REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

JOBSTREET.COM PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9483**
	Members:
-versus-	Castañeda, Jr., *Chairperson, and* Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 02 2019 1:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This Petition for Review filed by Jobstreet.com Philippines, Inc. prays for the reversal, cancellation and setting aside of the Final Decision on Disputed Assessment dated September 8, 2016, which seeks the collection of its alleged deficiency final withholding of value-added tax (VAT) for the taxable period July 1, 2012 to December 31, 2012 in the aggregate amount of ₱8,027,958.90.

STATEMENT OF FACTS

Petitioner Jobstreet.com Philippines, Inc. is a corporation duly organized and existing under Philippine laws[1] and is a registered taxpayer with Tax Identification Number 204-013-048-000.[2] Petitioner is engaged in the business of maintaining and operating a database gc

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[1] Exhibit "P-2".
[2] Exhibit "P-3".

service relating to work opportunities utilizing modern technological applications and related activities, without engaging in advertising and mass media activities.[3] Its principal office is located at the 20th Floor, Robinsons Cybergate Centre Tower III, Robinsons Pioneer Complex, Pioneer Street, Mandaluyong City.[4]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the duly appointed head of the Bureau of Internal Revenue (BIR), tasked to, among others, collect all national internal revenue taxes. Respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws related thereto. He holds his principal office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 5, 2015, petitioner received a Preliminary Assessment Notice[5] (PAN) of even date, assessing it for alleged deficiency VAT and final withholding VAT in the total amount of ₱9,658,876.41, inclusive of interest, for the period July 1 to December 31, 2012.

On January 20, 2015, petitioner filed its Reply to the PAN[6] dated January 20, 2014 in response thereto.

Simultaneously, on January 20, 2015, petitioner received a Formal Assessment Notice and Formal Letter of Demand[7] (FAN-FLD) of even date, which merely reiterated the findings in the PAN of petitioner's alleged deficiency VAT and final withholding VAT amounting to ₱9,796,364.54, inclusive of the adjustment in interest.[8]

Then, on February 18, 2015, petitioner filed its protest letter to the FAN-FLD[9] of even date, requesting for reconsideration of the deficiency VAT assessments.

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[3] Exhibit "P-2a".
[4] *Id.*
[5] Exhibit "P-7"; Exhibit "R-1".
[6] Exhibit "P-8".
[7] Exhibit "P-9"; Exhibit "R-2".
[8] *See* Par. 1, Jointly Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (vol. II), p. 437.
[9] Exhibit "P-10".

On September 8, 2016, respondent issued a Final Decision on Disputed Assessment[10] (FDDA). In the said FDDA, respondent upheld its assessment on the deficiency final withholding VAT in the total amount of ₱8,207,958.90, inclusive of interest of ₱3,404,726.02, and further stated that, *viz.*:

> "Please be informed that your request for re-investigation has been given action, however, you still failed to refute the validity of some of our findings as discussed under details of discrepancies.
>
> In accordance with Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, as implemented by Revenue Regulations No. 18-2013, you are still liable to pay deficiency Final Withholding of Value-Added Tax for the period of July 1, 2012 to December 31, 2012, as shown hereunder, to wit:
>
> **Deficiency Final Withholding of Value-Added Tax**

	Amount	FWT rate	Amount due
Total payments for services rendered in the Philippines by non-residences	₱38,526,940.65	12%	₱ 4,623,232.88
Deficiency final withholding of value-added tax			₱ 4,623,232.68
Add: Interest (01/11/2013 to 9/15/2016)			3,404,726.02
TOTAL AMOUNT DUE			**₱8,027,958.90**

x x x

> This is our final decision. If you disagree, you or your authorized representative may appeal with the Commissioner of Internal Revenue (CIR) or with the Court of Tax Appeals within thirty (30) days from the date of receipt hereof otherwise, the assessment shall become final, executory, and demandable."[11]

Aggrieved by the decision of respondent, petitioner filed the present Petition for Review[12] on October 7, 2016.

