REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

IBMS TECHNOLOGY PHILS. CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2907
(CTA Case No. 9970)

Present:

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

Promulgated:
NOV 12 2025 4:30pm

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by IBMS Technology Phils. Corporation (**petitioner**) seeking to reverse the Special First Division's Decision[2] promulgated on 05 October 2023 (**assailed Decision**) and its Resolution[3] (**assailed Resolution**) issued on 27 March 2024, pursuant

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[1] Filed on 23 April 2024, *rollo*, pp. 1-24.
[2] *Rollo*, pp. 29-64. Penned by Associate Justice Catherine T. Manahan, concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo.
[3] Id., pp. 66-70.

to Section 2(a)(1)[4], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**),

In the assailed Decision and Resolution, the Special First Division partially granted petitioner's prior Petition for Review and cancelled the assessments for deficiency Value-Added Tax (**VAT**) and compromise penalties against petitioner for lack of merit. Meanwhile, it upheld the remaining assessments for deficiency Income Tax (**IT**), Expanded Withholding Tax (**EWT**), Withholding Tax on Compensation (**WTC**), Final Withholding Tax (**FWT**), Documentary Stamp Tax (**DST**), and Improperly Accumulated Earnings Tax (**IAET**) for calendar year (**CY**) 2014, with surcharges and interests, amounting to ₱25,345,346.57.

PARTIES TO THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with address at Unit 29-C Chatham House Condominium, 116 Valero corner V.A. Rufino Streets, Salcedo Village, Makati City.[5]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) tasked to decide disputed assessments, refunds of internal revenue taxes, fees or charges, penalties imposed in relation thereto. He or she may be served with notices, pleadings, resolutions, orders, decisions, and other legal processes at the Bureau of Internal Revenue (**BIR**) National Office Bldg., Agham Road, Diliman, Quezon City.[6]

FACTS OF THE CASE

On 20 May 2016, petitioner received Letter of Authority (**LOA**) No. AUDR03/006827/2016[7] (SN: eLA201200035835) which authorized Group

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[4] SEC. 2. *Cases within the jurisdiction of the Court en banc.* - The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
1. Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry and Department of Agriculture[.]

[5] Id., p. 29.

[6] Id., p. 30.

[7] See LOA dated 13 May 2016, Exhibit "R-1", BIR Records, p. 1.

Supervisor (**GS**) Marilou Cortez (**Cortez**) and Revenue Officer (**RO**) Roland Dela Torre (**Dela Torre**) to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2014. The LOA was accompanied by a Checklist of Requirements listing the documents that petitioner must provide on or before 30 May 2016.[8]

When respondent did not receive a single document by 31 May 2016, it reminded petitioner of the Checklist of Requirements and again requested petitioner to provide the documents within ten (10) days from receipt.[9] However, petitioner failed to comply, thus, on 07 September 2016, respondent warned petitioner that it will issue a Subpoena *Duces Tecum* (**SDT**) if it still refuses to submit the documents.[10] Petitioner eventually submitted the documents on 05 June 2017.[11]

On 14 December 2017, respondent issued the Preliminary Assessment Notice[12] (**PAN**) Part I and Part II, with Details of Discrepancies, which was posted via accredited courier (*i.e.*, LBC) on the same day. In the PAN, respondent found petitioner liable for deficiency taxes of ₱25,871,748.63 for CY 2014, inclusive of surcharges and interests, computed as follows:

Tax Type	Basic Tax	Surcharge (25%)	Interest (as of 28 December 2017)	Total
IT	₱7,439,837.98	-	₱4,023,627.44	₱11,463,465.42
VAT	385,953.79	-	225,650.79	611,604.58
EWT	35,976.54	-	21,231.09	57,207.63
WTC	4,934,827.65	-	2,912,224.32	7,847,051.97
FWT	600,000.00	150,000.00	354,082.19	1,104,082.19
DST	25,000.00	6,250.00	14,753.42	46,003.42
IAET	2,842,648.79	710,662.20	1,109,022.43	4,662,333.42
Compromise Penalty	80,000.00	-	-	80,000.00
Total	₱16,344,244.75	₱866,912.20	₱8,660,591.68	₱25,871,748.63

On 05 January 2018, respondent issued the Formal Assessment Notice[13] (**FAN**) Part I and II which petitioner received on 12 January 2018.

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8 See Checklist of Requirements, Exhibit "R-2", id., p. 2.

9 See First Request for Presentation of Records, Exhibit "R-3", id., p. 3.

10 See Second and Final Notice, Exhibit "R-4", id., p. 284.

11 See Acknowledgment Receipt dated 05 June 2017, id., p. 463

12 Exhibits "R-6" / "P-15", id., pp. 512-517. See also LBC Tracking Receipt No. 1267 0134 2072, id., p. 518.

13 Exhibits "R-7" / "P-16", id., pp. 533-538.

In the FAN, petitioner was found liable for deficiency taxes amounting to ₱26,216,929.92 for CY 2014, inclusive of surcharges and interests, computed as follows:

Tax Type	Basic Tax	Surcharge (25%)	Interest (as of 29 January 2018)	Total
IT	₱7,439,837.98	-	₱4,154,079.40	₱11,593,917.38
VAT	385,953.79	-	232,418.20	618,371.99
EWT	35,976.54	-	21,861.91	57,838.45
WTC	4,934,827.65	-	2,998,752.80	7,993,580.45
FWT	600,000.00	150,000.00	364,602.74	1,114,602.74
DST	25,000.00	6,250.00	15,191.78	46,441.78
IAET	2,842,648.79	710,662.20	1,158,866.14	4,712,177.13
Compromise Penalty	80,000.00	-	-	80,000.00
Total	₱16,344,244.75	₱866,912.20	₱8,945,763.97	₱26,216,929.92

Petitioner filed a Request for Reinvestigation (**Protest**) against the FAN on 12 February 2018 and submitted additional supporting documents on 11 April 2018.[14]

PROCEEDINGS BEFORE THE COURT IN DIVISION

On 07 November 2018, petitioner filed a Petition for Review with this Court arguing that the FAN has no factual and legal basis as it has fully paid the taxes due thereon.[15] There, petitioner explained and reconciled the discrepancies that gave rise to the alleged deficiency IT, VAT, EWT, WTC, FWT, DST, IAET, and Compromise penalty. The case was docketed as CTA Case No. 9970 and was raffled to the First Division, which issued the Summons on respondent.[16]

On 07 January 2019, respondent filed his or her Answer, with a prayer that it be admitted despite the lapse of the fifteen (15)-day period to file it. According to respondent, he or she received the Summons on 23 November 2018 and it was forwarded to the Office of the Solicitor General (**OSG**) only on 20 December 2018.[17] In the Answer, respondent reiterated the factual and legal basis of the deficiency IT, VAT, EWT,

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14 See Letter dated 09 February 2018, id., pp. 551-565. See also Transmittal Letter dated 10 April 2018, Exhibit "P-18", Division Docket, Volume I. pp. 42-43.

