED

A. WHETHER OR NOT THE WAIVERS OF DEFENSE OF THE STATUTE OF LIMITATIONS VALIDLY EXTENDED THE PERIOD OF THE GOVERNMENT TO ASSESS PETITIONER OF ITS DEFICIENCY INTERNAL TAX LIABILITIES FOR THE TAXABLE YEAR ENDING DECEMBER 31, 2009

B. WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE ADDED TAX, AND EXPANDED WITHHOLDING TAX IN THE AGGREGATE AMOUNT OF PHP17,141,470.23, FOR THE TAXABLE YEAR ENDING DECEMBER 31, 2009" *je*

³⁸ Docket, Vol. VI, pp. 2114-2124.

³⁹ Docket, Vol. VI, pp. 2126-2129.

⁴⁰ Docket, Vol. VI, pp. 2142-2181.

⁴¹ Docket, Vol. VI, pp. 2137-2139.

⁴² Docket, Vol. VI, p. 2182.

⁴³ JSFI, Docket, Vol. I, p. 347.

THE COURT'S RULING

The waivers validly extended the period within which the government may assess petitioner of its deficiency tax liabilities for taxable year 2009.

Petitioner argues that it is not bound by the waivers executed by its President and General Manager because of lack of the specific Board Resolution authorizing such signatory to sign these waivers on its behalf. Moreover, petitioner also claims that the waivers are void for failure to specify the kind and amount of taxes which are the subject of such waivers. Accordingly, the government's right to issue the subject assessments had already prescribed since these were made beyond the three-year prescriptive period.

On the other hand, respondent maintains that the waivers executed by petitioner's President and General Manager are valid. Respondent posits that an authority to sign the waiver is not needed when the waiver is signed by the taxpayer itself through its responsible officials. In addition, the waivers executed by petitioner were in full compliance with the form prescribed and clearly indicates that the subject of the audit/investigation are all internal revenue taxes for the taxable year 2009. Respondent further avers that the requirement under Revenue Memorandum Order No. 20-1990, that the amount of tax be specified, has already been amended by Revenue Delegation Authority Order No. 5-2001. In the latter Order, what needs to be specified is the kind of tax and the taxable year.

Section 203 of the 1997 NIRC provides for a period of three (3) years within which the BIR may assess and collect any deficiency internal revenue tax from a taxpayer, to wit:

SEC. 203. *Period of limitation upon assessment and collection.* — Except as provided in the 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, ²*

That in a case where a return is filed beyond the period prescribed by law, the three-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.
(Emphasis supplied)

The rationale for the foregoing rule was explained by the Supreme Court in *Commissioner of Internal Revenue v. Standard Chartered Bank*⁴⁴ in this wise:

“This mandate governs the question of prescription of the government’s right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation by not indefinitely extending the period of assessment and depriving the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.”

Under Section 77(B)⁴⁵ in relation to Section 76⁴⁶ of the 1997 NIRC, every corporation liable to tax shall file a final adjustment

⁴⁴ G.R. No. 192173, July 29, 2015, 764 SCRA 183.

⁴⁵ **SECTION 77. Place and Time of Filing and Payment of Quarterly Corporate Income Tax.** —

x x x

x x x

x x x

(B) Time of Filing the Income Tax Return. — The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

x x x

x x x

x x x

⁴⁶ **SECTION 76. Final Adjustment Return.** — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

- (A) Pay the balance of tax still due; or
- (B) Carry-over the excess credit; or
- (C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters *je*

return on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be. In the present case, petitioner filed its Annual Income Tax Return for calendar year (CY) 2009 on April 14, 2010.⁴⁷ Applying Section 203 of the 1997 NIRC, respondent had until April 15, 2013, within which to assess petitioner for deficiency income tax for taxable year 2009.

On the other hand, Section 114(A) of the 1997 NIRC,⁴⁸ as implemented by Section 4.114-1(A) of Revenue Regulations (RR) No. 16-2005, as amended, provides that Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter. In the present case, petitioner filed its Quarterly VAT Return (BIR Form No. 2550Q) on April 21, 2009⁴⁹ for the first quarter, July 22, 2009⁵⁰ for the second quarter, October 20, 2009⁵¹ for the third quarter, and January 25, 2010⁵² for the fourth quarter of taxable year 2009. Accordingly, respondent had until January 25, 2013, at the latest, within which to assess petitioner for any deficiency VAT for taxable year 2009.

With respect to EWT, Section 58(A) of the 1997 NIRC,⁵³ as implemented by Section 2.58(A)(2)(b) of RR No. 2-98, as amended⁵⁴

of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

⁴⁷ Exhibit "P-65". Erroneously stated in the Petition for Review and petitioner's Memorandum as April 14, 2009.

⁴⁸ **SECTION 114. Return and Payment of Value-added Tax. —**

(A) In General. — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

x x x

x x x

x x x

⁴⁹ Exhibits "P-6-E-ICPA" to "P-6-F-ICPA".

⁵⁰ Exhibits "P-6-K-ICPA" to "P-6-L-ICPA".

⁵¹ Exhibits "P-6-Q-ICPA" to "P-6-R-ICPA".

⁵² Exhibits "P-6-Y-ICPA" to "P-6-Z-ICPA".

⁵³ **SECTION 58. Returns and Payment of Taxes Withheld at Source. —**

(A) Quarterly Returns and Payments of Taxes Withheld. — Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized agent bank, Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.

by RR No. 17-03 in relation to Section 7 of RR No. 09-01, as amended by RR No. 26-2002, prescribes that the electronic filing of EWT Returns of taxpayers engaged in manufacturing such as herein petitioner must be made within fourteen (14) days following the end of the month. The table below summarizes the dates of filing of petitioner's Monthly EWT Returns as well as the last day for respondent to assess deficiency EWT for taxable year 2009:

Month Covered	Exhibit	Date Filed	Last Day to File Return	Last Day to Assess
Jan-09	"P-4-A-ICPA" to "P-4-B-ICPA"	February 11, 2009	February 16, 2009 ⁵⁴	February 16, 2012
Feb-09	"P-4-C-ICPA" to "P-4-D-ICPA"	March 10, 2009	March 16, 2009 ⁵⁵	March 16, 2012
Mar-09	"P-4-E-ICPA" to "P-4-F-ICPA"	April 13, 2009	April 14, 2009	April 16, 2012 ⁵⁶
Apr-09	"P-4-G-ICPA" to "P-4-H-ICPA"	May 11, 2009	May 14, 2009	May 14, 2012
May-09	"P-4-I-ICPA" to "P-4-J-ICPA"	June 9, 2009	June 15, 2009 ⁵⁷	June 15, 2012
Jun-09	"P-4-K-ICPA" to "P-4-L-ICPA"	July 9, 2009	July 14, 2009	July 16, 2012 ⁵⁸
Jul-09	"P-4-M-ICPA" to "P-4-N-ICPA"	August 10, 2009	August 14, 2009	August 14, 2012
Aug-09	"P-4-O-ICPA" to "P-4-P-ICPA"	September 9, 2009	September 14, 2009	September 14, 2012
Sep-09	"P-4-Q-ICPA" to "P-4-R-ICPA"	October 8, 2009	October 14, 2009	October 15, 2012 ⁵⁹
Oct-09	"P-4-S-ICPA" to "P-4-T-ICPA"	November 11, 2009	November 16, 2009 ⁶⁰	November 16, 2012
Nov-09	"P-4-U-ICPA" to "P-4-V-ICPA"	December 9, 2009	December 14, 2009	December 14, 2012
Dec-09	"P-4-W-ICPA" to "P-4-X-ICPA"	January 27, 2010	January 14, 2010	January 28, 2013 ⁶¹

The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided*, That the Commissioner, with the approval of the Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.

x x x

x x x

x x x

⁵⁴ February 14, 2009 fell on a Saturday.
⁵⁵ March 14, 2009 fell on a Saturday.
⁵⁶ April 14, 2012 fell on a Saturday.
⁵⁷ June 14, 2009 fell on a Sunday.
⁵⁸ July 14, 2012 fell on a Saturday.
⁵⁹ October 14, 2012 fell on a Sunday.
⁶⁰ November 14, 2009 fell on a Saturday.
⁶¹ January 27, 2013 fell on a Sunday.

