REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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PHILIPPINE SECURITIES SETTLEMENT CORP.,
Petitioner,

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9058

Members:

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

Promulgated:

AUG 15 2018 : 2:30 pm

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DECISION

UY, *J.*:

Before Us is a *Petition for Review*[1] filed on May 28, 2015 by Philippine Securities Settlement Corp. against the Commissioner of Internal Revenue, praying for the cancellation and withdrawal of the latter's *Final Decision on Disputed Assessment* (FDDA) assessing the former for alleged deficiency income tax (IT), expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding tax (FWT), and final withholding value-added tax (FWVAT) for taxable year 2010 in the total amount of ₱7,601,925.55, inclusive of interest, penalties, and surcharges.

THE FACTS

Petitioner Philippine Securities Settlement Corp. is a domestic corporation duly organized and existing under Philippine law with registered principal address at the 37F Tower 1, The Enterprise Center,

[1] Docket – Vol. I, pp. 10 to 36.

Ayala Avenue, Makati City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of his Office, including *inter alia,* the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other laws, rules and regulations. He may be served summons, pleadings, and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

On April 13, 2012, petitioner received a letter-request from the Bureau of Internal Revenue (BIR) requesting petitioner to submit its books of accounts and tax returns for Taxable Year 2010, attaching thereto *Letter of Authority* (LOA) No. 047-2012-00000083 dated 30 March 2012 for the examination of petitioner's books of accounts and other accounting records of all internal revenue taxes for TY 2010.[4]

On November 6, 2013, petitioner received respondent's *Preliminary Assessment Notice* (PAN) assessing petitioner for deficiency IT, EWT, WTC, FWT and FWVAT for TY 2010 in the total amount of ₱7,458,186.07, inclusive of penalties and surcharge. Petitioner filed its protest to the PAN on November 21, 2013.[5]

On April 21, 2014, petitioner received a copy of respondent's *Final Assessment Notice* (FAN), assessing petitioner for alleged deficiency IT, EWT, WTC, FWT, and FWVAT for TY 2010 in the total amount of ₱6,797,415.03, inclusive of penalties and surcharge. Petitioner filed its *Protest* to the FAN with a request for reinvestigation on May 21, 2014.[6]

On April 28, 2015, petitioner received respondent's FDDA, assessing petitioner for deficiency IT, EWT, WTC, FWT, and FWVAT for TY 2010 in the total amount of ₱7,601,925.55, inclusive of interest, penalty, and surcharge,[7] with the following findings/conclusions, *inter alia*, to wit:

1) Petitioner is liable for deficiency IT in the total amount

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[2] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. I, p. 420.
[3] Par. 2, Admitted Facts, JSFI, Docket – Vol. I, p. 420.
[4] Par. 3, Admitted Facts, JSFI, Docket – Vol. I, p. 420.
[5] Par. 4, Admitted Facts, JSFI, Docket – Vol. I, pp. 420 to 421.
[6] Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 421.
[7] Par. 6, Admitted Facts, JSFI, Docket – Vol. I, p. 421.

of ₱4,989,902.97.[8]

2) The discrepancy in accounts receivable (AR) from receipts per petitioner's VAT Returns to assess petitioner for the deficiency IT is for alleged unreported income in the total amount of ₱475,609.65.[9]

3) Petitioner is liable for the deficiency IT for alleged non-withholding of EWT and FWT in the total amount of ₱6,170,231.59.[10]

4) In assessing petitioner for deficiency EWT, respondent claims that petitioner is liable for EWT at a rate of two percent (2%) on its payments to *"Contractors"* pursuant to Section 2.57.2(E) of RR No. 2-98, as amended.[11]

5) Petitioner is liable for the deficiency IT due to the disallowance of its salaries and wages for alleged non-withholding in the total amount of ₱1,928,255.53.[12]

6) Petitioner is liable for deficiency IT due to alleged unsupported expenses in the total amount of ₱447,132.93.[13]

7) The disallowance of petitioner's expenses resulting from the fees paid to Range Computer Services (RANGE) in the total amount of ₱251,755.10 for being substantiated by alleged invalid official receipts (ORs) due to the fact that the aforementioned ORs do not contain RANGE's authority-to-print-number (ATP).[14]

8) The disallowance of petitioner's expenses resulting from foreign travel expenses in the total amount of ₱195,377.83 paid to Marsman Drysdale Travel, Inc. due to alleged inconsistencies in the name/s appearing in the ORs with the Cost-Sharing Agreement. It is respondent's position that, following the Cost-Sharing Agreement, it is inconsistent with such agreement for petitioner to claim the entire amount of travel expenses resulting from the official business travels of common

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[8] Par. 7, Admitted Facts JSFI, Docket – Vol. I, p. 421.
[9] Par. 8, Admitted Facts, JSFI, Docket – Vol. I, p. 421.
[10] Par. 9, Admitted Facts, "JSFI, Docket – Vol. I, p. 421.
[11] Par. 10, Admitted Facts, JSFI, Docket – Vol. I, p. 421.
[12] Par. 11, Admitted Facts, JSFI, Docket – Vol. I, pp. 421 to 422.
[13] Par. 12, Admitted Facts, JSFI, Docket – Vol. I, p. 422.
[14] Par. 13, Admitted Facts, JSFI, Docket – Vol. I, p. 422.

officers of the PDS Group.[15]

9) Petitioner is liable for the deficiency IT due to disallowed prior period expenses in the total amount of ₱116,411.53 for being accrued prior to TY 2010.[16]

10) Petitioner is liable for interest, penalty, and surcharge in the total amount of ₱3,405,404.15 resulting from the alleged deficiency IT, EWT, WTC, FWT, and FWVAT for TY 2010.[17]

On May 28, 2015, the instant *Petition for Review*[18] was filed by petitioner.

Respondent then filed his *Answer* on July 30, 2015,[19] raising the following Special and Affirmative Defenses, to wit:

> "1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;
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> 2. Petitioner failed to submit the pertinent documents to refute the validity of the findings against them.
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> 3. Section 228 of the Tax Code provides that the taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of the letter protest, otherwise the assessment shall become final. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit and the said Revenue Officer shall state this fact in his report of investigation.
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> 4. Assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. *(Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109);*

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[15] Par. 14, Admitted Facts, JSFI, Docket – Vol. I, p. 422.
[16] Par. 15, Admitted Facts, JSFI, Docket – Vol. I, p. 422.
[17] Par. 16, Admitted Facts, JSFI, Docket – Vol. I, p. 422.
[18] Docket – Vol. I, pp. 10 to 36.
[19] Docket – Vol. I, pp. 172 to 174.

> 5. Finally, Petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance *(Commissioner vs. Algue, Inc., L-28896, 17 February 1988).* Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another – *Non videtur quisquam id capere quod ei necesse est alii restitutere."*

Thereafter, petitioner filed its *Motion to Admit Reply*[20] with attached *Reply*[21] on August 13, 2015, where petitioner argued that: it complied with Section 228 of the Tax Code by submitting documents in support of its *Formal Protest*; respondent failed to identify what documents petitioner allegedly failed to submit; and respondent failed to consider the additional supporting documents/evidence petitioner submitted.

In the Resolution dated August 26, 2015,[22] the Court granted *Motion to Admit Reply* of petitioner and thus, its *Reply* was admitted.

Both parties filed their respective *Pre-Trial Briefs*,[23] as well as a *Joint Stipulation of Facts and Issues*,[24] which was approved by this Court in the Resolution dated January 6, 2016.[25]

On December 14, 2015, petitioner filed a *Motion to Commission Independent Certified Public Accountant*,[26] which was granted by this Court on January 14, 2016. Accordingly, Atty. Adan T. Delamide was directed to submit his report within thirty (30) days.[27] The filing of the ICPA Report[28] on February 26, 2016, was noted by this Court on March 8, 2016.[29]

On February 29, 2016, this Court issued a Pre-Trial Order.[30]

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[20] Docket – Vol. I, pp. 178 to 180.
[21] Docket – Vol. I, pp. 181 to 186.
[22] Docket – Vol. I, p. 188.
[23] Docket – Vol. I, pp. 189 to 193, and 274 to 303.
[24] Docket – Vol. I, pp. 420 to 446.
[25] Docket – Vol. I, p. 466.
[26] Docket – Vol. I, pp. 447 to 451.
[27] Docket – Vol. I, pp. 472 to 473.
[28] Docket – Vol. II, pp. 1025 to 1172.
[29] Docket – Vol. II, p. 1028.
[30] Docket – Vol. I, pp. 735 to 747.

In support of its *Petition for Review*, petitioner presented documentary evidence, as well as the testimony of three (3) witnesses, namely: 1) Rosemarie V. Marchadesch; 2) Stephanie Marie A. Zulueta; and 3) Atty. Adan T. Delamide.

Thereafter, petitioner submitted its *Formal Offer of Evidence (with Manifestation)* on June 2, 2016,[31] to which respondent filed his *Comment* on June 23, 2016.[32]

In a Resolution dated August 12, 2016,[33] this Court resolved to admit Exhibits "P-1" to "P-13," "P-15" to "P-716," "P-718" to "P-1065," "P-1067" to "P-1187," "P-1191" to "P-1187," "P-1191" to "P-4618," "P-4620" to "P-6075," subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.

On September 6, 2016, petitioner filed a *Motion for Partial Reconsideration*,[34] praying that its Exhibit "P-14" be admitted into evidence. As per Records Verification dated October 20, 2016 of the Judicial Records Division of this Court,[35] respondent failed to file his comment, despite due notice. In the Resolution dated January 9, 2017,[36] petitioner's *Motion for Partial Reconsideration* was denied, due to petitioner's failure to satisfy the requirements for the admission of secondary evidence.

For his part, respondent presented documentary evidence, as well as the testimony of two (2) witnesses, namely: 1) Revenue Officer Gerardo C. Nuestro; and 2) Revenue Officer Marc Vermon Vileo L. Dela Cruz.

Respondent filed his *Formal Offer of Evidence* on March 28, 2017,[37] to which petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence dated 27 March 2017)* on April 7, 2017.[38] In the Resolution dated May 26, 2017,[39] this Court admitted into evidence Exhibits "R-1" to "R-8-a," subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy,

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[31] Docket – Vol. III, pp. 1219 to 1262.
[32] Docket – Vol. III, pp. 1530 to 1531.
[33] Docket – Vol. III, pp. 1536 to 1539.
[34] Docket – Vol. III, pp. 1550 to 1556.
[35] Docket – Vol. III, p. 1560.
[36] Docket – Vol. III, pp. 1565 to 1567.
[37] Docket – Vol. III, pp. 1581 to 1610.
[38] Docket – Vol. III, pp. 1611 to 1613.
[39] Docket – Vol. III, pp. 1619 to 1620.

and probative value to the issues involved in this case.

With the filing of petitioner's *Memorandum*[40] and respondent's *Memorandum*[41] on July 28, 2017, the instant case was submitted for decision on August 16, 2017.[42]

Hence, this Decision.

THE ISSUES

As stipulated by the parties, the following issue is submitted for the resolution of this Court,[43] to wit:

> "Whether or not Petitioner is liable to pay deficiency Income Tax, Expanded Withholding Tax, Withholding Tax on Compensation, Final Withholding Tax, and Final Withholding of Value-Added Tax for taxable year 2010 in the total amount of Seven Million Six Hundred One Thousand Nine Hundred Twenty Five Pesos and 55/100 (PhP7,601,925.55)."

Petitioner's arguments:

Petitioner contends that it submitted its supporting documents within the period prescribed by law.

It also avers that the assessment is void for lack of legal and/or factual basis.

Anent the assessment for deficiency income tax, petitioner asserts that the discrepancy in accounts receivable from receipts per VAT returns as sales, do not involve any income or revenue on its part. Rather, these accounts receivable pertain to reimbursements at cost by its clients for Rivest, Shamir, and Adlemen Tokens (RSA Tokens), the costs of which were initially shouldered by the petitioner. As explained in the ICPA Report, the purchase of the RSA Tokens were initially recorded as an asset and were subsequently written off after the costs were transferred to its customers. There was neither gain

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[40] Docket – Vol. III, pp. 1632 to 1680.
[41] Docket – Vol. III, pp. 1682 to 1686.
[42] Docket – Vol. III, p. 1689.
[43] Issue, JSFI, Docket – Vol. I, pp. 422 to 423.

nor profit actually or constructively realized by petitioner, as the amount was a mere return of capital.

With regard to the disallowed expenses due to non-withholding, petitioner argues that payments may to Cyberzone Properties, Inc., a PEZA-registered entity, are not subject to EWT pursuant to Section 24 of R.A. No. 7916, otherwise known as the Special Economic Zone Act, Section 2.75.5(B)(2) of RR No. 2-98, as amended, and Revenue Memorandum Circular No. 72-04. Petitioner also stated that its payment to Philippine Depository & Trust Corp. (PDTC), was made pursuant to a Cost-Sharing Agreement (CSA), which provides for a reimbursement mechanism between and among affiliated companies. As for the other rental expenses in the amount of ₱3,815,634.00, the same were all properly subjected to EWT.

Anent the disallowed professional fees expense, for failure to withhold on its income payments at the rate of fifteen percent (15%), petitioner submits that these pertain to payments made to professional recruitment agencies, and not professional fees made to those engaged in the practice of a profession. As such, such recruitment agencies are properly classified as "labor only" contractors subject to a withholding tax rate of two percent (2%), the amounts of which were properly withheld by petitioner, pursuant to Section 2.57.2(K) of RR No. 2-98.

As for the portion of ₱240,873.00 captioned as "Outside Other Services," the same represents petitioner's operating expenses made for the following third party services: (a) security services; (b) janitorial services; (c) messengerial services; and (d) other contractual services wherein the total amount of ₱172,592.47 were withheld at the appropriate amounts.

The remaining portion of ₱68,280.53 represents payments for the following accounts, which are not subject to EWT: (a) non-agency fee portion on its payments to security agencies; (b) reimbursements of parking fees for messengerial and janitorial supplies; and (c) estimates not subject to EWT.

On the other hand, the portion of ₱1,483,816.00 captioned as "Outside Services" represents petitioner's payments for the following accounts: (a) hiring fees; (b) security services; (c) messengerial services; (d) janitorial services; (e) other contractual services; (f) various legal fees; and (g) management and professional fees wherein the total amount of ₱27,554.02 were withheld at the appropriate amounts.

Among the foregoing payments, the following were not subject to EWT: (a) legal fees – retainer, regular, and notarial fees; (b) audit fees – external; (c) non-agency fees of payment to security agency; (d) reimbursement of parking fees; (e) amortization of previous years' payments; (f) estimates not subject to EWT; and (g) estimates not claimed as deductible expenses.

The legal and audit fees represent income payments to general professional partnerships and therefore, are not subject to EWT. Non-agency fees, on the other hand, do not fall within the scope of payments to "Contractors" as contemplated under Section 2.57.2(E) of RR No. 2-98, and are likewise not subject to EWT under Section 2.57.2(M) of RR No. 2-98 since petitioner is not classified as a Top 20,000 Taxpayer. Payment for parking fees consist of payments made at cost and without profit.

With regard to the amortization of previous years' expenses part of the Outside Services, these refer to payments incurred in prior years, the withholding of which was already made in full at the time it was made in accordance with Section 2.57.4 of RR No. 2-98. As such, petitioner is no longer obligated to withhold on its subsequent payments.

The amount of ₱76,380.00 represents petitioner's income payments made for advertising, out of which the amounts of ₱32,555.97 and ₱306.20 were subject to the applicable rates of 2% and 5%, respectively under RR No. 2-98.

The remaining portion of ₱43,478.83 represents payments for the following accounts: (a) payment for awards night validation; (b) payments to supplier of goods; (c) various reimbursements; (d) estimates not subject to EWT; and (e) estimates not claimed as deductible expense in the total amount of ₱20,000.00.

With regard to its payments for awards night validation, petitioner submits that these represent payments made to a general professional partnership and are not subject to EWT.

As for its payments to its supplier of goods, petitioner submits that these constitute payments to entities that are not within the scope of Section 2.57.2 of RR No. 2-98, which expressly mentions specific payees who are subject to withholding tax.

Anent its reimbursement payments, petitioner submits that such

payments are not subject to EWT since these merely constitute reimbursements at cost.

Petitioner also submits that the amount of ₱88,698.00 represents petitioner's income payments made to its various insurance providers out of which the amount of ₱20,191.49 was subject to the applicable EWT under RR No. 2-98.