15 Id., pp. 10-44, with annexes.

16 See Summons dated 22 November 2018, id., p. 45.

17 See Manifestation with Motion to Admit Answer dated 20 December 2018, id., pp. 47-50.

WTC, FWT, DST, IAET, and Compromise penalty assessments against petitioner.[18]

Petitioner opposed the motion arguing that respondent's reason (*i.e.*, office procedures) was not compelling enough to excuse respondent from filing his or her Answer on time.[19] Despite the opposition, the Court admitted respondent's Answer in the interest of substantial justice and to afford the latter the opportunity to defend his or her case on the merits.[20]

The parties underwent mediation from 08 July 2019 until 07 September 2019, but it was unsuccessful.[21] Thus, the Court set the case for Pre-Trial Conference and ordered respondent to submit the BIR Records.[22]

Respondent then filed his or her Pre-Trial Brief attaching the Judicial Affidavit of RO Dela Torre.[23] Petitioner likewise filed its Pre-Trial Brief with the Judicial Affidavit of Chervie Rose Janapin (**Janapin**).[24]

The Pre-Trial Conference followed on 27 August 2020.[25] Afterwards, the parties filed their Joint Stipulation of Facts and Issues[26] (**JSFI**), which the Court approved. Later, the Pre-Trial Order was issued, signaling the termination of the pre-trial stage.[27]

Thereafter, trial ensued.

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18 See Answer dated 20 December 2018, id., pp. 51-55.
19 See Comment/Opposition with Motion dated 16 January 2019, id., pp. 61-62.
20 See Resolution dated 12 April 2019, id., pp. 74-75.
21 See Manifestation with Motion dated 17 May 2019, id., pp. 76-77; Resolution dated 10 June 2019, id., p. 82; Request for Extension, id., p. 83; Resolution dated 22 August 2019, id., p. 86; and Resolution dated 22 January 2020, id., p. 104.
22 See Resolution dated 22 January 2020, id., p. 104.
23 See Pre-Trial Brief dated 28 February 2020, id., pp. 111-118. See also the Judicial Affidavit of RO Dela Torre dated 28 February 2020, id., pp. 123-137.
24 See Pre-Trial Brief with Manifestation dated 28 February 2020, id., pp. 139-143. See also Exhibit "P-207", Judicial Affidavit of Chervie Rose Janapin dated 03 March 2020, id., pp. 144-155.
25 See Order dated 27 August 2020, id., pp. 172-174.
26 See JSFI dated 11 September 2020, pp. 176-178.
27 See Resolution dated 17 September 2020, id., p. 200. See also the Pre-trial Order dated 09 December 2020, id., pp. 255-270.

During the hearing held on 02 March 2021, petitioner presented Janapin as its first witness.[28] Janapin testified through her Judicial Affidavit dated 03 March 2020, where she testified that: (1) she was petitioner's Finance Clerk, (2) there was no actual audit or physical examination of the books of accounts and related documents conducted in petitioner's premises; (3) petitioner remitted ₱1,736,412.84 EWT for CY 2014; (4) it paid entertainment, amusement, and recreation (**EAR**) expenses amounting to ₱744,408.60 for CY 2014; (5) it paid ₱15,996,777.00 to independent contractors or sub-contractors for CY 2014, and the tax required to be withheld therefrom had been paid; (6) its creditable withholding tax (**CWT**) of ₱1,939,411.99 was duly supported; (7) its zero-rated sales of ₱32,348,954.89 was also duly supported; (8) its cash dividend of ₱6 million was subjected to withholding tax; (9) it did not issue debt instruments for CY 2014; (10) it appropriated portions of its Retained Earnings (**RE**) for the acquisition of a land/property and for future expansion; and (11) its books of accounts, financial statements, tax returns, official receipts (**ORs**), and other accounting records are genuine and authentic.[29]

On cross-examination, Janapin stated that petitioner's Protest and additional supporting documents were submitted to Revenue District Office (**RDO**) No. 50.[30] No redirect examination was conducted.[31]

Petitioner then moved for the issuance of a subpoena to compel RO Dela Torre to testify before the Court as its hostile witness and to bring with him the original documents that it submitted to him during audit.[32]

The Court granted the motion and RO Dela Torre eventually took the witness stand on 01 March 2022.[33] During the hearing, he testified on direct examination that: (1) petitioner did not undergo the Notice of Informal Conference (**NIC**) stage; (2) he did not submit a report on the conduct of the audit within 120 days from the issuance of the LOA; and

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28 See Order dated 02 March 2021, id., pp. 336-337.

29 Supra at note 24.

30 TSN dated 02 March 2021, pp. 16-17.

31 Id., p. 23.

32 See Motion for the Issuance of Subpoena (*Duces Tecum and Ad Testificandum*) filed 05 March 2021, Division Docket, Volume I, pp. 339-340. The subpoenaed documents are (1) Three Books of Cash Disbursement Journals (CDJ) for CY 2014; (2) Journal Book for CY 2014; (3) Cash Receipt Journal (CRJ) Book for CY 2014; (4) Ledger for CY 2014; and (5) Other relevant documents related to the case.

33 See Resolution dated 20 May 2021, id., pp. 354-355; Subpoena Duces Tecum & Ad Testificandum dated 01 June 2021, id., p. 356; and Order dated 01 March 2022, id., Volume II, pp. 428-428-A.

(3) he did not have the LOA revalidated before the expiration of the 120 day period.[34]

On cross-examination, RO Dela Torre stated that when petitioner submitted its Protest, it was accompanied by two (2) folders of supporting documents. The first folder contains documents which were already submitted beforehand. Meanwhile, the second folder contains new vouchers, official receipts, and sales invoices. However, he could not match these documents to the specific assessments in the PAN and FAN.[35] On redirect examination, RO Dela Torre clarified that because of this, he requested petitioner to submit a schedule to guide him. However, petitioner did not comply.[36] No re-cross examination was conducted.[37]

Respondent then manifested that he or she is dispensing with RO Dela Torre's presentation as his or her own witness given RO Dela Torre's presentation as petitioner's hostile witness.[38]

Thereafter, petitioner electronically filed its Formal Offer of Evidence (**FOE**) on its last day to file on 16 March 2022 at 8:50 p.m.[39] Respondent objected to the FOE because it was filed out of time pursuant to the Court *En Banc*'s Resolution No. 2021, which mandates that pleadings, motions, and other court submissions filed by electronic mail beyond 4:30 p.m. are considered filed on the next working day. [40]

Respondent also moved for leave of court to file a Demurrer to Evidence (**Demurrer**).[41] In his or her Demurrer, respondent explained that since petitioner failed to file its FOE on time, it follows that petitioner has no documentary evidence to establish a *prima facie* case in its favor.[42] In response, petitioner argued that it has until 11:59 p.m. of

[34] TSN dated 01 March 2022, pp. 29-37.
[35] Id., pp. 37-41.
[36] Id., pp. 41-44.
[37] Id., p. 44.
[38] See Order dated 01 March 2022, supra at note 32.
[39] See Formal Offer of Evidence dated 15 March 2022, Division Docket, Volume II, pp. 429-439. See also print-out of electronic mail dated 16 March 2022, id., p. 965.
[40] See Comment and Opposition (To Petitioner's Formal Offer of Evidence dated March 15, 2022 with Manifestation), id., pp. 995-1000.
[41] See Motion for Leave of Court to File Demurrer to Evidence dated 31 March 2022, id., pp. 983-986.
[42] See Demurrer to Evidence dated 31 March 2022, id., pp. 987-992.