On December 16, 2016, respondent filed his Answer[13] interposing the following special and affirmative defenses, *viz.*: *jr*

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[10] Exhibit "P-11"; Exhibit "R-4".
[11] Par. 2, Jointly Stipulated Facts, JSFI, docket (vol. II), pp. 437-438.
[12] Docket (vol. I), pp. 12-25.
[13] *Id.*, pp.113-116.

> "11. Respondent adopts by way of reference all the allegations in the following paragraphs insofar as the same are material and relevant.
>
> 12. The assessment for July 1- December 31, 2012 was issued in accordance with law and regulations.
>
> 13. Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by the Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of correctness of the assessments." *(Commissioner of Internal Revenue vs. Bank of Philippine Islands, G.R. No. 134062, April 17, 2007)*

Thereafter, on December 21, 2016, a Notice of Pre-Trial Conference[14] was issued by this Court setting the case for pre-trial conference on February 2, 2017. However, by reason of petitioner's Motion for Resetting of Pre-Trial[15], it was eventually reset to February 16, 2017 as per the Order[16] of this Court dated January 31, 2017.

Meanwhile, on January 30, 2017, petitioner filed, through registered mail, its Pre-Trial Brief Ad Cautelam[17] pending resolution of its Motion for Resetting of Pre-Trial. On the other hand, Respondent's Pre-Trial Brief[18] was filed on February 10, 2017.

Thus, pre-trial ensued. On April 5, 2017, the parties filed their Joint Stipulation of Facts and Issues,[19] which was approved and adopted by this Court in the Pre-Trial Order[20] issued on April 11, 2017. As such, pre-trial was deemed terminated and the initial presentation of evidence for the petitioner was set on April 19, 2017.

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[14] *Id.*, pp. 117-118.
[15] *Id.*, pp. 119-122.
[16] *Id.*, p. 143.
[17] *Id.*, pp. 146-155.
[18] *Id.*, pp. 177-179.
[19] Docket (vol. II), pp. 437-441.
[20] *Id.*, pp. 442-447.

During trial, petitioner presented two witnesses, namely: Ms. Claribel Lincod,[21] its Finance Manager, and, Ms. Kar Lai Wong,[22] the Regional Tax Manager of Jobstreet.com Shared Services Sdn. Bhd., who both testified on direct way of judicial affidavit.

Thereafter, on August 4, 2017, petitioner filed its Formal Offer of Evidence[23] offering Exhibits "P-1" to "P-18A" as its documentary evidence. Consequently, this Court admitted all of petitioner's exhibits in the Resolution respectively dated September 18, 2017[24] and March 7, 2018[25]. After, petitioner was deemed to have rested its case.

When his turn to present his case, respondent offered as witnesses his Revenue Officers (RO) Jade H. Punto[26] and Jennifer Marie V. Fernando,[27] who also both testified on direct by way of judicial affidavit.

On June 20, 2018, Respondent filed his Formal Offer of Evidence[28] offering Exhibits "R-1" to "R-5", "R-100", "R-100-a", "R-222", and "R-222-a", as his documentary evidence. Thus, in the Resolution[29] dated August 1, 2018, this Court admitted respondent's exhibits except for Exhibit "R-5" for failure to identify the said exhibit. Furthermore, the parties were given a period of thirty (30) days within which to submit their respective memoranda.

Complying thereon, respondent filed his Memorandum[30] on August 31, 2018, while petitioner filed its Memorandum[31] on September 3, 2018. Accordingly, in the Resolution[32] dated September 7, 2018, the present case was deemed submitted for decision.