The remaining portion of ₱68,506.51 represents payments for the following accounts: (a) amortization of previous years' payments; (b) share in payment of affiliate under the CSA; (c) reimbursements; (d) taxes; and (e) estimates not subject to EWT.

With regard to the amortization of previous years' payments, petitioner submits that these refer to payments incurred in prior years, the withholding of which was already made in full at the time that it was made. As such, petitioner is no longer obligated to withhold on its subsequent payments, as previously discussed.

As for its share in payment of affiliate under the CSA, reimbursements, and taxes, petitioner submits that such payments are not subject to EWT since these merely constitute reimbursement at cost.

The amount of ₱470,996.00 represents petitioner's payments for reimbursements for taxi fares, gas and oil, and toll fees related to the conduct of its business and its share in the cost of its affiliates under the CSA. Therefore, such payments are not subject to EWT since these merely constitute reimbursement at cost.

Petitioner likewise submits that the amount of ₱332,625.00 represents payments for its utilities expense, made to The Enterprise Center Condominium Corporation (Enterprise) and Cyberzone.

With respect to its payment to Enterprise, petitioner posits that its payments are not subject to EWT due to the fact that such fees do not constitute payment to "Contractors" as contemplated under Section 2.57.2(E) of RR No. 2-98. Notwithstanding that its payments to Enterprise are not subject to EWT, petitioner nevertheless withheld two percent (2%) on its payments to the same, while its payment to Enterprise for its condominium/association dues are not subject to EWT.

As for its payment to Cyberzone, petitioner submits that it is not

subject to EWT pursuant to Section 2.75.5(B)(2) of RR No. 2-98, which expressly provides that payments made to PEZA-registered enterprises, such as Cyberzone, are not subject to EWT.

The findings of the ICPA shows that petitioner incurred Miscellaneous Expenses in the total amount of Php48,953.70 consisting of the following: (a) courier services; (b) printing and reproduction expense; (c) training expense; (d) realized foreign exchange loss; and (e) miscellaneous expense wherein the total amount of ₱20,864.23 was withheld at the appropriate amounts.

The remaining portion of ₱36,402.76 represents its various expenses consisting of the following: (a) accruals of courier fees; (b) income payments which were not subject to EWT; (c) realized foreign exchange loss; (d) training expenses; (e) amortization of previous year's payments; (f) estimates not subject to WT; and (g) miscellaneous expenses.

With regard to its foreign exchange loss, petitioner submits that this expense does not represent income payments. Rather, it represents actual losses occurred in the ordinary course of its trade and business from its regular dealings involving foreign currencies, which may be claimed as a deduction for income tax purposes.

As for its training expenses, these pertain to payments made to general professional partnerships, such as SGV & Co. and Isla Lipana & Co., which are not subject to EWT; as well as payments made to non-stock non-profit organizations, which are not subject to income tax pursuant to Section 30 of the Tax Code, and are likewise not subject to EWT.

Anent the amortization of previous year's payments, these refer to payments incurred in prior years, the withholding of which was already made in full at the time it was made. As such, petitioner is no longer obligated to withhold on its subsequent payments, as previously discussed.

With regard to its miscellaneous expenses, these refer to payments made, which are not subject to EWT due to the fact that such payment were made to entities who do not fall within the scope of payments to "Contractors" as contemplated under Section 2.57.2(E) of RR No. 2-98. These expenses are likewise not subject to EWT under Section 2.57.2(M) of RR No. 2-98 since petitioner is not classified as a Top 20,000 Taxpayer.

The amount of ₱5,510,104.00 represents petitioner's payments for various expenses consisting of the following: a) payments subjected to 2% EWT; b) payments subjected to 5% EWT; c) payments subjected to 15% EWT; d) payments for taxes, which are not subject to further taxes; e) payments to general professional partnerships, which are not subject to EWT; f) payments to non-stock non-profit institutions not subject to EWT; g) payment to travel agencies not subject to EWT; h) payments for purchase of goods not subject to EWT since PSSC is not classified as a Top 20,000 Taxpayer; i) reimbursements at cost to employees; j) amortization of prepaid expenses, the withholding of which was already made in full at the time the expense was made; k) reimbursements at cost to affiliates pursuant to the CSA; and l) accruals.

As for the disallowed salaries and wages for non-withholding, PSSC submits that the discrepancy between the amount reported in petitioner's books of account and audited Financial Statements against its BIR Form No. 1604CF for TY2010 amounts to ₱3,324,848.50.

With regard to petitioner's allocation of salaries and benefits to/and from affiliates, it is submitted that petitioner and its affiliates entered into a CSA wherein each entity shares in the expense or cost for salaries and wages of common staff and personnel, among others. As such, its payments booked as allocation of salaries and benefits to affiliates constitute reimbursements made at cost to the entity which initially shouldered the amount payable. As such, it is not subject to WTC. Furthermore, the proper WTC on the salaries and wages was initially shouldered by petitioner's affiliates and the expense is claimed by the entity receiving the allocation based on the policy approved by the PDS Group.

In addition, petitioner submits that its accrued vacation leaves, retirement benefit expenses, and accruals of bonuses were not claimed as a deduction in its income tax return for TY 2010. As such, respondent has no factual and/or legal basis to deny these alleged expenses for failure to withhold for the reason that they were never claimed as an expense in the first place.

Anent the assessment for deficiency IT for alleged unsupported expenses, petitioner submits that it represents PSSC's expenses for its payments to Range Computer Services, and Marsman Drysdale Travel, Inc.

With regard to its payments to Range, petitioner asserts that the

said payments were duly supported by the required official receipts and respondent has no legal basis to deny the same on the ground that the official receipts issued by Range does not bear the authority-to-print (ATP) number, as Section 238 of the Tax Code does not require the ATP to be indicated on a taxpayer's official receipts/invoices. Likewise, Section 113 of the Tax Code does not require the ATP among the information required to be contained on an official VAT receipt/invoice. Finally, RMO No. 28-2002 enumerates the information required to be contained on an official receipt and/or sales invoice. Notably, the ATP is absent from the said provision.

With regard to its payments to Marsman, petitioner submits that they consist of the following expenses: a) foreign travel expenses incurred for the sole benefit of PSSC; and b) foreign travel expenses incurred for the benefit of the PDS Group. Such distinction must be made due to the fact that under the CSA, only expenses that are incurred for the benefit of all entities within the PDS Group are allocated among its affiliates. However, expenses incurred for the sole benefit of one entity shall not be subject to allocation, rather, it shall be claimed in full by the benefitting entity.

As for the assessment for deficiency IT for alleged prior period expenses, the same represents payments made to Enterprise and City Service Corporation for services rendered in TY 2009. It should be noted that petitioner utilizes the accrual method of accounting wherein it makes an estimate of costs it may incur in a particular period. Considering that such payments are merely estimates, the actual expense incurred may be greater or lesser than the initial estimates.

In this case, the final billing of the foregoing expenses were only received by the petitioner in TY 2010 and yielded a greater expense than initially estimated, which prompted petitioner to make the necessary adjustment in its books of account in TY 2010 pertaining to the difference between the initial estimate and actual billing.

With regard to petitioner's alleged liability for deficiency expanded withholding tax, petitioner submits that its income payments for CY 2010 were subject to EWT at the proper rates. In addition, petitioner's income payments which were not subject to EWT were in accordance with the applicable rules and regulations promulgated by respondent.

Anent the alleged deficiency withholding tax on compensation, petitioner submits that its salaries and wages expense were subject

to WTC at the proper amounts. In addition, it is respectfully submitted that any remaining portion of petitioner's salaries and wages not subject to WTC represent reimbursements made at cost to the entity which initially shouldered the salaries payable to common staff and personnel in accordance with the CSA and expenses which were not claimed as deductions such as leave benefits, retirement and bonus.

As for the alleged deficiency final withholding tax, it is respectfully submitted that TATA was engaged to provide maintenance services for PDS Group's eCS Software. However, the service agreement was entered into between TATA and PDTC only. As such, petitioner's expenses for TATA's services represent reimbursements made by petitioner in favor of PDTC pursuant to the CSA, with no direct payments being made by petitioner in favor of TATA. Since these payments merely constitute reimbursements at cost, such payments are not subject to FWT.

In addition, petitioner cannot be deemed the proper withholding agent on its income payments to TATA by virtue of the fact that it is not the payor of the income. Section 2.57(A) of RR No. 2-98 expressly provides that the liability to withhold and remit the tax due is an obligation that is entrusted to the payor of the income as withholding agent. Also, it is submitted that the payments made by PDTC to TATA were properly subject to FWT.

Anent the alleged deficiency final withholding VAT, petitioner submits that it does not make direct payments to TATA. Rather, it is PDTC who makes direct payments and petitioner merely reimburses PDTC for its share in the same. Considering that these payments merely constitute reimbursements at cost, such payments are not subject to FWVAT. Finally, the proper FWVAT on PDTC's direct payments to TATA were properly subject to FWVAT.

With regard to the assessment for interest, penalty, and surcharge resulting from the alleged deficiency IT, EWT, WTC, FWT, and FWVAT for TY 2010, petitioner submits that it lacks the legal and/or factual basis to impose the alleged deficiency taxes, as well as the associated interest penalties and surcharge on the same.

Petitioner also asserts that it is not liable for Compromise Penalties for alleged deficiency FWT and FWVAT on its payments to TATA.

Respondent failed to identify what documents it allegedly failed to submit. Finally, respondent failed to consider the additional supporting documents/evidence petitioner submitted.

Respondent's counter-arguments:

For his part, respondent counters that the assessment against petitioner for taxable year 2010 has become final and executory due to petitioner's failure to submit relevant documents in support of its protest.

THE COURT'S RULING

The instant *Petition for Review* is partially granted.

Petitioner was able to submit "all relevant supporting documents".

Respondent is of the view that petitioner failed to submit the relevant documents to support its protest against the FAN, since the evidence petitioner presented are mostly narrative in character and did not focus and has no relation to the factual issues involved in the assessment; and that petitioner failed to observe the 60-day period under Section 228 of the NIRC of 1997, in submitting relevant supporting documents; thus, the deficiency taxes issued against petitioner for taxable year 2010 had become final and executory.

We disagree.

Section 228 of the NIRC of 1997 provides as follows:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx xxx xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**" *(Emphasis and underscoring supplied)*

Based on the foregoing provision, within sixty (60) days from the filing of a protest to the tax assessment, the taxpayer must submit all relevant supporting documents; otherwise, the said tax assessment shall become final.

In this case, petitioner's protest was filed on May 21, 2014.[44] Thus, counting from such date, the said sixty-day period ends July 20, 2014. However, record shows that petitioner submitted its supporting documents only on July 21, 2014.[45] Nevertheless, the same is of no moment, pursuant to Section 1, Rule 22 of the Rules of Court, to wit:

> "Section 1. *How to compute time.* In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.**" *(Emphasis and underscoring supplied)*

Thus, since July 20, 2014 fell on a Sunday, and the next working day is July 21, 2014, the submission of petitioner's relevant supporting documents on such later date was timely made.

Anent the issue whether petitioner submitted "relevant supporting documents", in *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*,[46] the Supreme Court said:

> "Since respondent has not allegedly submitted any

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[44] Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 421; Exhibit "P-5", Docket – Vol. III, pp. 1314 to 1340.
[45] Exhibit "P-6", Docket – Vol. III, pp. 1349 to 1350.
[46] G.R. No. 172045-46, June 16, 2009.

> relevant supporting documents, petitioner now claims that the assessment has become final, executory and demandable, hence, unappealable.
>
> We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.
>
> **The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment <u>as determined by the taxpayer</u>. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.**" *(Emphasis and underscoring supplied)*

Based on these jurisprudential pronouncements, the determination of which documents would be necessary to support the legal basis in disputing tax assessments is dependent on the taxpayer, **<u>not</u>** <u>on the BIR</u>. Thus, any document submitted by the said taxpayer is considered as "relevant supporting documents" for purposes of the aforequoted Section 228 of the NIRC of 1997.

Correspondingly, even when the BIR is of the opinion that the submitted documents do not address or refute their findings, as in this case, the same does not have the effect of making the subject tax assessments final. Hence, contrary to the position of respondent, the said tax assessments did not become final.

We shall then determine the propriety of the subject tax assessments.

In the FDDA, respondent assessed petitioner for deficiency income tax, EWT, WTC, FWT, and FWVAT in the amount of ₱7,601,925.55, broken down as follows:

I. Income Tax	₱ 4,989,902.97

II. EWT	238,909.27
III. WTC	951,242.77
IV. FWT	992,764.66
V. FWVAT	397,105.88
VI. Compromise Penalties	32,000.00
Total	**₱ 7,601,925.55**

Before resolving the propriety of the assessment for deficiency income tax, the Court finds it proper to first determine the propriety of the assessments for deficiency EWT, WTC, FWT, and FWVAT as the Court's findings thereon would affect the computation of the deficiency income tax assessment.

I. DEFICIENCY EWT - ₱238,909.27

Respondent assessed petitioner of deficiency EWT for TY 2010 in the amount of ₱238,909.27, computed as follows[47]:

Basic Tax Due (Schedule 2)	₱ 127,787.05
Add: Interest (01.16.11 to 5.22.15)	111,122.22
TOTAL AMOUNT DUE	**₱238,909.27**

The assessment resulted from respondent's findings that there were income payments made by petitioner in the year 2010 comprising of rental in the amount of ₱736,472.05, professional fees in the amount of ₱80,948.61, director's fees in the amount of ₱23,000.00 and payments to prime contractors/sub-contractors in the amount of ₱3,768,557.55 that were not subjected to EWT as required under Revenue Regulations (RR) No. 02-98, as amended, detailed as follows: [48]

Expense/Income Payments	**Per FS/ITR**	**Per 1601E**	**Discrepancy**	**EWT Rate**	**EWT Due**
Rental	₱ 3,815,634.00	₱ 3,079,161.95	₱ 736,472.05	5%	₱ 36,823.60
Professional Fees	308,262.00	227,313.39	80,948.61	15%	12,142.29
Director's fee	220,500.00	197,500.00	23,000.00	15%	3,450.00
Payment to contractors/subcontractors					
Other Outside Services	240,873.00				
Advertising	76,380.00				
Insurance	88,698.00				
Transportation and Travel	470,996.00				
Communication Light and Water	332,625.00				
Miscellaneous	48,880.00				
Outside Services	1,483,816.00				
Others	5,510,104.00				
	8,252,372.00	4,483,814.45	3,768,557.55	2%	75,371.15
	₱20,849,140.00	**₱7,987,789.79**	**₱4,608,978.21**		**₱127,787.05**

[47] Exhibit "P-7", Docket, Vol. III, p. 1386.
[48] Exhibit "P-7", Annex A, Details of Discrepancies, Schedule 2, Docket, Vol. III, p. 1388.

The Court shall discuss each of the above-enumerated categories of income payments.

I. Rental - ₱736,472.05

Section 2.57.2(C)(1) and (2) of RR No. 02-98, as amended by RR No. 14-02, prescribes the withholding of 5% tax on rentals of real properties used in business and rentals of personal properties in excess of ₱10,000.00 annually, to wit:

> "Sec. 2.57.2. Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (C) Rentals
>
> (1) Real properties. — On gross rental for the continued use or possession of real property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity — Five percent (5%);
>
> (2) Personal properties. — On gross rental or lease in excess of Ten Thousand Pesos (P10,000.00) per payment for the continued use or possession of personal property used in business which the payor or obligor has not taken or is not taking title, or in which he has no equity which include, but not limited to the following: land transport equipment, water transport equipment, air transport equipment, industrial equipment, commercial equipment, scientific equipment, agricultural machinery and equipment, construction/civil engineering machinery and equipment, telecommunication equipment, office furniture/machines/equipment, main frame computer and all other computer machines/equipment, materials handling equipment and auxiliary equipment — Five percent (5%);
>
> However, the Ten Thousand Pesos (P10,000.00) threshold shall not apply when the accumulated gross rental or lease paid by the lessee

> to the same lessor exceeds or is reasonably expected to exceed P10,000.00 within the year. In which case, the lessee shall withhold the five percent (5%) withholding tax on the entire amount.

