

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
Quezon City

**EN BANC**

**BENCHMARK MARKETING CORP.,** CTA EB NO. 2212  
(CTA Case No. 9296)

*Petitioner,*

Present:

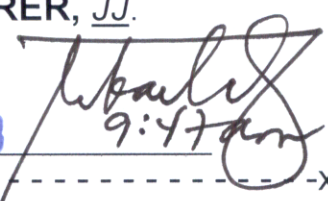
*-versus-*

**DEL ROSARIO, P.J.,  
UY,  
RINGPIS-LIBAN,  
MANAHAN,  
BACORRO-VILLENA,  
MODESTO-SAN PEDRO  
REYES-FAJARDO,  
CUI-DAVID, and  
FLORES-FERRER, JJ.**

**COMMISSIONER OF  
INTERNAL REVENUE,**  
*Respondent.*

Promulgated:

**MAR 10 2023**

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**DECISION**

**DEL ROSARIO, P.J.:**

This is a Petition for Review filed by petitioner Benchmark Marketing Corp. on January 31, 2020, praying for the reversal of the Decision dated September 4, 2019 (*assailed Decision*) and the Amended Decision dated January 2, 2020 (*assailed Amended Decision*) promulgated by the Court's Special Second Division (Court in Division) in the case entitled *Benchmark Marketing Corp. vs. Commissioner of Internal Revenue*, docketed as CTA Case No. 9296, and for the issuance of a judgment declaring as null and void the sustained portions of the deficiency tax assessments, inclusive of penalties, issued against petitioner for taxable year (TY) ending December 31, 2011.

**THE PARTIES**

Petitioner Benchmark Marketing Corp. (BMC) is a domestic corporation duly organized and existing under the laws of the

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Philippines with business address at Doña Natividad Bldg. 10 Quezon Avenue, Quezon City. The principal purpose for which it was created is to engage in, conduct and carry on the business of, buying, selling, distributing, marketing at wholesale and retail fermented liquor, bottled water and other beverages.<sup>1</sup>

Respondent Commissioner of Internal Revenue (CIR) is the chief of the Bureau of Internal Revenue (BIR) vested with power to decide disputed tax assessments.<sup>2</sup>

## FACTS

The undisputed facts, as narrated in the assailed Decision, are reproduced below:

“On April 8, 2013, petitioner received Letter of Authority (LOA) No. LOA-116-2013-00000011 with SN: eLA201100007112 and Checklist of Audit Requirements for the examination of petitioner’s books of accounts and other accounting records for all internal revenue taxes for the year 2011.

On September 28, 2013, petitioner received a Second and Final Notice from BIR dated September 24, 2013.

On June 20, 2014, petitioner executed a ‘Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC’ (Waiver) in relation to the 2011 Tax Audit which was accepted by the BIR on June 24, 2014 extending the audit period until December 31, 2014.

On September 24, 2014, petitioner received a Final Reminder and Audit Notice from BIR dated September 23, 2014.

On November 13, 2014, petitioner executed another Waiver which was accepted by the BIR on November 21, 2014 extending the audit period until June 30, 2015.

On March 27, 2015, petitioner executed another Waiver which was accepted by the BIR on April 27, 2015 extending the audit period until December 31, 2015.

On June 10, 2015, a Preliminary Assessment Notice (PAN) dated June 9, 2015 together with the Details of Discrepancies were received by petitioner from the BIR.

On July 22, 2015, the Formal Letter of Demand (FLD), Details of Discrepancies, and Assessment Notices (FAN) were received by petitioner from the BIR assessing [it for] deficiency income tax, VAT, and EWT. The FLD shows the following computations:

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<sup>1</sup> Paragraph 1, Facts of the assailed Decision, CTA EB Rollo, pp. 63-64.

<sup>2</sup> Sections 3 and 4, National Internal Revenue Code (NIRC) of 1997, as amended.



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On August 20, 2015, petitioner filed its administrative protest [against the FLD/FAN] disputing the deficiency income tax, VAT and EWT assessed against it.

Due to the BIR's alleged inaction on its protest, petitioner filed the instant Petition for Review on March 17, 2016 praying that the assessment notices for deficiency income tax, VAT, and EWT for the year ending December 31, 2011 in the aggregate amount of Php127,130,709.77 be declared null and void."<sup>3</sup>

On September 4, 2019, the Court in Division partially granted the Petition for Review. It cancelled and withdrew the assessments issued by respondent against petitioner covering deficiency VAT, EWT and compromise penalties for taxable year (TY) 2011, while it upheld in part the assessment issued against petitioner for deficiency income tax for TY 2011. It sustained the following items of income tax assessment, namely: (i) unallowable sales returns & allowances amounting to ₱16,281,370.23; (ii) unsupported freight-in, fuel & other transport expenses in the amount of ₱29,181,966.24; (iii) unsupported Advertising & Other Outside Services amounting to ₱22,089,137.55; (iv) undeclared sales to government amounting to ₱176,387.43; (v) the disallowed expenses due to non-withholding amounting to ₱41,230,990.26; and, (vi) undeclared sales per reconciliation of the Summary List of Sales (SLS) and Summary Alphalist of Withholding Tax (SAWT) amounting to ₱1,428,182.54. The dispositive portion of the Court in Division's Decision reads:

**"WHEREFORE, the instant Petition for Review is PARTIALLY GRANTED. The assessments issued by respondent against petitioner covering deficiency VAT, EWT and compromise penalties for TY 2011 are CANCELLED AND WITHDRAWN.**

However, the assessment issued against petitioner for deficiency income tax for TY 2011 is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **ONE HUNDRED NINE MILLION EIGHT HUNDRED TWENTY-SEVEN THOUSAND EIGHTY-FIVE PESOS AND 82/100** (Php109,827,085.82), inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

Basic Deficiency Income Tax	₱33,113,267.56
25% Surcharge	8,278,316.89
20% Deficiency Interest from April 17, 2012 to July	21,791,251.69

<sup>3</sup> CTA EB Rollo, pp. 64-66.



31, 2015 ( $\text{P}33,113,267.56 \times 20\% \times 1,201$ days/365 days)	
Total Amount Due, July 31, 2015	<b>₱63,182,836.14</b>
Add: 20% Deficiency Interest from August 1, 2015 to December 31, 2017 ( $\text{P}33,113,267.56 \times 20\%$ $\times 884$ days/365 days)	16,039,522.48
20% Delinquency Interest from August 1, 2015 to December 31, 2017 ( $\text{P}63,182,836.14$ $\times 20\% \times 884$ days/365 days)	30,604,727.20
Total Amount Due as of December 31, 2017	<b>₱109,827,085.82</b>

In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the total unpaid amount of Php63,182,836.13, as of July 31, 2015, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and implemented by RR No. 21-2018.

SO ORDERED.”

Petitioner filed on September 23, 2019 its Motion for Partial Reconsideration (of the Decision Promulgated on September 4, 2019), and respondent filed on even date his Motion for Reconsideration Re: Decision dated [04 September] 2019.

On January 2, 2020, the Court in Division promulgated the assailed Amended Decision, partially granting petitioner’s Motion for Partial Reconsideration and denying respondent’s Motion for Reconsideration for lack of merit. The Court in Division found merit in petitioner’s motion as it reduced the basic deficiency income tax by ₱202,826.41, corresponding to the thirty percent (30%) of assessed Advertising and Promotions Expenses of ₱676,088.02 which was substantiated with sales invoices or official receipts. With the reconsidered amount, the Court in Division arrived at the adjusted basic income tax deficiency of ₱32,910,441.15 from the basic income tax deficiency of ₱33,113,267.56, as computed in the assailed Decision. The dispositive portion of the Amended Decision reads:

“WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by the respondent is DENIED for lack of merit, while the Motion for Partial Reconsideration filed by the petitioner is PARTIALLY GRANTED.

Accordingly, the Court’s Decision dated September 4, 2019, is hereby amended to read as follows:

WHEREFORE, the instant Petition for Review is PARTIALLY GRANTED. The assessments issued by respondent against petitioner covering deficiency VAT,



EWT and compromise penalties for TY 2011 are CANCELLED AND WITHDRAWN.

However, the assessment issued against petitioner for deficiency income tax for TY 2011 is UPHeld IN PART. Accordingly, petitioner is ORDERED TO PAY respondent the aggregate amount of ONE HUNDRED NINE MILLION ONE HUNDRED FIFTY-FOUR THOUSAND THREE HUNDRED SIXTY-NINE PESOS AND 56/100 (P109,154,369.56), inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

Basic Deficiency Income Tax	P32,910,441.15
Surcharge (25%)	8,227,610.29
20% Deficiency Interest from April 17, 2012 to July 31, 2015 (P32,910,441.15 x 20% x 1,201 days/365 days)	21,657,775.24
Total Amount Due, July 31, 2015	P62,795,826.68
Add: 20% Deficiency Interest from August 1, 2015 to December 31, 2017 (P32,910,441.15 x 20% x 884 days/365 days)	15,941,276.70
20% Delinquency Interest from August 1, 2015 to December 31, 2017 (P62,795,826.68 x 20% x 884 days/365 days)	30,417,266.18
Total Amount Due as of December 31, 2017	P109,154,369.56

In addition, petitioner is liable to pay delinquency interest at the rate of 12% on the total unpaid amount of P62,795,826.68, as of July 31, 2015, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and implemented by RR No. 21-2018.

SO ORDERED."

Unfazed, petitioner filed its Motion for Extension of Time to File Verified Petition for Review (Pursuant to Rule 8, Sec. 3(b) of the Revised Rules of the Court of Tax Appeals) on January 15, 2020,<sup>4</sup> which was granted in the Court's Minute Resolution dated January 17, 2020.<sup>5</sup> Petitioner was granted a final and non-extendible period of fifteen (15) days from January 18, 2020, or until February 2, 2020, within which to file its Petition for Review.

<sup>4</sup> CTA EB Rollo, pp. 1-3.

<sup>5</sup> CTA EB Rollo, p. 4.



On January 31, 2020, petitioner filed the present Petition for Review.<sup>6</sup>

In the Resolution dated June 5, 2020, respondent was ordered to file a comment, not a motion to dismiss, on the Petition for Review.<sup>7</sup>

Respondent filed his Motion to Admit Attached Comment on July 1, 2020.<sup>8</sup> The Court granted the said motion and admitted the attached Comment/Opposition Re: Petitioner's Petition for Review in the Resolution dated September 1, 2020.<sup>9</sup> In the same Resolution, the case was referred to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for mediation.