In sum, the last day for respondent to issue an assessment for taxable year 2009 was on April 15, 2013 for income tax, on January 25, 2013, at the latest for VAT, and on January 28, 2013, at the latest for EWT. However, petitioner received the FLD and FAN only on October 16, 2013, which is one hundred eighty-four (184) days beyond the three-year prescriptive period for income tax, two hundred sixty-four (264) days beyond the three-year prescriptive period for VAT, and two hundred sixty-one (261) days beyond the three-year prescriptive period for EWT.

While respondent does not deny that the FLD and FAN were issued beyond the three-year prescriptive period, he claims that the period to assess petitioner was extended by the waivers duly executed by petitioner's President and General Manager.

Section 222(b) of the 1997 NIRC provides an exception to the three-year prescriptive period for the assessment of deficiency internal revenue taxes under Section 203 of the 1997 NIRC. The said provision reads:

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —

XXX

XXX

XXX

(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)*

Based on the above provision, the original three-year prescriptive period may be extended by virtue of a valid waiver. In this regard, the taxpayer and the BIR may stipulate to extend the assessment period by means of written agreement executed prior to the expiration of the period prescribed by law, and likewise by *Je*

subsequent written agreements executed before the lapse of the period previously agreed upon.

In *Commissioner of Internal Revenue v. Kudos Metal Corporation*,⁶² the Supreme Court discussed the requirements for a properly executed waiver, as follows:

"Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

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

⁶² G.R. No. 178087, May 5, 2010, 620 SCRA 241-244.

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."

In a number of cases,⁶³ the Supreme Court ruled that a Waiver of the Statute of Limitations must be carefully and strictly construed considering that it is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations. As thoroughly explained by the Supreme Court in *Philippine Journalists*,⁶⁴ to wit:

"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 therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is 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. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the 

⁶³ *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004, 447 SCRA 227 ("Philippine Journalists"); *Commissioner of Internal Revenue v. FMF Development Corporation*, G.R. No. 167765, June 30, 2008, 556 SCRA 709; *Commissioner of Internal Revenue v. Kudos Metal Corporation*, supra, Note 62; *Commissioner of Internal Revenue v. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015, 764 SCRA 183.

⁶⁴ *Id.*

purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed." (*Emphasis supplied*)

However, in the case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*,⁶⁵ the Supreme Court carved out an exception to the rule of strict compliance to the requirements for the execution of the Waiver of Statute of Limitations. The relevant portion of the said decision reads:

"To be sure, both parties in this case are at fault.

X X X

X X X

X X X

Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects.

In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. **It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claims before the CIR during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these** *je*

⁶⁵ G.R. No. 212825, December 7, 2015 ("Next Mobile").

Waivers after benefiting therefrom and allowing petitioner to rely on the same is an act of bad faith.

On the other hand, the stringent requirements in RMO 20-90 and RDAO 05-01 are in place precisely because the BIR put them there. Yet, instead of strictly enforcing its provisions, the BIR defied the mandates of its very own issuances. Verily, if the BIR was truly determined to validly assess and collect taxes from respondent after the prescriptive period, it should have been prudent enough to make sure that all the requirements for the effectivity of the Waivers were followed not only by its revenue officers but also by respondent. The BIR stood to lose millions of pesos in case the Waivers were declared void, as they eventually were by the CTA, but it appears that it was too negligent to even comply with its most basic requirements.

The BIR's negligence in this case is so gross that it amounts to malice and bad faith. Without doubt, the BIR knew that waivers should conform strictly to RMO 20-90 and RDAO 05-01 in order to be valid. In fact, the mandatory nature of the requirements, as ruled by this Court, has been recognized by the BIR itself in its issuances such as Revenue Memorandum Circular No. 6-2005, among others. Nevertheless, the BIR allowed respondent to submit, and it duly received, five defective Waivers when it was its duty to exact compliance with RMO 20-90 and RDAO 05-01 and follow the procedure dictated therein. It even openly admitted that it did not require respondent to present any notarized authority to sign the questioned Waivers. The BIR failed to demand respondent to follow the requirements for the validity of the Waivers when it had the duty to do so, most especially because it had the highest interest at stake. If it was serious in collecting taxes, the BIR should have meticulously complied with the foregoing orders, leaving no stone unturned.

The general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO [No. 05-01], it is invalid and *je*

ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, We shall treat this case as an exception to this rule and find the Waivers valid for the reasons discussed below.

First, the parties in this case are *in pari delicto* or "in equal fault." *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, **respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.**

Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would

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promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. **Respondent executed *five* Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it.** Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO [No. 05-01]. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith." (*Emphasis supplied and citations omitted*)

In the present case, petitioner alleged that the subject waivers are defective for the following reasons:

- a. The person who signed the waiver, *i.e.*, petitioner's President and General Manager, was not specifically 

authorized by petitioner's Board of Directors to execute and sign the waivers on petitioner's behalf; and

- b. The waivers failed to specify the type of tax and the amount of tax due.

Be that as it may, this Court finds that the aforequoted pronouncement of the Supreme Court in the *Next Mobile* case applicable in the present case. Notably, one of the defects found in *Next Mobile* is present in the subject waivers.

To be sure, both the petitioner and respondent are *in pari delicto*. Petitioner executed the subject waivers in consideration of the opportunity to gather and submit documents to substantiate and defend its case before the BIR at the investigation stage. In addition, by virtue of the waiver, petitioner was able to postpone the payment of the subject taxes assessed against it. And yet, after reaping such benefits, petitioner readily challenged the validity of the waivers when the effects thereof were not in its favor. Truth be told, petitioner's act of challenging the subject waiver after benefitting therefrom and allowing the respondent to rely thereon is an act of bad faith.

On the other hand, respondent also utterly failed to perform its duty of faithfully complying with its own issuances. She ought to ensure that all of the requirements for the execution of a valid waiver are strictly followed. Far from doing so, respondent allowed the execution of the subject waivers without carefully verifying the authority of petitioner's President and General Manager.

Given that a waiver of statute of limitations is, in law and in fact, a bilateral agreement between the CIR and the taxpayer,⁶⁶ both of them should thus be held responsible in ensuring that their agreement faithfully complies with the law. Failing which, they should both suffer the consequences.

Petitioner did not come to this Court with clean hands. It cannot be allowed benefit from the flaws of its own waiver and insists on its invalidity to escape its responsibility to pay deficiency taxes, when in committing such flaws, the petitioner itself is partly to blame. *Je*

⁶⁶ *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, supra, Note 63.

Moreover, petitioner is likewise estopped from challenging the validity of the subject waiver. Petitioner allowed the respondent to rely on the waivers they have executed and remained silent on the waivers' defects. Petitioner did not raise any objection against the waivers' validity up until it was already assessed with deficiency taxes and penalties. Certainly, such a highly suspicious situation cannot be countenanced.

Accordingly, and in light of the Supreme Court's Decision in the *Next Mobile* case, this Court holds that the subject waivers had validly extended the period within which the government may assess petitioner of its deficiency tax liabilities for taxable year 2009. This Court shall proceed to determine whether petitioner is liable therefor.