The Court-commissioned Independent CPA (ICPA) provided a breakdown of the rental expense as reflected in the Financial Statements/Income Tax Return (FS/ITR) and in the Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1601E) of petitioner and noted a discrepancy in the amount of ₱737,228.06, detailed as follows: [49]

Particulars	Per FS/ITR	Per 1601E	Difference	Supporting Schedule
Rent - Office Space –Enterprise	₱ 1,678,524.70	₱ 2,111,627.20	₱(433,102.50)	**Annex "D"**
Rent - Office Space – Northgate	398,001.51	-	398,001.51	**Annex "E"**
Rent - Parking Space	67,454.73	35,342.93	32,111.80	**Annex "F"**
Rent - Computer Equipment	808,254.44	250,415.82	557,838.62	**Annex "G"**
Rent – Others	5,956.36	5,955.75	0.61	**Annex "H"**
Car Lease	448,296.64	11,496.55	436,800.09	**Annex "I"**
Rent - Transportation Equipment	409,144.84	356,135.50	53,009.34	**Annex "J"**
Printing and Reproduction	-	46,791.46	(46,791.46)	**Annex "K"**
Telecommunications - DID/Leased Lines Periodic	-	5,155.48	(5,155.48)	**Annex "L"**
Telecommunications – Telephone	-	255,484.47	(255,484.47)	**Annex "L"**
TOTAL	**₱3,815,633.22**[50]	**₱3,078,405.16**	**₱737,228.06**	

The above amount of ₱737,228.06 is higher by ₱756.01 when compared to that assessed by respondent in the amount of ₱736,472.05 because respondent deducted in his computation a higher amount of ₱3,079,161.95 income payments already subjected to EWT per BIR Form No. 1601E, as shown below:

	Per FS/ITR	Per 1601E	Difference
Rental Expense Per BIR's Assessment	₱ 3,815,634.00	₱ 3,079,161.95	₱ 736,472.05
Rental Expense Per ICPA's Findings	3,815,633.22	3,078,405.16	737,228.06
	₱ 0.78	**₱ 756.79**	**₱ (756.01)**

[49] Exhibit "P-45", Annex C, Docket, Vol. II, p. 1050.

[50] With a minimal difference of ₱.78 when compared with the actual amount of ₱3,815,634.00 reported per FS/ITR (Exhibit "P-51", lines 52 and 84 and Exhibit "P-52", Statement of Comprehensive Income for the year ended December 31, 2010 and Note 13 of the Notes to Financial Statements):

Rental claimed under:	
Cost of Services	₱ 3,032,191.00
Operating Expenses/Deductions	783,443.00
Total	**₱3,815,634.00**

Further, it is to be noted that the ICPA's reconciliation schedule shows that there were payments for "Printing and Reproduction" in the amount of ₱46,791.46, "Telecommunications-DID/Leased Lines Periodic" in the amount of ₱5,155.48 and "Telecommunications – Telephone" in the amount of ₱255,484.47, for which a 5% EWT on rentals was withheld and remitted per BIR Form No. 1601E but the said income payments did not form part of petitioner's claimed rental expense. By deducting these amounts, respondent erroneously reduced petitioner's EWT liability on rentals. However, since the power to assess is lodged in the respondent and is not within the province of this Court, the Court is constrained to limit its findings based on respondent's assessment.

a. Rent – Office Space – Enterprise

The ICPA verified that the difference of ₱433,102.50 in the rental expense of office space in "The Enterprise" building pertains to Philippine Accounting Standards (PAS) No. 17 adjustment. Actual rental payments on the said office space amounted to ₱2,111,626.84 from which petitioner withheld ₱105,581.34 in taxes[51]. However, the rental expense following accounting standards required petitioner to report only the amount of ₱1,678,524.70 in its audited FS, thus:[52]

Rent - Office Space –Enterprise	
Per FS/ ITR	₱ 1,678,524.70
Per 1604E	2,111,627.20
Difference	**₱ (433,102.50)**
Difference due to recognition of PAS 17	**(433,102.14)**
Unaccounted Difference	₱ (0.36)

PAS 17 provides that the lease payment should be recognized as an expense (for lessee) or revenue (for lessor) in the income statement over the lease term on a straight line basis, unless another systematic basis is more representative of the time pattern of the user's benefit. In other words, under PAS 17, the sum of the expected rental for the lease term is computed and divided equally over the total number of months covered by the lease.

On the other hand, RR No. 02-98 requires the withholding of the 5% tax on the lease payment at the time it is paid or payable, accrued as an expense or asset, whichever is applicable, in the payor's books, whichever comes first.

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[51] Exhibit "P-45", Annex D, Docket, Vol. II, p. 1051.
[52] Exhibit "P-45", Docket, Vol. II, p. 1033.

Thus, there may be a timing difference between the recognition of the rental expense/income for financial statement purposes and the withholding of the corresponding 5% tax. However, petitioner failed to present the lease contracts relative to its lease payments for office space at The Enterprise building in order for this Court to ascertain that the aforesaid discrepancy of ₱433,102.50 was due to the recognition of rental expense under PAS 17.

Be that as it may, since the amount of ₱2,111,627.20 rental payments subjected to EWT per BIR Form No. 1601E is more than the amount of ₱1,678,524.70 rental payments reported as expense, petitioner is not liable of any deficiency EWT on the said lease payments.

b. Rent - Office Space – Northgate

Rent - Office Space – Northgate	
Per FS/ ITR	₱ 398,001.51
Per 1604E	-
Difference	**₱ 398,001.51**

Per the ICPA's report, petitioner did not withhold taxes on its rental payments to Cyberzone Properties, Inc. (Cyberzone) since the latter is a Philippine Economic Zone Authority (PEZA)-registered enterprise enjoying exemption from income tax and consequently from withholding taxes.

The Court partially agrees with the findings of the ICPA.

PEZA-registered enterprises are exempt from paying all local and national taxes and, in lieu thereof, are only subject to the 5% special tax on gross income, to be distributed in accordance with Section 24 of Republic Act (RA) No. 7916 otherwise known as The Special Economic Zone Act of 1995, to wit:

> "SEC. 24. *Exemption from National and Local Taxes.* — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly

> remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located."

Relative to the above-provision, Section 2.57.5(B)(2) of RR No. 02-98, as amended, states:

> "SECTION 2.57.5.*Exemption from Withholding.* — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> xxx xxx xxx
>
> (2) Corporations registered with the Board of Investments, Philippine Export Processing Zones and Subic Bay Metropolitan Authority enjoying exemption from the income tax pursuant to EO 226, as amended, Republic Act No. 7916 and the Omnibus Investments Code of 1987 and RA 7227, as amended, respectively;"

Clearly, from the foregoing, the EWT does not apply to income payments to persons enjoying exemption from the income tax provided by RA No. 7916.

Based on the Certification[53] issued by the PEZA, Cyberzone, located at the Northgate Cyberzone – SEZ, is a PEZA-registered Ecozone Facilities Enterprise with Registration Certificate No. 00-05-F dated 06 June 2000. Accordingly, income payments to Cyberzone effective June 6, 2000 shall not be subject to the EWT prescribed under RR No. 02-98, as amended.

However, out of the subject rental expense of ₱398,001.51, the amount of ₱166,700.46 pertaining to rental paid by petitioner to Cyberzone on January 20, 2010 and April 5, 2010, or prior to the latter's PEZA registration on June 6, 2000, is subject to 5% EWT. Hence, respondent's deficiency assessment thereon is upheld. Below

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[53] Exhibit P-6048.

is the breakdown of the rental amount of ₱166,700.46: [54]

Exhibit No.	Invoice Amount	VAT	Amount Paid	OR No.	OR Date
P-1707 to P-1710	₱ 83,350.23	₱10,002.03	₱93,352.26	436 V	20-Jan-10
P-1690 to P-1694	83,350.23	10,002.03	93,352.26	457 V	05-Apr-10
	₱166,700.46	₱20,004.06	₱186,704.52	886 V	05-Jul-10

c. Rent - Parking Space

Based on the ICPA report, the amount of ₱32,111.80 Rent – Parking Space not subjected to 5% EWT can be accounted for follows:[55]

Rent - Parking Space	
Per FS/ ITR	₱ 67,454.73
Per 1604E	35,342.93
Difference	**₱ 32,111.80**
Accounted for as follows:	
Rent - Parking Space (Exempt from EWT)	₱ 5,450.40
Rent - Parking Space (Reimbursements to employees)	1,749.26
Rent - Parking Space (Accrual)	12,164.84
Rent - Parking Space (Amortization of Prepaid Expense)	12,293.10
Overstatement of Parking Space	454.20
	₱32,111.80

The amount of ₱5,450.40 referred to as "Rent-Parking Space (Exempt from EWT)", pertains to petitioner's payments to Cyberzone for parking space rental, detailed as follows:

Exhibit No.	Invoice Amount	VAT	Amount Paid	OR No.	OR Date
P-1707 to P-1711	₱ 1,362.60	₱163.51	1,526.11	436 V	20-Jan-10
P-1712 to P-1716	1,362.60	163.51	1,526.11	457 V	05-Apr-10
P-1717 to P-1721	1,362.60	163.51	1,526.11	886 V	05-Jul-10
P-1722 to P-1726	1,362.60	163.51	1,526.11	1372 V	05-Oct-10
	₱ 5,450.40	**654.05**	**6,104.45**		

As stated earlier, Cyberzone is exempt from EWT starting only on June 6, 2000, the date of its PEZA registration. Thus, respondent's deficiency 5% EWT assessment on the amount of ₱2,725.20 (the sum

[54] Exhibit P-45, Annex E, Docket, Vol. II, p. 1052.
[55] Exhibit P-45, Annex F, Docket, Vol. II, p. 1053.

of ₱1,362.60 and ₱1,362.60) representing parking space rentals paid by petitioner prior to Cyberzone's PEZA registration is sustained.

With reference to the reimbursement to employees in the amount of ₱1,749.26, the Court found that the amount of ₱264.26 was paid to Tempo Services, Inc. for messengerial services, detailed as follows:

Exhibit	Date	Supplier/Payee	Nature of Payment	Amount Paid
P-2719 to P-2724	06-Jul-10	TEMPO SERVICES, INC.	Services rendered by 4 messengers	₱ 116.14
P-2725 to P-2730	06-Jul-10	TEMPO SERVICES, INC.	Services rendered by additional messengers	148.12
			Total	**₱ 264.26**

The aforesaid amount of ₱264.26 is not subject to 5% EWT on rentals as assessed by respondent but on the 2% EWT on payments to certain contractors under Section 2.57.2(E)(g) of RR No. 02-98, as amended, to wit:

> "SECTION 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (E) *Income payments to certain contractors* — On gross payments to the following contractors, whether individual or corporate — One percent (2%).
>
> xxx xxx xxx
>
> (g) Messengerial, janitorial, private detective and/or security agencies, credit and/or collection agencies and other business agencies;"

The remaining amount of ₱1,485.00 (₱1,749.26 less ₱264.26) represent parking tickets paid by petitioner's employees to various entities on several occasions, such as meetings and conferences, that were subsequently reimbursed by petitioner. Since the use of the parking space was not continuous and lasted only for a specific meeting/conference, the amount of ₱1,485.00 is not subject to the 5% EWT imposed on the "***continued use*** *or possession of real property used in business under which the payor or obligor has not taken or is*

not taking title, or in which he has no equity" as provided under Section 2.57.2(C)(1) of RR No. 02-98, as amended.

With reference to the "Rent - Parking Space (Accrual)" in the amount of ₱12,164.84 and "Rent Parking Space (Amortization of Prepaid Expense)" in the amount of ₱12,293.10, respondent's deficiency 5% EWT assessment thereon is sustained.

The ICPA noted that petitioner withheld taxes in the amount of ₱1,767.16 on its rental payments to SPI Parking Services, Inc. amounting to ₱35,342.93. Records showed that parking rental payments are made on quarterly bases and subjected to withholding taxes upon payment. Accruals of parking expenses (when no billing is received) and subsequent amortization of the pre-payments of rental are no longer subjected to withholding tax.[56] Thus, it can be gleaned that these accrual and amortization of Rent-Parking Space pertain to the petitioner's continued use of parking space owned by SPI Parking Services, Inc., hence subject to 5% EWT.

Pursuant to Section 2.57.4 of RR No. 02-98, as amended by RR No. 12-01, the obligation to withhold arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first.

Since it had accrued and claimed the amount of ₱12,164.84 as rental expense deduction in its ITR, petitioner was already obligated to withhold and remit the 5% EWT at the time of accrual thereof. Hence, for failure to do so, petitioner is liable to pay deficiency 5% EWT on ₱12,164.84.

Likewise, the amortization of prepaid Rent – Parking Space amounting to ₱12,293.10 shall be subjected to deficiency 5% EWT for petitioner's failure to prove that the 5% EWT on such prepaid rent had already been previously paid.

d. Rent - Computer Equipment

The amount of ₱557,838.62 pertaining to Rent-Computer Equipment that was not subjected to EWT is composed of the following:[57]

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[56] Exhibit "P-45", Docket, Vol. II, p. 1033.
[57] Exhibit "P-45", Annex G, Docket, Vol. II, p. 1054.

Allocation from affiliates	₱ 552,322.99
Overstatement in the books due to accounting error	5,515.65
Total	**₱557,838.64**

With regard to the allocation from affiliates in the amount of ₱552,322.99, it is important to note that petitioner is a wholly owned subsidiary of Philippine Dealing System Holdings Corp. (PDSHC).[58] The other subsidiaries of PDSHC are: (i) Philippine Dealing and Exchange Corp. (PDEX); (ii) Philippine Depository & Trust Corp. (PDTC); (iii) PCD Nominee Corporation; and (iv) PDS Academy for Market Development Corp. PDSHC (parent company) and its subsidiaries (including petitioner) are collectively referred to as the "PDS Group".[59]

By virtue of a Cost-Sharing Agreement (CSA) between and among the members of the PDS Group, certain expenses or costs are allocated and shared among the member companies.[60]

To implement the CSA, there are certain instances when each company pays its share of the allocable expense or cost directly to the vendor. In other instances, a company will initially shoulder a certain expense or cost and the other companies will reimburse the former for their respective allocated share of the expense or cost based on the percentages set out in the internal Memorandum[61] dated October 24, 2008.[62]

The BIR recognizes interrelated group of companies sharing costs/expenses in Revenue Audit Memorandum Order (RAMO) No. 1-98. However, petitioner must prove that such shared costs/expenses only involve reimbursement of costs/expenses, without any mark-up or additional charges.

In support of the allocated rent expense from affiliates in the amount of ₱552,322.99, petitioner presented PDTC's Accounts Payable Vouchers, Certificates of Creditable Tax Withheld at Source issued by PDTC to IBM Philippines, Inc., PDTC's BIR Form No. 1604E with attached Alphalist, Official Receipts and Invoices issued by IBM Philippines, Inc. to PDTC, and petitioner's Check Vouchers[63]. While these documents show that petitioner's affiliate, PDTC, made payments for computer rentals to IBM Philippines, Inc. and that it

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[58] Exhibit "P-52", Note 1 of petitioner's Audited Financial Statements for TY 2010, Exhibit "P-52".
[59] Exhibit "P-42", Answer to Q5, Docket, Vol. I, p. 490.
[60] Exhibit "P-43", Answer to Q24 and Q25, Docket, Vol. I, p. 232.
[61] Exhibit "P-11", Docket, Vol. III, pp. 1402-1408.
[62] Exhibit "P-43", Answer to Q26, Docket, Vol. I, p. 232.
[63] Exhibits P-1727 to P-1806.

withheld and remitted the corresponding 5% EWT, however, petitioner's actual reimbursement to PDTC for its shared computer rental expense was not established. The Check Vouchers, which were presented by petitioner, merely create a paper trail for its payment of the check. The same do not prove the fact of payment to PDTC. As held in the case of *Towne & City Development Corporation vs. Court of Appeals*[64], the vouchers remain a piece of paper having no evidentiary weight, to wit:

> "x x x [A]s correctly pointed out by the trial court which the appellate court upheld, vouchers are *not* receipts.
>
> It should be noted that a voucher is *not necessarily* an evidence of payment. It is merely a way or method of recording or keeping track of payments made. A procedure adopted by companies for the orderly and proper accounting of funds disbursed. Unless it is supported by an actual payment x x x, a voucher remains a piece of paper having no evidentiary weight.
>
> A receipt is a written and signed acknowledgment that money has been or goods have been delivered, while a voucher is documentary record of a business transaction.
>
> The references to alleged check payments in the vouchers presented by the petitioner do not vest them with the character of receipts. x x x" *(Citations omitted)*

Thus, respondent's deficiency 5% EWT on the assessed rental of ₱552,322.99 shall remain. The same holds true with the alleged overstatement of computer rental from IBM Phils., Inc. in the amount of ₱5,515.65.

e. Rent - Others

Petitioner's claimed Rent-Others refers to income payments made to KSA Realty Corporation for rental of chairs in the amount of ₱3,372.29, and to Diamond IGB, Inc for lease of vehicle amounting to ₱2,584.07 totaling ₱5,956.36 [65] which were subjected to 5% EWT, as shown below:[66]

Rent – Others	
Per FS/ ITR	₱ 5,956.36
Per 1604E	5,955.75
Difference	**₱ 0.61**

[64] G.R. No. 135043, July 14, 2004.
[65] Exhibit "P-45", Annex H, Docket, Vol. II, 1055.
[66] Exhibit P-85.

f. Car Lease and Rent – Transportation Equipment

For petitioner's failure to refute respondent's findings, the deficiency 5% EWT on the car lease expense of ₱436,800.09 and rent-transportation equipment of ₱53,009.34 is sustained.