16 March 2022 to file its FOE pursuant to Article 13[43] of the Civil Code and Section 2[44], Rule 1 of the RRCTA.[45]

The First Division denied respondent's Demurrer. In denying the same, it held that although the FOE was filed a day late pursuant to CTA *En Banc* Resolution No. 4-2021, the FOE was nevertheless admitted in the higher interest of justice (as applying the rules too rigidly would override substantial justice).[46] Thus, it admitted petitioner's exhibits, except for several documents which were denied due to lack of witness' identification[47], the originals were not presented for comparison[48], the marked exhibits were not submitted[49], the originals were not presented

[43] ARTICLE 13. When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included.

[44] SECTION 2. Liberal Construction. — The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court.

[45] See Comment/Opposition with Motion dated 12 April 2022, Division Docket, Volume II, pp. 1004-1006.

[46] See Resolution dated 14 June 2022, id., pp. 1009-1015.

[47]

Exhibit	Description
"P-9"	Memorandum of Assignment dated 19 March 2018.
"P-11"	Board Resolution dated 25 April 2014.
"P-248"	Letter dated 21 September 2020 to RO Dela Torre and GS Cortez.

[48]

Exhibit	Description
"P-10"	BIR Letter dated 17 May 2018.
"P-11-a"	Secretary's Certificate dated 18 March 2021.
"P-19"	2014 Audited Financial Statements (AFS).
"P-19-a"	Note 13 of the Notes to the 2014 Financial Statements.
"P-23", "P-25", "P-36", "P-40","P-41", "P-46"	BIR Form No. 2307 for the first quarter of CY 2014.
"P-193", "P-194", "P-195", "P-197", "P-198", "P-199", "P-200", "P-232", "P-233", "P-238"	BIR Form No. 2307 for the second to fourth quarters of CY 2014.
"P-293", "P-293-a", "P-297-b","P-297-c"	Various payment vouchers, official receipts or invoices for anniversaries, birthdays, and other celebrations.
"P-301", "P-305", "P-313", "P-338", "P-339"	Various official receipts and collection receipts issued by various contractors and subcontractors.

[49]

Exhibit	Description
"P-20"	Appraisal Report dated 17 April 2016.
"P-20-a"	Market value of property per Appraisal Report dated 17 February 2016.
"P-76"	BIR Form No. 1601-E for the month of April 2014.
"P-77"	UCPB – BIR Deposit Slip dated 12 May 2014.

for comparison and for lack of witness' identification[50], and for not being found in the records.[51]

Petitioner later filed a motion asking the First Division to reconsider, or in the alternative, by way of Tender of Excluded Evidence Rule[52], that any excluded evidence be attached or made part of the record. Respondent opposed arguing that petitioner failed to establish any legal basis which would warrant a disregard of procedural technicalities to favor substantial justice.[53] The First Division denied petitioner's motion for having been filed out of time but granted the alternative prayer that any excluded evidence be attached or made part of the records.[54]

Petitioner likewise moved to expunge the Judicial Affidavit of RO Dela Torre since respondent had already dispensed with his presentation as its own witness, which the First Division granted.[55]

The parties then filed their respective Memoranda. [56]

"P-78"	Amount paid of ₱897,586.37.

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Exhibit	Description
"P-109"	PEZA Certification with Certificate No. 2014-0435 dated 30 October 2014.
"P-110"	PEZA Certification with Certificate No. 2014-1452 dated 19 February 2014.
"P-111"	PEZA Certification with Certificate No. 2014-1018 dated 30 October 2014.
"P-112"	PEZA Certification with Certificate No. 2014-0353 dated 17 December 2013.
"P-113"	PEZA Certification with Certificate No. 2014-1742 dated 12 May 2014.
"P-248-a"	Acknowledgment Receipt dated 21 September 2020.
"P-251"	BIR Form No. 1604-CF for CY 2014.
"P-251-a"	BIR's stamp of receipt on the BIR Form No. 1604-CF for CY 2014.
"P-251-b"	BIR Acknowledgment Receipt dated 03 February 2015.

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Exhibit	Description
"P-207", "P-217"	BIR Form No. 2307 for the second to fourth quarters of CY 2014.
"P-253"	BIR Form No. 1702Q for the third quarter of CY 2014.
"P-253-a"	Total amount payable of ₱262,911.60 per BIR Form No. 1702Q for the third quarter of CY 2014.

52 See Motion for Leave to Admit with Tender of Excluded Evidence and Manifestation filed on 22 July 2022, Division Docket, Volume II, pp. 1017-1020.

53 See Comment/Opposition (To Petitioner's Motion for Leave to Admit with Tender of Excluded Evidence and Manifestation) filed on 18 August 2022, id., pp. 1057-1060.

54 See Resolution dated 20 October 2022, id., pp. 1066-1070.

55 See Comment/Opposition with Motion dated 12 April 2022, id., pp. 1004-1006. See also Resolution dated 18 August 2022, id., p. 1056.

56 See petitioner's Memorandum filed 22 July 2022, id., pp. 1022-1032 and respondent's Memorandum filed 20 July 2022, id., pp. 1033-1047.

On 05 October 2023, the Special First Division[57] promulgated the now assailed Decision which partially granted petitioner's Petition for Review.[58] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent's VAT assessment and the compromise penalties are **CANCELLED** for lack of merit, while the assessments for deficiency income tax, EWT, WTC, FWT, DST and IAET are **UPHELD**, but with modification. Accordingly, petitioner is **ORDERED TO PAY** respondent the following:

	Basic Deficiency	**25% Surcharge**	**Deficiency Interest as of Feb. 5, 2018**	**Total**
Income Tax	₱6,510,495.44	₱1,627,623.86	₱ 3,612,343.94	₱11,750,463.24
Expanded Withholding Tax (EWT)	35,976.54	8,994.14	21,637.17	66,607.85
Withholding Tax on Compensation (WTC)	4,901,501.61	1,225,375.40	2,947,883.92	9,074,760.93
Final Withholding Tax (FWT)	600,000.00	150,000.00	360,854.79	1,110,854.79
Documentary Stamp Tax (DST)	25,000.00	6,250.00	15,241.10	46,491.10
IAET	1,992,648.79	498,162.20	805,357.67	3,296,168.66
TOTAL	**₱14,065,622.38**	**₱3,516,405.60**	**₱7,763,318.59**	**₱25,345,346.57**

> In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total amount due of **₱25,345,346.57** as of February 5, 2018, as determined above, or equivalent to the amount of ₱8,332.72 per day, computed from February 6, 2018 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by TRAIN Law and implemented by Revenue Regulations No. 21-2018.
>
> **SO ORDERED.**
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> ...