***Petitioner is liable for
deficiency income tax, VAT
and EWT***

To begin with, it is noteworthy that the audit investigation, which is the subject of the instant petition, is pursuant to the Conglomerate Audit Program (RMC No. 36-2010).⁶⁷ Per Memorandum report for the issuance of the Final Decision on Disputed Assessment (FDDA), intercompany transactions within the conglomerate group were determined to be done in arm's length as more than 95% of the company's sales are sold to Philusa Corporation, the distribution arm of the Mercury Group of Companies. Any discrepancies in reporting between the company and its affiliates covered under the conglomerate audit that were discovered during the examination were properly captured and assessed under the Computer Assisted Audit Tools and Techniques System (CAATS).⁶⁸

Compromise Penalties

Respondent imposed compromise penalties in the subject internal revenue tax assessments in the total amount of ₱103,500.00, detailed as follows:

	Compromise Penalty
Income tax	₱ 50,000.00

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⁶⁷ See also Joint Stipulation of Facts and Issues, Stipulation of Facts, Paragraph 6, Docket Vol. I, p. 346.

⁶⁸ Exhibit "R-11", BIR Records, p. 694.

Value-added tax	45,000.00
Expanded withholding tax	8,500.00
TOTAL	₱ 103,500.00

Such imposition cannot be sustained. Under Revenue Memorandum Order (RMO) No. 19-2007, as amended, “compromise penalties are only amounts suggested in settlement of criminal liability, and may not therefore be imposed or exacted on the taxpayer, the violation shall be referred to the appropriate office for criminal action in the event that a taxpayer refuses to pay the suggested compromise penalty.” Absent any showing that petitioner is willing to pay the penalties, the same should not be imposed.

Deficiency Income Tax

Petitioner was assessed of deficiency income tax for the taxable year 2009 in the amount of ₱15,883,085.99 as follows:⁶⁹

Taxable Income per ITR		₱ 84,383,759.00
Add (Deduct): Audit adjustments per Investigation		
Discrepancy on Sales	₱ 230,574.03	
Discrepancies on purchases - undeclared	203,547.27	
Overclaimed/underdeclared expenses	26,082,570.24	
Disallowed expenses for non-withholding	2,326,691.88	
Total adjustments per audit		28,843,383.42
Taxable income per audit		₱ 113,227,142.42
Income tax due thereon		₱ 33,968,142.73
Less: Creditable Withholding Tax/Tax paid per audit		
Tax Paid	₱ 17,722,778.85	
Add: Creditable Tax	7,592,348.85	
Total creditable tax	₱ 25,315,127.70	
Less: Adjustments per audit in creditable withholding tax		
Disallowed CWT - from 2008 sales	17,777.14	
Overclaimed CWT	1,291.25	25,296,059.31
Basic income tax deficiency		₱ 8,672,083.41
Add: Increments		
Interest from 4.16.2010 to 5.31.2014	₱ 7,161,002.58	
Compromise penalty	50,000.00	7,211,002.58
Total		₱15,883,085.99

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⁶⁹ Exhibit “P-3”, Docket Vol. I, p. 29.

a. Discrepancy on sales—P230,574.03

Respondent’s examiner found that petitioner’s sales to Philusa Corporation per ledger differ from total sales found per Summary List of Sales and purported the resulting discrepancy as undeclared sales, thus:⁷⁰

Sales per ledger	₱ 702,478,654.74
Sales per Summary List of Sales	702,248,080.71
Discrepancy	₱ 230,574.03

The independent CPA⁷¹ commissioned by the Court reported that the difference of P230,574.03 pertains to “adjustment made to Sales to Philusa by way of credit memorandum issued due to Philusa’s disapproved sales price increase. In 2009, the Company had initially issued the invoices to Philusa at the new rate and recorded the sales on its Sales Ledger amounting to P702,478,654.74. Philusa, however, did not accept the new selling price and insisted that the old rate should be adopted. This resulted to issuance of Credit Memo by the Company and consequent adjustment on its reporting in the Summary List of Sales amounting to P702,248,080.71.”⁷²

Examination of the said credit memoranda shows the following:

Exhibit	CM No.	Date	Issued to	Amount
P-17-A	0409	7/29/2009	Philusa Corporation	₱ 188,181.19
P-17-B	0414	7/31/2009	Philusa Corporation	43,464.29
TOTAL				₱231,645.48

The undersigned is not convinced of the foregoing. Respondent’s audit revealed that petitioner’s sales per its sales ledger exceeds the amount reported in its Summary List of Sales (SLS). Thereafter, it was determined that the discrepancy arose from petitioner’s sales to Philusa Corporation (Philusa). In the unlikely event that petitioner somehow forgot to record the subject credit memo in its sales ledger but properly recognized the same in the SLS, petitioner should submit more evidence than the credit memos and sales invoice issued to Philusa. These documents alone are self-serving and insufficient for the undersigned to ascertain if the credit *Ja*

⁷⁰ Exhibit “P-3-a”, Docket Vol. I, p. 31.
⁷¹ Michael L. Aguirre of M.L. Aguirre & Co.
⁷² Exhibit “P-75”, Docket Vol. II, p. 436.

memos were indeed considered in preparing the SLS or if the same were not recorded in the sales ledger.

If the subject credit memos were the reason for the discrepancy found by respondent's examiner, the difference of ₱230,574.03 would be eliminated. However, the amount of ₱1,071.45 is still unaccounted for:

Discrepancy to be accounted for	₱ 230,574.03
Total amount of Credit Memos	231,645.48
Difference	₱ (1,071.45)

Thus, the assessment pertaining to the discrepancy in petitioner's sales should remain.

b. Discrepancy on purchases—₱203,547.27

The discrepancy on purchases arose from the following:⁷³

Sales per Philusa Corp. (SLS of Philusa)	₱ 756,640.67
Purchases from Philusa Corp. (SLP of Telstar)	712,103.95
Discrepancy	₱ 44,536.72
Add: BIR's CAATS master file SAWT vs Telstar 1604E	101,854.48
Total	₱ 146,391.20
Divided by COGS Rate	71.92%
	₱ 203,547.27

Petitioner attributes the discrepancy to timing difference on the recognition of purchase and sale. Further, petitioner avers that respondent failed to show the details of the alleged undeclared purchases so that petitioner can refute the findings.⁷⁴

Respondent counters that the alleged timing difference as explanation for the undeclared purchases is insufficient. It has long been held that mere allegations on the part of taxpayer is not a proof. Thus, absent substantiation by petitioner, such assessment in the amounts of ₱44,536.72 and ₱101,854.48 must stand.⁷⁵ *℞*

⁷³ Exhibit "P-3-a", Docket Vol. I, pp. 31-32.
⁷⁴ Memorandum for the Petitioner, Docket Vol. VI, pp. 2158-2159.
⁷⁵ Answer, Docket Vol. I, pp. 206-207.

By dividing the total undeclared purchases by the cost of sales rate, respondent is essentially assessing petitioner of undeclared sales from the undeclared purchases.

The undersigned finds this assessment bereft of factual basis. Aside from respondent's failure to provide the details of the alleged undeclared purchases, it appears that respondent merely relied on the assumption that the discrepancy on purchases automatically resulted to undeclared sales without obtaining any factual basis corroborating such findings. The possibility that the same purchases may have formed part of petitioner's ending inventory was not considered.

The Supreme Court has ruled that for income tax to be imposed, the following elements must be present:⁷⁶

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.

Presumption of the foregoing is contrary to the doctrine laid down in the case of *Collector of Internal Revenue vs. Benipayo*⁷⁷, wherein it was held that:

"xxx An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, **assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be** xxx.

In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption xxx" (*Emphasis supplied.*)

Thus, the deficiency income tax assessment arising from the discrepancy on purchases should be cancelled. 

⁷⁶ *CIR vs. CA, CTA and A. Soriano Corporation*, G.R. No. 108576, January 20, 1999.