PMC Form 9 or the Request for Extension [of mediation] filed on November 19, 2020,<sup>10</sup> was granted in the Resolution dated January 15, 2021. The parties were given a final extension of thirty (30) days from November 26, 2020 or until December 26, 2020 within which to reach an amicable settlement.<sup>11</sup>

Petitioner filed on March 15, 2021 a Manifestation on the Status of the Compromise Agreement informing the Court that it had submitted its offer of compromise settlement to respondent and that it had been informed that the offer is still for further negotiation.<sup>12</sup>

In the Resolution dated June 2, 2021, the Court suspended the proceedings for an additional sixty (60) days from May 15, 2021 when the quarantine classification of the National Capital Region (NCR) was downgraded to General Community Quarantine (GCQ) with heightened restrictions or until July 14, 2021. The parties were directed to submit a Report on the progress of their judicial compromise within five (5) days from July 14, 2021.<sup>13</sup>

On July 19, 2021, petitioner filed a Manifestation on the Status of the Compromise Agreement informing the Court that it had submitted its Revised Compromise Offer to respondent and that it was hopeful that the revised compromise offer would be given favorable consideration for the expedient resolution of the case. Petitioner

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<sup>6</sup> CTA EB Rollo, pp. 5-110.

<sup>7</sup> CTA EB Rollo, pp. 112-113.

<sup>8</sup> CTA EB Rollo, pp. 114-123.

<sup>9</sup> CTA EB Rollo, pp. 125-126.

<sup>10</sup> CTA EB Rollo, p. 127.

<sup>11</sup> CTA EB Rollo, pp. 129-130.

<sup>12</sup> CTA EB Rollo, pp. 132-133.

<sup>13</sup> CTA EB Rollo, pp. 146-147.

prayed that an extension of one (1) month, or until August 19, 2021, be granted for the parties to reach a compromise.<sup>14</sup>

In the Resolution dated October 27, 2021, the Court declared that with the developments in quarantine classification, petitioner's prayer for extension until August 19, 2021 is moot. The Court suspended the proceedings for an additional non-extendible period of sixty (60) days from October 1, 2021, or until November 30, 2021 in order to afford the parties ample opportunity to settle the case amicably. The parties were directed to submit a Joint Report on the progress of their judicial compromise within five (5) days from November 30, 2021.<sup>15</sup>

In the Resolution dated March 2, 2022, the Court reiterated the order requiring the parties to submit their Joint Report on the status of their judicial compromise within five (5) days from notice.<sup>16</sup>

Respondent filed on April 6, 2022 a Manifestation and Compliance With Apologies (Re: Resolution dated 02 March 2022) informing the Court that petitioner's offer of compromise submitted on December 2, 2021 was denied by respondent, and that petitioner submitted an improved offer of compromise which is pending before respondent's office for approval.<sup>17</sup>

In the Resolution dated June 7, 2022, the Court noted the aforesaid respondent's Manifestation and Compliance With Apologies. Since the Petition for Review has been pending for more than two (2) years already, and taking into account the denial by respondent of petitioner's original offer of compromise, the Court reinstated the proceedings in this case and submitted the Petition for Review for decision.<sup>18</sup>

Meanwhile, PMC-CTA Form 5 (Mediator's Report), filed on July 28, 2022, stating the unsuccessful mediation of this case, was noted in the Resolution dated August 22, 2022.

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<sup>14</sup> CTA EB Rollo, pp. 148-150.

<sup>15</sup> CTA EB Rollo, pp. 162-164.

<sup>16</sup> CTA EB Rollo, pp. 170-171.

<sup>17</sup> CTA EB Rollo, pp. 174-177.

<sup>18</sup> CTA EB Rollo, pp. 179-181.



## PETITIONER'S ARGUMENTS

Petitioner agrees with the Court in Division in rejecting part of the findings of the respondent, but raises on appeal the items of income tax assessment sustained by the Court in Division. Petitioner argues the following with respect to the sustained items of assessment:

1. Unallowable Sales Returns & Allowances - ₱16,281,370.23

Although the amount verified by the ICPA was only to the extent of ₱39,258,500.52, it does not necessarily mean that the unverified portion of [the contra-sales account] amounting to ₱16,281,370.23, as found by the Court in Division, may already be disallowed as deduction. Respondent failed to provide the legal basis for the disallowance of "sales discounts" as the FLD merely cites Revenue Audit Memorandum Order (RAMO) No. 01-1999, without stating which portion thereof provides a requirement for the production of the "Debit/Credit Memo and Certificate of Deductibility".

Anent the disallowance of the difference between the Sales Return and Discounts accounted by the ICPA and the Sales Return and Discounts recorded by petitioner for the months of February and April 2011 in the aggregate amount of ₱2,489,328.35, while the amounts accounted by the ICPA for these months were higher than that recorded in the ledger, this, however, did not remove the fact that these Sales Return and Discounts are from 2011. It is a normal occurrence in bookkeeping for posting of transactions to be made in other periods (i.e., earlier or subsequent months). After all, for the other months of 2011, except for February and April, the ICPA was able to validate less Sales Returns and Discounts than what were recorded in the ledger. In this situation, the ₱2,489,328.35 excess validated Returns and Discounts could very well be from these other months.

2. Unsupported Freight-In, Fuel & Transportation Expenses - ₱29,181,966.24

The question is whether the suppliers for the alleged difference of ₱29,181,966.24 were listed in petitioner's Summary List of Purchases (SLP).

The concern of the respondent in his FLD does not call for the production of the source documents. The complete listing of suppliers in the SLP relating to freight-in, fuel & transportation expenses was completely addressed by the ICPA.

Petitioner's freight-in, fuel & transportation expenses were found in the SLP, contrary to the asseveration of the respondent. Out of ₱59,559,522.08, the ICPA was able to verify the amount of ₱58,563,790.52. While it would seem that there is a difference of ₱995,731.79, this was only because the ICPA cannot match the particular supplier to the particular expenditure item the supplier should be categorized. The deficiency income tax assessment on



alleged unsupported freight-in, fuel and transportation expense are without factual or legal basis.

3. Unsupported Advertising & Other Outside Services -  
₱22,089,137.55

Petitioner insists that the allegation on unsupported advertising & other outside services has no factual basis. It avers that it presented its SLP for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Quarters for the year 2011, Audited Financial Statements (FS), Monthly and Quarterly VAT Returns to prove that the income payments made to various entities which represent Advertising and Other Outside Services has been properly reported to the BIR. Petitioner presented its line-by-line reconciliation to explain the alleged unsupported amounts. The Court in Division missed the fact that apart from the summary for certain expense items, the same were likewise supported by source documents which were submitted to the Court through a USB.

With respect to the purchases from Asia Brewery (₱4,676,301.75) and Interbev Philippines (₱939,937.48) which were charged to advertising (total of ₱5,616,239.23), while these purchases would have formed part of the Cost of Sales, the total was removed from the Cost of Sales and reclassified instead as advertising expenses, which is more appropriate considering the nature of these expenses. The matter of classifying legitimate costs and expenses in the books of accounts, either as Cost of Sales or expenses, is a discretion left on the management, and in any way, [the amount] would have been deducted from the taxable income.

4. Sales to Government (not included in the SLS) - ₱176,387.43

Petitioner claims that its sales to the Provincial Government of Camarines Sur were reported in the Summary List of Sales (SLS) for 2011 under the name, Camarines Sur Water Sports Complex (CLC). The ICPA was able to verify the fact of sales to the Province of Camarines Sur through the Certificate of Withholding Tax at Source (BIR Form 2306) by the petitioner, and that the same were included in petitioner's SLS under the registered name "CWC". Petitioner also moves for the Court to take judicial notice that the CWC is located within the Provincial Capitol Complex of Camarines Sur, supporting its contention that CWC listed in its SLS actually pertains to the Provincial Government of Camarines Sur. Thus, petitioner concludes that the deficiency income tax assessment on the sales to government for allegedly not having been included in the SLS should be cancelled for want of factual or legal bases.

5. Excess of Standard input over actual input (to be closed to expense) – (₱10,475.73)

As this assessed item relates to [the alleged sales to government not included in the SLS], petitioner reiterates that all its sales to the Provincial Government of Camarines Sur were duly supported in its SLS under the name Camarines Sur Water Sports Complex (CLC). Thus, it is petitioner's position that the assessed item is without factual basis.



6. Disallowed Expense due to non-withholding - ₱41,230,990.26

Petitioner disagrees with the findings of the respondent. It claims that it properly subjected the income payments covered by the withholding tax system. Respondent's assumption that all income payments are subject to withholding tax is incorrect as the ICPA confirmed that not all expenses it claimed are subject to withholding tax. The alleged income payments to suppliers not subjected to Expanded Withholding Tax (EWT) are either (i) casual purchases or from a person who is not considered a regular supplier, (ii) petty cash disbursements incurred by salesmen and sales offices such as, but not limited to meals, representation and entertainment, gasoline, out-of-town fieldwork expenses and supplies or (iii) expenses that were paid in cash such as, but not limited to prepaid cellphone loads, registered mails transmitted to customers and the like. In addition, the ICPA found that based on the supporting documents, purchases from Sincere Management Staff and Golden Touch Advertising, were found to be subject to EWT.

The deficiency income tax and corresponding EWT assessment were derived by respondent as a result of a mere comparison of petitioner's EWT forms and petitioner's purchases per Financial Statements/Income Tax Return/Trial Balance (FS/ITR/TB). As observed by the ICPA, respondent did not present supplier invoice details to explain the observed difference which may be due only to timing differences.

Assuming that certain expenses were not subjected to withholding taxes, respondent cannot simply disallow the expenses claimed as deduction from gross income for failure of the taxpayer to subject them to withholding taxes. If there is a deficiency in the payment of the withholding tax, respondent should, at the very least, assess it for deficiency in withholding taxes and not disallow the expenses altogether as this is deprivation of property without due process of law which no less than the Constitution proscribes.

The prevailing rule during the taxable year under audit is Revenue Regulations No. 14-2002 which states that [a deduction will also be allowed where no withholding of tax was made] when the withholding agent erroneously underwithheld the tax but pays the difference between the correct amount and the amount of tax withheld, including the interest, incident to such error, and surcharges, if applicable, at the time of the audit/investigation or reinvestigation/reconsideration.

7. Gross Profit on Undeclared sales per reconciliation of SLS & SAWT - ₱1,428,182.54

The assessment is downright speculative. The fact that the total income payment received as appearing in the SAWT is higher than the income payment received based on the SLS does not necessarily imply unrecorded sales. For it may happen that the SAWT total is higher due to timing difference, or due to variance in accounting system adopted by the payor and the payee of income.



Revenue Regulations No. 2-98 recognizes the variance in the time of recording, where it is possible that withholding would be made either at the time of accrual or payment, whichever comes first.

8. Imposition of Surcharge or Interests has no factual and legal bases

Considering that the imposition of interests and surcharge are in the nature of accessory penalties to the alleged deficiency basic taxes due and unpaid, the same should be cancelled upon the nullification of the assessment issues that were assailed in the Petition for Review.