Based on the foregoing, petitioner is liable for deficiency EWT on rental payments in the amount of ₱60,853.69, computed as follows:

Particulars	Amount
Rent - Office Space –Enterprise	₱ (433,102.50)
Rent - Office Space – Northgate	166,700.46
Rent - Parking Space	2,725.20
Rent - Computer Equipment	557,838.64
Car Lease	436,800.09
Rent - Transportation Equipment	53,009.34
Printing and Reproduction	(46,791.46)
Telecommunications - DID/Leased Lines Periodic	(5,155.48)
Telecommunications – Telephone	(255,484.47)
TOTAL	**₱ 476,539.82**
Withholding tax rate	5%
Deficiency EWT	**₱ 23,826.99**

II. Professional Fees - ₱80,948.61

Relative to the withholding of EWT on professional fees, Section 2.57.2(E)(4) of RR No. 2-98, as amended by RR No. 30-03, provides as follows:

> Sec. 2.57.2. *Income payments subject to creditable withholding tax and rates prescribed thereon.* — xxx.
>
> A) *Professional fees, talent fees, etc., for services rendered by individuals.* — On the gross professional, promotional and talent fees or any other form of remuneration for the services of the following individuals — Fifteen percent (15%), if the gross income for the current year exceeds P720,000; and Ten percent (10%), if otherwise;
>
> xxx xxx xxx
>
> (9) Fees of directors who are not employees of the company paying such fees, whose duties are confined to attendance at and participation in the meetings of the board of directors.
>
> xxx xxx xxx
>
> (B) *Professional fees, talent fees, etc., for services of taxable juridical persons.* — On the gross professional, promotional and talent fees, or any other form of remuneration enumerated in the preceding subparagraph for the services of taxable juridical persons **— Fifteen percent (15%), if the gross income for the current year exceeds P720,000**; and Ten percent (10%), if otherwise;

> Furthermore, in order to determine the applicable tax rate (10% or 15%) to be applied/withheld by the withholding agent, every individual professional/talent/corporate directors herein enumerated, shall periodically disclose his gross income for the current year to the Bureau of Internal Revenue (BIR) by submitting a notarized sworn declaration attached as Annex "A" hereof in three (3) copies (two (2) copies for the BIR and one (1) copy for the taxpayer), copy furnished all the current payors of the declaration duly stamped received by the BIR (Collection Division of the Regional Office having jurisdiction over the place where the income earner is registered/Large Taxpayers Collection Division for large taxpayers in Metro Manila/LTDO for large taxpayers outside Metro-Manila). Sworn declaration may likewise be filed by the income payor on behalf of the professionals/talents/directors whose services were being rendered exclusively to the aforesaid payor. The disclosure should be filed on June 30 of each year or within fifteen (15) days after the end of the month the professional/talent/director's income reaches P720,000, whichever comes earlier. In case his total gross income is less than P720,000 as of June 30, he/she shall submit a second disclosure within fifteen (15) days after the end of the month that his/her gross income for the current year to date reaches P720,000. The payee — professional/talent/director shall furnish each payor a copy of the BIR duly stamped received sworn declaration not later than five (5) days from the date of receipt by the BIR. **In case of failure to submit the June 30 annual declaration/disclosure to the BIR, and to furnish the payor/s a copy thereof, the payor shall withhold the tax at the rate of 15%.** (Emphasis supplied)

As verified by the ICPA, the amount of professional fees per books amounted to ₱828,586.03. Of this amount, ₱308,867.13 was charged to operating expenses. Per FS, this amount was ₱308,262.00, or a discrepancy of ₱605.13. Petitioner claimed in its ITR the lower amount per FS. Below is the distribution of the professional fees of ₱828,586.03:[67]

Summary of Professional Fees	Direct Costs 63.60%	Indirect Costs 36.40%	Total 100%	Tax Withheld
Legal Fees – Retainer	₱ 302,732.82	₱ 173,262.18	₱ 475,995.00	-
Legal Fees – Regular	2,322.11	1,329.00	3,651.11	-
Legal Fees - Notarial Fees	512.89	293.54	806.43	-
Audit Fees – External	100,107.92	57,294.47	157,402.39	-
Hiring Fees (60/40)	121,030.19	80,686.79	201,716.98	₱ 4,918.01
Management and Professional Fees – Others	(6,987.02)	(3,998.86)	(10,985.88)	4,184.82
Total	**₱ 519,718.90**	**₱ 308,867.13**	**₱ 828,586.03**	**₱ 9,102.83**
Per BIR Assessment		**308,262.00**		
Unaccounted Difference		**₱ 605.13**		

Legal Fees –Retainer and Legal Fees – Regular refer to income payments made by petitioner to "Puno and Puno Law Offices" and

[67] Exhibit "P-45", Docket, Vol. II, p. 1036.

"Romulo Mabanta Buenaventura Sayoc & Delos Angeles". On the other hand, Audit fees – External pertain to payments made to "Sycip Gorres Velayo & Company". Petitioner maintain that these payees are general professional partnerships (GPPs) duly registered with the SEC, thus the alleged income payments thereto in the total amount of ₱637,048.50 are exempt from EWT under RR No. 02-98, as amended. This was allegedly confirmed by the ICPA, in paragraph 19 of his report dated February 24, 2016.

Section 22(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, defines GPPs as partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business. Corollary thereto, Section 26 of the same NIRC provides that a general professional partnership shall not be subject to income tax. Its partners are the ones liable in their individual capacity for the payment of income tax.

Consequently, GPPs are exempt from EWT as provided for under Section 2.57.5 of RR No. 02-98, as amended by RR No. 14-02, to wit:

> "Sec. 2.57.5. *Exemption from Withholding.* — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> (4) General professional partnerships

However, in the instant case, petitioner failed to provide valid supporting documents such as the Articles of Partnership of the subject payees to prove that the same are indeed GPPs. Also, there is nothing from the records that would show that the gross income for the year 2010 of the said payees did not exceed ₱720,000.00. Consequently, the professional fees paid thereto in the amount of ₱637,048.50 is subject to 15% EWT pursuant to Section 2.57.2(E)(4) of RR No. 2-98, as amended by RR No. 30-03.

With regard to the Legal Fees – Notarial Fees in the amount of ₱806.43[68], the same are subject to EWT on professional fees as provided for under Section 2.57.2(E)(4) of RR No. 2-98, as amended by RR No. 30-03. In the absence of proof that the gross income for the year 2010 of the recipients of the said notarial fees did not exceed

[68] Exhibits P-2248 to P-2268.

₱720,000.00, the amount of ₱806.43 shall be imposed of 15% deficiency EWT.

As regards the Hiring Fees amounting to ₱201,716.98, the same pertain to the following items:

Exhibit No.	Supplier	Nature of Payment	Invoice Amount
P-2269 to P-2274	Jobstreet.Com Philippines Inc.	Payment for Job Postings	₱ 3,435.75
P-2275 to P-2280	QUAERITO QUALITAS INC.	Payment for search and selection services.	19,240.20
P-2281 to P-2286	JOBSTREET SELECT, INC.	Payment for search and selection services.	17,316.18
P-2287 to P-2292	QUAERITO QUALITAS INC.	Payment for search and selection services.	22,680.00
P-2293 to P-2298	George Garrett Guilford & Associates	Payment for professional fee for hiring.	108,000.00
P-2299 to P-2305	Jobs DB Philippines, Inc.	Payment for Job Postings	780.00
P-2306 to P-2311	QUAERITO QUALITAS INC.	Payment for search and selection services.	7,311.28
P-2312 to P-2317	Jobstreet.Com Philippines Inc.	Payment for Job Postings	936.00
P-2318 to P-2323	JOBSTREET SELECT, INC.	Payment for search and selection services.	8,747.39
P-2324 to P-2329	JOBSTREET SELECT, INC.	Payment for search and selection services.	4,200.00
P-2330 to P-2337	-	Prepaid Amortization	9,070.18
			₱ 201,716.98

A comparison of the alphalist attached to the petitioner's BIR Form No. 1604E for the year 2010[69] and the schedule of professional fees[70] shows that petitioner properly withheld and remitted 2% EWT on the income payments listed above, except for the prepaid amortization of ₱9,070.18, pursuant to Section 2.57.2(E)(3)(k) of RR No. 02-98, as amended by RR No. 17-03, which provides as follows:

> Sec. 2.57.2. *Income payments subject to creditable withholding tax and rates prescribed thereon.* — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> (E) *Income payments to certain contractors* — On gross payments to the following contractors, whether individual or corporate — Two percent (2%)
>
> xxx xxx xxx
>
> (3) *Other contractors*
>
> xxx xxx xxx

[69] Exhibit P-85.
[70] Exhibit "P-45", Annex N, Docket, Vol. II, pp. 1068 to 1070.

> (k) Labor recruiting agencies and/or "labor-only" contractors. For this purpose, any person who undertakes to supply workers to an employer shall be deemed to be engaged in "labor-only" contracting where such person does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials and the workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer which the workers are habitually employed;

With reference to the Management and Professional Fee – Others in the amount of ₱(10,985.88), since the said amount did not form part of the claimed professional fees of ₱828,586.03, the same shall be disregarded.

In sum, petitioner failed to withhold and remit 15% EWT in the amount of ₱34,736.11 on professional fees of ₱231,574.06, computed as follows:

	Direct Costs	Indirect Costs	Total
	₱	₱	₱
Legal Fees – Retainer	302,732.82	173,262.18	475,995.00
Legal Fees – Regular	2,322.11	1,329.00	3,651.11
Legal Fees - Notarial Fees	512.89	293.54	806.43
Audit Fees – External	100,107.92	57,294.47	157,402.39
Unaccounted Difference		(605.13)	
Total Professional Fees	₱ 405,675.74	**₱231,574.06**	₱ 637,854.93
Total 15% EWT		**₱ 34,736.11**	

However, the Court is constrained to limit its findings based on respondent's assessment. Accordingly, petitioner is liable only to the extent of that EWT assessed by respondent in the amount of **₱12,142.29.**

III. Director's fee - ₱23,000.00

Petitioner was amiss of its duty to contradict the findings of respondent on the difference of ₱23,000 pertaining to payment for Director's Fees not subjected to Withholding tax. Hence, this part of the assessment is upheld.

It bears stressing that tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment. [71]

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[71] Marcos II vs. Court of Appeals, et at., G.R. No. 120880, June 5, 1997.

IV. Payment to contractors/subcontractors - ₱3,768,557.55

a. Outside Services and Other Outside Services

The ICPA provided the following details pertaining to *Other Outside Services*, to wit:

Particulars	Invoice Amount	Direct Cost	Indirect Cost	Tax Withheld
Security services:				
Agency Fee	30,447.29	24,357.83	6,089.46	608.95
Non-Agency fee	202,981.95	162,385.56	40,596.39	0.00
	233,429.24	186,743.39	46,685.85	608.95
Janitorial services:				
Labor Cost	123,134.94	98,507.95	24,626.99	2,462.70
Supplies Materials	11,571.51	9,257.21	2,314.30	0.00
	134,706.45	107,765.16	26,941.29	2,462.70
Messengerial services				
Labor Cost	355,118.49	284,094.79	71024.00	7,102.36
Supplies Materials	7,595.95	6,076.76	1,519.19	0.00
	362,714.44	290,171.55	72,543.19	7,102.36
Other contractual services				
Expense subj. to 2%	354436.24	283,548.99	70,887.25	7,088.72
Reimbursement	6,575.53	5,260.42	1,315.11	0.00
	361,011.77	288,809.42	72,202.35	7,088.72
Hiring fees				
Hiring fees subject to EWT	192,646.80	116,166.02		3,852.94
Prepayment	9,070.18	5,469.32		
	201,716.98	121,635.34	0.00	3,852.94
Notarial	806.43	512.89		0.00
Management and other professional fees – others				
Expense subjected to 2% EWT	74,125.89	47,144.07		1,951.58
Expense subjected to 15% EWT	14,888.25	9,468.93		2,233.24
	89,014.14	56,612.99	0.00	4,184.82
Outsource Accrual	112,677.07	90,141.66	22,535.41	2,253.54
GPP Accrual				
Legal Fee	117,532.50	74,750.67		0.00
Audit Fee	92,271.92	58,684.94		0.00
	209,804.42	133,435.61	0.00	0.00
GPP Professional fees				
Legal Fee	362,113.61	230,304.26		0.00
Audit Fee	67,086.75	42,667.17		0.00
	429,200.36	272,971.43	0.00	0.00
Sub-Total	2,135,081.30	1,548,799.44	240,908.10	27,554.02
Non-deductible Expense		(63,600.00)	0.00	0.00

Grand Total as Per Audit		1,485,199.44	240,908.10	27,554.02
Per FS/ ITR in FAN		1,483,816.00	240,873.00	
Discrepancy		**1,383.44**	**35.10**	

However, the Court finds that petitioner failed to withhold taxes from its accrual of outside services amounting to ₱112,677.07, listed as follows:

Exhibit No.	Supplier	Nature of Payment	Invoice Amount
P-3383 to P-3384	Bulldog Security Agency Inc	Accrual for security services.	₱ 21,271.62
SUBTOTAL			**21,271.62**
P-3385 to P-3386	One V-cion Technology & Gen. Services, Inc.	Accrual for service rendered of 4 l.t> support for the pd 9/1-15/10	10,022.52
P-3387 to P-3388	One V-cion Technology & Gen. Services, Inc.	Accrual for service rendered of 4 l.t> support for the pd 10/16-30/10	10,022.52
P-3389 to P-3390	One V-cion Technology & Gen. Services, Inc.	Accrual for service rendered of 4 l.t> support for the pd 11/16-30/10	10,022.52
P-3391 to P-3392	One V-cion Technology & Gen. Services, Inc.	Accrual for service rendered of 4 l.t> support for the pd 12/16-30/10	10,022.52
P-3393 to P-3394	Jones Lang Lasalle (Philippines) Inc.	To accrue Jones lang lasalle for Feb 2010	10,797.14
P-3395 to P-3396	Jones Lang Lasalle (Philippines) Inc.	To record Jones Management fee accrual for June	10,510.54
SUBTOTAL			**61,397.76**
P-3397 to P-3398	Tempo Services, Inc.	Accrual for Additional Messenger	15,887.45
P-3399 to P-3400	Tempo Services, Inc.	Accrual for messengerial services for the pd 11/16-30/10	11,750.88
P-3401	Tempo Services, Inc.	To record accrual for additional Messengers for November	1,908.70
SUBTOTAL			**29,547.03**
P-3402 to P-3403	City Service Corporation	Accrual for janitorial services for the month of 11/ 2010.	460.66
SUBTOTAL			**460.66**
TOTAL			**₱112,677.07**

Likewise, a comparison of petitioner's alphalist against the amounts purported to be subjected to withholding resulted to the following amounts not subjected to withholding tax:

Particulars	Amount
Tempo Services, Inc.	₱ 6,657.97
One V-cion Technology & Gen. Services, Inc.	1,032.81
Jones Lang Lasalle (Philippines) Inc.	6,575.53
Total	**₱14,266.31**

Thus, petitioner failed to withhold on its income payments pertaining to other outside services in the total amount of ₱25,388.68 representing 20% of the amount of ₱126,943.38 (the sum of

₱112,677.07 and ₱14,266.31); and on its income payments pertaining to other outside services in the total amount ₱101,554.70 or 80% of the same amount of ₱126,943.38.

b. Advertising

The ICPA verified that total advertising expense paid by petitioner amounted to ₱380,701.76. Of this amount, ₱76,140.35 was charged to operating expense representing 20% of the total costs. Per FS, the amount is ₱76,380.00 or a difference of ₱239.65. Below is the breakdown of the advertising expense of ₱380,701.76:[72]

	80% (₱)	20% (₱)	100% (₱)	Tax Withheld (₱)
Advertising Subject to 2%	129,423.88	32,355.97	161,779.85	3,235.38
Advertising Subject to 5%	1,224.80	306.20	1,531.00	76.55
Advertising not subject to EWT	43,686.11	10,921.53	54,607.64	
Advertising (Accrual)	50,226.62	12,556.65	62,783.27	
Advertising considered nondeductible	80,000.00	20,000.00	100,000.00	
Total Advertising Expenses	**304,561.41**	**76,140.35**	**380,701.76**	**3,311.93**

Per ICPA report, advertising expense amounting to ₱ 54,607.64 was not subjected to EWT either because it was paid to GPPs or represents reimbursements.