⁷⁷ G.R. No. L-13656, January 31, 1962.

c. Overclaimed/Underdeclared expenses—P26,082,570.24

Another item in respondent’s deficiency income tax assessment is petitioner’s alleged overclaimed/underdeclared expenses, itemized as follows:

1. Overclaimed salaries	₱ 9,266,864.88
2. Disallowed salaries	101,124.61
3. Overclaimed cost of direct labor	7,118,152.38
4. Overclaimed cost of factory overhead	9,596,428.37
Total	₱ 26,082,570.24

1. Overclaimed salaries—P9,266,864.88

Respondent’s examiner computed the foregoing overclaimed salaries thus:

Income payment to Mercury Group - Vivian Azcona	₱ 7,020,352.18
Tax withheld (32%)	2,246,512.70
Total	₱9,266,864.88

Petitioner counters that respondent’s examiner erred in concluding that the salaries paid was P9,266,864.88. Petitioner’s Finance Manager Ms. Regina D. Velasquez stated that the correct amount paid to Mercury Group was P7,020,352.18 and the tax paid thereon was P2,246,512.70. The net amount received by the payee was P4,773,839.48. This allegedly represented salaries paid to Mercury Group of Companies in 2009 which were subjected to withholding tax on compensation.⁷⁸

Examination of petitioner’s Alphalist of Employees as of December 31, 2009⁷⁹ shows the following:⁸⁰

SEQ NO.	TAX IDENTIFICATION NUMBER	NAME OF EMPLOYEES	NET TAXABLE COMPENSATION INCOME	TAX DUE	TAX WITHHELD
64	000-389-266-0000	MERCURY GROUP OF COMPANIES INC.	7,020,352.18	2,246,512.70	2,246,512.70

⁷⁸ Exhibit "P-71", Q&A Nos. 64 to 67, Docket Vol. I, pp. 248-264.

⁷⁹ Exhibit "[P-]47-a".

⁸⁰ Exhibit "P-47-a-1".

The ICPA reported that the payment was actually made to Vivian Azcona as evidenced by the check voucher which reveals the following:⁸¹

PAY TO <u>Cash (Vivian Que-Azcona)</u>		<u>May 06, 2009</u>
TRANSACTION		AMOUNT
Y2008 Profit Sharing		P 4,773,839.48
ACCOUNT CHARGED		AMOUNT
Accrued exp	P 7,020,352.18	P 4,773,839.48
W/tax payable	(2,246,512.70)	
TOTAL		P 4,773,839.48

The undersigned is not convinced. Based on the foregoing, it is improbable that Mercury Group of Companies Inc. (Mercury) is petitioner’s employee. Further, payments to Mercury cannot be classified as salaries. Furthermore, the check voucher showed that the subject payment is for “Cash (Vivian Que-Azcona)” for the year 2008 profit sharing and tax was withheld therefrom at the rate of 32%. Finally, the corresponding check in the amount of ₱4,773,839.48 was issued to “Cash”, NOT to Vivian Que-Azcona.⁸²

For petitioner’s failure to explain the actual nature and recipient of the subject payment, petitioner failed to overturn respondent’s assessment. The Court is constrained to maintain the disallowance of salaries expense but in the adjusted amount of ₱7,020,352.18.

2. *Disallowed salaries—₱101,124.61*

Respondent’s examiner computed the disallowed salaries by comparing the total reported salaries per financial statements/income tax return (ITR) with the alphalist of employees, thus:

Salaries per FS/ITR:		
COGS	₱ 16,250,157.00	
Operating expenses	43,741,225.00	₱ 59,991,382.00

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⁸¹ Exhibit “P-12-A-ICPA”.
⁸² Exhibit “P-12-B-ICPA”.

Salaries per Alphalist:		
Taxable	₱ 54,640,250.85	
Non-taxable	5,452,255.76	60,092,506.61
Difference		₱ (101,124.61)

Petitioner alleged that the discrepancy represents *de minimis* benefits of employees and are not subject to income and withholding tax.⁸³

However, the undersigned found that the amounts in respondent's computation consist of the following:

Per FS/ITR: ⁸⁴	Cost of Goods Sold	Operating Expenses	Total
Salaries & allowances	₱ 14,193,382.00	₱ 39,187,049.00	₱ 53,380,431.00
Pension trust fund contributions	1,342,186.00	3,293,866.00	4,636,052.00
Employees' welfare	714,589.00	1,260,310.00	1,974,899.00
TOTAL	₱16,250,157.00	₱43,741,225.00	₱59,991,382.00
Per Alphalist: ⁸⁵	Taxable	Non-taxable	Total
Gross compensation income	₱ 54,640,250.85	₱ 5,452,255.76	₱60,092,506.61
Difference			₱ 101,124.61

It is noted that the FS/ITR amounts used in the computation do not include petitioner's payments for its employees' SSS, Medicare, HDMF and other contributions, which amount to ₱979,186.00 (₱456,733.00 in cost of goods sold plus ₱522,453.00 in operating expenses). On the other hand, the amounts taken from the alphalist of employees are total gross taxable and non-taxable compensation income, which already include the *de minimis* benefits and SSS, Medicare, HDMF and other contributions. Moreover, pension trust fund contributions are not reflected in the alphalist because they are not subject to withholding tax on compensation.

Recomputation of the foregoing results in a discrepancy of ₱3,757,990.61, as shown below: *je*

⁸³ Memorandum for the Petitioner, Paragraph 69, Docket Vol. VI, p. 2163.

⁸⁴ Exhibit "P-31".

⁸⁵ Exhibit "P-47-a".

Per FS/ITR: ⁸⁶	Cost of Goods Sold	Operating Expenses	Total
Salaries & allowances	₱ 14,193,382.00	₱ 39,187,049.00	₱ 53,380,431.00
Employees' welfare	714,589.00	1,260,310.00	1,974,899.00
SSS, Medicare, HDMF and other contributions	456,733.00	522,453.00	979,186.00
TOTAL	₱15,364,704.00	₱40,969,812.00	₱56,334,516.00
Per Alphalist: ⁸⁷	Taxable	Non-taxable	Total
Gross compensation income	₱ 54,640,250.85	₱ 5,452,255.76	₱60,092,506.61
Difference	₱ 3,757,990.61		

However, respondent's allegation that petitioner had undeclared income arising from the alleged unreported income payments is without factual basis. By comparing petitioner's income payments to its employees per alphalist with those allegedly shown in petitioner's FS/ITR, respondent concluded that the difference pertains to petitioner's undeclared income. Again, assessments must be based on facts, not on assumptions.

Even if these alleged unaccounted income payments are to be treated as income, the same shall be offset by reporting the equivalent payments as expenses. Hence, no taxable income will result from the said transactions.

For lack of factual basis, the deficiency income tax assessment pertaining to the alleged undeclared income from alleged unaccounted income payments of ₱101,124.61 should be cancelled.

- 3. *Overclaimed cost of direct labor—₱7,118,152.38 and*
- 4. *Overclaimed cost of factory overhead—₱9,596,428.37*

Respondent found alleged overclaimed costs of direct labor and factory overhead in the amounts of ₱7,118,152.38 and ₱9,596,428.37, respectively, computed as follows:

Direct labor:	
Per FS (under COGS)	₱ 41,240,854.00
Per cost of production report	34,122,701.62
Difference	₱ 7,118,152.38 <i>je</i>

⁸⁶ Exhibit "P-31".
⁸⁷ Exhibit "P-47-a".