### **RESPONDENT'S ARGUMENTS**

In his Comment/Opposition Re: Petitioner's Petition for Review filed on July 1, 2020,<sup>19</sup> respondent raises the following:

1. The arguments propounded by petitioner are without merit;
2. The Court in Division is correct in ruling that petitioner is liable for deficiency income tax assessment;
3. Assessments are presumed correct and made in good faith. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Dereliction on the part of the petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of the assessment.
4. As noted by the Court in Division, sales returns and discounts require proper substantiation for it to be allowed as deduction from gross sales to arrive at gross income. The sales returns and discounts, being unsupported, were correctly disallowed by the Court;
5. The Freight, Fuel and Transportation Expense was correctly disallowed for being unsupported; and,
6. Since petitioner failed to present sufficient evidence to disprove respondent's findings, the disallowance was properly upheld by the Court.

### **ISSUE**

Whether or not petitioner is liable for the assessed deficiency Income Tax for taxable year 2011 in the aggregate amount of ₱109,154,369.56, inclusive of interest and penalties.<sup>20</sup>

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<sup>19</sup> CTA EB Rollo, pp. 119-123.

<sup>20</sup> Petition for Review, CTA EB Rollo, p. 14.



## THE COURT *EN BANC*'S RULING

### ***CTA En Banc has jurisdiction over the case***

The present case is a Petition for Review of the assailed Decision and assailed Amended Decision rendered by the Court in Division relative to the disputed deficiency taxes issued by the Bureau of Internal Revenue (BIR) against petitioner for TY ending December 31, 2011.

The Court *En Banc* is vested with authority to review the said assailed Decision and assailed Amended Decision of the Court in Division pursuant to Section 18<sup>21</sup> of Republic Act (R.A.) No. 1125,<sup>22</sup> as amended by R.A. No. 9282,<sup>23</sup> in relation to Section 2(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended.<sup>24</sup>

Moreover, the present Petition for Review was filed on January 31, 2020, which is within the extended period pursuant to Court *En Banc*'s Minute Resolution dated January 17, 2020.<sup>25</sup>

Clearly, the Court *En Banc* can properly take cognizance over the present Petition for Review.

### ***CTA En Banc sustains the findings of the Court in Division***

In the assailed Decision, petitioner was ordered to pay a Basic Deficiency Income Tax of ₱33,113,267.56. As aforesaid, in the

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<sup>21</sup> SEC. 18. Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc.

<sup>22</sup> An Act Creating the Court of Tax Appeals.

<sup>23</sup> An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court With Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

<sup>24</sup> Sec. 2. *Cases within the jurisdiction of the Court en banc.* - The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]

<sup>25</sup> CTA EB Rollo, p. 4.

assailed Amended Decision, the Basic Deficiency Income Tax was reduced to ₱32,910,441.15 in the light of the findings of the Court in Division anent the substantiated Advertising and Promotions Expenses amounting to ₱676,088.02. Thus, petitioner was ordered to pay respondent the aggregate amount of ₱109,154,369.56, inclusive of the Basic Deficiency Income Tax of ₱32,910,441.15, 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017.

The adjusted Basic Deficiency Income Tax of ₱32,910,441.15 is computed below:

Reference	Basis for the Assessment in the FLD	Amount
IT-3	Unallowable Sales Returns & Allowances	16,281,370.23
IT-4	Unsupported Freight-in, Fuel & Transportation expenses	29,181,966.24
IT-5	Unsupported Advertising & Other Outside Services (₱22,089,137.55 less the amount of ₱676,088.02 which was reconsidered in the assailed Amended Decision)	21,413,049.53
IT-6	Sales to Gov't (not included in the SLS)	176,387.43
IT-7	Excess of std input over actual input (to be closed to expense)	(10,475.73)
IT-8	Disallowed expenses due to nonwithholding (Sec. 34K, NIRC)	41,230,990.26
IT-9	GP on undeclared sales per recon of SLS, SAWT [ & TPI Data]	1,428,182.54
	Total Adjustments Per Audit	109,701,470.50
	Taxable Income per return	4,236,787.70
	Taxable Income per Audit	113,938,258.20
	Income Tax Rate	30%
	Income Tax Due Per Audit	34,181,477.46
	Allowable Credits	1,271,036.31
	<b>Basic Deficiency Income Tax</b>	<b>32,910,441.15</b>

The aforesaid items of income tax assessment in the assailed Decision, as adjusted in the assailed Amended Decision, are sought to be reconsidered in the present Petition for Review.

After a careful review of the arguments raised by petitioner, the Court finds that the same were already sufficiently threshed out and passed upon by the Court in Division in the assailed Decision and Amended Decision.

The Court, however, opts to address the issues raised by petitioner to settle once and for all the controversy.

***IT-3 Unallowable Sales  
Returns and Allowances -  
₱16,281,370.23***

To recall, respondent disallowed petitioner's sales discounts amounting to ₱46,338,319.08 due to petitioner's alleged failure to present the required supporting documents. The Details of Discrepancies attached to the FLD stated that "[a]s part of the audit procedure for Sales account, the contra-sales account, Sales Returns, Discount & Allowances requires verification of supporting records such as Debit/Credit Memo and Certificate of Deductibility issued by the BIR, pursuant to RAMO No. 01-1999. The amount of contra-sales account reflected in the Trial Balance was not considered as a valid reduction of sales due to failure to present the required supporting documents."

In the assailed Decision, the Court in Division partially upheld the disallowance. The Court in Division found that notwithstanding the absence of Debit/Credit Memo or Certificate of Deductibility issued by the BIR, petitioner sufficiently proved a portion of its claimed sales returns, discounts and allowances through the presentation of its sales invoices for TY 2011.

In the present Petition, however, petitioner reiterates its contention that the FLD merely cites RAMO No. 01-1999 as legal basis for the subject item of assessment without actually stating which portion thereof requires the production of the documents "Debit/Credit Memo and Certificate of Deductibility" to allow the sales discounts to be deducted from the gross sales. Thus, petitioner argues that the FLD failed to provide the legal basis for the disallowance of the sales discount as a valid deduction from gross sales.

Petitioner's contention is untenable.

Contrary to petitioner's allegations, records reveal that respondent provided factual and legal bases for the subject item of assessment as shown in the Details of Discrepancies<sup>26</sup> attached to the FLD. Since the assessment contains factual and legal bases, there is no violation of petitioner's right to due process. In fact, petitioner was

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<sup>26</sup> Exhibit "P-37-a", BIR Records, Folder 2, pp. 1599-1604.



able to effectively refute the assessment and explain its side thereon by arguing in its protest to the FLD/FAN that it had proper documentation of the sales discounts in the form of sales invoices which it submitted to respondent.<sup>27</sup>

The Court in Division was correct in holding that the presentation of sales invoices is sufficient to prove the sales discounts and allowances.

It must be emphasized that the term “gross income” derived from business is invariably stated in Title II (Tax on Income) of the NIRC of 1997, as amended.<sup>28</sup> The term ‘gross income’ derived from business shall be equivalent to gross sales **less sales returns, discounts and allowances** and cost of goods sold.<sup>29</sup> The Chapter pertaining to Tax on Income does not elaborate on the concept about “**sales returns, discounts and allowances**”.

Nonetheless, Section 106(D), a provision on VAT under Title IV of the of the NIRC of 1997, as amended, gives light on the concept of sales returns, discounts and allowances, *viz.*:

“SEC. 106. *Value-added Tax on Sale of Goods or Properties.*

— xxx

(D) Sales Returns, Allowances and Sales Discounts. – The value of goods or properties sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued. **Sales discount granted and indicated in the invoice at the time of sale and the grant of which does not depend upon the happening of a future event may be excluded from the gross sales within the same quarter it was given.**”

Although the afore-quoted provision is stated under Title IV of the NIRC of 1997, as amended, the same is equally applicable for income tax purposes in determining their deductibility or exclusion from gross sales. It is a rule in statutory construction that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The law must not be read in truncated parts, its provisions must be read in relation to the whole law. The particular words, clauses and phrases should not be studied as detached and isolated expression, but the whole and

<sup>27</sup> Protest to the FAN, Exhibit “P-38”, CTA Docket, Vol. III, pp. 1498-1517.

<sup>28</sup> See for instance Sections 27, 28, 31, 32 of the NIRC of 1997, as amended.

<sup>29</sup> Section 27, NIRC of 1997, as amended.

every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.<sup>30</sup>

In relation to Section 106(D) of the NIRC of 1997, as amended, Section 4.106.9 of Revenue Regulations (RR) No. 16-2005 provides that a sales discount be indicated in the invoice at the time of sale for it to be excluded from the gross sales, to wit:

“SEC. 4.106-9. – *Allowable Deductions from Gross Selling Price.*  
– In computing the taxable base during the month or quarter, the following shall be **allowed as deductions** from gross selling price:

(a) **Discounts determined and granted at the time of sale, which are expressly indicated in the invoice, the amount thereof forming part of the gross sales duly recorded in the books of accounts.**

Sales discount indicated in the invoice at the time of sale, the grant of which is not dependent upon the happening of a future event, may be excluded from the gross sales within the same month/quarter it was given.

(b) Sales returns and allowances for which a proper credit or refund was made during the month or quarter to the buyer for sales previously recorded as taxable sales.” (*Boldfacing supplied*)

Upon evaluation of the Summary of Sales and the corresponding sales invoices,<sup>31</sup> the Court in Division concluded that the disallowed contra-sales account “Sales Returns, Discount, & Allowances” actually consisted of “trade discounts,” “deals,” and “pick-up allowances” which are all in the nature of sales discount. Considering that these were given to the customers at the time of sale and properly indicated in the sales invoice, then the sales invoices are sufficient to prove such discounts.

Scrutiny of the ICPA’s monthly schedules of sales returns/discounts and allowances, together with the corresponding invoices, shows that petitioner’s substantiated sales returns and discounts from its five sales offices amounted to ₱36,451,830.46 (inclusive of VAT) or ₱32,546,277.20 (exclusive of VAT).<sup>32</sup> Ultimately, the Court in Division upheld the disallowance of sales discount amounting to ₱16,281,370.23, representing the difference between the sales discount of ₱46,338,319.08 per petitioner’s schedules and

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<sup>30</sup> Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation, G.R. No. 192398, September 29, 2014.

<sup>31</sup> Exhibit “P-120-A-1-1 and series” to “P-120-E-12-1 and series” except the exhibits which were denied admission by the Court.

<sup>32</sup> Assailed Decision, CTA EB Rollo, pp. 82-84.





sales discount per ICPA's schedule, as recomputed by the Court in Division, amounting to ₱30,056,948.85.<sup>33</sup>

Petitioner further questions the disallowance of the difference between the sales returns and discounts accounted by the ICPA and the sales returns and discounts recorded by petitioner for the months of February and April 2011 in the aggregate amount of ₱2,489,328.95. Petitioner argues that while the amounts accounted by the ICPA for the said months were higher than that recorded in the ledger, such finding did not remove the fact that these returns and discounts are from 2011. Moreover, petitioner posits that it is a normal occurrence in bookkeeping for posting transactions to be made either in earlier or later periods. Finally, petitioner believes that the amount of ₱2,489,328.95 could be from the other months where the ICPA validated less returns and discounts than those recorded in petitioner's ledgers.