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[21] Exhibits "P-17" and "P-17a"; Judicial Affidavit dated February 10, 2017, *Id.*, p. 199-217.
[22] Exhibits "P-16" and "P-16a"; Judicial Affidavit dated January 20, 2017, *Id.*, p. 218-230.
[23] Docket (vol. II), pp.495-507.
[24] *Id.*, pp.723-724.
[25] *Id.*, pp. 763-764.
[26] Exhibits "R-100" and "R-100-a"; Judicial Affidavit dated February 13, 2017, Docket (vol. I), pp.182-186.
[27] Exhibits "R-222" and "R-222-a"; Judicial Affidavit dated February 10, 2017, Docket (vol. I), pp.169-172.
[28] Docket (vol. II), pp. 777-782.
[29] *Id.*, pp. 787-788.
[30] *Id.*, pp. 789-796.
[31] *Id.*, pp.797-824.
[32] *Id.*, p. 853.

STATEMENT OF ISSUES

The following issues[33] were submitted by the parties for this Court's disposition, viz.:

> "1. Whether or not petitioner correctly withheld VAT at the time of payment of the fees in 2014 and not at the time the fees were accrued in its books in 2012.
>
> 2. Assuming that VAT should have been withheld at the time the fees were accrued in petitioner's books in 2012, whether or not petitioner should be held liable for deficiency withholding VAT considering that it already remitted to the BIR the VAT due on the fees accrued for the taxable period July 1, 2012 to December 31, 2012.
>
> xxx
>
> Is petitioner liable for deficiency Final Withholding VAT for (the year) Y2012?"

Petitioner's Arguments

Petitioner mainly anchors its argument on Section 114(C) of the NIRC of 1997, as amended, which provides that VAT shall be due on payments of royalties and service fees to non-resident owners, such as Jobstreet Singapore, only at the time of payment thereof. As such, petitioner claims that it correctly withheld final VAT in 2014, since the said fees accrued in 2012 were only paid in September 2014. Thus, petitioner insists that it is not liable for final withholding VAT on 2012 as withholding is done at the time of payment and not at the time of accrual.

Respondent's Counter-Arguments

Conversely, respondent argues that upon checking of the monthly remittance return of final income taxes withheld for the month of December 2012, it was discovered that petitioner paid a non-resident alien engaged in trade or business (NRA-ETB) in the aggregate amount of ₱38,526,290.65. Respondent asserts that as per its Audited Financial Statements (AFS), it can be gathered that petitioner paid the said amount to Jobstreet Singapore since the outstanding liability due to related parties at year-end is only ₱29,474,015.00, which represents intercompany billings for common

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[33] Issues, JSFI, *Id.*, pp. 438-439.

expenses among others, for rent, utilities, communications and other related services. Thus, respondent posits that petitioner is liable for deficiency final withholding VAT for the payment made to Jobstreet Singapore, a NRA-ETB, for the year 2012.

THE COURT'S RULING

After due consideration of the arguments and evidence presented by the parties, this Court finds merit in the instant Petition for Review.

Time of withholding and payment of final withholding VAT.

Verily, Section 114(C) of the NIRC of 1997, as amended, in relation to Section 4.114-2(b) of Revenue Regulations No. 16-2005[34] provides for the time of withholding VAT on payments made to, among others, non-residents, to wit:

> "**SEC. 114.** *Return and Payment of Value-Added Tax.* –
>
> x x x
>
> (C) *Withholding of Value-added Tax.* – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of five (5%) of the gross payment thereof: ***Provided,*** **That the payment for lease or use of properties or property rights to nonresident owners shall be subject to twelve (12%) withholding tax at the time of payment.** For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.
>
> **The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made.** *(Emphases supplied)*
>
> **SEC. 4.114-2.** *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* –

[34] Consolidated Value-Added Tax Regulations of 2005, dated September 1, 2005.

x x x

(b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as **private corporations**, individuals, estates and trusts, whether large or non-large taxpayers, **shall withhold ten percent (10%) VAT with respect to the following payments:**

1. **Lease or use of property rights owned by non-residents**;

2. Services rendered to local insurance companies, with respect to reinsurance premiums payable to non-residents; and

3. **Other services rendered in the Philippines by non-residents.**

x x x

VAT withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made." (*Emphases supplied*)

Based above, the final withholding VAT for payments to non-residents for use of their property rights or for services rendered in the Philippines shall be withheld at the time of payment, and the remittance of which shall be ten (10) days following the month the withholding was made.