On 26 October 2023, petitioner filed a Motion for Partial Reconsideration of the assailed Decision (**MPR**).[59] In its MPR, petitioner argued that the period of one (1) year and seven (7) months from the

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57 Pursuant to Administrative Circular No. 01-2023 dated 23 May 2023, which was issued following the retirement of Associate Justice Erlinda P. Uy, the Court underwent a reorganization. The instant case stayed with the Special First Division, which was composed of the same members of the prior First Division.

58 Supra at note 3.

59 See Motion for Partial Reconsideration with Motion to Set for Hearing and Motion for Leave to Present Additional Evidence dated 24 October 2023, Division Docket, Volume III, pp. 1115-1126.

issuance of the LOA on 13 May 2016 to the issuance of the FAN on 05 January 2018 is an unreasonable length of time, thereby resulting to a violation of its constitutional right to speedy disposition of cases as provided under Section 16, Article III of the Constitution. Petitioner also claimed for the first time that its right to due process of law was violated when it did not receive the PAN prior to the issuance of the FAN. To support this, it attached the Supplemental Judicial Affidavit of Janapin dated 24 October 2023[60] and new documents.[61] Thus, petitioner's MPR contains a Motion to Set for Hearing and a Motion for Leave to Present Additional Evidence. Respondent opposed the MPR.[62]

On 27 March 2024, the Special First Division issued the assailed Resolution which denied the MPR for lack of merit.[63] The Court ruled that it cannot reconsider the case based on evidence already denied admission. As to the new documents, it found that they are not newly discovered evidence under Section 37, Section 1 of the Rules of Court (**ROC**), as amended. According to it, petitioner was already aware of their existence even before the trial of the case commenced. It could have seasonably produced the same through exercise of reasonable diligence.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the Special First Division's actions, petitioner filed the present petition before the Court *En Banc* on 23 April 2024.[64] Respondent then filed his comment on the petition.[65] Since the parties decided not to undergo mediation[66], the Court submitted the case for decision on 12 November 2024.[67]

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60 Id., pp. 1128-1137.
61 Id., pp. 1138-1274.
62 See Comment/Opposition (To Petitioner's Motion for Partial Reconsideration with Motion to Set for Hearing and Motion for Leave to Present Additional Evidence) filed on 01 December 2023, id., pp. 1276-1283.
63 Supra at note 3.
64 Supra at note 1.
65 See Comment (Re: Petition for Review dated 22 April 2024) filed on 04 July 2024, *rollo*, pp. 291-296.
66 See No Agreement to Mediate dated 01 October 2024, id., p. 299.
67 See Notice of Resolution dated 12 November 2024, id., p. 300.

ISSUES

Petitioner puts forward the following issues for the Court *En Banc*'s resolution:

I.
WHETHER THE SPECIAL FIRST DIVISION GRAVELY ERRED IN UPHOLDING THE ASSESSMENTS DESPITE RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S (CIR'S) VIOLATION OF PETITIONER IBMS TECHNOLOGY PHILS. CORPORATION'S (PETITIONER'S) RIGHT TO DUE PROCESS OF LAW AS THE PRELIMINARY ASSESSMENT NOTICE (PAN) DATED 14 DECEMBER 2017 WAS NOT DULY SERVED TO PETITIONER'S AUTHORIZED REPRESENTATIVE AT LEAST FIFTEEN (15) DAYS PRIOR TO THE ISSUANCE OF THE FORMAL ASSESSMENT NOTICE (FAN) ON 05 JANUARY 2018;

II.
WHETHER THE SPECIAL FIRST DIVISION GRAVELY ERRED IN UPHOLDING THE ASSESSMENTS DESPITE RESPONDENT'S VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT TO SPEEDY DISPOSITION OF CASES DUE TO THE INORDINATE DELAY OF ONE (1) YEAR AND SEVEN (7) MONTHS FROM THE ISSUANCE OF THE LETTER OF AUTHORITY (LOA) ON 13 MAY 2016 TO THE ISSUANCE OF THE FORMAL ASSESSMENT NOTICE (FAN) ON 05 JANUARY 2018;

III.
WHETHER THE SPECIAL FIRST DIVISION GRAVELY ERRED AS RESPONDENT'S RIGHT TO ASSESS PETITIONER'S INCOME TAX, EXPANDED WITHHOLDING TAX (EWT), WITHHOLDING TAX ON COMPENSATION (WTC) AND FINAL WITHHOLDING TAX (FWT) HAD ALREADY PRESCRIBED, EXCEPT FOR EWT OF DECEMBER 2014;

IV.
WHETHER THE SPECIAL FIRST DIVISION GRAVELY ERRED IN UPHOLDING THE ASSESSMENTS AS RESPONDENT FAILED TO CONSIDER THE EXPLANATIONS AND EVALUATE THE DOCUMENTS SUBMITTED BY PETITIONER IN SUPPORT OF ITS REQUEST FOR REINVESTIGATION, TANTAMOUNT TO A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW;

V.
WHETHER THE SPECIAL FIRST DIVISION GRAVELY ERRED IN UPHOLDING THE ASSESSMENTS OF ₱12,440,005.03, AS PORTION OF THE ₱20,144,157.82 SALARIES AND WAGES NOT SUBJECTED TO

WITHHOLDING TAX (SCHEDULE 2) AS IT MANIFESTLY DISREGARDED THE PIECES OF EVIDENCE OFFERED BY PETITIONER AND/OR THE RELEVANT EVIDENCE CONTAINED IN THE BIR RECORDS, WHICH WAS SUBMITTED BY RESPONDENT ITSELF, PURSUANT TO SECTION 5(B), RULE 6 OF THE REVISED RULES OF THE COURT OF TAX APPEALS (RRCTA); AND

VI.
WHETHER THE SPECIAL FIRST DIVISION GRAVELY ERRED AS THE ASSESSMENTS ON THE DEFICIENCY INCOME TAX, EWT, WTC, FWT, DST AND IAET CANNOT BE UPHELD AS THEY HAVE NO FACTUAL OR LEGAL BASIS.[68]

ARGUMENTS

In calling for the reversal of the Special First Division's actions, petitioner argued that it was not afforded the full 15 days within which to respond to the PAN before respondent issued the FAN, making the PAN and FAN void and without effect. Moreover, its constitutional right to speedy disposition of cases was violated by the inordinate delay in the issuance of the FAN.

In addition, petitioner argues that respondent's right to assess has already prescribed and that respondent failed to consider the explanations and documents it submitted in support of its Protest. Petitioner also claims that the Special First Division manifestly ignored or disregarded the pieces of evidence that it offered and/or the relevant evidence contained in the BIR Records.

Lastly, petitioner reiterated its explanation why the assessments on deficiency IT, EWT, WTC, FWT, DST and IAET have no factual and legal basis.[69]

In response, respondent argued that it fully complied with due process requirements when the subject PAN and FAN were issued to and received by petitioner. Moreover, respondent contended that there was no unreasonable delay in the issuance of the FAN since the law itself (*i.e.*, Section 203 of the National Internal Revenue Code (**NIRC**) of 1997, as amended) ordains that assessment of internal revenue taxes must be

68 Supra at note 1, V. Issues/Assignments of Errors, *rollo*, pp. 6-7.
69 Supra at note 1.

made within three (3) years, from the actual date of filing of a tax return, or the last day prescribed by law for filing of a tax return, whichever is later.[70]

<u>RULING OF THE COURT *EN BANC*</u>

At the outset, it is noted that the present petition before the Court *En Banc* was timely filed.