The Court finds petitioner's contentions without merit.

Petitioner failed to substantiate its allegation that the ₱2,489,328.95 excess validated sales discounts pertain to the months other than February and April 2011. Allegations are not evidence, and without evidence, bare allegations do not prove facts.<sup>34</sup>

Section 4.106-9 of RR No. 16-2005 mandates that sales discount indicated in the invoice at the time of sale, the grant of which is not dependent upon the happening of a future event, may be **excluded from the gross sales within the same month/quarter it was given**. In other words, it is required that the sales discounts given in a specific taxable period should be excluded from the gross sales reported in the very same taxable period.

The ICPA determined that for the months of February and April 2011, there are sales discounts amounting to ₱1,521,969.12 and ₱967,359.23, respectively, that were not excluded from gross sales in the same months. In February 2011, petitioner only reported sales discounts amounting to ₱810,993.42 contrary to the finding of the ICPA that in the same month, petitioner granted sales discounts amounting to ₱2,332,962.54. Similarly, in April 2011, petitioner only reported sales discounts amounting to ₱1,724,517.90 while the ICPA

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<sup>33</sup> Substantiated sales discount, net of VAT amounting to ₱32,546,277.20 less over-accounted sales discount amounting to ₱2,489,328.95 which did not form part of the ₱46,338,319.08 sales discounts claimed by petitioner.

<sup>34</sup> Sabellina vs. Buray et al., G.R. No. 187727, September 2, 2015.



found that in the same month, petitioner actually granted sales discounts amounting to ₱2,691,877.13.

Petitioner attempts to explain by arguing that the sales discounts in the aggregate amount of ₱2,489,328.95 were granted in months other than February and April 2011 so that it was proper for petitioner not to exclude them from gross sales reported in February and April 2011.

Contrary to such claims, the ICPA noted that the sales discounts pertain to the months of February and April 2011. The ICPA evaluated the sales invoices dated within the said months and accounted these sales discounts as indicated in the said invoices. It is, therefore, inappropriate to claim that these sales discounts are from other months.

In fine, it is proper to sustain the disallowance of the unsubstantiated sales discounts amounting to ₱16,281,370.23.

***IT-4 Unsupported Freight-in,  
 Fuel & Transportation  
 Expenses – ₱29,181,966.24***

To recall, respondent assessed petitioner for the unsupported freight-in, fuel and transportation expenses amounting to ₱29,181,966.24, computed as follows:

Per FS/ITR/TB		
Freight-In	₱ 47,329,257.00	
Transportation	2,369,147.21	
Fuel & Oil	9,861,117.87	₱ 59,559,522.08
<b>Less: Freight Contractors &amp; Fuel Suppliers per SLP:</b>		
LFH Ventures Mdsg Corp.	11,702,250.28	
Pilipinas Shell Petroleum Corp.	4,970,167.56	
Petron Corp	4,749,098.05	
Rapid Movers & Forwarders Co Inc.	2,687,483.02	
Quincela Shipping Lines	2,539,108.30	
Hizon Transport Services & Trdg Inc.	1,774,705.07	
MRTC Trucking Services Corp	743,925.07	
Our Beverly Village Trucking Corp	709,860.05	
CMT Hauling Services	259,411.75	
Regina Shipping Lines Inc	63,169.59	
Powerzone Petroleum Products Corp	43,628.04	
Philippine Airlines Inc	28,658.03	
LBC Express-Sei Inc	28,316.81	
JRS Business Corp	25,002.84	

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Montenegro Shipping Lines Inc	17,133.89	
TCL Merchandise Brokerage Inc	16,986.83	
Air Philippines Corp	6,751.78	
Santa Clara Shipping Corp	5,107.13	
Penafancia Shipping Corp	3,587.26	
DHL Worldwide Express	3,204.49	30,377,555.84
<b>Unsupported</b>		<b>₱ 29,181,966.24</b>

Petitioner argues that this item of assessment should be cancelled inasmuch as *first*, the ICPA was able to name the contractors and suppliers for freight-in, transportation and fuel expenses amounting to ₱54,292,071.57 as shown in the "Reconciliation of Freight, Fuel & Transpo Expenses";<sup>35</sup> and, *second*, petitioner has submitted the receipts and invoices<sup>36</sup> for the non-VAT expenses amounting to ₱4,271,718.95. Out of the total freight-in, transportation and fuel expenses per FS/ITR amounting to ₱59,559,522.08, petitioner claims that the ICPA has verified expenses amounting to ₱58,563,790.52. Hence, petitioner effectively claims that only the difference of ₱995,731.79 should remain in this item of assessment considering that the ICPA cannot trace this amount.

In essence, petitioner reiterates its contention that the subject item of assessment does not call for the production of source documents pertaining to the unsupported freight-in, fuel and transportation expenses, but merely for the completion of the list of suppliers in the SLP.

Petitioner's contention lacks merit.

As shown in respondent's computation of this item of assessment, the amount of ₱29,181,966.24 pertains to the "unsupported" freight-in, transportation and fuel expenses." By using the word "unsupported", respondent's clear intention is to require petitioner to provide the breakdown of the total expenses as well as the source documents thereof.

Without the supporting source documents, the Court cannot simply accept the reconciliation prepared by the ICPA. It bears stressing that the Court is not bound by the findings of the ICPA as so provided in Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRTCA), as amended, *viz*:

<sup>35</sup> Exhibit "P-95".

<sup>36</sup> Exhibits "P-95-d" and series, and "P-95-e" and series.

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**“SEC. 3. Findings of independent CPA. – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusion subject to verification.” (Boldfacing supplied)**

The ICPA's findings are not conclusive as the same are subject to verification as to their accuracy, veracity and merit. The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification.

Thus, absent the source documents supporting the items indicated in the reconciliation prepared by the ICPA, the Court is constrained to reject the findings of the ICPA thereby disallowing freight-in, transportation and fuel expenses amounting to ₱29,181,966.24.

***IT-5 Unsupported Advertising  
and Other Outside Services -  
₱21,413,049.53***

In the assailed Decision, the Court in Division upheld respondent's disallowance of advertising expenses amounting to ₱22,089,137.55 due to petitioner's failure to submit supporting documents.

In the assailed Amended Decision, however, the Court in Division verified the source documents for the Non-VATable Outside Services and Advertising & Promotions Expenses and determined that expenses amounting to a total of ₱676,088.02 were found to be properly substantiated by sales invoices and official receipts. Thus, deducting this amount from the original disallowance of ₱22,089,137.55, the remaining disallowed expenses is ₱21,413,049.53.

To recall, the original disallowance of ₱22,089,137.55 was computed by respondent as follows:



Per FS/TB:		
Security Services	1,142,961.38	
Outside services	11,609,840.55	
Advertising & Promotions	10,479,297.00	23,232,098.93
Less: Service & Advertising Provider per SLP:		
Tigon Security Investigation & Gen Services Inc	375,000.00	
Paraseal Security Agency	312,187.50	
New Bicol Veterans Security Agency Inc	268,273.88	
Mezza Security Agency Inc	137,500.00	
Hot Rod Detective & Protective Agency Inc	50,000.00	1,142,961.38
<b>Unsupported/un-necessary advertising expenses</b>		<b>22,089,137.55</b>

Petitioner presented a reconciliation<sup>37</sup> between the total advertising and outside services per Financial Statements/Trial Balance and total advertising and outside services per SLP. Examination of the reconciliation revealed the following breakdown and a discrepancy amounting to ₱2,330,572.67, computed as follows:

Reconciliation Items	Amount
<b>VATable</b>	
(a) Security Services per SLP	1,142,961.38
(b) Advertising and Promotions per SLP	1,209,905.09
(c) Asia Brewery Inc. purchase charged to Advertising	4,676,301.75
(d) Interbev Philippines, Inc. purchase charged to Advertising	939,937.48
(e) Outside Services	1,841,604.50
<b>Non-VATable</b>	
(a) Outside Services	11,090,816.06
Total	20,901,526.26
Advertising & Other Outside Services per FS/TB	23,232,098.93
<b>Unsupported Advertising &amp; Other Outside Services per ICPA</b>	<b>2,330,572.67</b>

<sup>37</sup> Paragraph 49, Petition for Review, CTA EB Docket, p. 24.

**VATable**

**(a) Security Services per SLP  
(P1,142,961.38)**

**(b) Advertising and  
Promotions per SLP  
(P1,209,905.09); and**

**(e) Outside Services  
(P1,841,604.50)**

To support the security services, advertising and promotions, and outside services, petitioner submitted the "Schedule of Security Services per SLP",<sup>38</sup> "Schedule of Vatable- Advertising & Promotion per SLP",<sup>39</sup> and "Schedule of Vatable- Outside Services per SLP",<sup>40</sup> respectively. Undeniably, these documents are mere schedules prepared by petitioner and without the supporting source documents, the Court cannot determine whether these expenses were indeed incurred.

**(c) Asia Brewery Inc.  
purchase charged to  
Advertising (P4,676,301.75);  
and**

**(d) Interbev Philippines Inc.  
purchase charged to  
Advertising (P939,937.48)**

Petitioner claims that portions of its purchases from and payments to Asia Brewery Inc. and Interbev Philippines, Inc. pertain to freebies or products given to its customers for promotion purposes. To support its claim, petitioner offered a "Reconciliation of Taxes Withheld vs. Audited Financial Statement,"<sup>41</sup> showing that inventories purchased from Asia Brewery Inc. and Interbev Philippines, Inc. with a total value of P5,616,239.23 were reclassified from cost of sales to operating expenses.

As shown in the Reconciliation below, petitioner deducted "Purchases charged to Advertising (Complimentaries)" with an amount of P5,616,239.23 from the purchases during the taxable year to arrive at the net purchases, and such deduction effectively reduced the cost of sales by the same amount. The deducted purchases, which according to petitioner were given to its customers as freebies, were

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<sup>38</sup> Exhibit "P-96-a".

<sup>39</sup> Exhibit "P-96-c".

<sup>40</sup> Exhibit "P-96-b".