In the present case, petitioner as Licensee is required to pay License Fee for the use of intellectual property and services of the Company, Jobstreet.com PTE LTD or Jobstreet Singapore. The parties' Intellectual Property License and Services Agreement[35] dated September 15, 2014 provides that:

"3. License Fee

x x x

3.4 The Licensee shall pay the Company without any deduction **other than such amount as required by law, if any**. x x x.

3.5 The Philippine taxes on all payments relating to this Agreement shall be borne by the Company." (*Emphasis supplied*) ✓

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[35] Exhibit "P-1".

Clearly, petitioner is authorized to deduct, in the royalties and service fees due to Jobstreet Singapore, any Philippine taxes, such as VAT for the lease of its property rights. Now, the only question left is whether petitioner was able to prove that it timely withheld the final VAT due in the payment of Jobstreet Singapore's royalties and service fees.

Petitioner established preponderant evidence to prove fact of payment in 2014.

To support its claim that it paid Jobstreet Singapore's royalties and service fees only in September 2014, petitioner presented as witness its Finance Manager, Ms. Claribel Lincod, who testified as follows:[36]

> "27. Q: *You mentioned that Jobstreet Singapore charged fees to Jobstreet Philippines amounting to SG$1,155,852 for the taxable year 2012. Do you have any proof, if any of such?*
>
> A: Yes. In 2013, Jobstreet Singapore issued a debit note to Jobstreet Philippines covering the fees for the financial year ended December 31, 2012 amounting to SG$1,155,852.
>
> 28. Q: *If shown a copy of this debit note, would you be able to recognize and identify it?*
>
> A: Yes.
>
> 29. Q: *I am showing you a copy of debit note no. DN-JSPH-2013/01 dated November 14, 2013, which appears to cover charges by Jobstreet Singapore for the taxable year 2012. What relation, if any, does this document have to the debit note you just mentioned?*
>
> A: This is the same debit note that I just mentioned.
>
> 30. Q: *Would you know why the debit note covering the financial year ended December 31, 2012 was issued to Jobstreet Philippines only in 2013?*
>
> A: There was delay in the issuance of the debit note because of the ongoing transition of activities at the time in respect to the change in ownership structure of Jobstreet Philippines. However, Jc

[36] Pages 7-9 of the Judicial Affidavit of Claribel Lincod dated February 10, 2017, Docket (vol. I), pp. 205-207.

even prior to the issuance of the debit note, Jobstreet Philippines had recognized in its books in 2012 that it had an obligation to pay Jobstreet Singapore for the use of intellectual property and services rendered in 2012.

31. Q: *What happened, if any, after Jobstreet Philippines received the debit note from Jobstreet Singapore?*

    A: On September 30, 2014, Jobstreet Philippines remitted the amount of US$1,515,000 to the designated bank account of Jobstreet Singapore. The amount of US$1,515,000 covers the charges made by Jobstreet Singapore for the taxable years 2012 and 2013.

32. Q: What proof do you have of this, if any?

    A: A telegraphic transfer document was issued by Banco de Oro (or BDO), which reflects the payments made by Jobstreet Philippines to Jobstreet Singapore for the period July to December 31, 2012.

33. Q: If shown a copy of the BDO telegraphic transfer document that you just mentioned, would you be able to recognize and identify it?

    A: Yes.