Petitioner received a copy of the assailed Resolution on 08 April 2024.[71] Petitioner had fifteen (15) days from its receipt of the assailed Resolution, or until 23 April 2024, to file a Petition for Review before the Court *En Banc*.[72] Thus, the present Petition for Review was timely filed on 23 April 2024.[73]

We proceed to the merits of the case.

I. THERE WAS NO VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS.

Petitioner argues that the PAN and the FAN are void and without effect because there is no proof that it received the PAN. Petitioner adds that even if it received the PAN, still, it was not given the full 15-day period to respond, before respondent issued the FAN. On the contrary, respondent claims that petitioner's own witness, Janapin, testified that the subject PAN and FAN were issued to and received by petitioner.[74]

We agree with respondent.

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70 Supra at note 60.

71 See Notice of Resolution dated 01 April 2024, *rollo*, p. 65.

72 Pursuant to Section 3(b), Rule 8 of the RRCTA, which reads:
SEC. 3. Who may appeal; period to file petition. —

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

73 Supra at note 1.

74 Supra at note 60.

LBC Tracking Receipt No. 1267 0134 2072 shows that respondent posted the PAN on 14 December 2017.[75] It also shows that the PAN was expected to be delivered on 15 December 2017.[76]

Moreover, Janapin, petitioner's Finance Clerk, confirmed that petitioner received the PAN:

> ...
>
> 22. Q: Pagkatapos nyo ibigay and mga books at documents, anong sumunod na nangyari kung mayroon man?
>
>   A: Pumunta po si Mr. Roland S. Dela Torre at Marilou J. Cortez sa office namin.
>
> 23. Q: Kailan sila pumunta at ano ang ginawa nila kung mayroon man?
>
>   A: Mga December 2017 po. Dinala nila yung Preliminary Assessment Notice.
>
> 24. Q: Kung ipapakita and Preliminary Assessment Notice na ito, maaalala mo ba?
>
>   A: Opo sir.
>
> 25. Q: Ipinapakita ko ang Preliminary Assessment Notice na ito dated December 14, 2017, pakisabi sa kagalang galang na hukumang ito kung ito ba ang Preliminary Assessment Notice na sinasabi niyo?
>
>   A: Ito po yun sir.
>
>   A copy of the Preliminary Assessment Notice dated December 14, 2017 to be marked as Exhibit "N".[77]
>
> ...

It does not escape the Court *En Banc*'s attention that petitioner never put to issue its alleged non-receipt of the PAN until the Special First Division issued the assailed Decision. Conspicuously, it was only in the MPR to the assailed Decision when petitioner claimed that it did not receive the PAN. In support, it submitted the Supplemental Judicial Affidavit of Janapin (where she retracted her previous testimony).

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75 Supra at note 12.

76 Id.

77 See Judicial Affidavit of Chervie Rose Janapin dated 03 March 2020, Division Docket, Volume I, pp. 14-148.

The Special First Division was not convinced, and so is the Court *En Banc*.

In seeking to belatedly introduce the Supplemental Judicial Affidavit of Janapin, petitioner is effectively asking the Special First Division for a new trial. Under Section 1, Rule 37 of the ROC, as amended[78], a Motion for New Trial may only be granted if the case falls under any of the following circumstances: (1) if there is fraud, accident, mistake or excusable negligence impairing the rights of the aggrieved party; or (2) on account of newly discovered evidence.

Here, the additional testimony of Janapin is neither omitted evidence (due to fraud, accident, mistake or excusable negligence) nor newly discovered evidence. By exercising reasonable diligence, petitioner could have discovered as early 12 January 2018, when it received the FAN, that it did not receive a PAN. However, petitioner was completely quiet about this issue even when it filed its Protest to the FAN and its petition before the Court in Division.

Interestingly, while petitioner initially lamented the absence of a full 15-day period to reply to the PAN, it also argued (*albeit* belatedly) that it did not actually receive the PAN. Clearly, petitioner's conflicting arguments are not helping its cause. Likewise, had it truly been the case, it escapes this Court why it never raised this matter at the earliest opportunity if a violation of its due process rights was so patent.

Reverting to the Supplemental Judicial Affidavit where the non-receipt of the PAN was raised, assuming ex *gratia argumenti* that petitioner discovered that it did not receive the PAN only after the Special First Division issued the assailed Decision, the same Supplemental Judicial Affidavit is hardly a forgotten evidence that may be allowed to be admitted in evidence specially so that the affiant may no longer be a subject of cross-examination.

Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party

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[78] 2019 Amendments to the 1997 Rules of Civil Procedure (A.M. No. 19-10-20-SC).

or the counsel.[79] Presentation of forgotten evidence is disallowed because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.[80]

We are not unaware that Section 8[81] of Republic Act (**RA**) No. 1125[82], as amended, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence and there are instances where the Court allows the reopening of trial even though judgment has already been rendered. However, petitioner has not demonstrated any convincing reason for the Court *En Banc* to apply the technical rules liberally.

II. THERE WAS NO VIOLATION OF PETITIONER'S RIGHT TO SPEEDY DISPOSITION OF CASES.

Petitioner also claims that respondent violated its constitutional right to speedy disposition of cases due to the inordinate delay in the issuance of the FAN. According to petitioner, it took respondent one (1) year and seven (7) months from the issuance of the LOA on 13 May 2016 to the issuance of the FAN on 05 January 2018.

Respondent replied that there was no unreasonable delay as to violate petitioner's right to speedy disposition of cases so long as the assessment was made within the period provided for by law. According to respondent, under Section 203 of the NIRC of 1997, as amended, it has three (3) years (counted from the actual date of filing of a tax return, or the last day prescribed by law for the filing thereof, whichever is later) to make the assessment.

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79 See Office of the Ombudsman represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel, G.R. No. 164460, 27 June 2006.

80 Id.

81 **SEC. 8**. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

82 AN ACT CREATING THE COURT OF TAX APPEALS.

We agree with respondent.

In *The Ombudsman v. Ben C. Jurado*[83], the Supreme Court explained the concept of the right to speedy disposition of cases:

> ...
>
> It bears stressing that although the Constitution guarantees the right to the speedy disposition of cases, it is a flexible concept. *Due regard must be given to the facts and circumstances surrounding each case.* The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Just like the constitutional guarantee of "speedy trial", "speedy disposition of cases" is a flexible concept. It is consistent with delays and depends upon the circumstances. *What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.*
>
> ...

In the case at bar, We do not find the length of time (one [1] year and seven [7] months) from the issuance of the LOA to the issuance of the FAN to be unreasonable, arbitrary, and oppressive which renders petitioner's rights nugatory.

Moreover, there is nothing in the records that would suggest that respondent's audit of petitioner's books for CY 2014 was attended by vexatious, capricious, oppressive delays, or unjustified postponements. To the contrary, it appears that although petitioner received the LOA and the Checklist of Requirements as early as 20 May 2016, it did not submit the requested documents by 07 September 2016, such that respondent had to warn it that it will issue a subpoena if it still refuses to submit the documents.[84]

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83 G.R. No. 154155, 06 August 2008; Citations omitted and italics supplied.