<sup>41</sup> Exhibit "P-98".



claimed as ordinary deduction, particularly under the advertising expense account. Shown below is the pertinent portion of the Reconciliation showing the above-explained reclassification:

SALES	100%	394,636,706.32
COST OF SALES		
Beg. Inventories		30,405,210.42
Purchases		339,677,518.77
Purchase Returns		(506,085.90)
Vatable Purchase Discounts		(6,448,684.98)
Non-vatable Purchase Discounts		(44,199,888.00)
<b>Purchases charged to Advertising (Complimentaries)</b>		<b>(5,616,239.23)</b>
		282,906,620.66
Freight		47,329,257.23
Net Purchases		330,235,877.89
TGAFS [Total Goods Available For Sale]		360,641,088.31
Net Purchases		(28,035,788.43)
Cost of Sales	84%	332,605,299.88
GROSS PROFIT	16%	62,031,406.44
OPERATING EXPENSES		
Salaries and Wages		14,837,145.60
Fringe Benefits		250,191.93
Rental		292,989.28
Professional Fees		37,900.00
Security Services		1,142,961.38
Other Outside Services		11,609,840.55
Advertising		10,479,297.17
<b>Complimentaries</b>		<b>5,616,239.23</b>
Promotions		4,863,057.94
Repairs and Maintenance		2,900,720.04
Research and Development		295,335.52
Office Supplies		287,084.81
SSS, GSIS, Philhealth, HDMF & etc.		983,745.05

Insurance		405.00
Representation and Entertainment		236,191.93
Transportation and Travel		2,369,147.21
Fuel and Oil		9,861,117.87
Communication, Light and Power		1,569,521.99
Taxes and Licenses		381,250.29
Losses		171,797.49
Depreciation		81,139.13
Charitable Contribution		-
Miscellaneous		6,836.50
		57,794,618.74
NET TAXABLE INCOME		4,236,787.70 <sup>42</sup>

According to petitioner, while those purchases would have formed part of the cost of sales, the amount of ₱5,616,239.23 was deducted from cost of sales and reclassified instead as advertising expense. To petitioner, it is more appropriate to claim these purchases as advertising expenses considering that they were not sold but given away as freebies to its customers. Essentially, petitioner contends that the matter of classifying legitimate costs and expenses in the books of accounts (*i.e., either as cost of sales or ordinary expenses*) is a discretion left to management and in any case, these expenses would have certainly reduced its taxable income.

While the Court agrees that the matter of classifying legitimate costs and expenses is left to the discretion of management, it is incumbent upon the taxpayer to prove that the classification was proper by submitting the supporting documentary requirements.

To establish that business expenses are deductible for income tax purposes, such must pass the substantiation requirements under Section 34(A)(1)(b) of the NIRC of 1997, which reads as follows:

“Section 34. *Deductions from Gross Income.* – xxx

(A) *Expenses.* –

(1) Ordinary and Necessary Trade, Business or Professional Expenses.-

xxx

xxx

xxx

<sup>42</sup> Per Reconciliation, the net taxable income is (₱6,242,509.47) but upon re-computation the correct net taxable income is ₱4,236,787.70 which tallies with the taxable income per return.





(b) Substantiation Requirements. - No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

In this case, petitioner failed to submit evidence supporting the amount of expenses charged to the advertising expenses account and the receipt of the freebies by petitioner's customers. By showing the Reconciliation and the invoices supporting the purchases, petitioner simply pointed out that these expenses were part of the purchases made by it during the taxable year, reclassified them as advertising expenses, and nothing more. Lamentably, it is not sufficient to prove that these supposed freebies were originally part of the purchases; it must be shown that these inventories were first withdrawn from the inventories for sale, and second, they were actually given as freebies to the customers. Mere reclassification of accounts, i.e., from cost of sales to advertising expense, does not even prove that there was actual withdrawal of the goods, much less a free distribution thereof to customers.

**Non-VATable**

**(a) Outside Services**  
**(P11,090,816.06)**

With respect to the non-VATable outside services, petitioner claims that the Court in Division failed to consider that apart from the summary of the following expense items, they are likewise supported by source documents:

<b>Non-VATable Outside Services</b>	<b>Amount</b>	<b>Exhibit</b>
Commission-OP	201,737.81	P-96-d and series
Janitorial & Security	12,000.00	P-96-e and series
Salesmen Expenses	5,456,878.89	P-96-f and series
Non-VATable Advertising & Promotions Promotions - Sponsorship	5,420,199.36	P-96-g and series
<b>Total</b>	<b>11,090,816.06</b>	

The Court evaluated the claim of petitioner that the foregoing expense items are supported by source documents. After a thorough

examination, the Court found that the submitted documents<sup>43</sup> are mostly paying vouchers, petty cash vouchers, statements of operating expenses, and expense reports which are all petitioner's internal documents. Thus, the Court in Division correctly ruled that these documents are self-serving evidence which do not carry much evidentiary value.

It is also worth pointing out that the petty cash vouchers for the janitorial and security expenses, all dated 2010, were incurred and paid in 2010, as shown below:

Exhibit No.	Payee	Petty Cash Voucher (PCV) No.	PCV Date	Date of Stamp Paid
P-96-e-1-3	Alex Batin	2010-03-142	23-Mar-10	31-Mar-10
P-96-e-1-3	Herald Manzares	2010-03-151	25-Mar-10	31-Mar-10
P-96-e-2-3	Alex Batin	2010-04-158	27-Apr-10	30-Apr-10
P-96-e-3-4	Herald Manzares	2010-07-034	23-Jul-10	24-Jul-10
P-96-e-3-4	Alex Batin	2010-07-033	20-Jul-10	24-Jul-10
P-96-e-4-3	Alex Batin	2010-08-048	18-Aug-10	23-Aug-10

As aforesaid, the Court found that although some of the documents presented are invoices and official receipts, they were nevertheless dated 2009 and 2010, and thus, outside the assessed taxable period. Shown below are the expenses claimed as deductions in 2011 but whose supporting invoices and official receipts were dated in prior years:

Exhibit No.	Payee	OR/Invoice No.	Date
P-96-g-1-4	Masbate New Life Marketing & Merchandising Corporation	Unreadable	20-Mar-10
P-96-g-2-13	D'Golden Touch Advertising	1556	2-Mar-10
P-96-g-2-17	New Ong to Expressmart	290020	12-Mar-10
P-96-g-2-18	Naga Lucky Star Trading	44807	3-Mar-10
P-96-g-2-19	Robertson Department Store and Supermart	989333	4-Mar-10
P-96-g-2-20	DK Botor Store	450	4-Mar-10
P-96-g-2-21	Philippine Fisheries Development Authority	3872	4-Mar-10
P-96-g-2-22	Lolo's Music Bar	4134	4-Mar-10
P-96-g-2-23	Robertson Mall	300641	5-Feb-10
P-96-g-2-30	Philippine Fisheries Development Authority	3902	5-Mar-10
P-96-g-2-31	Boning's Trading	701046	6-Mar-10

<sup>43</sup> Exhibits "P-96", "P-96-a" to "P-96-c", "P-96-d" and series, "P-96-e" and series, "P-96-f" and series, "P-96-g" and series.

## Decision

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P-96-g-2-35	Abonalla Sari-Sari Store	231	6-Mar-10
P-96-g-2-41	Philippine Fisheries Development Authority	3926	6-Mar-10
P-96-g-2-45	DK Botor Store	602	6-Mar-10
P-96-g-2-47	Kim's Mobile Disco	2692	10-Mar-10
P-96-g-2-50	DK Botor Store	604	8-Mar-10
P-96-g-2-55	New Ong To Expressmart	29001	9-Mar-10
P-96-g-2-58	Iriga Ice Plant & Cold Storage, Inc.	13844	9-Mar-10
P-96-g-2-60	New Ong To Expressmart	290017	10-Mar-10
P-96-g-2-62	Boning's Trading	70157	10-Mar-10
P-96-g-2-63	Robertson Department Store and Supermart	98949	10-Mar-10
P-96-g-2-64	Naga Jam Trading 1	92360	10-Mar-10
P-96-g-2-70	Iriga Ice Plant & Cold Storage, Inc.	13849	10-Mar-10
P-96-g-2-74	Iriga Ice Plant & Cold Storage, Inc.	13854	11-Mar-10
P-96-g-2-79	Iriga Ice Plant & Cold Storage, Inc.	13858	12-Mar-10
P-96-g-2-80	Iriga Standard Bazar	7368	12-Mar-10
P-96-g-2-81	Joyce S. Ong Marketing	18421	13-Mar-10
P-96-g-2-82	Joyce S. Ong Marketing	18422	13-Mar-10
P-96-g-2-83	Iriga Ice Plant & Cold Storage, Inc.	13861	13-Mar-10
P-96-g-2-84	J.B.S.S Merchandising	N/A	13-Mar-10
P-96-g-2-86	Kim's Mobile Disco	2693	13-Mar-10
P-96-g-2-87	Fortuna Department Store	27785	13-Mar-10
P-96-g-2-96	Mudbugs Sports _ & Café	8318	11-Mar-10
P-96-g-2-97	Lucky Nine Convenience Store	3351	13-Mar-10
P-96-g-2-99	Kim's Mobile Disco	2694	16-Mar-10
P-96-g-2-101	DK Botor Store	488	17-Mar-10
P-96-g-2-102	Luzonwide Commercial Center	140078	17-Mar-10
P-96-g-2-104	Benmat Handicraft Store	3776	16-Mar-10
P-96-g-2-105	Robertson Department Store and Supermart	989599	17-Mar-10
P-96-g-2-106	Robertson Department Store and Supermart	989598	12-Mar-10
P-96-g-2-107	Robertson Department Store and Supermart	989899	18-Mar-10
P-96-g-2-108	J. San Pascual Native	18677	19-Mar-10
P-96-g-2-108	New TH Trading	251361	16-Mar-10
P-96-g-2-108	New TH Trading	253097	19-Mar-10
P-96-g-2-109	San Vicente de Ferrer Grains Center	9416	17-Mar-10
P-96-g-2-110	San Vicente de Ferrer Grains Center	9417	17-Mar-10
P-96-g-2-112	C.O.B. Hardware	171728	18-Mar-10
P-96-g-2-112	New Bernales Hardware	29581	18-Mar-10
P-96-g-2-113	DK Botor Store	487	18-Mar-10
P-96-g-2-114	Kim's Mobile Disco	2695	18-Mar-10
P-96-g-2-117	V.C. Trading	28571	19-Mar-10
P-96-g-2-117	V.C. Trading	28570	19-Mar-10
P-96-g-2-121	Naga City	9186603	19-Mar-10