34. Q: *I am showing you a copy of the BDO telegraphic transfer document with Reference No. 048514008899. How is this related to the BDO telegraphic transfer document that you just mentioned?*

    A: This is the same BDO telegraphic transfer document that I just mentioned. Based on this telegraphic transfer, Jobstreet Philippines paid US$1,515,000 to Jobstreet Singapore.

35. Q: *You mentioned that the total remittance amounting to US$1,515,000 covers fees charged by Jobstreet Singapore for the taxable years 2012 and 2013. Of this total remittance, how much pertains to the taxable year 2012?*

    A: Of the total remittance amounting to US$1,515,000, only the amount of US$680,013.74 pertains to the taxable year 2012.

    The balance of the remittance amounting to US$834,986.26 represents partial payment of the fees for the taxable year 2013.

    Thus, the total remittance to Jobstreet Singapore is US$1,515,000, which is the sum of US$680,013.74 and US$834,986.26." *gc*

More so, during the hearing held on June 21, 2017, Ms. Claribel Lincod further testified that there were additional documents to prove the fact of petitioner's payment in 2014, *viz.*:

"x x x

ATTY. GERALDEZ:
Q. Ms. Witness, Question No. 32 reads, 'What proof do you have of this if any?', and this is in relation to Question No. 31 which refers to the remittance of the amount from Jobstreet Philippines to Jobstreet Singapore. Your answer to this question is, 'A telegraphic transfer document was issued by Banco de Oro which reflects the payments made by Jobstreet Philippines to Jobstreet Singapore for the period July to December 31, 2012'. What are you saying inaccurate to the statement?

MS. LINCOD:
A. Well in addition to the BDO telegraphic transfer, for the payment of the license agreement, we also got the acknowledgment receipt or confirmation of the payment made with the attachment of the credit advise of HSBC that Jobstreet Singapore has received the payment from us, from BDO Philippines.

JUSTICE CASTANEDA:
We will allow the amendment subject to a fine of One Thousand Pesos (₱1,000.00)

ATTY. GERALDEZ:
Yes, Your Honors.

Q. Ms. Witness, we are presenting you an email memorandum from Estella Hui sent on Monday, June 19, 2017 and addressed to Claribel Lincod, is this the email that you just mentioned in your previous answer?

MS. LINCOD:
A: Yes, sir, this is the email.

ATTY. GERALDEZ:
Q: Would you know who printed this email?

MS. LINCOD:
A: I personally printed it, sir.

ATTY. GERALDEZ
Q. In this email, you made mention of an HSBC transfer credit advise?

MS. LINCOD
A. Yes, sir.

ATTY. GERALDEZ: ge

Q: I am showing you the attachment to this email which is the HSBC transfer credit advise, do you recognize this document?

MS. LINCOD
A. Yes, sir.

ATTY. GERALDEZ:
Q: Is this the attachment that you referred to in your previous email?

MS. LINCOD
A. Yes, this is the attachment to the email.

ATTY. GERALDEZ:
Q: Ms. Witness, this document is just a print-out, would you know where the original of this document is?

MS. LINCOD
A. Well, the original after due diligence of checking with the records, we have not received the originals of this as this is also an ownership of Jobstreet Singapore so we already requested for the certified true copy consularized but we did not receive the same on time for this hearing, so what I've got is a print-out of an email.

ATTY. BURGOS:
Your Honors, I have to object, Your Honors, she just add a statement to the Judicial Affidavit and introducing, how many documents?

ATTY. ORTUA:
The email, Your Honors, and then the email refers to a credit advise of HSBC which is also an attachment to the email.

JUSTICE CASTANEDA:
We will allow for whatever it is worth.

x x x"[37]

To further corroborate the foregoing testimonies, petitioner also presented the following evidence to prove its payment to Jobstreet Singapore in September 2014, *viz.*:

1. Debit Note[38] dated November 14, 2013 that was issued by Mr. Lionel Ng, Finance Manager of Jobstreet Singapore billing petitioner for the fees rendered for the year 2012; gc

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[37] Transcript of Stenographic Notes dated June 21, 2017, pp. 6-8.
[38] Exhibit "P-14".