Factory Overhead:	
Per FS (under COGS)	₱ 70,901,614.00
Per Cost of Production Report	61,305,185.63
Difference	₱ 9,596,428.37

Examination of the subject documents shows the following:

STANDARD PRODUCTION COST REPORT			
Exhibit	Month	Labor	Overhead
P-29	January	₱ 2,768,296.89	₱ 4,945,610.59
P-29-a	February	3,087,900.18	5,216,399.85
P-29-b	March	3,074,849.91	5,389,214.95
P-29-c	April	2,701,938.91	4,911,995.41
P-29-d	May	2,855,388.56	5,022,889.84
P-29-e	June	2,519,628.15	4,421,198.40
P-29-f	July	3,409,335.11	6,670,832.75
P-29-g	August	2,928,374.95	5,514,515.93
P-29-h	September	3,034,978.72	5,599,021.49
P-29-i	October	3,071,775.82	5,646,753.18
P-29-j	November	3,083,117.12	5,406,265.41
P-29-k	December	1,576,839.69	2,553,470.71
TOTAL		₱ 34,112,424.01	₱ 61,298,168.51
FS - COST OF GOODS SOLD			
Exhibits P-31-a & P-31-b		₱ 41,240,854.00	₱ 70,901,611.00
Difference		₱ 7,128,429.99	₱ 9,603,442.49

The ICPA noted that respondent erred in using the amounts from the Standard Production Cost Report “wherein components of production cost, such as Direct Labor and Factory Overhead, were derived by means of estimate, using standard and predetermined direct labor and overhead rates. xxx As a matter of industry practice, the rates used for production cost have been determined by the Manufacturing Department based on its extensive production run experience. xxx As these are in the nature of cost estimates, the amounts of production cost indicated therein should not be considered as the actual cost of the Company.”⁸⁸

Further, when petitioner protested on the assessment of undeclared raw and packaging materials used, respondent admitted as to the purpose of the standard production cost report thus:⁸⁹ *fe*

⁸⁸ Exhibit “P-75” p. 9, Docket Vol. II, p. 433.
⁸⁹ Exhibit “P-3-a”, Docket Vol. I, p. 32.

Verification of the actual cost of production recorded in the books and declared per FS/ITR showed that the actual cost claimed as deduction is lower than the **standard cost of production report, which is based o[n] standard costing and is only being used by the taxpayer internally to evaluate performance of its subdivisions.** xxx (Emphasis supplied)

Respondent then reasoned that the ‘lower deduction [for raw and packaging materials used] is beneficial to the government for income tax purpose’, hence, the discrepancy in raw and packaging materials used found by respondent’s examiner is cancelled.⁹⁰

The undersigned finds respondent’s position untenable. The discrepancies in direct labor and factory overhead, being based on the same documents, should be cancelled as well. Petitioner’s actual costs are reported in its audited financial statements and ITR, and respondent’s assessment for deficiency income tax arising from the lower standard costs has no basis.

d. Disallowed expenses for non-withholding—P2,326,691.88 and Deficiency Expanded Withholding Tax

Per FLD, respondent disallowed petitioner’s expenses amounting to P42,886,053.63 due to non-withholding of taxes.⁹¹

	Per AFS	Per 1604E	Discrepancy
Payments to supplier of goods	P 342,044,372.48	P 335,652,091.15	P 6,392,281.33
Service contractors	87,529,504.63	57,536,201.23	29,993,303.40
Professional fees	13,041,969.00	6,541,500.10	6,500,468.90
Total	P442,615,846.11	P399,729,792.48	P42,886,053.63

In its protest, petitioner reconciled for P40,559,361.75, leaving P2,326,491.88 unaccounted.⁹²

Exhibit		Discrepancy	Reconciliation	Not Subj. to WT
P-61	Payments to supplier of goods	P 6,392,281.33	P 5,005,472.43	P 1,386,808.90
P-62	Service contractors	29,993,303.40*	29,054,160.87	939,142.53**
P-64	Professional fees	6,500,468.90	6,499,928.45	540.45

⁹⁰ Exhibit “P-3-a”, Docket Vol. I, p. 32.

⁹¹ Exhibit “P-8”, Docket Vol. I, p. 309.

⁹² Exhibit “P-3-a”, Docket Vol. I, p. 35. Details of Discrepancy attached to the FDDA shows the amount P2,326,691.88, but should be P2,326,491.88 (P42,886,053.63 less P40,559,561.75).

	Total	₱ 42,886,053.63	₱ 40,559,361.75	₱ 2,326,491.88
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- * Details of Discrepancy attached to the FDDA shows the amount ₱29,993,503.40, but should be ₱29,993,303.40 (₱87,529,504.63 less ₱57,536,201.23).
- ** Details of Discrepancy attached to the FDDA shows the amount ₱939,342.53, but should be ₱939,142.53 (₱29,993,303.40 less ₱29,054,160.87).

From these disallowed expenses, respondent assessed petitioner of deficiency expanded withholding taxes of ₱78,800.27, inclusive of increments, computed as follows:

EWT Due on FS Analysis		₱ 32,736.01
Add: Under remittance - Difference between 1601E and 1604E		3,000.00
Basic EWT deficiency per audit		₱ 35,736.01
Add: Increments		
Interest from 1.16.2010 to 5.31.2014	₱ 31,271.45	
Interest on late remittance	3,292.81	
Compromise penalty	8,500.00	43,064.26
Total		₱ 78,800.27

Petitioner avers that the disallowed expenses are payments which are not subject to expanded withholding tax such as bank charges, interests, arrastre and brokerage, importation, direct labor, and payment to general professional partnerships and should be allowed as deductions from gross income.⁹³

However, the ICPA reports that the remaining discrepancy of ₱2,326,491.88 should be subjected to expanded withholding tax.⁹⁴ Seeing that petitioner did not submit supporting documents other than the reconciliation, which was already taken into consideration by respondent, the undersigned finds the same to be in order.

Petitioner should be held liable to pay deficiency expanded withholding tax in the amount of ₱32,732.01, computed as follows:

	Income Payments	Tax Rate	EWT
Payments to supplier of goods	₱ 1,386,808.90	1%	₱ 13,868.09
Service contractors	939,142.53	2%	18,782.85
Professional fees	540.45	15%	81.07
Total	₱2,326,491.88		₱32,732.01

⁹³ Exhibit "P-71", Paragraphs 61 to 63, Docket Vol. I, pp. 259-260. See also Memorandum for the Petitioner, Paragraph 74, Docket Vol. VI, p. 2172.

⁹⁴ Exhibit "P-75", p.11, Docket Vol. II, p. 435.

Notwithstanding the assessment of deficiency EWT, petitioner cannot claim the subject expenses as deduction from its gross income pursuant to Section 2.58.5 of Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 12-2013, which provides:

"Sec. 2.58.5. Requirements for Deductibility.—Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.

No deduction will also be allowed notwithstanding payments of withholding tax at the time of the audit investigation or reinvestigation/reconsideration in cases where no withholding of tax was made in accordance with Secs. 57 and 58 of the Code." *(Emphasis supplied)*

Further, respondent found an alleged under remittance of ₱3,000.00 when petitioner's Monthly Remittance Returns (BIR Forms No. 1601-E) and Annual Information Return (BIR Form No. 1604-E) of creditable income taxes withheld (creditable) for the year 2009 were compared.⁹⁵

Scrutiny of petitioner's remittance returns showed no discrepancy, thus:

Exhibit	Month	Total EWT Remitted
P-2-A-ICPA	January 2009	₱ 722,475.80
P-2-B-ICPA	February 2009	573,141.62
P-2-C-ICPA	March 2009	750,262.36
P-2-D-ICPA	April 2009	753,987.66
P-2-E-ICPA	May 2009	770,602.69
P-2-F-ICPA	June 2009	661,714.75
P-2-G-ICPA	July 2009	663,808.35
P-2-H-ICPA	August 2009	737,823.31
P-2-I-ICPA	September 2009	622,045.05
P-2-J-ICPA	October 2009	681,793.41
P-2-K-ICPA	November 2009	748,823.11
P-2-L-ICPA	December 2009	676,351.06
	Total Per 1601-E	₱ 8,362,829.17
P-3-A-ICPA to P-3-H-ICPA	Per 1604-E	₱ 8,362,829.17
	Difference	₱ -

Je

⁹⁵ Exhibits "P-3" and "P-3-a", Docket Vol. I, pp. 30 and 37.