Exhibit No.	Supplier	Nature of Payment	Invoice Amount
P-3674 to P-3679	Isla Lipana &Co.	Payment to General Professional Partnership	₱ 24,255.00
P-3680 to P-3684	Best World Beverage Brands, Inc.	Payment for Purchase of Goods	2,328.75
P-3685 to P-3689	Best World Beverage Brands, Inc.	Payment for Purchase of Goods	168.75
P-3690 to P-3695	Best World Beverage Brands, Inc.	Payment for Purchase of Goods	3,571.43
P-3696 to P-3699	Office Warehouse, Inc.	Reimbursement & Liquidations	220.00
P-3700 to P-3703	C.R. Sytian Enterprises	Reimbursement & Liquidations	1,593.75
P-3704 to P-3708	National Bookstore	Reimbursement & Liquidations	417.86
P-3709 to P-3712	Kenny Rogers Roasters	Reimbursement & Liquidations	388.39
P-3709 to P-3712	National Bookstore	Reimbursement & Liquidations	441.96
P-3713 to P-3714	-	Reimbursement & Liquidations	15,000.00
P-3715 to P-3719	Paramint Enterprises	Payment for Other Advertising Expenses	1,200.00

[72] Exhibit "P-45", Docket, Vol., p. 1037.

P-3720 to P-3721	Paramint Enterprises	Payment for Other Advertising Expenses	3,428.00
P-3722 to P-3726	Jets Trophy, Inc.	Payment for Other Advertising Expenses	543.75
P-3727 to P-3732	Ian Santillan Photography	Payment for Other Advertising Expenses	1,050.00
Total			**₱54,607.64**

While petitioner argued that the foregoing do not constitute payments to entities that are not within the scope of Section 2.57.2 of RR No. 2-98, petitioner did not present evidence to that effect. Thus, in the absence of such evidence proving that the said entities are not contractors within the purview of the said provision, the subject finding must be maintained. In the same vein, there is no evidence to support that the amount of ₱100,000.00 representing *"Advertising considered nondeductible"* should not have been subjected to EWT for contractors.

In addition, accrual of advertising of ₱62,783.27 was not subjected to EWT. Total advertising expense not subjected to EWT and not claimed as deduction amounted to ₱20,000.00. This represents reversal of IT-related advertising unsupported provisions[73].

Exhibit No.	Nature of Payment	Invoice Amount
P-3733	Accrual for advertising	₱ 6,896.58
P-3734	Accrual for advertising	8,487.50
P-3735	Accrual for advertising	8,487.50
P-3736	Accrual for advertising	8,487.50
P-3737	Accrual for advertising	8,487.50
P-3738	Accrual for advertising	8,487.50
P-3739	Accrual for advertising	13,449.19
Total		**₱62,783.27**

Thus, the 20% on the said amounts (₱54,607.64+₱100,000.00+ ₱62,783.27) or a total of should indeed be subject to EWT at 2%, plus the difference of ₱239.65, determined as follows:

	20% (₱)	**100% (₱)**
Advertising not subject to EWT	₱ 10,921.53	54,607.64
Advertising (Accrual)	12,556.65	62,783.27
Advertising considered nondeductible	20,000.00	100,000.00
Unaccounted difference in Advertising as reflected per FS and as found by the ICPA	239.65	-
Total Advertising Expenses	**₱43,717.83**	

[73] Exhibit "P-3740".

c. Insurance

The ICPA made the following findings pertaining to *Insurance*, to wit:

	Direct-80% (₱)	Indirect-20% (₱)	Total-100% (₱)	Tax Withheld (₱)
Insurance - Fire:				
Payment subject to 2%	13,127.28	3,281.82	16,409.10	328.18
Payment not Subject to EWT	1,718.90	429.72	2,148.62	-
Accruals	2,290.80	572.70	2,863.50	-
Insurance - Public Liability:				
Accruals	253.62	63.40	317.02	-
Insurance - Electronic Equipment				
Payment subject to 2%	20,407.54	5,101.88	25,509.42	510.19
Payment not Subject to EWT	5,054.66	1,263.67	6,318.33	-
Amortization	0.80	0.20	1.00	-
Insurance - Transportation Equipment:				
Payment subject to 2%	24,027.46	6,006.86	30,034.32	3,934.66
Payment not Subject to EWT	3,369.74	842.44	4,212.18	-
Accruals	5,340.17	1,335.04	6,675.21	-
Amortization	33,186.87	8,296.72	41,483.59	-
Insurance - Banker's Blanket & Fidelity:				
Payment not Subject to EWT	95,953.40	23,988.35	119,941.75	-
Amortization	144,964.53	36,241.13	181,205.66	-
Insurance Expense	**349,695.76**	**87,423.94**	**437,119.70**	**4,773.03**

Under payments subjected to 2% EWT, the Court, per examination of the alphalist of payees, verified that the petitioner failed to withhold on its income payments to vendor "Paul Robert Murga" in the total amount of 1,718.91.

Exhibit No.	Supplier	Nature of Payment	Invoice Amount
MC CV HP 2348274	Paul Robert Murga	Payments subjected to 2% Expanded Withholding Tax (Transportation Equipment)	₱ 1,527.92
MC CV HP 2348274	Paul Robert Murga	Payments subjected to 2% Expanded Withholding Tax (Transportation Equipment)	190.99
Total			**₱ 1,718.91**

The ICPA verified that a portion of insurance expense charged in taxable year 2010 represents amortization of payments already made in previous years and that no withholding of EWT was made on the amortizations.

However, the ICPA was unable to ascertain whether the EWT was withheld in the year the insurance was paid. The allegation that the petitioner's practice is to withhold tax in the year of payment was

not established by mere illustrations as indicated in the ICPA report. Thus, petitioner shall be liable for withholding taxes on the amortized portion of insurance premiums amounting to ₱222,690.25:

Amortization			
Exhibit No.	**Supplier**	**Nature of Payment**	**Invoice Amount**
P-3757	-	Insurance - Electronic Equipment	₱ 1.00
Sub-Total			**1.00**
P-3765	-	Insurance - Transportation Equipment	5,120.08
P-3773	-	Insurance - Transportation Equipment	4,930.94
P-3774	-	Insurance - Transportation Equipment	4,713.10
P-3775	-	Insurance - Transportation Equipment	4,713.10
P-3787	-	Insurance - Transportation Equipment	3,398.70
P-3788	-	Insurance - Transportation Equipment	3,398.70
P-3789	-	Insurance - Transportation Equipment	3,398.70
P-3796	-	Insurance - Transportation Equipment	2,996.94
P-3812	-	Insurance - Transportation Equipment	2,996.94
P-3824	-	Insurance - Transportation Equipment	2,843.89
P-3825	-	Insurance - Transportation Equipment	2,972.50
Sub-Total			**41,483.59**
P-3828	-	Insurance - Banker's Blanket and Fidelity Bond	26,041.66
P-3829	-	Insurance - Banker's Blanket and Fidelity Bond	26,041.66
P-3830	-	Insurance - Banker's Blanket and Fidelity Bond	26,041.66
P-3831	-	Insurance - Banker's Blanket and Fidelity Bond	26,041.66
P-3832	-	Insurance - Banker's Blanket and Fidelity Bond	26,041.66
–P-3833	-	Insurance - Banker's Blanket and Fidelity Bond	26,041.66
P-3834	-	Insurance - Banker's Blanket and Fidelity Bond	24,955.70
Sub-Total			**181,205.66**
Total			**₱ 222,690.25**

In addition, petitioner shall be liable for withholding on the total accrued insurance expense amounting to ₱9,855.73 claimed as deduction for income tax purposes.

Exhibit No.	**Nature of Payment**	**Invoice Amount**
P-3745	Accruals claimed as deductible expense (Fire Insurance)	₱ 2,863.50
P-3755	Accruals claimed as deductible expense (Public Liability)	158.51
P-3756	Accruals claimed as deductible expense (Public Liability)	158.51
P-3766	Accruals claimed as deductible expense (Transportation Equipment))	3,702.70
P-3827	Accruals claimed as deductible expense (Transportation Equipment))	2,972.51
Total		**₱ 9,855.73**

In view thereof, petitioner failed to withhold the 2% EWT on the amount of ₱46,852.98, representing 20% of insurance expense amounting to ₱234,264.89, broken down as follows:

	20% (₱)	**100% (₱)**
Payments to Paul Robert Murga	₱ 343.78	₱ 1,718.91
Amortized Portion of	44,538.05	222,690.25

Insurance Expense		
Accrual of Insurance Expense	1,971.15	9,855.73
Total Advertising Expenses	**₱46,852.98**	**₱234,264.89**

d. Transportation and Travel

The ICPA also made the following findings pertaining to *Transportation and Travel*, to wit:

Summary of Transportation & Travel	Direct (₱)	Indirect (₱)	Total (₱)
Transportation			
Local	20,967.81	74,340.41	95,308.22
Others	2,256.98	8,002.02	10,259.00
Gas & Oil	13,260.83	47,015.67	60,276.50
Travel	110,246.22	390,872.98	501,119.20
Over-reversal of Accrual	(580.99)	(2,059.87)	(2,640.86)
Total	**146,150.85**	**518,171.21**	**664,322.06**
Less: Gas & Oil		47,015.67	
Net		**471,155.54**	

With regard to the amounts of ₱95,308.22, ₱10,259.00, and ₱60,276.50 totaling ₱165,843.72 representing reimbursements to employees for transportation, gas and oil, the Court finds that the same are not subject to the 2% EWT. By its very nature, reimbursements of costs are not income for they are mere returns of capital. Accordingly, said reimbursements are not subject to withholding tax prescribed under Revenue Regulations No. 2-98. (BIR Rulings Nos. UN262-95 dated July 11, 1995; UN245-95 dated July 5,1995; 1-90 dated January 4, 1990; 345-88 dated July 20, 1988; 202-81dated October 22, 1981 and 061-79 dated July 23, 1979).

As regards the amount of ₱501,119.20 pertaining to foreign travel expenses paid to Marsman Drysdale Travel, Inc., the same is not one of those enumerated transactions subject to 2% EWT under Section 2.57.2(E)(4) of RR No. 02-98, as amended.

e. Communication Light and Water

The ICPA provided the following details of *Communication Light and Water,* to wit:

	80%	20%	100%	Tax Withheld
Subjected to 2% EWT	₱ 572,255.32	₱ 143,063.83	₱ 715,319.15	₱ 14,304.13
Made to PEZA Registered Entity	410,723.18	102,680.79	513,403.97	-
Condominium dues not subjected to EWT	301,513.67	75,378.42	376,892.09	-
Payments not subjected to EWT	65,560.67	16,390.17	81,950.84	-

Accruals not subject to EWT	(18,958.05)	(4,739.51)	(23,697.56)	-
Reimbursement of allocation from affiliates	(499.65)	(124.91)	(624.56)	-
Total	**₱ 1,330,595.14**	**₱332,648.79**	**₱ 1,663,243.93**	**₱ 14,304.13**

The Court, upon examination of the schedule and supporting documents per ICPA report, verified that the following income payments were not properly subjected to withholding tax:

Particulars	20%	100%
Income Payments not subjected to EWT	₱ 16,390.17	₱ 81,950.84
Accruals not subjected to EWT	(4,739.51)	(23,697.56)
Reimbursement of allocation from affiliates	(124.91)	(624.56)
Total	**₱11,525.74**	**₱57,628.72**

f. Miscellaneous

The ICPA provided the following breakdown of the *Miscellaneous* account:

	Direct	Indirect	Total	Tax Withheld
Training and Development - Local - Officers				
Subject to 2% EWT - 96/4	₱ 14,838.71	₱ 618.28	₱ 15,456.99	₱ 309.14
Subject to 15% EWT - 96/4	199,518.87	8,313.29	207,832.16	-
Reimbursements - 96/4	870.85	36.29	907.14	-
Accruals - 96/4	146,889.66	6,120.40	153,010.06	-
Not Subject to EWT 96/4	2,701.05	112.54	2,813.60	-
Training and Development - Local - Staff				
Subject to 2% EWT - 96/4	29,128.04	1,213.67	30,341.71	606.83
Payment to GPPs - 96/4	6,272.64	261.36	6,534.00	-
Accruals - 96/4	(38,573.89)	(1,607.25)	(40,181.14)	-
Not Subject to EWT 96/4	3,744.00	156.00	3,900.00	-
Courier Services - Courier Fees				
Subject to 2% EWT - 0/100	-	3,389.74	3,389.74	67.79
Accruals - 0/100	-	1,136.00	1,136.00	-
Printing & Reproduction				
Subject to 2% EWT - 87/13	40,708.52	6,082.88	46,791.40	2,339.59
Accruals - 87/13	6,025.93	900.43	6,926.36	-
Miscellaneous Expenses - Others				
Subject to 2% EWT - 60.3/39.7	1,893.09	1,246.37	3,139.46	62.79
Goods not subject to 1% - 60.3/39.7	1,345.98	886.16	2,232.14	-
Amortization -2009 - 60.3/39.7	1,241.06	817.09	2,058.15	-
Not Subject to EWT 60.3/39.7	2,678.59	1,763.51	4,442.10	-
Realized Gain /Loss on Foreign Exchange	-	35,432.65	35,432.65	-
Realized Gain on Foreign Exchange	-	(25,899.91)	(25,899.91)	-

Realized Loss on Foreign Exchange	-	7,923.77	7,923.77	-
Miscellaneous	**₱ 419,283.12**	**₱ 48,903.26**	**₱ 468,186.38**	**₱ 3,386.15**

For petitioner's failure to submit supporting documents, the Court cannot ascertain the actual nature and tax implication of the following transactions lodged under the Miscellaneous account in the amount of ₱10,247.19, thus, shall be assessed of the corresponding 2% EWT:

Nature of Payment	Invoice Amount	Indirect
-	907.14	
Training and Development-Reimbursements	**₱ 907.14**	**₱ 36.29**
Recording of Additional Accrual	19,375.00	
Recording of Accrual for Training Program	19,375.00	
Recording of Accrual for Training Program	19,375.00	
Adjustment of Accrual for Training Program	19,375.00	
Recording of Accrual for Training Program	25,833.33	
Recording of Accrual for Training Program	25,833.33	
Recording of Accrual for Training Program	25,833.33	
Recording of Accrual for Training Program	25,833.33	
Recording of Accrual for Training Program	25,833.33	
Recording of Accrual for Training Program	25,833.33	
Reversing of Accrual for Training Program	(200.00)	
Recording of Accrual for Training Program	25,833.33	
Reversing of Accrual for Training Program	(2,613.60)	
Recording of Accrual for Training Program	25,833.33	
Reversing of Accrual for Training Program	(114,269.92)	
Recording of Accrual for Training Program	25,833.33	
Reversing of Accrual for Training Program	(106,573.06)	
Recording of Accrual for Training Program	66,666.67	
Training and Development-Accrual	**₱ 153,010.06**	**₱ 6,120.40**
Recording of Liquidation of CA	1,136.00	
Courier Services-Accrual	**₱ 1,136.00**	**₱ 1,136.00**
Payment for registration fee for Training Program	2,613.60	
Payment for registration fee for Training Program	200.00	
Payment for registration fee for Training Program	**₱ 2,813.60**	**₱ 112.54**
Payment for Seminar	6,534.00	
Payment for Seminar	**₱ 6,534.00**	**₱ 261.36**
Amortization of prepaid expenses	289.93	
Amortization of prepaid expenses	289.93	
Amortization of prepaid expenses	289.93	
Amortization of prepaid expenses	289.93	
Amortization of prepaid expenses	289.93	
Amortization of prepaid expenses	289.93	
Amortization of prepaid expenses	289.93	
Amortization of prepaid expenses	28.64	
Miscellaneous Expenses-Accrual	**₱ 2,058.15**	**₱ 817.09**
Amortization of prepaid expenses	13.55	
Amortization of prepaid expenses	867.51	
Amortization of prepaid expenses	33.82	
Amortization of prepaid expenses	2,194.02	
Payment for list of graduates of UP	1,333.20	
Miscellaneous Expenses-Amortization	**4,442.10**	**1,763.51**
Total	**₱ 170,901.05**	**₱ 10,247.19**

g. Others

As provided for by the ICPA, below are the transactions booked under the account "Others":