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P-96-g-2-122	Naga City	3272905	19-Mar-10
P-96-g-2-124	C-Free Purified Drinking Water	11312	19-Mar-10
P-96-g-2-125	M Abellado Fresh Fish Retailer	364	20-Mar-10
P-96-g-2-127	Xymon Jan Eatery	1165	20-Mar-10
P-96-g-2-128	Aldecs Mobile Disco Sound System	2130	20-Mar-10
P-96-g-2-129	Kim's Mobile Disco	2698	20-Mar-10
P-96-g-2-130	HPJ General Merchandise	3607	20-Mar-10
P-96-g-2-137	Philippine Fisheries Development Authority	4198	12-Mar-10
P-96-g-2-141	Philippine Fisheries Development Authority	4218	18-Mar-10
P-96-g-2-144	Related Investment & Development Company, Inc.	23979	19-Mar-20
P-96-g-2-149	Related Investment & Development Company, Inc.	23984	19-Mar-10
P-96-g-2-152	Related Investment & Development Company, Inc.	23989	20-Mar-10
P-96-g-2-155	Philippine Fisheries Development Authority	4250	19-Mar-10
P-96-g-2-167	Master Square Department Store	260524	22-Mar-10
P-96-g-2-168	Robertson Department Store and Supermart	990640	22-Mar-10
P-96-g-2-169	Beth Trading	2210	23-Mar-10
P-96-g-2-172	CBCM Rela Estate Lessor	167	26-Mar-10
P-96-g-2-173	Master Square Supermart	Unreadable	26-Mar-10
P-96-g-2-174	Master Square Department Store	259843	26-Mar-10
P-96-g-2-176	San Jose Ice Plant	15276	27-Mar-10
P-96-g-2-177	Bulwagan Bicolano	1927	28-Mar-10
P-96-g-2-178	Kim's Mobile Disco	1276	27-Mar-10
P-96-g-2-179	Robertson Department Store and Supermart	991163	26-Mar-10
P-96-g-2-180	Master Square Department Store	263755	26-Mar-10
P-96-g-2-180	Mher-nang Store	29	26-Mar-10
P-96-g-2-181	Power Plus Store	Unreadable	27-Mar-10
P-96-g-2-182	San Vicente de Ferrer Grains Center	9437	27-Mar-10
P-96-g-2-186	Naga City	9186705	27-Mar-10
P-96-g-2-188	Pro-Lites Electronics Sales & Services	673	27-Mar-10
P-96-g-2-194	Philippine Fisheries Development Authority	4301	22-Mar-10
P-96-g-2-195	Philippine Fisheries Development Authority	4318	23-Mar-10
P-96-g-2-202	Philippine Fisheries Development Authority	4343	24-Mar-10
P-96-g-2-202	Philippine Fisheries Development Authority	4342	24-Mar-10
P-96-g-2-206	Philippine Fisheries Development Authority	4363	25-Mar-10
P-96-g-2-209	Philippine Fisheries Development Authority	4383	26-Mar-10
P-96-g-2-212	Philippine Fisheries Development Authority	4411	27-Mar-10
P-96-g-2-239	Top Hongkong Trading and Shoe Place	592459	8-Feb-10
P-96-g-2-239	Top Hongkong Trading and Shoe Place	594346	10-Mar-10
P-96-g-2-241	Refaircon Commercial Services	199	15-Mar-10
P-96-g-2-262	RM Quintela Enterprises	62531	19-Mar-10
P-96-g-2-264	Brgy. Parang	8577923	15-Mar-10

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P-96-g-2-265	Malayan Store	15172	20-Mar-10
P-96-g-2-266	Top Hongkong Trading and Shoe Place	594914	15-Mar-10
P-96-g-2-266	Top Hongkong Trading and Shoe Place	595237	18-Mar-10
P-96-g-2-267	Mega Mini Mart	4634	20-Mar-10
P-96-g-2-296	D&T General Merchandise	122770	27-Mar-10
P-96-g-2-297	Mega Mini Mart	4554	7-Mar-10
P-96-g-2-298	Al Vino Roast, Grill & Fry	16183	27-Mar-10
P-96-g-2-301	Top Hongkong Trading and Shoe Place	596375	27-Mar-10
P-96-g-3-2	Sincere Staff Management Services	2255	6-Apr-10
P-96-g-4-3	D' Golden Touch Advertising	1576	29-Mar-10
P-96-g-4-5	Refaircon Commercial Services	376	12-Apr-10
P-96-g-4-7	Kim's Mobile Disco	2715	24-Apr-10
P-96-g-4-9	Kim's Mobile Disco	2706	10-Apr-10
P-96-g-4-9	Kim's Mobile Disco	2709	17-Apr-10
P-96-g-4-11	Philippine Fisheries Development Authority	4807	17-Apr-10
P-96-g-4-30	Bacerdo Sound System	77	10-Apr-10
P-96-g-4-32	Cepeda Advertising	1885	28-Apr-10
P-96-g-4-35	Philippine Fisheries Development Authority	4977	24-Apr-10
P-96-g-4-36	Philippine Fisheries Development Authority	4649	10-Apr-10
P-96-g-5-2	Prime Oriental Marketing Enterprise	9744	25-Feb-10
P-96-g-5-3	Masbate New Life Marketing & Merchandising Corporation	542981	15-May-10
P-96-g-6-2	D' Golden Touch Advertising	1387	21-Jun-10
P-96-g-6-7	Libertad Consumers Corporation	282	10-Jul-10
P-96-g-6-10	Mudbugs Sports _ & Café	9899	12-Jul-10
P-96-g-6-12	D' Golden Touch Advertising	1669	30-Jun-10
P-96-g-6-14	D' Golden Touch Advertising	1671	17-Jul-10
P-96-g-6-14	D' Golden Touch Advertising	1670	17-Jul-10
P-96-g-6-15	Related Investment & Development Company, Inc.	23899	8-Mar-10
P-96-g-7-15	Denver's Computer Shoppe, Inc.	4345	29-Dec-09
P-96-g-7-18	Rofe's Toy Balloons, Flower & Party Needs	1041	28-Dec-09
P-96-g-7-20	Rofe's Toy Balloons, Flower & Party Needs	103	7-Dec-09
P-96-g-7-22	Lucky Educational Supply, Inc.	26898	14-Nov-09
P-96-g-7-28	Nikko Studio & Developing Center	1858	2-Dec-09
P-96-g-7-29	Southern Bicol Development Corporation	90965	4-Dec-09
P-96-g-7-50	Nikko Studio & Developing Center	1863	31-Dec-09
P-96-g-7-52	Duka Enterprises	6839	24-Nov-09
P-96-g-7-53	New Balogo Enterprises	56058	13-Nov-09
P-96-g-7-82	M.E. Dy Trading	1083	14-Dec-09
P-96-g-7-82	Belen Amurao	8362	14-Dec-09
P-96-g-7-85	Bicol Warehouse Sales	Unreadable	21-Dec-09
P-96-g-7-97	Lucky Educational Supply, Inc.	112059	6-Dec-09

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P-96-g-7-97	Bicol Warehouse Sales	127626	6-Dec-09
P-96-g-7-124	Garries Party Accessories & Catering Services	828	21-Dec-09
P-96-g-7-125	Bicol Warehouse Sales	131316	19-Dec-09
P-96-g-7-125	Bicol Warehouse Sales	131923	21-Dec-09
P-96-g-7-147	Abenson	Unreadable	2009
P-96-g-7-158	Patrick's Party Flavors & Catering Services	3291	30-Dec-09
P-96-g-7-164	F.E. Lee Enterprises	71744	6-Dec-09
P-96-g-7-166	Bulan Kimson Enterprises	19492	6-Dec-09
P-96-g-7-167	P. Aldana Cellphones & General Merchandise	2333	13-Dec-09
P-96-g-7-175	Nikko Studio & Developing Center	1871	4-Dec-09
P-96-g-7-176	Bulan Kimson Enterprises	19622	13-Dec-09
P-96-g-7-176	Bulan Kimson Enterprises	19623	13-Dec-09
P-96-g-7-187	P. Aldana Cellphones & General Merchandise	2790	19-Dec-09
P-96-g-7-194	L CC Supermarket	N/A	22-Dec-09
P-96-g-7-198	F.E. Lee Enterprises	71657	22-Dec-09
P-96-g-7-201	P. Aldana Cellphones & General Merchandise	2792	19-Dec-09
P-96-g-7-208	Jad's Marketing	28241	29-Dec-09
P-96-g-7-213	F.E. Lee Enterprises	71685	23-Dec-09
P-96-g-7-216	P. Aldana Cellphones & General Merchandise	2791	19-Dec-09
P-96-g-8-13	Unreadable	19836	2-Feb-10
P-96-g-8-13	Unreadable	19835	2-Feb-10
P-96-g-8-13	FJM Construction Supply And Gen. Mdse.	963	3-Feb-10
P-96-g-8-13	Unreadable	19881	6-Feb-10
P-96-g-8-14	Belen Amurao Grocery	10037	3-Feb-10
P-96-g-8-14	Belen Amurao Grocery	10100	23-Feb-10
P-96-g-8-14	Belen Amurao Grocery	Unreadable	10-Feb-10
P-96-g-8-15	M.E. Dy Trading	1144	10-Feb-10
P-96-g-8-15	M.E. Dy Trading	1143	3-Feb-10
P-96-g-8-24	Belen Amurao Grocery	10040	4-Feb-10
P-96-g-9-2	D' Golden Touch Advertising	1783	29-Dec-10
P-96-g-9-33	Iriga Ice Plant & Cold Storage, Inc.	Unreadable	22-Jan-20
P-96-g-10-2	Sincere Staff Management Services	1211	30-Jul-10
P-96-g-10-3	Master Square Supermart	167353	6-Feb-10
P-96-g-10-4	Master Square Supermart	172850	16-Aug-10
P-96-g-11-9	Unreadable	30296	25-Mar-10
P-96-g-11-19	Six In One Corporation	Unreadable	19-Mar-10
P-96-g-11-38	Rolly General Merchandise	78965	6-Mar-10
P-96-g-11-39	Belen Amurao Grocery	10168	12-Mar-10
P-96-g-11-39	Belen Amurao Grocery	10137	5-Mar-10
P-96-g-11-40	Unreadable	1147	12-Mar-10
P-96-g-11-41	Carries Party Accessories & Catering Services	1362	15-Mar-10