84 See First Request for Presentation of Records dated 31 May 2016, Exhibit "R-3", BIR Records, p. 3. See also Second and Final Notice dated 07 September 2016, Exhibit "R-4", BIR Records, p. 284.

III. A. RESPONDENT'S PERIOD TO ASSESS THE DEFICIENCY EXPANDED WITHHOLDING TAX (EWT) AND WITHHOLDING TAX ON COMPENSATION (WTC) FOR THE PERIOD JANUARY 2014 to NOVEMBER 2014 HAD ALREADY PRESCRIBED.

Similarly, petitioner argues that, except for month of December 2014, respondent's right to assess petitioner's EWT and WTC had already prescribed. It adds that since the IT and FWT assessments were based on expenses allegedly not subjected to withholding taxes, the same had also prescribed.

In this respect, We agree with petitioner.

Section 203 of the NIRC of 1997, as amended, states that except as provided in Section 222 thereof, internal revenue taxes shall be assessed within three (3) years from the last day prescribed by law for the filing of the return or the day the return was actually filed, whichever is later. Meanwhile, Section 222 provides that in the case of a false or fraudulent return, the tax may be assessed at any time within 10 years after the discovery of the falsity, fraud or omission.

Since respondent did *not* impute, much less established the existence of fraud, the applicable prescriptive period is three (3) years, reckoned from the last day prescribed by law for its filing or the day the return was actually filed, whichever is later. Here, the prescriptive period to assess petitioner for any deficiency IT ended on 24 April 2018, or three (3) years from 24 April 2015, when petitioner filed its CY 2014 income tax return that was due on 15 April 2015.[85]

As for the deficiency EWT and FWT, the applicable prescriptive periods for respondent's right to assess are outlined below:

85 See BIR Form No. 1702-RT, BIR Records, p. 282.

Period Covered	Date of Actual Filing	Last Day Prescribed by Law to File the Return[86]	Last Day to Assess under Section 203 of the NIRC of 1997, as amended
Expanded Withholding Tax			
January 2014	10 February 2014[87]	10 February 2014	10 February 2017
February 2014	10 February 2014[88]	10 March 2014	10 March 2017
March 2014	10 April 2014[89]	10 April 2014	10 April 2017
April 2014	12 May 2014[90]	12 May 2014*	12 May 2017
May 2014	10 June 2014[91]	14 June 2014*[92]	14 June 2017
June 2014	8 July 2014[93]	14 July 2014*	14 July 2017
July 2014	14 August 2014[94]	13 August 2014	14 August 2017
August 2014	12 September 2014[95]	15 September 2014*	15 September 2017
September 2014	14 October 2014[96]	13 October 2014	14 October 2017
October 2014	16 November 2014[97]	13 November 2014	16 November 2017
November 2014	12 December 2014[98]	15 December 2014*	15 December 2017
December 2014	14 January 2015[99]	13 January 2015	14 January 2018
Withholding Tax on Compensation			
January 2014	7 February 2014[100]	10 February 2014	10 February 2017
February 2014	10 February 2014[101]	10 March 2014	10 March 2017
March 2014	10 April 2014[102]	10 April 2014	10 April 2017
April 2014	12 May 2014[103]	12 May 2014*	12 May 2017
May 2014	10 June 2014[104]	14 June 2014*	14 June 2017
June 2014	10 July 2014[105]	14 July 2014*	14 July 2017

86 Revenue Regulations (RR) No. 2-98, Section 2.58(A)(2).
87 BIR Form No. 1601-E (January 2014), BIR Records, p. 84.
88 BIR Form No. 1601-E (February 2014), id., p. 82.
89 BIR Form No. 1601-E (March 2014), id., p. 80.
90 BIR Form No. 1601-E (April 2014), id., p. 78.
91 BIR Form No. 1601-E (May 2014), id., p. 75.
92 Petitioner manually filed its January to April 2014 returns and shifted to electronic filing beginning its May 2014 returns. Since its main line of business is described as "Other Computer Related Activities", petitioner belongs to Group C of eFPS filers, whose due date for filing monthly withholding tax returns is the thirteenth (13th) day following the end of each month.
93 BIR Form No. 1601-E (June 2014), BIR Records, p. 71.
94 BIR Form No. 1601-E (July 2014), id., p. 69.
95 BIR Form No. 1601-E (August), id., p. 66.
96 BIR Form No. 1601-E (September 2014), id., p. 60.
97 BIR Form No. 1601-E (October 2014), id., p. 55.
98 BIR Form No. 1601-E (November 2014), id., p. 45.
99 BIR Form No. 1601-E (December 2014), id., p. 37.
100 BIR Form No. 1601-C (January 2014), id., p. 4.
101 BIR Form No. 1601-C (February 2014), id., p. 5.
102 BIR Form No. 1601-C (March 2014), id., p. 6.
103 BIR Form No. 1601-C (April 2014), id., p. 9.
104 BIR Form No. 1601-C (May 2014), id., p. 12.
105 BIR Form No. 1601-C (June 2014), id., p. 15.

Period Covered	Date of Actual Filing	Last Day Prescribed by Law to File the Return[86]	Last Day to Assess under Section 203 of the NIRC of 1997, as amended
July 2014	14 August 2014[106]	13 August 2014	14 August 2017
August 2014	11 September 2014[107]	15 September 2014*	15 September 2017
September 2014	14 October 2014[108]	13 October 2014	14 October 2017
October 2014	6 November 2014[109]	13 November 2014	13 November 2017
November 2014	12 December 2014[110]	15 December 2014*	15 December 2017
December 2014	28 January 2015[111]	13 January 2015	28 January 2018
* Deadline fell on a weekend or holiday.			

Based on the foregoing, it appears that when respondent issued the FAN on 05 *January 2018*, it had already lost the right to assess petitioner for deficiency EWT and WTC covering the period from January 2014 to November 2014. Corrorarily, respondent's right to assess petitioner for deficiency IT, and for deficiency EWT and WTC for December 2014 *had not yet prescribed*, as the issuance of the FAN fell within the three (3)-year prescriptive period allowed by law.

While the Court finds respondent's right to assess petitioner for deficiency EWT and WTC (from January 2014 to November 2014) had prescribed, **a further examination of the evidence remains necessary to clearly distinguish the portion of the alleged deficiency that corresponds to the prescribed periods from those that have not.** In the absence of proof to the contrary, the Court *En Banc* will then be constrained to attribute the entire alleged deficiency for the taxes under scrutiny to the portion of CY 2014 that has *not* yet prescribed.