With regard to the late remittance of ₱3,292.81, petitioner argues that remittances for the prior year's withholding taxes are not covered by the Letter of Authority⁹⁶ pertaining to this instant case, which covers only the taxable period 2009.⁹⁷

The undersigned agrees with petitioner. The assessment of interest for late remittance of prior year's withholding taxes should be cancelled for lack of merit.

Hence, petitioner's basic deficiency EWT liability amounts to ₱32,732.01 as computed previously.

e. Disallowed creditable withholding taxes—₱19,068.39

Respondent deducted ₱19,068.39 from petitioner's available creditable withholding taxes (CWT) for the following reasons:⁹⁸

Disallowed CWT - from 2008 sales	₱ 17,777.14
Overclaimed CWT	1,291.25
Total	₱ 19,068.39

The overclaimed CWT of ₱1,291.25 is broken down as follows:⁹⁹

Payor	Per SAWT	Per BIR TRS* Data	Difference
Frivys Recycling, Inc.	₱ 106.25	₱ -	₱ 106.25
SC Johnson & Sons Inc.	31,743.54	30,558.54	1,185.00
TOTAL	₱ 31,849.79	₱ 30,558.54	₱ 1,291.25

* Tax Reconciliation System (TRS)

The Court-commissioned ICPA found that the CWT pertaining to the taxable year 2008 amounting to ₱17,777.14 should be disallowed.¹⁰⁰ The Court is constrained to uphold the same as petitioner did not submit any supporting documents to refute respondent's disallowance. *fr*

⁹⁶ Exhibit "P-4", Docket Vol. I, p.296.

⁹⁷ Memorandum for the Petitioner, Paragraph 88, Docket Vol. VI, p. 2178.

⁹⁸ Exhibit "P-3", Docket Vol. I, pp. 29-30.

⁹⁹ Exhibit "P-3-a", Docket Vol. I, p. 35.

¹⁰⁰ Exhibit "P-75" p. 13, Docket Vol. II, pp. 437-438.

Regarding the overclaimed CWT, scrutiny of the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) submitted to the Court reveals that creditable taxes withheld by Frivys Recycling, Inc. in the amount of ₱106.25 is properly supported.¹⁰¹ Further, creditable taxes withheld by SC Johnson & Sons, Inc. amount to ₱32,744.54 per certificates of withholding submitted by petitioner, detailed thus:

Exhibit	Period	Payor	Income Payment	CWT
P-18-A-ICPA	Jan-Apr 2009	S.C. Johnson & Sons, Inc.	₱ 232,632.59	₱ 4,242.76
P-18-B-ICPA	Apr-Jun 2009	S.C. Johnson & Sons, Inc.	534,007.82	10,313.72
P-18-C-ICPA	Jul- Oct 2009	S.C. Johnson & Sons, Inc.	793,044.48	16,676.30
P-18-D-ICPA	Oct-Dec 2009	S.C. Johnson & Sons, Inc.	97,006.17	1,511.76
		TOTAL		₱32,744.54
		Per BIR TRS		30,558.54
		Difference		₱ 2,186.00

The difference of ₱2,186.00 cannot be construed as overclaimed CWT since, as clearly shown above, the whole amount of ₱32,744.54 is properly supported by certificates of withholding (BIR Form No. 2307).

In fine, petitioner’s deficiency income tax liability amounts to ₱2,891,062.57, computed as follows:

Taxable Income per ITR		₱ 84,383,759.00
Add (Deduct): Audit adjustments per Investigation		
Discrepancy on Sales	₱ 230,574.03	
Overclaimed/underdeclared expenses	7,020,352.18	
Disallowed expenses for non-withholding	2,326,691.88	
Total adjustments per audit		9,577,618.09
Taxable income per audit		₱ 93,961,377.09
Income tax due thereon		₱ 28,188,413.13
Less: Creditable Withholding Tax/Tax paid per audit		
Tax Paid	₱17,722,778.85	
Add: Creditable Tax	7,592,348.85	
Total creditable tax	₱25,315,127.70	
Less: Adjustments per audit in creditable withholding tax		
Disallowed CWT - from 2008 sales	17,777.14	25,297,350.56
Basic income tax deficiency		₱2,891,062.57

¹⁰¹ Exhibit “P-18-E-ICPA”.

Deficiency Value-Added Tax

Respondent assessed petitioner of deficiency value-added tax in the amount of ₱606,863.14, thus:¹⁰²

Net sales per VAT returns		₱733,791,481.66
Add (Deduct): Audit adjustments per investigation		
Discrepancy on sales	₱ 230,574.03	
Discrepancy on purchases	203,547.27	
Overclaimed/Underdeclared expenses	26,082,570.24	
Proceeds from sale of property per cash flow	5,610.71	26,522,302.25
Taxable sales per audit		₱760,313,783.91
Tax rate		12%
Output tax per audit		₱ 91,237,654.07
Less: Creditable input tax		
Carried from previous period	₱ 3,465,303.49	
Add (Deduct): Audit adjustments per investigation		
Input tax on purchases	₱58,920,863.99	
Overclaimed IT per FS/ITR vs VAT	-	
Disallowed IT on unsupported expenses	2,918,401.80	
Not in accordance with invoicing req.	-	
Carried over to succeeding period	(1,316,192.04)	60,523,073.75
Total allowable input tax		₱ 63,988,377.24
VAT Payable		₱ 27,249,276.83
Less: VAT paid per returns		26,642,413.69
VAT deficiency		₱ 606,863.14

Respondent's audit adjustments in the computation of petitioner's deficiency VAT includes disallowed input taxes amounting to ₱2,918,401.80. However, a closer look at the computation shows that instead of deducting the disallowed input taxes, the same was added to the input taxes on purchases incurred during the taxable year. Moreover, the amount of input taxes incurred by petitioner for the year 2009 per quarterly VAT returns amount to ₱65,038,027.67, not ₱58,920,863.99¹⁰³ as indicated by respondent in the assessment:

Exhibit	Period	Goods	Importation	Services	Total
P-6-E-ICPA	1 st Qtr	₱ 13,173,752.09	₱ 2,643,265.00	₱ 1,784,928.47	₱ 17,601,945.56
P-6-K-ICPA	2 nd Qtr	11,866,598.71	2,947,115.00	1,474,362.12	16,288,075.83
P-6-Q-ICPA	3 rd Qtr	12,256,514.32	2,503,407.00	1,375,454.97	16,135,376.29
P-6-Y-ICPA	4 th Qtr	10,983,480.87	2,546,731.00	1,482,418.12	15,012,629.99
	TOTAL	₱48,280,345.99	₱10,640,518.00	₱6,117,163.68	₱65,038,027.67

¹⁰² Exhibit "P-3", Docket Vol. I, p. 29.

¹⁰³ BIR Records, p. 520.

The foregoing includes input taxes from the purchase of capital goods exceeding ₱1million in the amount of ₱205,928.57,¹⁰⁴ which has to be amortized over the life of the depreciable asset.

Furthermore, petitioner’s VAT payments for the taxable year 2009 amount to ₱20,317,116.70, as detailed below, not ₱26,642,413.69 as computed by respondent’s examiner¹⁰⁵:

Exhibit	Quarter	Monthly VAT Payments	Quarterly VAT Payments	Total
P-6-E-ICPA	1 st	₱ 1,044,342.06	₱ 2,171,145.93	₱ 3,215,487.99
P-6-K-ICPA	2 nd	3,480,161.79	2,160,599.57	5,640,761.36
P-6-Q-ICPA	3 rd	6,012,868.68	1,543,371.91	7,556,240.59
P-6-Y-ICPA	4 th	3,904,626.76	-	3,904,626.76
	TOTAL	₱14,441,999.29	₱ 5,875,117.41	₱20,317,116.70

Another adjustment made by respondent in petitioner’s VAT assessment is the deduction of the input taxes carried over to the succeeding period in the amount of ₱1,316,192.04. The undersigned found that the amount ₱1,316,192.04 comprise of the following:¹⁰⁶

Input tax on purchase of capital goods exceeding P1Million deferred for the succeeding period	₱ 973,603.37
Total overpayment (Excess input taxes)	342,588.67
TOTAL	₱ 1,316,192.04

Respondent’s FLD or FDDA does not provide for an explanation why the excess input taxes amounting to ₱342,588.67 are deducted from the available input taxes for the taxable year 2009. If the purpose is to re-capture the benefit of the input taxes which redounded to the succeeding period, the same is not within the scope of the letter of authority and should be excluded.