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P-96-g-11-42	Brushwork Advertising	342	6-Mar-10
P-96-g-11-48	Costa Fishing Supply	17754	19-Mar-10
P-96-g-11-49	LCC Liberty Commercial Center, Inc.	45021	19-Mar-10
P-96-g-11-52	Lucky Educational Supply, Inc.	121594	18-Mar-10
P-96-g-11-52	Lucky Educational Supply, Inc.	108849	15-Mar-10
P-96-g-11-52	JY Legazpi Mini Mart - Albay	1621	18-Mar-10
P-96-g-11-54	Carries Party Accessories & Catering Services	1380	24-Mar-10
P-96-g-11-54	Carries Party Accessories & Catering Services	1379	24-Mar-10
P-96-g-11-57	LCC Shopmore Commercial Corporation	859	6-Feb-10
P-96-g-11-59	Denver's Computer Shoppe, Inc.	5029	6-Feb-10
P-96-g-11-60	Sorsogon Hollywood Trading	99597	6-Feb-10
P-96-g-11-65	Jad's Marketing	28244	10-Feb-10
P-96-g-11-66	Sorsogon Hollywood Trading	100618	19-Feb-10
P-96-g-11-79	Jad's Marketing	28973	13-Mar-10
P-96-g-11-80	Denver's Computer Shoppe, Inc.	5744	13-Mar-10
P-96-g-11-81	Lasam Ice Plant	1216	13-Mar-10
P-96-g-12-4	Belen Amurao Grocery	10344	26-Apr-10
P-96-g-12-5	M.E. Dy Trading	1150	6-Apr-10
P-96-g-12-6	M.E. Dy Trading	1151	30-Apr-10
P-96-g-12-12	JY Legazpi Mini Mart - Albay	1530	16-Apr-10
P-96-g-12-13	Carries Party Accessories & Catering Services	1394	17-Apr-10
P-96-g-12-19	JY Legazpi Mini Mart - Albay	1577	30-Apr-10
P-96-g-12-58	Best Initial Art & Design Center	977	26-Apr-10
P-96-g-12-62	Best Initial Art & Design Center	976	27-Apr-10
P-96-g-12-77	Balogo Shopville	5028	9-Apr-10
P-96-g-12-95	Jad's Marketing	28249	17-Apr-10
P-96-g-12-96	Jeanee's Supermart & Department Store, Inc.	17402	17-Apr-10
P-96-g-12-107	Balogo Shopville	5030	16-Apr-10
P-96-g-12-108	Denver's Computer Shoppe, Inc.	6210	17-Apr-10
P-96-g-12-114	Balogo Shopville	5032	23-Apr-10
P-96-g-12-120	Balogo Shopville	5035	30-Apr-10
P-96-g-13-6	Unreadable	21476	7-Jul-10
P-96-g-13-32	Jad's Marketing	27909	13-Jul-10
P-96-g-13-32	Jad's Marketing	27910	14-Jul-10
P-96-g-13-32	Jad's Marketing	27911	15-Jul-10
P-96-g-15-11	Everlast Marketing	26411	4-May-10
P-96-g-15-11	Charisma Snack House & Catering Services	6430	8-May-10
P-96-g-15-28	JY Legazpi Mini Mart - Albay	1655	15-May-10
P-96-g-15-29	Charisma Snack House & Catering Services	6433	16-May-10
P-96-g-15-47	Polyware Trading	10100	22-May-10
P-96-g-15-47	Polyware Trading	11753	22-May-10

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P-96-g-15-49	Charisma Snack House & Catering Services	3415	9-May-10
P-96-g-15-60	Charisma Snack House & Catering Services	6389	24-May-10
P-96-g-15-76	JY Legazpi Mini Mart - Albay	1677	29-May-10
P-96-g-15-76	Charisma Snack House & Catering Services	6390	29-May-10
P-96-g-15-95	Lasam Ice Plant	1053	8-May-10
P-96-g-15-96	Jad's Marketing	27856	1-May-10
P-96-g-15-98	Jeanee's Supermart & Department Store, Inc.	17499	30-Apr-10
P-96-g-15-98	Jeanee's Supermart & Department Store, Inc.	354808	30-Apr-10
P-96-g-15-103	Jessa Ice Plant	3202	8-May-10
P-96-g-15-110	Lasam Ice Plant	1052	14-May-10
P-96-g-15-111	Jad's Marketing	27861	14-May-10
P-96-g-15-113	DRI Enterprises	280	14-May-10
P-96-g-15-121	Lasam Ice Plant	1051	7-May-10
P-96-g-15-136	Lasam Ice Plant	1054	15-May-10
P-96-g-15-142	Lasam Ice Plant	1055	21-May-10
P-96-g-15-152	Lasam Ice Plant	1056	22-May-10
P-96-g-15-153	Denver's Computer Shoppe, Inc.	6667	22-May-10
P-96-g-15-161	Jad's Marketing	27870	28-May-10
P-96-g-15-162	Bringuela Enterprises	28207	28-May-10
P-96-g-15-176	Lasam Ice Plant	1057	29-May-10
P-96-g-16-2	Jacinto Enterprises	75993	1-Sep-10
P-96-g-16-3	Jacinto Enterprises	76085	17-Sep-10
P-96-g-16-4	Jacinto Enterprises	76100	20-Sep-10
P-96-g-22-2	Masbate New Life Marketing & Merchandising Corporation	550228	11-Oct-10
P-96-g-22-3	Masbate Apollo General Merchandise	2110	12-Sep-10
P-96-g-23-2	D' Golden Touch Advertising	1630	2-Jun-10
P-96-g-23-4	Mercury Drug	3455	16-Jun-10
P-96-g-23-6	Master Square Department Store	264806	17-Jun-10
P-96-g-23-10	V.C. Trading	31125	23-Jun-10
P-96-g-23-15	TJ Paint Center & General Merchandise	170131	10-Jun-10
P-96-g-23-16	Gemmaglenn Supermart	2203	10-Jun-10
P-96-g-23-17	TJ Paint Center & General Merchandise	172780	10-Jun-10
P-96-g-23-18	Gemmagleen Supermart	2260	10-Jun-10
P-96-g-23-19	Regine Joy Store	20427	10-Jun-10
P-96-g-23-20	Regine Joy Store	20429	10-Jun-10
P-96-g-23-21	Cepeda Advertising	3864	7-Jun-10
P-96-g-23-23	Lucky Nine Convenience Store	1995	12-Jun-10
P-96-g-23-24	Gemmagleen Supermart	2206	11-Jun-10
P-96-g-24-4	D' Golden Touch Advertising	1753	30-Aug-10
P-96-g-24-8	Libertad Consumers Corporation	354	6-Aug-10
P-96-g-24-9	Prince & Pearl Hardware & Construction Supply	71707	7-Aug-10



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P-96-g-24-13	Empire Trade Center	351678	7-Aug-10
P-96-g-24-14	Greenstone General Merchandise	12868	7-Aug-10
P-96-g-24-15	Empire Trade Center	351712	10-Aug-10
P-96-g-24-16	Remstarr Trading	138247	10-Aug-10
P-96-g-24-18	Robertson Mall	210029	11-Aug-10
P-96-g-24-18	Robertson Mall	210035	12-Aug-10
P-96-g-24-19	Pya Store	3041	12-Aug-10
P-96-g-24-20	An-An Marketing	10544	12-Aug-10
P-96-g-24-21	Lucky 9 Convenience Store	1375	12-Aug-10
P-96-g-24-23	Mercury Drug	3663	12-Aug-10
P-96-g-24-25	Lau Trading	1618	12-Aug-10
P-96-g-24-26	Princeton Enterprises	88876	13-Aug-10
P-96-g-24-27	Erickson's Copy Center	13599	13-Aug-10
P-96-g-24-28	Pimentel Hardware	17311	13-Aug-10
P-96-g-24-63	Unreadable	2874	14-Aug-10
P-96-g-24-63	Related Investment & Development Company, Inc.	25198	20-Aug-10
P-96-g-24-64	Unreadable	64908	16-Aug-10
P-96-g-24-64	Princeton Enterprises	89106	21-Aug-10
P-96-g-24-65	Related Investment & Development Company, Inc.	25217	21-Aug-10
P-96-g-24-65	Philippine Fisheries Development Authority	8916	22-Aug-10
P-96-g-24-65	Top People Hardware	87	20-Aug-10
P-96-g-24-67	Related Investment & Development Company, Inc.	25222	22-Aug-10
P-96-g-24-67	Related Investment & Development Company, Inc.	11155	21-Aug-10
P-96-g-24-68	Sir Karlos Restaurant	67	22-Aug-10
P-96-g-24-69	Yet'zboo Tattoo Shop	52	23-Aug-10
P-96-g-24-77	D' Golden Touch Advertising	1682	31-Jul-10
P-96-g-24-81	New Pili Lumber Dealer & Hardware	78476	3-Aug-10
P-96-g-24-84	Bigg's	94165	11-Aug-10
P-96-g-24-85	Asog Garden and Catering Services	1525	28-Aug-10
P-96-g-24-86	D' Golden Touch Advertising	1690	10-Aug-10
P-96-g-24-87	Julia Outdoor Advertising	2520	12-Aug-10
P-96-g-24-88	Paraprint	1023	21-Aug-10
P-96-g-24-90	RP Canlas Enterprises	839	28-Aug-10
P-96-g-24-91	RP Canlas Enterprises	843	29-Aug-10
P-96-g-24-94	Robertson Mall	210218	26-Aug-10
P-96-g-24-94	Artido Ricemill Corp	184377	26-Aug-10
P-96-g-24-96	Philippine Fisheries Development Authority	8935	24-Aug-10
P-96-g-24-96	Philippine Fisheries Development Authority	8972	25-Aug-10
P-96-g-24-96	Philippine Fisheries Development Authority	8958	25-Aug-10
P-96-g-24-96	Iriga Ice Plant & Cold Storage, Inc.	14452	25-Aug-10

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P-96-g-24-97	Philippine Fisheries Development Authority	8995	26-Aug-10
P-96-g-24-97	Iriga Ice Plant & Cold Storage, Inc.	14458	27-Aug-10
P-96-g-24-97	Related Investment & Development Company, Inc.	25247	28-Aug-10
P-96-g-24-98	Related Investment & Development Company, Inc.	25241	28-Aug-10
P-96-g-24-99	Asog Garden & Catering Services	1520	28-Aug-10
P-96-g-24-102	Mudbugs Sports Bar & Café	12441	31-Aug-10
P-96-g-24-103	Boning's Trading	709635	23-Aug-10
P-96-g-24-103	Mequene Abe Commercia	27302	27-Aug-10
P-96-g-24-103	Mequene Abe Commercia	27303	27-Aug-10
P-96-g-24-103	Boning's Trading	709702	24-Aug-10
P-96-g-24-103	G-Ram's Goods & Gen Mdse	8501	28-Aug-10
P-96-g-24-105	Pro-Lites Electronics Sales & Services	148	28-Aug-10
P-96-g-24-147	Arsen's Textile & Upholstery Supply - Main	21479	3-Aug-10
P-96-g-24-148	Cepeda Advertising	1714	3-Aug-10
P-96-g-24-149	Arsen's Textile & Upholstery Supply - Main	19245	8-Aug-10
P-96-g-24-150	Cepeda Advertising	1721	9-Aug-10
P-96-g-24-151	Cepeda Advertising	2094	24-Aug-10
P-96-g-25-6	Junliy's Bakeshop & Gen. Mdse.	86456	25-Nov-10
P-96-g-25-13	Iriga Ice Plant & Cold Storage, Inc.	14613	27-Nov-10
P-96-g-25-30	Top Hongkong Trading and Shoe Place	N/A	30-Nov-10
P-96-g-25-32	E.P. Manzana Sales Center	92721	23-Nov-10
P-96-g-25-35	E.P. Manzana Sales Center	92776	26-Nov-10
P-96-g-25-37	D' Golden Touch Advertising	1403	1-Nov-10
P-96-g-25-40	Mudbugs Sports Bar & Café	14112	19-Nov-10
P-96-g-25-41	D' Golden Touch Advertising	1765	27-Nov-10
P-96-g-25-44	Greenstone General Merchandise	17312	25-Nov-10
P-96-g-25-55	Iriga Ice Plant & Cold Storage, Inc.	14601	24-Nov-10
P-96-g-25-61	Iriga Ice Plant & Cold Storage, Inc.	14605	24-Nov-10
P-96-g-25-61	Iriga Ice Plant & Cold Storage, Inc.	14606	25-Nov-10
P-96-g-25-68	Philippine Fisheries Development Authority	11663	25-Nov-10
P-96-g-25-75	Philippine Fisheries Development Authority	11680	26-Nov-10
P-96-g-25-79	Iriga Ice Plant & Cold Storage, Inc.	14609	26-Nov-10
P-96-g-26-4	Sincere Staff Management Services	1724	26-Nov-10
P-96-g-26-7	Master Square Supermart	174354	3-Nov-10
P-96-g-27-4	Mardi's Store	38274	5-Jul-10
P-96-g-27-5	M.E. Dy Trading	1157	4-Aug-10
P-96-g-27-6	Duka Enterprises	3729	5-Aug-10
P-96-g-28-2	Masbate New Life Marketing & Merchandising Corporation	551250	4-Nov-10
P-96-g-28-3	Masbate New Union Bakery & Marketing Corporation	228638	12-Nov-10
P-96-g-28-4	Pamatra Trading	2235	15-Nov-10