A. Payments subjected to 2% expanded withholding tax	**Per Audit**
Training and Development - Local – Officers	₱ 14,838.71
Training and Development - Local – Staff	29,128.04
Repairs and Maintenance - Furniture & Fixtures	544.05
Repair & Maintenance - System Software	321,562.71
Repairs and Maintenance - Telecoms Lines and Equipment	3,214.29
Repairs and Maintenance - Leasehold Improvements	27,732.65
Repairs and Maintenance – Others	12,692.87
Advertising and Publicity - Advertising	129,423.88
Meetings & Conferences	69,328.82
Representation & Entertainment	120,054.63
Insurance – Fire	13,127.30
Insurance - Electronic Equipment	20,407.54
Insurance - Transportation Equipment	24,027.46
Insurance - Banker's Blanket and Fidelity Bond	-
Miscellaneous Expenses – Others	1,893.09
Total of payments subjected to 2%	**₱ 787,976.03**
B. Payments subjected to 5% expanded withholding tax	**Per Audit**
Advertising and Publicity - Advertising	₱ 1,224.80
Printing & Reproduction	40,708.52
	₱ 41,933.32
C. Payments subjected to 15% expanded withholding tax	**Per Audit**
Training and Development - Local - Officers	₱ 199,518.87
	₱ 199,518.87
D. Payments not subject to withholding tax	
D1. Payment for taxes	**Per Audit**
Taxes and Licenses - Fringe Benefits Tax	₱ 160,765.40
Insurance – Fire	1,718.88
Insurance - Electronic Equipment	2,591.78
Insurance - Transportation Equipment	3,135.70
Insurance - Banker's Blanket and Fidelity Bond	-
	₱ 168,211.76
D2. Payment to GPPs	**Per Audit**
Advertising and Publicity - Advertising	₱ 19,404.00
Training and Development - Local - Officers	6,272.64
	₱ 25,676.64
D3. Payment to non-stock not for profit institutions	**Per Audit**
Training and Development - Local - Officers	₱ 2,701.05

Training and Development - Local - Staff	3,744.00
Membership Fees and Dues - Non Taxable - Firm Membership	31,482.50
Miscellaneous Expenses – Others	803.92
	₱ 38,731.47
D4. Payment to travel agencies	**Per Audit**
Traveling – Foreign	₱ 110,246.22
	₱ 110,246.22
D4. Payment for purchase of goods not subject to 1% withholding tax	**Per Audit**
Repair & Maintenance - System Software	₱ 7,395.69
Repairs and Maintenance - Leasehold Improvements	18,750.00
Repairs and Maintenance – Others	24,255.00
Advertising and Publicity - Advertising	10,454.40
Miscellaneous Expenses – Others	1,345.98
	₱ 1,345.98
D5. Reimbursements to employees, liquidation forms, petty cash payments	**Per Audit**
Training and Development - Local - Officers	₱ 870.85
Transportation - Gas & Oil	13,260.83
Transportation – Local	20,967.81
Transportation – Others	2,256.98
Repairs and Maintenance - Transportation Equipment	9,988.12
Advertising and Publicity - Advertising	14,449.57
Representation & Entertainment	177,354.12
Meetings & Conferences	70,621.06
Insurance - Transportation Equipment	234.04
	₱ 310,003.38
E. Amortization in 2010 of prepaid expenses paid in 2009	**Per Audit**
Repair & Maintenance - System Software	₱ 248,528.87
Insurance - Electronic Equipment	0.80
Insurance - Transportation Equipment	33,186.87
Insurance - Banker's Blanket and Fidelity Bond	144,964.53
Miscellaneous Expenses – Others	1,241.06
	₱ 427,922.13
F. Reimbursement to affiliates for its share in allocated expenses	**Per Audit**
Repair & Maintenance - System Software	2,947,756.33
Insurance - Banker's Blanket and Fidelity Bond	95,953.40
	₱ 3,043,709.73
G. Accruals	
G1. Accruals claimed as deductible expense	**Per Audit**
Training and Development - Local - Officers	₱ 146,889.66
Training and Development - Local - Staff	- 38,573.89

Traveling – Foreign	- 580.99
Repair & Maintenance - System Software	489,946.01
Advertising and Publicity - Advertising	50,226.62
Printing & Reproduction	6,025.93
Insurance – Fire	2,290.80
Insurance - Public Liability	253.62
Insurance - Electronic Equipment	2,462.88
Insurance - Transportation Equipment	5,340.17
	₱ 664,280.80
	Per Audit
G2. Accruals not claimed as deductible expense	
Repair & Maintenance - System Software	(440,000.00)
Advertising and Publicity - Advertising	80,000.00
	₱(360,000.00)
	Per Audit
H. Payments not subjected to withholding tax	
Repairs and Maintenance - Transportation Equipment	1,413.69
Advertising and Publicity - Advertising	4,977.40
Miscellaneous Expenses – Others	1,874.67
	8,265.76
Total	**₱ 5,467,822.11**

The Court notes that above amount differs with the amount of 5,510,104.00 assessed by respondent, as shown below:

Total Per ICPA	₱ 5,467,822.11
Others-Account based on FS/ITR	5,510,104.00
Unaccounted Difference	**₱(42,281.89)**

For failure to explain the discrepancy of 42,281.89, the same shall be assessed of 2% EWT.

Moreover, the following unsubstantiated transactions recorded under the account "Others" shall be imposed of 2% EWT, thus:

Amortization		
Exhibit No.	**Nature of Payment**	**Invoice Amount**
P-5571 to P-5573	Repair & Maintenance - System Software	25,717.40
P-5574 to P-5576	Repair & Maintenance - System Software	28,673.26
P-5577 to P-5579	Repair & Maintenance - System Software	28,673.26
P-5580 to P-5582	Repair & Maintenance - System Software	28,673.26
P-5583 to P-5585	Repair & Maintenance - System	28,673.26

	Software	
P-5586 to P-5588	Repair & Maintenance - System Software	28,673.26
P-5589 to P-5591	Repair & Maintenance - System Software	27,655.26
P-5592 to P-5594	Repair & Maintenance - System Software	17,846.71
P-5595 to P-5597	Repair & Maintenance - System Software	16,368.80
P-5598 to P-5600	Repair & Maintenance - System Software	7,501.18
P-5601 to P-5603	Repair & Maintenance - System Software	5,036.61
P-5604 to P-5606	Repair & Maintenance - System Software	5,036.61
Total		**₱ 248,528.87**

Reimbursements from Affiliates			
Exhibit No.	**Supplier**	**Nature of Payment**	**Invoice Amount**
P-5607 to P-5611	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	7,896.12
P-5612 to P-5616	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	7,896.12
P-5617 to P-5620	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	388,885.92
P-5617 to P-5620	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	197,144.86
P-5621 to P-5625	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	7,896.12
P-5626 to P-5628	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	180,440.53
P-5626 to P-5628	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	180,440.55
P-5629 to P-5633	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	7,896.12
P-5634 to P-5636	Philippine Dealing & Exchange Corp.	Repair & Maintenance - System Software	11,687.02
P-5637 to P-5642	Philippine Dealing System Holdings Corp.	Repair & Maintenance - System Software	4,339.20
P-5643 to P-5644	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	389,161.20
P-5643 to P-5644	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	175,749.72
P-5645 to P-5650	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	12,235.33
P-5651 to P-5653	Philippine Dealing System Holdings Corp.	Repair & Maintenance - System Software	- 37,660.76
P-5654 to P-5658	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	12,235.33
P-5659 to P-5663	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	12,235.33

P-5664 to P-5665	Philippine Dealing System Holdings Corp.	Repair & Maintenance - System Software	350,079.86
P-5664 to P-5665	Philippine Dealing System Holdings Corp.	Repair & Maintenance - System Software	175,039.93
P-5666 to P-5671	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	12,235.33
P-5672 to P-5676	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	12,235.33
P-5677 to P-5681	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	12,235.33
P-5677 to P-5681	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	24,470.66
P-5682 to P-5685	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	339,765.23
P-5682 to P-5685	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	169,882.62
P-5686 to P-5690	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	48,888.89
P-5686 to P-5690	Philippine Depository & Trust Corp.	Repair & Maintenance - System Software	244,444.44
Total			**₱2,947,756.33**

Accruals		
Exhibit No.	**Nature of Payment**	**Amount**
P-5691	Repair & Maintenance - System Software	14,406.54
P-5692	Repair & Maintenance - System Software	20,232.14
P-5693	Repair & Maintenance - System Software	3,652.00
P-5694	Repair & Maintenance - System Software	21,782.93
P-5695	Repair & Maintenance - System Software	5,676.88
P-5696	Repair & Maintenance - System Software	3,652.00
P-5697	Repair & Maintenance - System Software	14,406.54
P-5698	Repair & Maintenance - System Software	20,232.14
P-5699	Repair & Maintenance - System Software	56,310.81
P-5700	Repair & Maintenance - System Software	3,652.00
P-5701	Repair & Maintenance - System Software	14,406.54
P-5702	Repair & Maintenance - System Software	20,232.14
P-5703	Repair & Maintenance - System Software	20,232.14
P-5704	Repair & Maintenance - System Software	14,406.54
P-5705	Repair & Maintenance - System Software	3,652.00
P-5706	Repair & Maintenance - System Software	- 62,247.21
P-5707	Repair & Maintenance - System Software	- 2,600.04
P-5708	Repair & Maintenance - System Software	34,638.68
P-5709	Repair & Maintenance - System Software	14,406.54
P-5710	Repair & Maintenance - System Software	20,232.14
P-5711	Repair & Maintenance - System Software	12,235.33
P-5712	Repair & Maintenance - System Software	14,406.54
P-5713	Repair & Maintenance - System Software	20,232.14
P-5714	Repair & Maintenance - System Software	14,406.54
P-5715	Repair & Maintenance - System Software	20,232.14
P-5716	Repair & Maintenance - System Software	9,808.56
P-5717	Repair & Maintenance - System Software	20,232.14
P-5718	Repair & Maintenance - System Software	14,406.54
P-5719	Repair & Maintenance - System Software	3,839.29
P-5720	Repair & Maintenance - System Software	- 9,808.56
P-5721	Repair & Maintenance - System Software	14,406.54
P-5722	Repair & Maintenance - System Software	20,232.14
P-5723	Repair & Maintenance - System Software	8,867.62

P-5724	Repair & Maintenance - System Software	20,232.14
P-5725	Repair & Maintenance - System Software	14,406.54
P-5726	Repair & Maintenance - System Software	8,867.62
P-5727	Repair & Maintenance - System Software	2,464.56
P-5728	Repair & Maintenance - System Software	14,406.54
P-5729	Repair & Maintenance - System Software	20,232.14
-	Repair & Maintenance - System Software	4,476.06
Total		**₱ 489,946.01**
Exhibit No.	**Nature of Payment**	**Invoice Amount**
P-4926 to P-4927	Printing & Reproduction	3,463.18
P-4928 to P-4929	Printing & Reproduction	3,463.18
Total		**6,926.36**
Total-Accruals		**₱ 496,872.37**

Not Subjected to EWT			
Exhibit No.	**Supplier**	**Nature of Payment**	**Invoice Amount**
P-5550 to P-5553	Honda Cars Alabang	Repairs and Maintenance - Transportation Equipment	1,413.69
Total			**₱1,413.69**

Reimbursements			
Exhibit No.	**Supplier**	**Nature of Payment**	**Invoice Amount**
P-5544 to P-5549	Victor Tumang	Repairs and Maintenance - Transportation Equipment	9,988.12
Total			**₱9,988.12**
Exhibit No.	**Supplier**	**Nature of Payment**	**Invoice Amount**
P-5730 to P-5735	Filstar Distributors Corp	Representation & Entertainment	6,785.71
P-5736 to P-5740	A.Almanzor	Representation & Entertainment	857.14
P-5736 to P-5740	-	Representation & Entertainment	130.36
P-5736 to P-5740	-	Representation & Entertainment	118.08
P-5741	A.Almanzor	Representation & Entertainment	936.00
P-5742 to P-5746	Bestworld Beverage Brands, Inc.	Representation & Entertainment	5,544.64
P-5747 to P-5751	Bestworld Beverage Brands, Inc.	Representation & Entertainment	5,544.64
P-5752	-	Representation & Entertainment	7,500.00
P-5753	-	Representation & Entertainment	4,141.96
P-5754	-	Representation & Entertainment	241.07
P-5755	-	Representation & Entertainment	341.07
P-5756	Janice Espana	Representation & Entertainment	691.47
P-5759 to P-5765	Bestworld Beverage Brands, Inc.	Representation & Entertainment	1,848.21
P-5759 to P-5765	Bestworld Beverage Brands, Inc.	Representation & Entertainment	1,848.21
P-5759 to P-5765	Bestworld Beverage Brands, Inc.	Representation & Entertainment	4,500.00
P-5766 to P—5773	Bestworld Beverage Brands, Inc.	Representation & Entertainment	5,544.64
P-5766 to P—5773	Bestworld Beverage Brands, Inc.	Representation & Entertainment	9,000.00
P-5774 to P-5783	Bestworld Beverage Brands, Inc.	Representation & Entertainment	10,044.64
P-5774 to P-5783	Bestworld Beverage Brands, Inc.	Representation & Entertainment	9,000.00
P-5774 to P-5783	Bestworld Beverage Brands, Inc.	Representation & Entertainment	3,696.43
P-5784 to P-5787	ISS Facility Services Phils., Inc	Representation & Entertainment	1,982.14

P-5788		Representation & Entertainment	721.92
P-5789 to P-5791	Maria Elizabeth R. Ponce de Leon	Representation & Entertainment	614.36
P-5792 to P-5799	Bestworld Beverage Brands, Inc.	Representation & Entertainment	3,696.43
P-5792 to P-5799	Bestworld Beverage Brands, Inc.	Representation & Entertainment	7,392.86
P-5792 to P-5799	Bestworld Beverage Brands, Inc.	Representation & Entertainment	7,392.86
P-5792 to P-5799	Bestworld Beverage Brands, Inc.	Representation & Entertainment	375.00
P-5800 to P-5803	Bestworld Beverage Brands, Inc.	Representation & Entertainment	2,500.00
P-5804	Bestworld Beverage Brands, Inc.	Representation & Entertainment	29,089.29
P-5805	Bestworld Beverage Brands, Inc.	Representation & Entertainment	7,785.71
P-5806	Bestworld Beverage Brands, Inc.	Representation & Entertainment	36,417.85
P-5807		Representation & Entertainment	1,071.43
Total			**₱177,354.12**
Exhibit No.	**Supplier**	**Nature of Payment**	**Invoice Amount**
P-5136 to P-5139	-	Meetings & Conferences	175.00
P-5140	-	Meetings & Conferences	2,598.28
	-	Meetings & Conferences	1,764.00
P-5147	-	Meetings & Conferences	3,537.77
P-5196		Meetings & Conferences	2,328.57
P-5199 to P-5207	-	Meetings & Conferences	178.57
P-5241 to P-5254		Meetings & Conferences	-5,000.00
P-5261 to P-5263	-	Meetings & Conferences	4,464.29
P-5264	-	Meetings & Conferences	573.21
P-5305	-	Meetings & Conferences	831.25
P-5306	-	Meetings & Conferences	879.46
P-5307	-	Meetings & Conferences	5,000.00
Total			**₱ 70,621.06**

Based on the preceding discussions, the following income payments shall be assessed for deficiency EWT. Thus, petitioner shall be liable for deficiency EWT for the income payments amounting to ₱3,722,910.43, computed as follows:

Unaccounted Difference	₱ (42,281.89)
Amortization Not Subjected to EWT	248,528.87

Reimbursements from Affiliates	2,947,756.33
Accruals Not Subjected to EWT	496,872.37
Income Payments Not Subjected to EWT Not Subjected to EWT	1,413.69
Reimbursements Not Subjected to EWT	70,621.06
Total	**₱ 3,722,910.43**

To recapitulate, petitioner's basic deficiency EWT due for the taxable year 2010 amounted to ₱155,689.93, computed as follows:

Expense/Income Payments	Amount	EWT Rate	EWT Due
Rental	₱ 476,539.82	5%	₱ 23,826.99
Professional Fees	80,948.61	15%	12,142.29
Director's fee	23,000.00	15%	3,450.00
Payment to contractors/subcontractors			
Other Outside Services	₱25,388.68		
Outside Services	101,554.70		
Advertising	43,717.83		
Insurance	46,852.98		
Communication Light and Water	11,525.74		
Miscellaneous	10,247.19		
Others	3,722,910.43		
	₱3,962,197.55	2%	₱ 79,243.95
Total	**₱4,542,685.98**		**₱118,663.23**

II. DEFICIENCY WTC - ₱951,242.77

Respondent's reconciliation of Salaries and Wages and Other Benefits per Financial Statements (FS)/Income Tax Return (ITR) *vis-à-vis* the amount subjected to WTC per BIR Form No. 1601-C disclosed that there were salaries not subjected to WTC amounting to ₱1,928,255.53. Hence, respondent assessed petitioner of the corresponding deficiency WTC in the amount of ₱951,242.77, computed as follows:[74]

Salaries per FS/ITR		₱ 16,353,876.89
Salaries per 1601C		14,425,621.36
Disallowed Salaries due to non-withholding		₱ 1,928,255.53
Withholding Tax Rate:		
Tax Due per 1601C	₱ 3,629,747.68	
Divided by Taxable Salaries per 1601C	13,756,115.36	26.39%

[74] Exhibit "P-7", Docket, Vol. III, pp. 1386 and 1389.