It is noteworthy that the amount of ₱3,465,303.49 indicated in respondent’s VAT assessment as input taxes carried from previous period includes the following:¹⁰⁷ 

¹⁰⁴ Exhibit “P-6-G-ICPA”.
¹⁰⁵ BIR Records, p. 519.
¹⁰⁶ Exhibit “P-6-Y-ICPA”.
¹⁰⁷ Exhibit “P-6-A-ICPA”.

Input tax carried over from previous period	₱ 2,296,201.70
Input tax deferred on capital goods exceeding P1Million deferred from previous period	1,169,101.79
TOTAL	₱ 3,465,303.49

Inasmuch as the input tax on capital goods exceeding P1Million carried over from the previous period and the total input taxes incurred for the taxable year 2009 is considered, the deduction of the deferred input tax on purchase of capital goods exceeding P1Million in the amount of ₱973,603.37 at the end of the quarter is correct in order to get the amortized input taxes on capital goods exceeding P1Million for the subject taxable period.

To proceed, the propriety of respondent's audit findings will be discussed.

As found previously, petitioner failed to account for the discrepancy on sales in the amount of ₱230,574.03 found by respondent; hence, the income tax assessment is upheld. The same discrepancy should likewise be subject to VAT. However, discrepancies in purchases and expenses amounting to ₱203,547.27 and ₱26,082,570.24, respectively, cannot be subjected to VAT as the imposition thereof has no basis and there was no proof that there were sales or receipts coming from the said purchases and expenses.

With regard to the proceeds from sale of property in the amount of ₱5,610.71, the ICPA reports that it must be subjected to VAT.¹⁰⁸ Absent any evidence submitted by petitioner to the contrary, the undersigned finds the same to be in order.

The disallowed input taxes of ₱2,918,401.80 are computed as follows:¹⁰⁹

Payments to Suppliers of Local Goods	₱ 6,392,281.33
Payments to Service Contractors	29,993,303.40
Payments of Professional Fees	6,500,468.90
Total Discrepancy per FLD	₱ 42,886,053.63
Less: Reimbursable Expense from Contractors	18,566,038.67
Balance to be retained in assessment	₱ 24,320,014.96
Multiply by VAT rate	12%

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¹⁰⁸ Exhibit "P-75", p. 14, Docket Vol. II, p. 438.

¹⁰⁹ Exhibit "P-3-a", Docket Vol. I, p. 37.

Disallowed input tax	₱ 2,918,401.80
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It should be noted that the discrepancy of ₱42,886,053.63 is the same amount found by respondent in the deficiency income tax assessment as disallowed expenses due to non-withholding per Formal Letter of Demand (FLD).¹¹⁰ When respondent issued the FDDA, ₱40,559,361.75 of the discrepancy previously found is reconsidered for income tax purposes, leaving ₱2,326,491.88 unaccounted.¹¹¹

However, for VAT purposes, the discrepancy of ₱42,886,053.63 is deemed to be unsupported expenses and the corresponding input taxes of ₱5,146,326.44 are disallowed per FLD.¹¹² In the FDDA, only ₱18,566,038.67 of the discrepancy is accounted for as reimbursable expense from contractors.¹¹³

To prove that the purchases declared and the input taxes claimed in its VAT returns are properly supported, petitioner submitted various sales invoices and official receipts to the Court. Upon verification of petitioner’s voluminous documents, the ICPA finds that of the total input taxes examined in the amount of ₱65,038,027.78, only ₱20,855.82 are without proper supporting documents, thus:¹¹⁴

Particulars	Amount
With proper supporting documents	₱ 54,376,653.96
Input VAT from importation	10,640,518.00
Without proper supporting documents	20,855.82
TOTAL	₱65,038,027.78

However, further examination by the Court reveals that no supporting documents are submitted by petitioner for the input taxes from importation amounting to ₱10,640,518.00. In his testimony, the ICPA stated thus:¹¹⁵

23. Q: I noticed that your basis for allowing input VAT on importation in the amount of PhP10,640,518.00 is the VAT 

¹¹⁰ Exhibits “P-8” and “P-8-a”, Docket Vol. I, pp. 309-312 & 313-320.
¹¹¹ See Note 28.
¹¹² See Note 43.
¹¹³ See Note 42.
¹¹⁴ Exhibit “P-75”, p. 12, Docket Vol. II, p. 436.
¹¹⁵ Exhibit “P-76”, p.12, Docket Vol. II, p. 687.

Returns of the company for the year 2009. Why did you not examine the source documents particularly the Import Entry Declaration?

A: We no longer examined the Import Entry Declaration because the BIR itself admitted that the input tax on the importation of Php10,640,518.00 was not included by BIR as part of the disallowed input VAT.

The undersigned disagrees with the ICPA. As there is a presumption of regularity of the assessment, it is imperative that petitioner submit documentary evidence to refute the findings.¹¹⁶ Since respondent alleges that petitioner’s purchases are unsupported, the latter has the burden to overturn said allegation by substantiating all of its purchases for the subject taxable period. For petitioner’s failure to do the same should be disallowed.

Furthermore, after a cursory examination, the undersigned found that of the input taxes with proper supporting documents as found by the ICPA in the amount of ₱54,376,653.96, ₱627,816.97 should be disallowed for the following reasons:

Particulars	Amount
Supported by Statement of Charges	₱ 8,598.21
Supported by invoices/ORs dated outside the period	534,025.25
Supported by undated invoices/ORs	83,594.55
Supported by an OR issued not in the name of petitioner	1,598.96
TOTAL	₱ 627,816.97

The breakdown of the disallowances found by the Court is shown hereafter:

Exhibit	SI/OR No.	Date	Supplier	Input Tax
1. Supported by Statement of Charges				
P-14.58-Z-ICPA	5840	11/9/2009	Skyland Brokerage, Inc.	₱ 2,466.70
P-14.58-AA-ICPA	5805	11/3/2009	Skyland Brokerage, Inc.	1,357.64
P-14.58-AB-ICPA	5804	11/3/2009	Skyland Brokerage, Inc.	1,361.97
P-14.58-AC-ICPA	5819	11/4/2009	Skyland Brokerage, Inc.	3,411.90
			Subtotal	₱ 8,598.21
2. Supported by invoices/ORs dated outside the period				
P-14.6-M-ICPA	77152	1/7/2010	Manila Electric Company	₱ 127,238.92
P-14.10-Y-ICPA	852	1/15/2010	Remed Services, Inc.	48,274.54
P-14.14-X-ICPA	775	1/16/2008	Southern Star Manpower & General Services,	28,439.97

¹¹⁶ *Marcos II vs. Court of Appeals, et. al.*, G.R. No. 120880, June 5, 1997.