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P-96-g-30-36	Julia Outdoor Advertising	2698	22-Feb-10
P-96-g-31-3	Related Investment & Development Company, Inc.	25714	4-Dec-10
P-96-g-31-7	Iriga Ice Plant & Cold Storage, Inc.	14637	11-Dec-10
P-96-g-31-10	Philippine Fisheries Development Authority	11885	10-Dec-10
P-96-g-31-11	Iriga Ice Plant & Cold Storage, Inc.	14631	10-Dec-10
P-96-g-31-15	Philippine Fisheries Development Authority	11901	11-Dec-10
P-96-g-31-17	Philippine Fisheries Development Authority	11910	11-Dec-10
P-96-g-31-20	Philippine Fisheries Development Authority	11919	12-Dec-10
P-96-g-31-28	Iriga Ice Plant & Cold Storage, Inc.	14657	18-Dec-10
P-96-g-31-30	Iriga Ice Plant & Cold Storage, Inc.	14611	17-Dec-10
P-96-g-31-34	Iriga Ice Plant & Cold Storage, Inc.	14659	19-Dec-10
P-96-g-31-35	Shotex Trade Center	163262	27-Dec-10
P-96-g-31-36	Iriga Ice Plant & Cold Storage, Inc.	14680	29-Oct-10
P-96-g-31-67	Salgado Videoke	4714	16-Dec-10
P-96-g-31-82	Cepeda Advertising	2777	30-Dec-10
P-96-g-32-4	Sincere Staff Management Services	1249	29-Dec-10
P-96-g-32-7	Sincere Staff Management Services	1250	29-Dec-10
P-96-g-32-10	Master Square Supermart	175595	30-Dec-10
P-96-g-32-10	Master Square Supermart	175594	30-Dec-10
P-96-g-33-2	JY Tabaco Supermarket & Dept Store	1240	4-Nov-10
P-96-g-33-3	Boy & Lar Enterprise	22930	12-Nov-10
P-96-g-35-4	Unreadable	11290	2-Dec-10
P-96-g-35-5	M.E. Dy Trading	1167	1-Dec-10
P-96-g-36-6	JY Legazpi Mini Mart - Albay	2269	13-Oct-10
P-96-g-36-7	Legazpi Mini Mart	507	13-Oct-10
P-96-g-36-7	Joy Daraga Supermarket	1804	12-Oct-10
P-96-g-37-1	Masbate New Life Marketing & Merchandising Corporation	552210	4-Dec-10
P-96-g-37-1	Lim Enterprises, Inc.	474443	2-Dec-10
P-96-g-37-4	Milagro's Auto Supply & Hardware	196832	7-Dec-10
P-96-g-37-5	M.E. Dy Trading	1166	1-Dec-10
P-96-g-37-13	Masbate New Life Marketing & Merchandising Corporation	552293	21-Dec-10

Well-settled is the rule that while a taxpayer has the right to claim all authorized deductions during the current year, a taxpayer cannot deduct such claim in the succeeding year. Section 76 of RR No. 02-40 is instructive, thus:

"SECTION 76. When charges are deductible. – Each year's return, so far as practicable, both as to gross income and deductions therefrom, should be complete in itself, and taxpayers are expected to make every reasonable effort to ascertain the facts necessary to make a correct return. The expenses, liabilities or deficit of one year cannot be used to reduce the income of a subsequent year. **A taxpayer has the right to deduct all**

**authorized allowances and it follows that if he does not within any year deduct certain of his expenses, losses, interests, taxes, or other charges, he can not deduct them from the income of the next or any succeeding year."**

In *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*,<sup>44</sup> the Supreme Court, citing Revenue Audit Memorandum Order No. 1-2000, highlighted the importance of claiming deductions in the year they are incurred, thus:

"The requisites for the deductibility of ordinary and necessary trade, business or professional expenses, like expenses paid for legal and auditing services, are: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer and; (d) it must be supported by receipts, records or other pertinent papers.

The requisite that it must have been paid or incurred during the taxable year is further qualified by Section 45 of the National Internal Revenue Code (NIRC) which states that: "[t]he deduction provided for in this Title shall be taken for the taxable year in which 'paid or accrued' or 'paid or incurred', dependent upon the method of accounting upon the basis of which the net income is computed..."

Accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions. In the instant case, the accounting method used by ICC is the accrual method.

**Revenue Audit Memorandum Order No. 1-2000, provides that under the accrual method of accounting, expenses not being claimed as deductions by a taxpayer in the current year when they are incurred cannot be claimed as deduction from income for the succeeding year. Thus, a taxpayer who is authorized to deduct certain expenses and other allowable deductions for the current year but failed to do so cannot deduct the same for the next year." (Boldfacing supplied)**

Undoubtedly, petitioner used the accrual method of accounting for TY 2011 as implied in the declarations in its Audited Financial Statements,<sup>45</sup> particularly under the "Summary of Significant Accounting Policies," to wit:

"Revenue Recognition

Revenue comprises the fair value of the consideration received. **The Company recognizes revenue when the amount can be reliably measured; it is probable that future economic benefits will flow to the entity and specific criteria have been met.**

Revenue from the sale of goods is recognized when the significant risk and rewards of ownership of the goods have passed to the buyer."<sup>46</sup> (Boldfacing supplied)

<sup>44</sup> G.R. No. 172231, February 12, 2007.

<sup>45</sup> Exhibit "P-23", CTA Docket, Vol. III, pp. 1403-1421.

<sup>46</sup> Exhibit "P-23", CTA Docket, Vol. III, p. 1414.

If the taxpayer accounts for its income on the accrual method, it should also adopt the accrual method of accounting for its expenses. A hybrid method, i.e., accrual method for income recognition and cash method for expense recognition, is not contemplated by Philippine tax laws, rules and regulations. Considering that petitioner employed the accrual method of accounting for its revenues, then it follows that the same method of accounting was employed for the accounting of its expenses. Petitioner should have claimed the expenses incurred in TYs 2009 and 2010 in the same years and not in TY 2011. Petitioner cannot deduct the expenses incurred in TYs 2009 and 2010 from its gross income earned in TY 2011.

Accordingly, it is proper to sustain the disallowance of Advertising and Other Outside Services amounting to ₱22,089,137.55.

***IT-8 - Disallowed expenses  
due to non-withholding (Sec.  
34K, NIRC) - ₱41,230,990.26***

Petitioner reiterates its position that the expenses should not have been disallowed because it properly subjected all income payments covered by the withholding tax system as presented in its reconciliation. Further, petitioner explains that the income payments not subjected to expanded withholding tax are either (1) casual purchases or from a person who is not considered as a regular supplier; (2) petty cash disbursements incurred by salesmen and sales offices such as, but not limited to, meals, representation and entertainment, gasoline, out-of-town fieldwork expenses and supplies; or (3) expenses that were paid in cash such as, but not limited to, prepaid cellphone loads, registered mails transmitted to customers and the like.

To prove that it subjected to withholding tax all expenses it incurred, petitioner submitted a Reconciliation of Taxes Withheld vs. Audited Financial Statement for the Taxable Year Ended December 31, 2011.<sup>47</sup> Perusal of the said Reconciliation reveals the following pertinent figures:

Total purchases	388,083,135.02
Exempt	1,869,323.89
Compensation	14,837,145.60
Casual purchases, etc.	41,237,829.13

<sup>47</sup> Exhibit "P-47", CTA Docket, Vol. III, p. 1564.



Total income payments subject to EWT	330,138,836.40
Less: Subjected per alphabetical list	330,138,836.40
<b>Income payment not subjected to EWT</b>	-

Based on the foregoing, petitioner would like the Court to believe that certain expenses are actually casual purchases, cash disbursements incurred by salesmen and sales offices and expenses paid in cash, without offering a breakdown of any of these expenses and their accompanying source documents. The Court is constrained to reject the above reconciliation *sans* the supporting documents that would allow the Court to verify the existence of these expenses.

Petitioner likewise argues that respondent cannot simply disallow the expenses claimed as deduction from gross income for failure of the taxpayer to subject them to withholding taxes. If there is a deficiency in the payment of the withholding tax, respondent should assess petitioner for deficiency withholding taxes and not disallow the expenses altogether. In particular, petitioner claims that the prevailing rule during the taxable year under audit is RR No. 14-2002. In effect, petitioner is of the belief that since the taxable year is 2011, then RR No. 14-2002 applies.

Petitioner failed to prove that it paid the withholding taxes at the time of the audit/investigation or reinvestigation/reconsideration. Thus, the Court finds it futile and irrelevant to discuss whether it is RR No. 14-2002 or RR No. 12-2013 that is applicable to petitioner's case.

In fine, it is proper to sustain the disallowance of expenses amounting to ₱41,230,990.26 due to non-withholding of taxes.

All told, the Court finds no reason to modify much more reverse the findings of the Court in Division. It is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.<sup>48</sup>

**WHEREFORE**, premises considered, the present Petition for Review is **DENIED** for lack of merit. The assailed Amended Decision dated January 2, 2020 is **AFFIRMED**.

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<sup>48</sup> Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation), G.R. No. 188016, January 14, 2015.

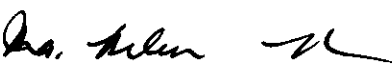


**SO ORDERED.**

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

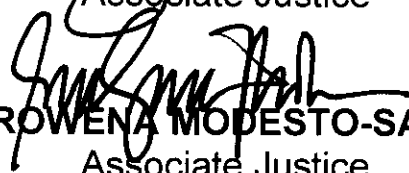
WE CONCUR:


  
**ERLINDA P. UY**  
Associate Justice


  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice

  
**CATHERINE T. MANAHAN**  
Associate Justice

  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice

  
**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice

  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice

  
**LANEE S. CUI-DAVID**  
Associate Justice

  
**CORAZON G. FERRER-FLORES**  
Associate Justice

### CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



**ROMAN G. DEL ROSARIO**  
Presiding Justice