Basic Tax Due		₱ 508,797.79
Add: Interest (01.16.11 to 5.22.15)		442,444.98
TOTAL AMOUNT DUE		**₱ 951,242.77**

As correctly noted by the ICPA, the source of the ₱16,353,876.89 salaries per FS/ITR used by respondent in his computation cannot be ascertained. Petitioner's claimed deduction for salaries and benefits in its 2010 ITR amounted to ₱16,145,237.00[75], which is lower by ₱208,639.89 than the amount of ₱16,353,876.89 per respondent's computation. On the other hand, petitioner's 2010 audited FS showed salaries and benefits amounting to ₱17,803,967.00[76], which is higher by ₱1,450,090.11 *vis-à-vis* the amount used by the respondent. Moreover, petitioner's salaries and wages (excluding benefits) in the FS is only ₱16,298,140.00, or lower by ₱55,736.89, as summarized below:[77]

	Per FS (Excluding Benefits)	**Per FS (Including Benefits)**	**Per ITR**
Salaries and wages	₱16,298,140.00		
Direct Charges - Sales, Wages and Benefits		₱17,180,828.00	₱15,587,526.00
Itemized Deduction - Salaries and Allowances		623,139.00	557,711.00
Total	16,298,140.00	17,803,967.00	16,145,237.00
Per BIR Assessment	16,353,876.89	16,353,876.89	16,353,876.89
Discrepancy	**₱ 55,736.89)**	**₱1,450,090.11**	**₱(208,639.89)**

Based on the ICPA's verification of the ₱17,803,967.00 salaries and employee benefits reported in the FS, petitioner withheld on the amount of ₱14,479,118.56. The ICPA accounted for the remaining amount of ₱3,324,848.50 as follows:

Salaries and benefits per FS		₱ 17,803,967.06
Total Compensation per BIR Form No. 1601C		14,479,118.56
Difference		₱ 3,324,848.50
Accounted for as follows:		
Allocation of salaries and benefits from affiliates:		
From PDSHC	₱ 7,589,433.57	
From PDEX	653,411.41	
From PDTC	4,587,257.45	12,830,102.43
Allocation of salaries and benefits to affiliates		(11,976,194.73)
Accrued vacation leave not claimed as deduction		70,918.00
Retirement benefits expense not claimed as deduction		542,127.00

[75] The sum of ₱15,587,526.00 (Exhibit P-51, line 49) and ₱557,711.00 (Exhibit P-51, line 82).
[76] Exhibit "P-52", Notes to Financial Statements, Note 14.
[77] Exhibit "P-45", Docket, Vol. II, p. 1040.

Fringe benefits tax		166,596.00
Non-taxable compensation (per BIR Form 1601C)		723,003.20
Accrual of bonus		975,328.64
Total		**₱3,331,880.54**
Unaccounted difference		**(₱ 7,032.04)**

With reference to accrued vacation leave in the amount of ₱70,918.00, accrued retirement benefits in the amount of ₱542,127.00, and accrual of bonus in the amount of ₱975,328.64, the same do not constitutes compensation subject to WTC. Pursuant to Sec. 2.78 of RR 2-98, the WTC on compensation income accrues upon receipt of the income. Considering these amounts were merely accrued in the books of the petitioner and have not been paid to the employees, the WTC thereon is not yet due and payable.

Similarly, the fringe benefits tax in the amount of ₱166,596.00, and non-taxable compensation per BIR Form 1601C in the amount of ₱723,003.20 do not constitute compensation subject to WTC.

With regard to the allocation of salaries and benefits from affiliates in the amount of ₱12,830,102.43 and allocation of salaries and benefits to affiliates in the amount of ₱(11,976,194.73), the ICPA stated in his report[78] that petitioner's payroll, as well as that of its affiliates, are handled by a third-party payroll provider, Business Process Outsourcing International, Inc.. Payroll costs are allocated among the members of PDS Group based on pre-determined formula or cost allocation policy.[79]

The ICPA further stated that the withholding of taxes on salaries and employee benefits is made by the company who is in control of the payment. This can be shown by BIR Form 1604CF wherein the amount of salaries subjected to withholding tax is different from the amount claimed as salary expense in the books. Moreover, based on the payroll register prepared by petitioner's payroll service provider, it was shown that employee salaries of each entity are respectively allocated to the other affiliates, including petitioner. The expense is claimed by the entity receiving the allocation based on policy approved by the PDS Group.[80]

However, the documents presented by petitioner such as BIR Forms No. 1601C and BIR Forms No. 1604CF together with the alphalists it filed with the BIR and that of its affiliates, namely, PDTC,

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[78] Exhibit "P-45", Docket, Vol. II, pp. 1041-1042.
[79] Exhibit "P-124".
[80] Exhibits P-6049 to P-6074.

PDSHC, and PDEX[81], Journal Vouchers with attached cost allocations,[82] and BPO Process Workflow[83] are insufficient to corroborate the findings of the ICPA.

While the aforesaid documents show that petitioner's affiliates withheld and remitted WTC on the compensation of their corresponding employees, however, petitioner's actual reimbursement to and from its affiliates of the alleged shared costs was not established. The Journal Vouchers with attached cost allocations merely show the costs distribution and the corresponding entries but do not prove the fact of payment of the alleged allocated/shared costs. Petitioner should have presented the details of its Advances From/To Affiliates as reflected in the FS of petitioner and its affiliates in order for the Court to ascertain the actual charging and payment of the shared/allocated costs. Thus, for failure to prove that the amounts of ₱12,830,102.43 and ₱(11,976,194.73), actually pertain to allocated salaries and benefits from and to affiliates, the net amount of ₱853,907.70 is subject to deficiency WTC in the amount of ₱225,346.24, computed as follows:

Allocation of salaries and benefits from affiliates:	₱12,830,102.43
Allocation of salaries and benefits to affiliates	(11,976,194.73
Salaries and Benefits subject to WTC	**₱ 853,907.70**
WTC Rate	26.39%
Deficiency WTC	**₱ 225,346.24**

I. DEFICIENCY FWT - ₱1,008,764.66; and
II. DEFICIENCY FWVAT - ₱413,105.88

The assessment on final withholding tax and final withholding tax of VAT as computed below pertains to payments made to Tata Consulting Services, Ltd., a non-resident foreign corporation based in India.

Final Withholding Tax

Basic Tax Due (Schedule 6)		₱ 468,376.01
Add: Surcharge (25%)	₱ 117,094.00	
Interest (01.16.11 to 5.23.14)	313,876.00	430,970.00
Total Amount Due		**₱ 899,346.01**

Payment to Tata Consultancy Services Ltd.	₱ 1,561,253.38
Multiplied by: FWT Rate	30%
Final Withholding Tax Due	**₱ 468,376.01**

[81] Exhibits P-53 to P-72, P-6009 to P-6047.
[82] Exhibits P-125 to P-277, P-6049 to 6074.
[83] Exhibits P-122.

Withholding Tax of VAT

Basic Tax Due (Schedule 7)		₱ 187,350.41
Add: Surcharge (25%)	₱ 46,837.60	
Interest (01.16.11 to 5.23.14)	125,550.44	172,388.04
Total Amount Due		**₱ 359,738.45**

Payment to Tata Consultancy Services Ltd.	₱ 1,561,253.38
Multiplied by: WVAT Rate	12%
Final Withholding VAT Due	**₱ 187,350.41**

Petitioner posted that it has no direct payments to Tata Consultancy Services Limited (Tata) that requires it to withhold any final tax on payments to non-residents.

Petitioner explained that the billings of Tata Consultancy Services Limited were issued to Philippine Depository & Trust Corp. (PDTC), and not to petitioner. To which PDTC allocated the same to the other affiliates, including petitioner.[84]

However, upon perusal of the documents submitted by the petitioner (check vouchers, application for fund transfer, invoices, payment advice, letter correspondences), petitioner failed to prove that it actually reimbursed PDTC of the allocated cost. In addition, the fact of withholding and remittance of the FWT and WVAT related to the income payments to Tata was not proven. Petitioner did not submit the BIR Forms 1601F and 1600 supposedly filed by PDTC pertaining to the subject income payments. The check vouchers were merely presented to further substantiate petitioner's claim that PDTC allocated a part of its payments to Tata to the petitioner.

For petitioner's failure to sufficiently refute said assessments, the same must not be disturbed.

III. DEFICIENCY INCOME TAX - ₱4,989,902.97

The details of respondent's deficiency IT assessment against petitioner are as follows:[85]

I. Income Tax		
Taxable Income per return		₱ 3,949,033.00
Add: Adjustments/disallowances		
Sales not subject to income tax (Schedule 1)	₱ 475,609.65	

[84] Exhibits P-5983 to P-6008.
[85] Formal Letter of Demand, Exhibit R-24, BIR Records, Folder 7, pp. 391 to 396.

Disallowed Expenses due to non-withholding (Schedule 2)	6,170,231.59	
Disallowed salaries and wages for non-withholding (Schedule 3)	1,928,255.53	
Unsupported expenses (Schedule 4)	447,132.93	
Disallowed prior period expenses (Schedule 5)	116,411.53	9,137,641.23
Adjusted Taxable Income		₱ 13,086,674.23
Basic Income tax Due		₱ 3,926,002.27
Less: Tax credits/payments		
Unexpired excess of prior year's MCIT over NT	₱ 171,830.00	
Prior year's excess credits	4,063,029.00	
Creditable income tax withheld	671,404.00	
Total	₱ 4,906,263.00	
Less: Excess tax credits carried over to succeeding year	3,721,553.00	1,184,710.00
Basic Deficiency Income Tax		₱ 2,741,292.27
Add: Interest (04.16.11 to 5.23.14)		2,248,610.70
TOTAL AMOUNT DUE		**₱ 4,989,902.97**

The Court shall determine the propriety of the following adjustments/disallowances to petitioner's taxable income that resulted to the above deficiency IT assessment:

A. Sales not subject to income tax	₱ 475,609.65
B. Disallowed expenses due to non-withholding	6,170,231.59
C. Disallowed salaries and wages for non-withholding	1,928,255.53
D. Unsupported expenses	447,132.93
E. Disallowed prior period expenses	116,411.53

A. Sales not subject to income tax - ₱475,609.65

Respondent arrived at the alleged sales not subjected to income tax by considering the amount reported as gross receipts per petitioner's VAT returns and the change in its Accounts Receivable (A/R) account for TY 2010, as shown below:

Receipts per VAT Returns	₱ 39,697,453.51
Add: A/R, end (Net of VAT)	3,676,483.93
Total	₱ 43,373,937.44
Less: A/R, beginning (Net of VAT)	3,015,376.79
Sales to be subjected to income tax	₱ 40,358,560.65
Less: Sales per FS ITR	39,882,951.00
Sales not subjected to income tax	**₱ 475,609.65**

On the other hand, petitioner contended that the A/R account includes receivables that are not reported as taxable income because they are in the nature of reimbursements. Specifically, the A/R account includes receivables from customers for Rivest, Shamir and Adlemen (RSA) Tokens initially purchased by petitioner for and on behalf of its clients. The RSA token is a device used for security authentication in connecting to the petitioner's computer network, which some customers prefer to use for added security.

The Court cancels the assessment.

Petitioner operates the domestic transfer systems for two foreign currencies: United States Dollars, through the Philippine Domestic Dollar Transfer System (PDDTS) and Chinese Yuan, through the Renminbi Transfer System (RTS). Petitioner also operates the Payment vs. Payment (PVP) System for interbank USD-PHP transactions.[86]

In its operations, petitioner implemented a two-factor authentication system for PDDTS member-banks, which are petitioner's clients, through the use of RSA Tokens. Two-factor authentication is a security feature to enhance internet access beyond the traditional user ID and password. It provides additional security by requiring the user to input another password which is automatically generated by a token, which the user must possess. The password generated by the token is random and changes every few minutes making it almost impossible to be cracked by hackers. It is recommended by the Bangko Sentral ng Pilipinas (BSP) for financial transactions particularly for internet-based system like the one used for PDDTS/PVP.[87]

The purchase cost and maintenance services were initially shouldered by petitioner but were subsequently reimbursed by petitioner's clients, i.e., PDDTS member-banks.

The ICPA illustrated through the following entries the initial purchase by petitioner and subsequent reimbursement by its clients of the costs and maintenance services related to the RSA Tokens as follows:

Computer Equipment	xxx	
Input VAT	xxx	
Accounts Payable		xxx
To record purchase of tokens.		
Repair and Maintenance of Comp Equipment (Expense Account)	xxx	

[86] Exhibits "P-42" and "P-43", Q4, Docket, Vol. I, pp. 229 and 490.
[87] Exhibit "P-8", Docket, Vol. III, p, 1391

Input VAT	xxx	
Accounts Payable		xxx
To record payment of repairs and maintenance.		
Receivable	xxx	
Output VAT		xxx
Other Fees		xxx
To record billing to customers.		
Other Fees	xxx	
Computer Equipment		xxx
Repair and Maintenance of Comp Equipment (Expense Account)		xxx
To record transfer of tokens to customers.		

Based on the foregoing, the receivables from customers related to RSA tokens are in its nature, mere reimbursements to which the petitioner has not gain profit.

Citing *BIR Ruling No. DA-511-06*, to wit:

> " ... monies received by TPI from its tenants as payments for direct utilities and services are not subject to VAT and EWT. Reimbursement of expenses, by its very nature, is not income but merely a return of capital. As a return of capital, it is not income payment per se. Such being the case, it is not subject to income tax.
>
> In the case at bar, the expenses directly and indirectly attributable to TPI's tenants are billed to its various tenants depending on their levels of consumption. These amounts are actually payments for such direct and indirect expenses. As such, they are not income payments subject to income and withholding tax."

Mere reimbursements of actual expenses/costs without any mark-up or profit element do not constitute income payments and are, therefore, not subject to Philippine income taxes. Thus, receivables from customers for RSA tokens initially purchased by petitioner for and on behalf of its clients being mere reimbursement of the actual costs and expenses incurred for the provision of security authentication in connecting to the petitioner's computer network are not subject to income and consequently to withholding tax.

B. ***Disallowed Expenses due to non-withholding of EWT and FWT - ₱6,170,231.59***

Finding that petitioner failed to withhold EWT and FWT on the certain income payments, respondent disallowed the amount of ₱6,170,231.59 as deductions from petitioner's gross income pursuant

to Section 34(K) of the NIRC of 1997, as amended, which states:

As stated earlier under the deficiency EWT and FWT assessments, petitioner failed to withhold and remit the EWT and FWT on the income payments totaling ₱6,103,939.36. However, the amount of ₱20,00000 representing non-deductible Advertising expense shall be deducted from the said amount. Thus, only the net amount of ₱6,083,939.36 shall disallowed as deductions from petitioner's taxable income per return, thus:

Disallowed Expenses due to non-withholding of EWT	₱ 4,542,685.98
Disallowed Expenses due to non-withholding of FWT	1,561,253.38
Total Disallowed expenses due to non-withholding of EWT and FWT	**₱6,103,939.36**
Less: Non-deductible Advertising expense	20,00000
Total	**₱6,083,939.36**

C. Disallowed Salaries and wages for non-withholding of WTC- ₱1,928,255.53

As earlier stated under the deficiency WTC assessment, petitioner failed to withhold WTC on the salaries and benefits in the amount of ₱853,907.70, thus disallowed as deduction from petitioner's taxable income per return pursuant to Sec. 34(K) of the NIRC of 1997, as amended, computed as follows:

Allocation of salaries and benefits from affiliates:	₱12,830,102.43
Allocation of salaries and benefits to affiliates	(11,976,194.73
Salaries and Benefits subject to WTC	**₱ 853,907.70**

D. Unsupported expenses - ₱447,132.93

Range Computer Services	₱ 251,755.10
Foreign Travel Expenses	195,377.83
Total	**₱ 447,132.93**

Pursuant to Section 34(A)(1)(b), no deduction from gross income shall be allowed unless the taxpayer shall substantiate with sufficient evidence the amount of expense being deducted, and 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.[88]

Hence, what petitioner needs to prove before this Court is the sufficiency of the supporting documents to establish the validity of such

[88] Gancayco vs. CIR, G.R. No. L-13325, April 20, 1961, 1 SCRA 980.

expense in accordance with Sections 34(A)(1)(b) in relation to Section 34(A)(1)(a) of the NIRC of 1997, as amended. [89]

On this note, upon court's examination of the submitted documents by the petitioner, there was sufficient substantiation of the disallowed expenses upon submission of the official receipts, check vouchers and other supporting documents[90] pertaining to such expenses.

The court verified from the petitioner's BIR Form No. 1604E that it withheld tax in the total amount of ₱12,395.80 from its payment Range Computer Services amounting to ₱269,904.70.

E. Disallowed Prior period expenses - ₱116,411.53

a. The Enterprise Center CC	₱ 58,682.76
b. The Enterprise Center CC	45,892.00
c. City Service Corp.	11,836.77
Total	**₱ 116,411.53**

Based on the ICPA report, the above expenses are supported by invoices and receipts dated in taxable year 2010, except for the invoice issued by City Service Corporation dated in the December 29, 2009 but the same was received only in 2010 and paid in 2010.

Upon examination of the invoices and other submitted documents pertaining to these expenses revealed that these pertain to payments for water, aircon, ac ext, electricity, janitorial services, supplies and materials which were incurred in prior year 2009. Since petitioner admits that it adopts the accrual method of accounting in reporting its income and expenses, the amount of ₱ 116,411.53 properly belong to the year 2009 and cannot be claimed as deductions for the year 2010. Hence, the assessment on these expenses is upheld.

Taxable Income per return		₱3,949,033.00
Add: Adjustments/disallowances		

[89] **SEC. 34. Deductions from Gross Income.** – x x x
(A) Expenses. – x x x
(1) Ordinary and Necessary Trade, Business or Professional Expenses. – x x x
(a) In General. – x x x
(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.

[90] Exhibits P-5831 to P-5902, P-5908 to P-5913.

Sales not subject to income tax (Schedule 1)		
Disallowed Expenses due to non-withholding (Schedule 2)	6,083,939.36	
Disallowed salaries and wages for non-withholding (Schedule 3)	853,907.70	
Disallowed prior period expenses (Schedule 5)	116,411.53	7,054,258.59
Adjusted Taxable Income		**₱11,003,291.59**
Basic Income tax Due		₱3,300,987.48
Less: Tax credits/payments		
Unexpired excess of prior year's MCIT over NT	₱171,830.00	
Prior year's excess credits	4,063,029.00	
Creditable income tax withheld	671,404.00	
Total	₱4,906,263.00	
Less: Excess tax credits carried over to succeeding year	3,721,553.00	1,184,710.00
Basic Deficiency Income Tax		**₱ 2,116,277.48**

The compromise penalties must be cancelled.

The compromise penalties imposed by respondent in the amount of ₱32,000.00 for petitioner's alleged deficiency FWT and FWVAT must likewise be cancelled.

Pursuant to Revenue Memorandum Order No. 19-07,[91] compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court cannot compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[92] Absent a showing that petitioner consented to the subject compromise penalties, as it was, in fact, assailing the tax impositions herein, the imposition of the said compromise penalties should be deleted. Simply put, the imposition of the compromise penalty without the taxpayer's conformity is illegal and unauthorized.[93]

Imposition of the deficiency and delinquency interests.

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[91] SUBJECT: The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code

[92] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.

[93] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

At the time the subject tax assessments were made, the imposition of deficiency and delinquency interests are governed by Section 249 of the NIRC of 1997, to wit:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum,* or such higher rate as may be prescribed by the rules and regulations, from the date prescribed for its payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency Interest.* – In case of failure to pay:
>
> xxx xxx xxx
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax." *(Emphases supplied)*

However, with the advent of Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion" (TRAIN Law), which took effect on January 1, 2018, the foregoing provision was amended to read as follows:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, **interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid**: *Provided*, **That in no case shall the deficiency and delinquency interest prescribed**

> **under Subsections (B) and (C) hereof be imposed simultaneously**.
>
> (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.
>
> (C) *Delinquency Interest.* xxx xxx xxx." *(Emphasis supplied)*

Based on the foregoing, the following amendments to the imposition of interests are noted:

1. The interest rate is reduced to "double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas."

   Currently, the legal interest rate is 6%,[94] hence the interest rate to be applied on any unpaid amount of tax shall be 12%, which is lower than the twenty (20%) interest imposed under Section 249 of the NIRC of 1997.

2. In no case shall the deficiency interest and delinquency interest be imposed simultaneously. As such, the overlapping of interest penalties under the NIRC of 1997 has been effectively eliminated.

3. The period for the application of deficiency interest is modified to run from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the CIR, whichever comes earlier. Hence, under the TRAIN law, the running of the period for the computation of the deficiency interest may be interrupted by the issuance of a notice and demand by respondent.

   It bears noting that under the NIRC of 1997, the deficiency interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof and is not interrupted by the issuance of a notice or demand from respondent.

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[94] BSP MB Circular No. 799, Series 2013 which took effect on July 1, 2013.

The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[95] There being no clear legislative intent to retroactively apply the provisions of the TRAIN law, the same should only be applied prospectively, *i.e.*, beginning January 1, 2018.

Furthermore, it bears emphasis that tax burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports, tax statutes being construed *strictissimi juris* against the government. Any doubt on whether a person, article or activity is taxable is generally resolved against taxation.[96]

Considering the foregoing principles, the effects of the amendments under the TRAIN Law, particularly the imposition of interests, shall be applied to this case.

Thus, as of January 1, 2018, the interests to be imposed must already be at 12%, and there must no longer be a simultaneous imposition of deficiency and delinquency interests.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**.

The compromise penalties in the amount of ₱32,000.00 for petitioner's alleged deficiency FWT and FWVAT are **CANCELLED** and **SET ASIDE**.

The assessments issued by respondent against petitioner for taxable year 2010 covering deficiency EWT, WTC, FWT, FWVAT and income tax are hereby **PARTIALLY UPHELD**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the reduced amount of **₱3,895,016.71**, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax	Basic	25% Surcharge	Total
EWT	118,663.23	29,665.81	148,329.04
WTC	225,346.24	56,336.56	281,682.80
FWT	468,376.01	117,094.00	585,470.01

[95] *BPI Leasing Corporation vs. Court of Appeals, et al.*, G.R. No. 127624, November 18, 2003.
[96] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 3008.

FWVAT	187,350.41	46,837.60	234,188.01
Income Tax	2,116,277.48	529,069.37	2,645,346.85
Total	**₱3,116,013.37**	**₱779,003.34**	**₱3,895,016.71**

In addition, petitioner is **ORDERED TO PAY** following deficiency and delinquency interest, computed in accordance with the provisions of Section 249 of the NIRC of 1997, in its original text and as amended by RA No. 10963 (TRAIN law), *viz.:*

1) Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency EWT, WTC, FWT, FWVAT, and income tax, computed from the dates indicated below until full payment thereof **until December 31, 2017**:

Tax	Basic	Commencement dates
EWT	₱ 118,663.23	January 15, 2011
WTC	225,346.24	January 15, 2011
FWT	468,376.01	January 15, 2011
FWVAT	187,350.41	January 15, 2011
Income Tax	₱2,116,277.48	April 15, 2011

2) Delinquency interest at the rate of 20% *per annum* on the total amount of ₱3,895,016.71 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from October 24, 2012 **until December 31, 2017**;

3) **Delinquency interest at the rate of 12% on the total unpaid amount [basic taxes, surcharges, and interests computed on (a) and (b) above] from January 1, 2018 until the same is fully paid.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

with Concurring Dissenting Opinion

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE SECURITIES SETTLEMENT CORP., Petitioner,	**CTA CASE No. 9058**
- versus -	Members:
	DEL ROSARIO, *P.J.*, *Chairperson*, **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 15 2018 2:30 pm

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in partially granting the Petition for Review filed by petitioner Philippine Securities Settlement Corporation, thereby partially upholding the assessments issued by respondent Commissioner of Internal Revenue against petitioner for taxable year 2010.

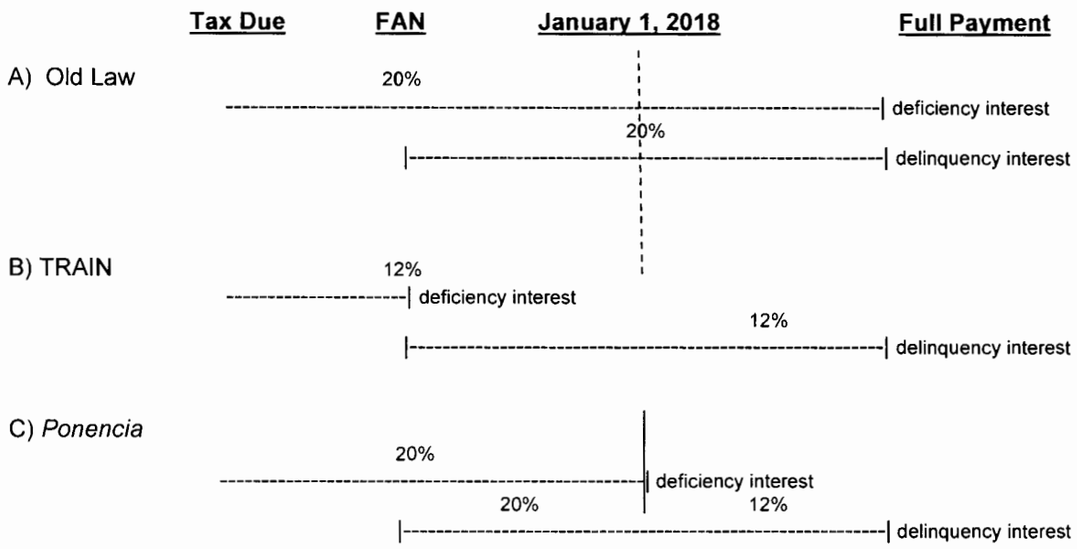
Anent the imposition of deficiency and delinquency interests, in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018, I submit that the imposable delinquency interest and deficiency interest on petitioner's deficiency expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding tax (FWT), final withholding VAT (FWVAT) and income tax liability should be at the rate of 12%, pursuant to Section 249 of the NIRC of 1997, as amended by the Train Law.

It must be emphasized that deficiency interest and delinquency interest on tax are based on law. When the law is amended during the pendency of a case, and there being a specific provision as to when the amendment becomes effective, there is no reason for the Court not to apply the law as amended.

Parenthetically, the TRAIN Law made a substantial modification on the rate of interest and the mode by which interest may be computed. A comparison of the provision of Section 249 on interest under the NIRC and its amendment under the TRAIN Law would readily highlight the radical incongruity, *viz.*:

Section 249, NIRC of 1997, as amended	**Section 249, NIRC, as amended by the TRAIN Law**
Deficiency Interest **20% per annum**, from the date prescribed for its payment until the full payment thereof	**Deficiency Interest** **12% per annum**, from the date prescribed for its payment until: (i) the full payment thereof; **or (ii) upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier** Provided that **in no case shall the deficiency and delinquency interest be imposed simultaneously**
Delinquency Interest **20% per annum**, until fully paid	**Delinquency Interest** **12% per annum**, until fully paid

The comparative provision of Section 249, before and after its amendment by the TRAIN Law vis-à-vis the imposition of interest in the *ponencia,* is graphically shown hereafter:



From the foregoing, it is readily apparent that Section 249 of the NIRC of 1997, as amended by the TRAIN Law, incorporates three (3) provisos that cannot be applied without setting aside the original version of Section 249 of the NIRC of 1997:

> *First*, the TRAIN Law prescribes 12% interest, which is double the legal interest rate for loans or forbearance of money, while the old provision prescribes the rate of 20% per annum;
>
> *Second*, under the TRAIN Law, the deficiency interest is computed from date prescribed for its payment: (i) until the full payment thereof; or **(ii) until the issuance of a notice and demand by the CIR, whichever comes earlier**. The old version confined its computation strictly from the date prescribed for its payment until the full payment thereof; and
>
> *Third*, the TRAIN Law proscribes the simultaneous imposition of deficiency interest and delinquency interest, which the old version allows.

In other words, since the TRAIN Law clearly **became effective on January 1, 2018**, there can be no logical and practical approach than to apply it in accordance with its clear language, Thus, the computation of **deficiency interest** should now be in accordance with the TRAIN Law, that is -- **at 12% and only until demand; while**

delinquency interest at the rate also of 12% should be from the due date appearing in the notice of demand until full payment.

In computing deficiency and delinquency interests, the provisions of the TRAIN Law are not being applied retroactively. At the time that petitioner was adjudged to be liable to pay the deficiency taxes with corresponding deficiency interest and delinquency interest, the prevailing provisions are that of the TRAIN Law which specifically state that there shall be no simultaneous imposition of deficiency and delinquency interests. Thus, the Court has no recourse but to apply the same. To be sure, there is nothing in the TRAIN Law which provides that the rate and manner of computing deficiency and delinquency interests shall be applied only to assessments issued after TRAIN Law's effectivity. **It is clearly and plainly provided that upon TRAIN Law's effectivity, "in no case shall the deficiency and delinquency interests be imposed simultaneously."**

In view of the effectivity of the TRAIN Law on January 1, 2018, **the amendatory provisions of the TRAIN Law on the imposition of deficiency and delinquency interests must be applied in determining the amount of petitioner's tax liability.**

All told, I **VOTE** to:

(i) **PARTIALLY GRANT** the Petition for Review filed by petitioner Philippine Securities Settlement Corporation;

(ii) **CANCEL** and **SET ASIDE** the compromise penalty in the amount of ₱32,000.00 imposed on petitioner's alleged deficiency FWT and FWVAT;

(iii) **PARTIALLY UPHOLD** the assessments issued by respondent against petitioner for taxable year 2010 covering deficiency EWT, WTC, FWT, FWVAT and income tax;

(iv) **ORDER** petitioner to **PAY** the **Bureau of Internal Revenue** the reduced amount of **₱3,895,016.71**, inclusive of the 25% surcharge imposed under Section 248 (A) (3) of the NIRC of 1997, as amended, computed as follows:

TAX	BASIC	25% SURCHAGE	TOTAL
EWT	118,663.23	29,665.81	148,329.04
WTC	225,346.24	56,336.56	281,682.80
FWT	468,376.01	117,094.00	585,470.01
FWVAT	187,350.41	46,837.60	234,188.01
Income Tax	2,116,277.48	529,069.37	2,645,346.85
TOTAL	**₱3,116,013.37**	**₱779,003.34**	**₱3,895,016.71**

(v) **ORDER** petitioner to **PAY** the **Bureau of Internal Revenue** the following:

a. **Deficiency interest** at the rate of twelve percent (12%) per annum on the basic deficiency EWT, WTC, FWT, FWVAT and income tax, computed from the dates indicated below until April 21, 2014, the date of petitioner's receipt of the Final Assessment Notice, pursuant to Section 249 (B) of the NIRC of 1997, as amended by RA No. 10963:

TAX	BASIC	COMMENCEMENT DATES
EWT	118,663.23	January 15, 2011
WTC	225,346.24	January 15, 2011
FWT	468,376.01	January 15, 2011
FWVAT	187,350.41	January 15, 2011
Income Tax	2,116,277.48	April 15, 2011

b. **Delinquency interest** at the rate of 12% per annum on the total amount of **₱3,895,016.71** and on the 12% deficiency interest which have accrued as aforestated in item (a) above, computed from May 14, 2014[1] until the amount is fully paid, pursuant to Section 249 (C) of the NIRC of 1997, as amended.

ROMAN G. DEL ROSARIO
Presiding Justice

[1] Due date for payment indicated in the FAN.