			Inc.	
P-14.14-Y-ICPA	1179	1/8/2010	Southern Star Manpower & General Services, Inc.	36,463.28
P-14.22-A-ICPA	6023	2/5/2010	Exce Ads Graphics & Printing	45,369.48
P-14.22-C-ICPA	5994	3/5/2010	Exce Ads Graphics & Printing	25,138.27
P-14.22-T-ICPA	5846	1/8/2010	Exce Ads Graphics & Printing	35,133.83
P-14.22-U-ICPA	5847	1/8/2010	Exce Ads Graphics & Printing	26.79
P-14.22-V-ICPA	6385	8/11/2010	Exce Ads Graphics & Printing	1,928.56
P-14.26-HD-ICPA	5148	4/20/2010	Multi-seal Ind. Corp.	1,475.86
P-14.26-HH-ICPA	5147	4/20/2010	Multi-seal Ind. Corp.	404.06
P-14.39-F-ICPA	26302	9/15/2008	Federal Phoenix	1,116.01
P-14.39-G-ICPA	26776	12/27/2008	Federal Phoenix	7,705.00
P-14.47-A-ICPA	9000294223 19	8/12/2008	Philusa Corporation	1,472.94
P-14.47-B-ICPA	9000336129 19	11/17/2008	Philusa Corporation	1,442.88
P-14.50-A-ICPA	4605	12/9/2008	CRB Machine Works	410.40
P-14.50-G-ICPA	3001	1/8/2010	CRB Machine Works	2,784.00
P-14.51-AK-ICPA	1591	12/12/2008	Empowerment Trading	1,928.57
P-14.51-AL-ICPA	1595	12/23/2008	Empowerment Trading	4,067.14
P-14.57-F-ICPA	7017	1/8/2010	Skills & Talent Employment Pool, Inc.	11,303.16
P-14.57-G-ICPA	7016	1/8/2010	Skills & Talent Employment Pool, Inc.	13,748.22
P-14.74-B-ICPA	57411	12/27/2008	Cesar Enterprises	312.32
P-14.74-C-ICPA	57372	12/20/2008	Cesar Enterprises	913.71
P-14.74-I-ICPA	57361	12/18/2008	Cesar Enterprises	244.29
P-14.74-J-ICPA	57362	12/18/2008	Cesar Enterprises	1,412.14
P-14.74-K-ICPA	57405	12/22/2008	Cesar Enterprises	1,549.93
P-14.74-L-ICPA	57406	12/22/2008	Cesar Enterprises	231.43
P-14.74-M-ICPA	57407	12/23/2008	Cesar Enterprises	1,578.00
P-14.74-N-ICPA	57408	12/23/2008	Cesar Enterprises	632.14
P-14.74-O-ICPA	57409	12/27/2008	Cesar Enterprises	1,308.11
P-14.74-P-ICPA	57410	12/27/2008	Cesar Enterprises	125.89
P-14.74-Q-ICPA	57412	12/27/2008	Cesar Enterprises	46.61
P-14.74-R-ICPA	57414	12/29/2008	Cesar Enterprises	718.39
P-14.95-N-ICPA	7560	1/8/2010	Security & Credit Investigation, Inc.	1,278.26
P-14.106-L-ICPA	8724	1/22/2010	Allied Tire Center Corporation	219.64
P-14.106-M-ICPA	8723	1/22/2010	Allied Tire Center Corporation	630.00
P-14.103-M-ICPA	97217	1/8/2010	City Service Corporation	10,227.66
P-14.107-D-ICPA	806625	12/1/2008	Atlas Copco Philippines Inc.	102,000.00
P-14.112-L-ICPA	10295	1/8/2010	AC Lazaga Multi Services	1,372.66
P-14.114-WX-ICPA	317	12/22/2008	Specs Inc.	13,352.19
			Subtotal	P534,025.25
3. Supported by undated invoices/Ors				
P-14.14-B-ICPA	808	-	Southern Star Manpower & General Services, Inc.	P 20,086.06
P-14.14-G-ICPA	873	-	Southern Star Manpower & General Services, Inc.	63,508.49
			Subtotal	P 83,594.55
4. Supported by an OR issued not in the name of petitioner				
P-14.57-A-ICPA	6733	10/30/2009	Skills & Talent Employment Pool, Inc.	P 1,598.96

			Subtotal	₱ 1,598.96
TOTAL				₱627,816.97

The foregoing failed to comply with the invoicing requirements as provided in Sections 110(A) and 113 of the NIRC of 1997, as amended, thus cannot be considered as proper supporting documents for petitioner's input taxes. For easy reference, the foregoing provisions are quoted hereafter:

SEC. 110. *Tax Credits.*—

(A) Creditable Input Tax.—

Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

xxx xxx xxx

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —

(A) Invoicing Requirements. — **A VAT-registered person shall issue:**

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information Contained in the VAT Invoice or VAT Official Receipt.—**The following information shall be indicated in the VAT invoice or VAT official receipt:**

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and 

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client. *(Emphasis supplied)*

Thus, petitioner’s deficiency VAT liability amount to **₱11,525,666.27**, computed as follows:

Net sales per VAT returns		₱ 733,791,481.66
Add (Deduct): Audit adjustments per investigation		
Discrepancy on sales	₱ 230,574.03	
Proceeds from sale of property per cash flow	5,610.71	236,184.74
Taxable sales per audit		₱ 734,027,666.40
Tax rate		12%
Output tax per audit		₱ 88,083,319.97
Less: Creditable input tax		
Carried from previous period, including input taxes on capital goods exceeding P1Million	₱ 3,465,303.49	
Input tax on purchases	65,038,027.67	
Total	68,503,331.16	
Less: Audit adjustments per investigation		
Disallowed IT on unsupported expenses:		
a) Per ICPA findings	₱ (20,855.82)	
b) Per Court’s findings:		
1) Unsupported input taxes on importation	(10,640,518.00)	
2) Input taxes not properly substantiated	(627,816.97)	(11,289,190.79)
Total available input taxes		₱57,214,140.37
Less: Input taxes on capital goods exceeding P1Million deferred to succeeding period		(973,603.37)
Total allowable input tax		56,240,537.00
VAT Payable		₱ 31,842,782.97
Less: VAT paid per returns		20,317,116.70
Basic VAT deficiency		₱11,525,666.27

To recapitulate, petitioner’s total basic deficiency tax liability amount to **₱14,449,460.85**, broken down as follows:

Tax Type	Basic Deficiency
Income tax	₱ 2,891,062.57
Value-added tax	11,525,666.27
WT-Expanded	32,732.01
TOTAL	₱ 14,449,460.85



WHEREFORE, the present Petition for Review is **DENIED**. Petitioner is **ORDERED** to pay basic deficiency income tax, value-added tax and expanded withholding tax for the year 2009 in the aggregate amount of ₱18,061,826.06, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, detailed as follows:

Tax Type	Basic Deficiency	Surcharge	Total
Income tax	₱ 2,891,062.57	₱ 722,765.64	₱ 3,613,828.21
Value-added tax	11,525,666.27	2,881,416.57	14,407,082.84
WT-Expanded	32,732.01	8,183.00	40,915.01
TOTAL	₱14,449,460.85	₱ 3,612,365.21	₱ 18,061,826.06

In addition, Petitioner is **ORDERED** to pay:

- (a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, value-added tax and expanded withholding tax, computed from April 15, 2010, January 25, 2010 and January 15, 2010, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and
- (b) Delinquency interest at the rate of 20% per annum on the total amount of ₱18,061,826.06, representing the sum of the basic deficiency income tax, value-added tax and expanded withholding tax in the aggregate amount of ₱14,449,460.85 and 25% surcharge of ₱3,612,365.21, and on the deficiency interest which have accrued as aforestated in (a), computed from August 29, 2014¹¹⁷ until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

¹¹⁷ Exhibit "P-3", Docket Vol. I, pp. 29-30.

WE CONCUR:



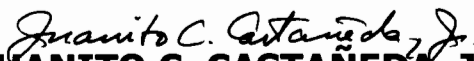
CAESAR A. CASANOVA
Associate Justice



CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

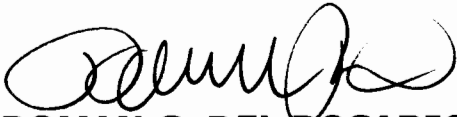
I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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



ROMAN G. DEL ROSARIO
Presiding Justice