2. BDO Telegraphic Transfer with Reference No. 04851400889[39] dated September 30, 2014, to prove payment in September 2014;

3. Email (Acknowledgment Receipt)[40] dated June 19, 2017 by Ms. Stella Hui, Senior Finance Manager of Jobstreet Singapore, acknowledging the receipt of payment on September 30, 2014 for the 2012 and 2013 in the amount of US$1,515,000; and,

4. Consularized Certificate of Authentication[41] of the certified true copy of Transfer Credit Advise of Jobstreet Singapore dated July 6, 2017, issued by The Hongkong and Shanghai Banking Corporation Limited (HSBC) in Singapore, confirming remittance in the amount of US$1,515,000 on September 30, 2014.

Insufficient countervailing evidence to prove fact of payment in 2012.

On the other hand, to prove his claim that petitioner made payment in 2012, respondent presented the following pieces of evidence that were admitted by this Court, *viz.*:

1. Preliminary Assessment Notice;

2. Final Assessment Notice with Formal Letter of Demand;

3. Memorandum of Assignment to RO Jennifer Marie Fernando dated March 25, 2015;

4. Final Decision on Disputed Assessment;

5. Judicial Affidavit of RO Jade Punto; and,

6. Judicial Affidavit of RO Jennifer Marie Fernando. *ge*

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[39] Exhibit "P-4".
[40] Exhibit "P-18".
[41] Exhibit "P-18A".

Apparently, the aforementioned pieces of evidence are not enough to prove its claim that petitioner made payment to Jobstreet Singapore in 2012. As a matter of fact, it was only in the respective judicial affidavits of ROs Jade H. Punto and Jennifer Marie V. Fernando, where it was stated as to how respondent arrived at his assessment for final withholding tax. The pertinent portion on the respective statements of ROs Punto and Fernandez, read as follows:

<u>Judicial Affidavit of RO Jade H. Punto dated February 13, 2017:</u>

"x x x

Q.12. Can you please inform the Honorable Court how you arrived at the deficiency VAT Final Withholding Tax?

A. Under Section 114 of the NIRC, the payment for lease or use of properties or property rights to nonresident owners shall be subject to VAT withholding tax at the time of payment. Based thereon, I examined Petitioner's transactions to determine if there were royalty payments made.

Upon checking of the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) for the month of December 2012, it was discovered that Petitioner made royalty payments to non-resident alien engaged in trade or business in the aggregate amount of ₱38,526,940.65. Analysis of Petitioner's audited financial statements (AFS) showed that the royalty payment made by Petitioner was for database and warehouse cost for the license to use the intellectual property provided by Jobstreet.com Pte. Ltd.

Inquiry with the Statement of Financial Position would show that Petitioner had outstanding Accounts Payable and Other Current Liabilities amounting to ₱273,638,873. Of the said amount, ₱227,830,552 of which represents the Trade Payable to Related Parties while the remaining ₱45,808,321 represents liabilities to third parties, accrued payables, tax liabilities, and other miscellaneous liabilities. This can be found in Note 7 *(Accounts Payable and Other Current Liabilities)* of the AFS.

Note 10 *(Related Party Transaction)* of the AFS would show that the Trade Payable to Related Parties is composed of the Due from or to related parties for intercompany billings for common expenses such as maintenance and servicing of the database and website, rent, utilities, communications and other related services. From the total Trade Payable to Related Parties, only the amount of ₱29,474,015 represents the total amount due to Jobstreet.com Pte Ltd. Since the total royalty payments of Petitioner to Jobstreet.com Pte Ltd. amounts to ₱38,526,940.65, it only fortifies the fact that the royalty fee was paid in December 2012 since the outstanding liability as at year-end is only ₱29,474,015 which represents the total liabilities for all intercompany billings for common expenses among others, for rent, utilities, communications and other related services. Thus, it is clear that the royalty payments of Petitioner to Jobstreet.com Pte Ltd. amounting to ₱38,526,940.65 was indeed paid in Y2012.