III. B. RESPONDENT'S PERIOD TO COLLECT HAS NOT PRESCRIBED.

When the BIR issues the assessment within the three (3)-year prescriptive period, it has another three (3) years, counted from the date

106 BIR Form No. 1601-C (July 2014), id., p. 18.
107 BIR Form No. 1601-C (August 2014), id., p. 21.
108 BIR Form No. 1601-C (September 2014), id., p. 23.
109 BIR Form No. 1601-C (October 2014), id., p. 26.
110 BIR Form No. 1601-C (November 2014), id., p. 28.
111 BIR Form No. 1601-C (December 2014), id., p. 30.

the assessment notice is released, mailed or sent to the taxpayer, within which to collect the tax due by distraint, levy or court proceeding.[112] Moreover, the running of the period to collect is tolled when the CIR grants a taxpayer's request for reinvestigation.[113]

A thorough reading of the Protest shows that petitioner requested for reinvestigation. Respondent, based on internal document, seems to have granted the request for reinvestigation.[114] However, the records do not show that petitioner was informed of the grant of its request. Accordingly, the three (3)-year period to collect the deficiency assessments started to run when the FAN was issued on 05 January 2018 and expired on 05 January 2021.

In this case, respondent's filing of an Answer to the present Petition for Review constitutes a judicial action for the collection of tax. In *Philippine National Oil Company v. The Hon. Court of Appeals, et al.*[115], the Supreme Court, sitting *en banc*, discussed that a "judicial action for the collection of a tax may be initiated by the filing of a complaint with the proper regular trial court; or where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for."

Thus, respondent's period to collect tax has not prescribed since it filed the Answer on 07 January 2019, well before the expiration of the period to collect on 05 January 2021.[116]

IV. RESPONDENT DID NOT IGNORE PETITIONER'S PROTEST.

We do not also subscribe to petitioner's insistence that respondent ignored its Protest and the supporting documents it submitted on the mere pretext that the said supporting documents had no specifying markings. It is noted that this claim was based on the testimony of RO Dela Torre during the hearing on 01 March 2022.

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112 See Section 203 of the NIRC of 1997, as amended. See also *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, 02 July 2014.

113 See Section 223 of the NIRC of 1997, as amended.

114 Memorandum dated 04 June 2020 from RO Dela Torre addressed to the Revenue District Officer of RDO No. 50, Exhibit "R-9", BIR Records, p. 571.

115 G.R. Nos. 109976 & 112800, 26 April 2005.

116 See Answer dated 20 December 2018, supra at note 22.

Unfortunately for petitioner, RO Dela Torre's testimony belies petitioner's allegation, to wit:

> ...
>
> ATTY. SHALEMAR H. BUENAVENTURA:
>
> Q: Mr. Witness, you said that based on the documents submitted to your office by the petitioner, you cannot determine what are those documents as compared to the Formal Assessment Notice. Is that correct, Mr. Witness?
>
> MR. ROLAND S. DELA TORRE:
>
> A: I could determine, they are vouchers and official receipts and sales invoice, but those sales invoice and ORs cannot determine on where the, for example, where these official receipts will support the discrepancy doon sa PAN and FAN na inissue namin. For example, the issue was on the disallowed compensation due to non-withholding and represent on the official receipts and invoices. How can that be supported with official receipts and invoices?
>
> ...
>
> MR. ROLAND S. DELA TORRE:
>
> A: After receiving the second folder, after evaluating it and verification, I called the office and then I asked them to submit a schedule within which I could be led on what documents, supporting documents pertaining to the assessment that we issued. But then again, on the other hand, they will just answer, yes, sir, we will. But they did not present us any supporting or lead schedule or schedules for which, to guide us on what ORs and invoices are going to use in support of the assessment.[117]
>
> ...

From the foregoing, it appears that although RO Dela Torre admitted that there are no specifying marks on the ORs and invoices, We find that he did not ignore them but to the contrary, requested petitioner to submit a lead schedule so that he can match the documents to the specific assessments in the FAN. It was petitioner who failed to heed the request.

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[117] TSN dated 01 March 2022, pp. 41-43.

V. THE SPECIAL FIRST DIVISION CORRECTLY UPHELD THE DISALLOWANCE OF THE SALARIES AND WAGES NOT SUBJECTED TO WITHHOLDING TAX.

In the assailed Decision and Resolution, the Special First Division upheld respondent's disallowance of the amount of ₱12,440,005.03, as portion of the ₱20,144,157.82 Salaries and Wages, for not having been subjected to WTC. It ruled that although respondent submitted official receipts and invoices to prove that they refer to payment to contractors and sub-contractors, the best documents to prove that they were indeed subjected to EWT would be the alphalist attached to the EWT returns.

Petitioner argues that the alphalist attached to the EWT returns for CY 2014 are in fact found in the BIR Records and such alphalists would readily show that the said payments to contractors and sub-contractors were subjected to 2% EWT.

Since BIR Records are considered public documents (*i.e.*, entries in public records made in the performance of a duty by a public officer) pursuant to Section 23[118] of Rule 132 of the Rules on Evidence, as amended, We will entertain petitioner's argument.

A perusal of petitioner's EWT returns and the attached monthly alphalist of payees (**MAP**) for CY 2014 found in the BIR Records indeed show that petitioner withheld and remitted 2% EWT from its payments to Third Generation Network Solutions Corp (**TGNSC**), summarized as follows:

Period	Tax Base	EWT
January[119]	₱714,285.71	₱14,285.71
February[120]	937,500.00	18,750.00

118 Sec. 23. *Public documents as evidence.* - Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

119 Monthly Alphalist of Payees attached to the BIR Form No. 1601-E (January 2014), BIR Records, p. 83.

120 Monthly Alphalist of Payees attached to the BIR Form No. 1601-E (February 2014), id., p. 81.

March[121]	714,285.72	14,285.71
April[122]	357,142.86	7,142.86
May[123]	982,142.86	19,642.86
June[124]	982,143.00	19,642.86
July[125]	625,000.00	12,500.00
August[126]	803,571.50	16,071.43
September[127]	848,214.50	16,964.29
October[128]	357,143.00	7,142.86
October[129]	357,143.00	7,142.86
October[130]	401,785.50	8,035.71
November[131]	446,428.50	8,928.57
November[132]	535,714.50	10,714.29
December[133]	535,714.50	10,714.29
December[134]	446,428.50	8,928.57
Total	₱10,044,643.65	₱200,892.87

Petitioner further contends that its payments to TGNSC were recorded as Direct Labor and reported under Cost of Services in its Income Statement. In support, petitioner offered its AFS for CY 2014, which was, however, not admitted in evidence due to petitioner's failure to present originals for comparison.[135] Thus, we sustain the disallowance of petitioner's Salaries and Wages amounting to ₱12,440,005.03, there being no evidence to prove that its payments to TGNSC forms part of the said amount.