Since Petitioner failed to withhold and to subsequently remit the pertinent VAT on royalties to Jobstreet.com Pte. Ltd., a non-resident foreign corporation, deficiency VAT in the amount of ₱6,600,949.17 *(inclusive of interest)* was assessed.

x x x"[42]

Judicial Affidavit of RO Jennifer Marie V. Fernando dated February 10, 2017:

"x x x

Q.9 What is the result of your reinvestigation?

A: I examined the bases of the assessment, evaluated the arguments raised by petitioner in the protest letter, and concluded with the following findings:

x x x

3. Final VAT withholding on royalty payment to non-residents

The basis of the assessment on the issue was found to be proper. The fact of payment was fairly established since it was shown that Petitioner paid final income taxes withheld for the month of December 2012 which is based on the income payments actually paid or payable. A study of the audited financial statements further showed that the actual payment of the royalty was established since said amount is not among Petitioner's outstanding trade payable at the end of the taxable year, as shown in Petitioner's balance sheet and Notes 7 *(Accounts Payable and Other Current Liabilities)* and 10 *(Related Party Transaction)* of the audited financial statements.

Likewise, petitioner failed to establish that the royalty payment was paid only on Y2014 with the presentation of a BDO telegraphic transfer application form. A mere money transfer application form does not and could not constitute as proof of payment but should be taken on its face, as a mere application form. To substantiate its claim, Petitioner should have presented the billing statement and official receipt issued by Jobstreet.com Pte.Ltd. to acknowledge the receipt of royalty payment. For failure of Petitioner to dispute the fact of payment in Y2012 based in the presentation of the Final Withholding Tax payment in Y2012 and the failure to recognize the royalty as a liability in the Y2012 audited financial statements, the deficiency VAT was upheld.

[42] Docket (vol. I), pp. 183-184.

x x x"[43]

Notably, aside from the testimony of the two revenue officers, no other evidence was offered to corroborate such claim. In spite of the wide array of powers respondent have in seeking a taxpayer's information, the documents upon which the allegation was based, namely, the Statement of Financial Position with corresponding Notes to Financial Statements and the BIR Form 1601-F, were not sought after and formally offered in evidence to this Court by respondent.

Indeed, well settled is the rule that the court shall consider no evidence which has not been formally offered.[44] The Supreme Court, in the case of *Heirs of Pedro Pasag, et al. vs. Spouses Lorenzo and Florentina Parocha, et al.*[45] has emphasized the importance of formal offer of evidence, thus:

> "The Rules of Court provides that 'the court shall consider no evidence which has not been formally offered.' A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.
>
> x x x
>
> Thus, the trial court is bound to consider only the testimonial evidence presented and exclude the documents not offered. Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot in any manner be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value. It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already offered as part of evidence. It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected."

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[43] *Id.*, pp. 170-171.
[44] Section 34, Rule 132 of the Revised Rules of Court.
[45] G.R. No. 155483, April 27, 2007.

Simply put, there is no evidence to substantiate respondent's claim that there was payment to non-resident foreign corporation in 2012. This Court cannot sustain an assessment for deficiency taxes based on empty allegations.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government", the power to tax has its limits, in spite of all its plenitude.[46]

Henceforth, considering that petitioner satisfactorily proved that the payment of royalties and service fees rendered in 2012 was only made in 2014, the assessment for deficiency final withholding VAT arising from the transaction in 2012 has no legal and factual bases.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated September 8, 2016, assessing petitioner of deficiency final withholding of VAT for the taxable period July 1, 2012 to December 31, 2012 in the aggregate amount of ₱8,027,958.90 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

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[46] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

I CONCUR:

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 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