Furthermore, even if We were to consider petitioner's financial statements, it merely shows that for CY 2014, petitioner reported Cost of Services amounting to ₱71,502,209.00 and included in this amount is

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121 Monthly Alphalist of Payees attached to the BIR Form No. 1601-E (March 2014), id., p. 79.
122 Monthly Alphalist of Payees attached to the BIR Form No. 1601-E (April 2014), id., p. 76.
123 Monthly Alphalist of Payees attached to the BIR Form No. 1601-E (May 2014), id., p. 72.
124 Monthly Alphalist of Payees attached to the BIR Form No. 1601-E (June 2014), id., p. 70.
125 Monthly Alphalist of Payees attached to the BIR Form No. 1601-E (July 2014), id., p. 67.
126 Monthly Alphalist of Payees attached to the BIR Form No. 1601-E (August 2014), id., p. 61.
127 Monthly Alphalist of Payees attached to the BIR Form No. 1601-E (September 2014), id., p. 56.
128 Monthly Alphalist of Payees attached to the BIR Form 1601-E (October 2014), id., p. 46.
129 Id.
130 Id.
131 Monthly Alphalist of Payees attached to the BIR Form 1601-E (November 2014), id., p. 38.
132 Id.
133 Monthly Alphalist of Payees attached to the BIR Form 1601-E (November 2014), id., p. 32.
134 Id.
135 See Resolution dated 14 June 2022, supra at note 42.

Direct Labor amounting to 15,996,777.00.[136] It does not prove that petitioner's payments to TGNSC was included in this amount.

VI. THE SPECIAL FIRST DIVISION CORRECTLY UPHELD THE ASSESSMENTS, EXCEPT THE ASSESSMENT FOR DEFICIENCY FINAL WITHHOLDING TAX (FWT).

Petitioner further asserts that the Special First Division gravely erred in upholding each line-item findings that gave rise to the alleged deficiency IT, EWT, WTC, FWT, DST, and IAET due to several grounds.

First, petitioner contends that certain documents[137] which were denied admission are duplicates. Being such, they are admissible to the same extent as an original under Section 4(b) and 4(c), Rule 130 of the ROC, as amended.

The Court *En Banc* notes that the Special First Division, in its Resolutions dated 14 June 2022[138] and 20 October 2022[139], had thoroughly discussed the grounds of its denial of petitioner's exhibits. We find no no reason to depart therefrom.

Petitioner also argues that the First Division did not consider Exhibits "P-207"[140] and "P-217"[141] and provided no reason for not considering them. We find petitioner's statement misleading, specially so that the Resolutions resolving its FOE and MR clearly stated that these exhibits were denied admission because they could not be found in the records of the case.[142]

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136 See Statement of Comprehensive Income, Audited Financial Statements for CY 2014, Division Docket, Volume II, p. 482.

137 Exhibits "P-293" to "P-297-b", "P-23", "P-25", "P-36", "P-40", "P-41", "P-46", "P-193" to "P-195", "P 197" to "P-200", "P-232" to "P233", and "P-238".

138 Supra at note 42.

139 Supra at note 50.

140 BIR Form No. 2307 for the third quarter of 2014 issued by Concentrix Services Corporation with withheld amount of ₱13,200.00.

141 BIR Form No. 2307 for the third quarter of 2014 issued by Filinvest Land, Inc. with withheld amount of ₱3,553.57.

142 Supra at notes 42 and 50.

Furthermore, petitioner prays for the cancellation of the deficiency DST and IAET on the basis of Exhibits "P-19-a" and "P-11". However, Exhibits "P-19-a" and "P-11" were not admitted into evidence by the Special First Division since the original were not presented for comparison and for failure to be identified by witnesses, respectively.[143]

In its last desperate attempt, petitioner also invokes the liberal application of the Rules for the admission of the above-mentioned exhibits. However, it did not provide any justification why the Court *En Banc* should reconsider.

As to the FWT assessment, petitioner argues that even if the BIR Form No. 1601-E for the month of April 2014 (Exhibits "P-76" to "P-78") was correctly denied admission, it should still be considered since the same return is found in the BIR Records.

To recap, respondent found petitioner liable for deficiency 10% FWT amounting to ₱600,000.00 arising from the ₱6 million cash dividends it declared in CY 2014. Petitioner explained that it paid the dividends tax as can be seen in the BIR Form No. 1601-E that it filed in April 2014 (marked as Exhibits "P-76" to "P-78"). The Special First Division sustained the assessment because Exhibits "P-76" to "P-78 were denied admission as the marked exhibits were not submitted.

Petitioner's argument is impressed with merit.

As previously discussed, the BIR Records are considered public documents (*i.e.*, entries in public records made in the performance of a duty by a public officer) pursuant to Section 23 of Rule 132 of the Rules on Evidence, as amended.[144]

Moreover, the Supreme Court had already ruled that public documents are admissible in evidence even without further proof of their due execution and genuineness.[145]

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143 Supra at notes 42 and 50.

144 Supra at note 124.

145 *Iris Rodriguez v. Your Own Home Development Corporation (YOHDC)*, G.R No. 199451, 15 August 2018.

Here, **petitioner's BIR Form No. 1601E and the corresponding MAP for April 2014 are indeed included in the BIR Records**, a review of which undeniably shows that petitioner withheld and remitted the following amounts:[146]

Payee	Tax Code	Description	Tax Base	Tax Rate	Tax Withheld
De Guzman, Edwin	WI202	Cash Dividend payment by domestic corporation to citizens and resident aliens/NRFCs	₱60,000	10%	₱6,000.00
Teng Tian Keum	WI224	Cash Dividend payment by domestic corporation to NRAETB	2,400,000.00	20%	480,000.00
Vicente, Myra	WI202	Cash Dividend payment by domestic corporation to citizens and resident aliens/NRFCs	60,000.00	10%	6,000.00
Vicente, Jeffrey	WI2042	Cash Dividend payment by domestic corporation to citizens and resident aliens/NRFCs	420,000.00	10%	42,000.00
Vicente, Ornan	WI202	Cash Dividend payment by domestic corporation to citizens and resident aliens/NRFCs	3,060,000.00	10%	306,000.00
TOTAL			₱6,000,000.00		₱840,000.00

146 See BIR Records, pp. 76-78.

Based on the foregoing, respondent's allegation that petitioner did not withhold and remit the 10% withholding tax on the ₱6 million cash dividends declared by petitioner in CY 2014, has no factual and legal basis.

ACCORDINGLY, the instant Petition for Review filed by petitioner IBMS Technology Phils. Corporation on 23 April 2024 is hereby **PARTIALLY GRANTED**. The assailed Decision dated 05 October 2023 and assailed Resolution dated 27 March 2024, of the Special First Division in CTA Case No. 9970, entitled *IBMS Technology Phils. Corporation v. Commissioner of Internal Revenue,* are hereby **AFFIRMED with MODIFICATIONS.**

Thus, the assessments for deficiency final withholding tax shall be **CANCELLED** and **WITHDRAWN** and petitioner is **ORDERED TO PAY** respondent the following:

Tax Type	Basic Tax	Surcharge (25%)	Interest (as of 05 February 2018)	Total
IT	₱6,510,495.44	1,627,623.86	₱3,612,343.94	₱11,750,463.24
EWT	35,976.54	8,994.14	21,637.17	66,607.85
WTC	4,901,501.61	1,225,375.40	2,947,883.92	9,074,760.93
DST	25,000.00	6,250.00	15,241.10	46,941.10
IAET	1,992,648.79	498,162.20	805,357.67	3,296,168.66
Total	₱13,465,622.38	₱3,366,405.60	₱7,402,463.80	₱24,234,941.78

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total amount due of ₱24,234,941.78 from 06 February 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ON OFFICIAL BUSINESS

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

Ma. Belen 7 —

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice