22-000018-0088

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

**FIRST DIVISION**

**CTA CASE NO. 10728**

**FORD GROUP PHILIPPINES, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

# NOTICE OF DECISION

**To:**

**OFFICE OF THE SOLICITOR GENERAL**
134 Amorsolo St., Legazpi Village
Makati City

**ATTY. SYLVIA R. ALMA JOSE**
**ATTY. AYESHA HANIA B. GUILING-MATANOG**
**ATTY. NIKI BERYL B. DELA CRUZ**
**ATTY. KARL KENNY M. RAMO**
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

**EMMANUEL C. ALCANTARA AND ASSOCIATES LAW OFFICES**
5th Floor, SGV I Building
6760 Ayala Avenue
1226 Makati City

***GREETINGS:***

You are hereby notified by these presents that on **November 20, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 25, 2025.**

**Atty. Maria Johoanna F. Chan-Te**
Executive Clerk of Court III

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

# FIRST DIVISION

**FORD GROUP PHILIPPINES, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

CTA Case No. **10728**

Members:

**BACORRO-VILLENA,** *Acting Chairperson, and*
**CUI-DAVID,** *JJ.*

Promulgated:
NOV 20 2025; 4:20PM

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# DECISION

***BACORRO-VILLENA, J.:***

At bar is a Petition for Review[1] filed by petitioner Ford Group Philippines, Inc. (**petitioner**) on 02 February 2022, pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3], Rule 4 of the Revised Rules of

[1] Division Docket, Volume I, pp. 6-65.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

the Court of Tax Appeals (**RRCTA**), assailing respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) Final Decision on Disputed Assessment[4] (**FDDA**), covering petitioner's supposed deficiency income tax, value-added tax (**VAT**), withholding tax on compensation (**WTC**), expanded withholding tax (**EWT**), excise tax (**ET**) and compromise penalties for the calendar year (**CY**) ended 31 December 2017 (**2017**), broken down as follows:

| Tax Type/Fee | Basic | Surcharge | Interest | Compromise Penalty | Total |
|---|---|---|---|---|---|
| Income Tax | ₱97,200,628.67 | - | ₱42,342,191.67 | - | ₱139,542,820.34 |
| VAT | 101,256,004.13 | - | 46,771,951.50 | - | 148,027,955.63 |
| WTC | 475,389.45 | - | 221,153.77 | - | 696,543.22 |
| EWT | - | - | 6,027,594.65 | - | 6,027,594.65 |
| ET | 32,287.55 | ₱8,071.89 | 14,914.19 | - | 55,273.63 |
| Compromise Penalties | - | - | - | ₱200,000.00 | 200,000.00 |
| **Total** | | | | | **₱294,550,187.47** |

## PARTIES OF THE CASE

Petitioner is registered with the Securities and Exchange Commission (**SEC**) as the Philippine branch office of Ford Group Philippines, Inc., a foreign corporation organized and existing under the laws of the State of Delaware, United States of America (**USA**). It is primarily engaged in wholesale distribution and importation of automotive vehicles, parts and components, and provide services relating to the same.[5] Its registered address with the Bureau of Internal Revenue (**BIR**) is at 8F, Filinvest One Building, Northgate Cyberzone, Filinvest, Alabang, Muntinlupa City, Metro Manila, under the Taxpayer's Identification Number (**TIN**) 206-377-654-000.[6]

Respondent, on the other hand, is empowered to perform the duties of his or her office, including acting on disputed assessment cases and approval of claims for refund or tax credit as provided by law and implementing regulations. He or she can be served with pleadings, notices, and other processes at Litigation Division, Room 703, BIR National Office Bldg., BIR Road, Diliman, Quezon City.[7]

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[4] Exhibit "P-36", Division Docket, Volume II, pp. 655-661.
[5] Exhibits "P-1" / "P-2", id., Volume III, pp. 1399-1410.
[6] Exhibit "P-4", id., pp. 1436-1437.
[7] See Par. A.1, Joint Stipulation of Facts and Issues (JSFI), id., Volume II, p. 768.

## FACTS OF THE CASE

On 16 October 2018, petitioner received Letter of Authority (**LOA**) No. eLA201600056334 dated 24 September 2018[8] issued by Officer-In-Charge (**OIC**) Assistant Commissioner (**Asst. Comm**) Teresita M. Dizon (**Dizon**) of the Large Taxpayers Service (**LTS**), authorizing Revenue Officers (**ROs**) Joann Serquiña (**Serquiña**), Romualdo Plocios (**Plocios**), Ram Joseph Roxas (**Roxas**), Melinda Rugayan (**Rugayan**) and Group Supervisor (**GS**) Samuel Reyes (**Reyes**) Excise Large Taxpayers (**LT**) Audit Division 2 to examine/audit petitioner's internal revenue taxes for CY 2017. Due to changes in ROs, Asst. Comm Dizon issued a replacement LOA (No. eLA2016000942542)[9] on 14 February 2019, authorizing ROs Serquiña, Ryan Calvin Morga (**Morga**), Roxas and GS Roberto Castro (**Castro**), which petitioner received on 04 March 2019.

In the course of the audit, petitioner allegedly executed several Waivers of the Defense of Prescription under the Statute of Limitations (**waivers**):

| **Waiver** | **Date of Execution** | **Extended Period Until** |
|---|---|---|
| First Waiver[10] | 05 December 2019 | 30 June 2020 |
| Second Waiver[11] | 01 June 2020 | 30 September 2020 |
| Third Waiver[12] | 14 August 2020 | 31 December 2020 |
| Fourth Waiver[13] | 04 September 2020 | 31 March 2021 |
| Fifth Waiver[14] | 21 January 2021 | 30 June 2021 |

Due to petitioner's alleged failure to submit all documents necessary for audit, respondent issued a *Subpoena Duces Tecum* (**SDT**) dated 09 July 2020[15], compelling submission of additional records.

After evaluating petitioner's partial submissions, respondent issued a Notice of Discrepancy[16] (**NOD**) on 01 October 2020, followed by

8 Exhibits "P-26" / "R-1", id., p. 576.
9 Exhibits "P-27" / "R-2", id., p. 577.
10 Exhibits "P-28" / "R-3", id., p. 578.
11 Exhibit "P-29", id., p. 579.
12 Exhibits "P-30" / "R-6", id., p. 580.
13 Exhibit "R-7", BIR Records, Folder 3 of 6, p. 551.
14 Exhibit "P-31", Division Docket, Volume II, p. 581.
15 Exhibit "R-5", BIR Records, Folder 3 of 6, p. 406.
16 Exhibits "R-8", id., Folder 1 of 4, p. 664.

a Preliminary Assessment Notice (**PAN**) dated 03 December 2020[17] that petitioner received on 7 December 2020. On 22 December 2020, petitioner filed a written reply thereto disputing the said findings.[18]

Despite petitioner's opposition, respondent proceeded to issue a Formal Letter of Demand (**FLD**) and Final Assessment Notice (**FAN**) dated 22 June 2021[19], assessing petitioner with deficiency income tax, VAT, WTC, EWT, ET and compromise penalties in the aggregate amount of ₱490,680,202.41, inclusive of interest and surcharges, broken down as follows:

| Tax Type/Fee | Basic | Surcharge | Interest | Compromise Penalty | Total |
|---|---|---|---|---|---|
| Income Tax | ₱183,999,291.32 | - | ₱69,082,912.01 | - | ₱253,082,203.33 |
| VAT | 160,144,601.77 | - | 64,338,642.20 | - | 224,483,243.97 |
| WTC | 4,838,882.94 | - | 1,959,946.45 | - | 6,798,829.39 |
| EWT | - | - | 6,027,594.65 | - | 6,027,594.65 |
| ET | 32,287.55 | ₱8,071.89 | 12,971.63 | - | 53,331.07 |
| Compromise Penalties | - | - | - | ₱235,000.00 | 235,000.00 |
| **Total** | | | | | **₱490,680,202.41** |

Petitioner timely filed its "Request for Reinvestigation" (**protest**) against the FLD/FAN on 28 July 2021[20] and submitted additional supporting documents *via* transmittal letters dated 08 and 27 September 2021.[21]

In response, respondent, through CIR Caesar R. Dulay (**Dulay**) issued an FDDA, affirming the deficiency assessments in a reduced aggregate amount of ₱294,550,187.47, broken down as follows:

| Tax Type/Fee | Basic | Surcharge | Interest | Compromise Penalty | Total |
|---|---|---|---|---|---|
| Income Tax | ₱97,200,628.67 | - | ₱42,342,191.67 | - | ₱139,542,820.34 |
| VAT | 101,256,004.13 | - | 46,771,951.50 | - | 148,027,955.63 |
| WTC | 475,389.45 | - | 221,153.77 | - | 696,543.22 |
| EWT | - | - | 6,027,594.65 | - | 6,027,594.65 |

17 Exhibits "P-32" / "R-10", id., pp. 582-586.
18 Exhibit "P-33", id., pp. 587-612.
19 Exhibits "P-34" / "R-13", id., Folder 2 of 4, pp. 1142-1166.
20 Exhibit "P-35", Division Docket, Volume II, pp. 617-650.
21 Exhibits "P-35-1" / "P-35-2", pp. 651-654.

| | | | | | |
|---|---|---|---|---|---|
| ET | 32,287.55 | ₱8,071.89 | 14,914.19 | - | 55,273.63 |
| Compromise Penalties | - | - | - | ₱200,000.00 | 200,000.00 |
| **Total** | | | | | **₱294,550,187.47** |

Petitioner received the FDDA on 15 December 2021.[22]

On 16 December 2021, petitioner partially paid ₱15,061,852.12, broken down as follows:

| Tax Type/Fee | Total | Partial Payment | Balance |
|---|---|---|---|
| Income Tax | ₱139,542,820.34 | ₱5,606,214.32[23] | ₱133,936,606.02 |
| VAT | 148,027,955.63 | 2,473,555.76[24] | 145,554,399.87 |
| WTC | 696,543.22 | 699,043.91[25] | (2,500.69) |
| EWT | 6,027,594.65 | 6,027,594.65[26] | - |
| ET | 55,273.63 | 55,443.48[27] | (169.85) |
| Compromise Penalties | 200,000.00 | 200,000.00[28] | - |
| **Total** | **₱294,550,187.47** | **₱15,061,852.12** | **₱279,488,335.35** |

Thereafter, petitioner filed a Petition for Review before the Court of Tax Appeals (**CTA**) on 02 February 2022.

## PROCEEDINGS BEFORE THE COURT

Petitioner, through the instant petition[29], is asking this Court to set aside respondent's FDDA.

In support of its petition, petitioner contended that the assailed assessments are void and bereft of legal effect, as respondent failed to issue them within the prescribed period to assess. Petitioner maintained that the waivers were improperly executed and thus, did not validly extend the statute of limitations. On the substantive aspect, petitioner

22 Supra at note 4.
23 Exhibits "P-37" / "P-38", Division Docket, Volume III, pp. 1438-1439.
24 Exhibits "P-41" / "P-42", id., pp. 1442-1443.
25 Exhibits "P-44" / "P-45", id., pp. 1445-1446.
26 Exhibits "P-47" / "P-48", id., pp. 1448-1449.
27 Exhibits "P-50" / "P-51", id., pp. 1451-1452.
28 Exhibits "P-53" / "P-54", id., pp. 1453-1454.
29 Supra at note 1.

further averred that it bears no liability for the deficiency taxes assessed in the FDDA, insisting that the findings therein lack both factual basis and legal mooring.

Initially, the case was raffled to the Court's Second Division. On 07 February 2022, summons was issued to respondent, directing him or her to file an Answer within thirty (30) days from the date of receipt thereof, *i.e.*, 18 February 2022.[30] He or she sought and obtained a 30-day extension[31], thereafter, filing his or her Answer[32] on 19 April 2022.

In his or her Answer, respondent interposed the following defenses: (1) petitioner executed five (5) timely waivers dated – 05 December 2019, 01 June 2020, 14 August 2020, 04 September 2020 and 21 January 2021, extending assessment until 30 June 2021, thus rendering the 22 June 2021 FLD/FAN within the extended prescriptive period; (2) Revenue Memorandum Order (**RMO**) No. 14-2016[33] superseded RMO No. 20-90[34] and requires only the date of execution, the taxpayer's signature or that of a duly authorized officer, and the expiry date, with notarization and BIR acceptance date no longer essential, the waiver taking legal effect upon execution and binding the taxpayer who has the responsibility to ensure that the waivers are validly executed (as the execution of the waivers are for their benefit), as reiterated in Revenue Memorandum Circular (**RMC**) No. 141-2019[35]; (3) the income tax assessment rests on actual variances and disallowances, including undeclared revenue from Reconciliation of Listings for Enforcement (**RELIEF**) and Summary Alphalist of Withholding Taxes (**SAWT**) cross matches, unaccounted purchases and importations, revenue reported in VAT Returns but not subjected to income tax, unsupported additions to property plant and equipment and depreciation, unnecessary or unsupported advertising and promotions and unsupported creditable withholding tax; (4) the VAT assessment mirrors the undeclared revenue, purchases and importations, reclassified zero-rated sales to an

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30 Division Docket, Volume I, p. 388.
31 See Order dated 21 March 2022, id., p. 395.
32 Id., pp. 396-411.
33 Guidelines for the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, as Amended.
34 Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.
35 Reiterating the Salient Points Arising from RMO No. 14-16 on the Proper Execution of Waivers of the Defense of Prescription and Providing an Illustration of the Basic Requirements Thereof.

SBMA entity as taxable under Republic Act (**RA**) No. 7916[36], RMC No. 25-99[37], and Revenue Regulations (**RR**) No. 25-2003[38], imposed VAT cascading from unpaid excise on oils and fluids and disallowed input tax due to invalid TINs, lack of supporting invoices or receipts, invoicing violations and premature claims on capital goods; (**5**) deficiency WTC arises from variances between the alphalist and monthly returns; (**6**) deficiency EWT resulted from petitioner's failure to withhold or to remit timely *per* third-party reconciliations; (**7**) deficiency excise taxes cover excisable oils and lubricants found in importations; and (**8**) the assessments enjoy the presumption of correctness and regularity, which petitioner failed to overthrow.

Thereafter, the Pre-Trial Conference was initially set on 20 June 2022.[39] Petitioner filed its Pre-Trial Brief[40] on 06 May 2022. The Pre-Trial Conference was subsequently reset to 05 September 2022[41] and 27 October 2022.[42]

On 19 July 2022, petitioner filed a "Motion for Suspension of Collection of Taxes and Dispensation of the Requirement to Post a Bond"[43] (**Motion to Suspend**), seeking to suspend implementation of the Warrant of Distraint and/or Levy (**WDL**) which respondent issued on 12 July 2022, arguing that the subject assessments were already barred by prescription. Thereafter, on 25 July 2022, petitioner filed a "Manifestation," informing the Court that it received copies of Warrants of Garnishment (**WOGs**) dated 19 July 2022 addressed to BDO Unibank, Inc., Chinabank, Metropolitan Bank & Trust Co. (**MBTC**), Development Bank of the Philippines (**DBP**) and Bank of the Philippine Islands (**BPI**) for ₱279,522,131.45.[44] On 28 July 2022, respondent was given five (5) days

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36 AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

37 Disseminating the Ruling of the Commissioner of Internal Revenue on the Non-eligibility for VAT Zero-Rating of Automobile Sales to Entities Registered with PEZA, SBMA and Clark Development Authority dated March 18, 1999.

38 Amended Revenue Regulations Governing the Imposition of Excise Tax on Automobiles Pursuant to the Provisions of Republic Act No. 9224, An Act Rationalizing the Excise Tax on Automobiles, Amending for the Purpose the National Internal Revenue Code of 1997, and for Other Purposes

39 Notice of Pre-Trial Conference dated 21 April 2022, Division Docket, Volume I, pp. 430-431.

40 Id., pp. 432-447.

41 Notice of Resetting dated 09 June 2022, id., p. 453.

42 See Order dated 22 August 2022, id. Volume II, pp. 680-681.

43 Id., Volume I, pp. 454-464.

44 Id., pp. 466-467. See Resolution dated 11 August 2022, id., Volume II, pp. 508-509.

from the date of receipt thereof to file their comment or opposition to the Motion to Suspend.[45]

Respondent, in his or her "Comment and Opposition (Re: Petitioner's [Motion to Suspend])"[46] (**Comment**) dated 08 August 2022, asseverated that the period to assess had not yet prescribed since the waivers petitioner issued were valid and effective thus the period to assess was validly extended. He or she also argued that petitioner failed to establish that the government or its interests may be jeopardized if respondent does his or her duty of collecting petitioner's tax liabilities and that there is extreme urgency necessitating the issuance of the suspension order.

During the hearing of petitioner's Motion to Suspend, petitioner presented Jo-Anne T. Matas (**Matas**) who testified *via* her Judicial Affidavit dated 09 August 2022.[47]

On the witness stand, Matas, petitioner's Tax Manager, declared that: (1) she supervises compliance and tax payments; (2) petitioner engages in the wholesale distribution and importation of vehicles, parts and related services; (3) she coordinated the BIR audit under LOAs dated 24 September 2018 and 14 February 2019; (4) after the LOAs' receipts, petitioner's Chief Financial Officer (**CFO**) executed waivers on 05 December 2019, 01 June 2020, 14 August 2020 and 21 January 2021, which she produced; (5) respondent issued a PAN on 03 December 2020 that petitioner replied on 22 December 2020; (6) respondent thereafter issued an FLD/FAN dated 22 June 2021, which petitioner protested; (7) the CIR rendered an undated FDDA received on 15 December 2021, prompting a Petition for Review filed on 02 February 2022; (8) petitioner received on 18 July 2022 a WDL dated 12 July 2022 and WOGs dated 19 July 2022 covering an aggregate ₱279,522,131.45; (9) petitioner prayed for suspension of the WDL's enforcement and, after hearing, a permanent bar to respondent's collection, invoking three grounds – prescription, invalid assessments, and absence of a valid LOA; (10) on prescription, she recounted ITR and VAT filing dates and asserted the FLD's belatedness unless valid waivers tolled the period; (11) on the waivers, she alleged defects, *i.e.*, missing receipt and BIR acceptance dates and one waiver executed after the prior's expiry; and (12) on due

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45 See Resolution dated 28 July 2022, id., Volume I, p. 480.
46 Id., pp. 481-505.
47 See Order dated 22 August 2022, supra at note 42.

process, she claimed LOA invalidity for failure to revalidate within the 120-day audit window.[48]

In her cross-examination, Matas affirmed that petitioner had executed only four (4) waivers. She further clarified that petitioner's Motion to Suspend was anchored on three principal grounds: (1) respondent's right to assess had already prescribed; (2) the deficiency tax assessments were null and void; and (3) the Letter of Authority was invalid for want of revalidation, as respondent failed to reissue or properly revalidate the prior authority.[49]

No re-cross examination followed.[50]

The Court directed petitioner to file its Formal Offer of Evidence (**FOE**) relative to its Motion to Suspend.[51] In compliance therewith, petitioner filed its "[FOE] ([Motion to Suspend])"[52] on 25 August 2022, while respondent filed his or her "Comment (on Petitioner's [FOE] [Motion to Suspend])"[53] on 30 August 2022. Acting thereon, the Court admitted petitioner's FOE.[54]

On 11 October 2022, petitioner filed a "Manifestation and Urgent Motion to Resolve the [Motion to Suspend]"[55], urging the Court for the early resolution of its Motion to Suspend since respondent had already put on hold its BPI account in the amount of ₱137,680,000.00 and such freezing of its account had already affected its operations.

In the Resolution dated 25 October 2022[56], the Court denied petitioner's Motion to Suspend on the ground that petitioner's testimonial and documentary evidence did not show how the execution of the WDL and/or WOG would jeopardize the interest of either the Government or the taxpayer.

48 See Judicial Affidavit of Jo-Anne T. Matas dated 09 August 2022, Exhibit "P-57", id., pp. 512-527.
49 TSN dated 22 August 2022, pp. 5-7.
50 Id., p. 7.
51 See Order dated 22 August 2022, supra at note 42.
52 Division Docket, Volume II, pp. 689-697.
53 Id., pp. 699-701.
54 See Resolution dated 20 September 2022, id., pp. 704-705.
55 Id., pp. 717-720.
56 Id., pp. 735-743.

On 03 November 2022, petitioner filed a "Motion for Reconsideration Re: Resolution dated October 25, 2022"[57] (**MR on Motion to Suspend**), mainly arguing that it had sufficiently established that there is a *prima facie* showing that respondent's right to assess had already prescribed since the waivers petitioner executed failed to properly extend the period to assess.

Respondent failed to file a comment on petitioner's MR on Motion to Suspend.[58] On 31 January 2023, the Court partially granted petitioner's MR on Motion to Suspend and, pending determination (of the issue of prescription), enjoined respondent from collecting on the subject assessments.[59] The Court required petitioner to post a cash or surety bond equivalent to the amount of the basic deficiency taxes of ₱192,879,870.40. On 10 February 2023, petitioner filed a "Motion to Reduce Bond and Extend Time to Post Reduced Bond."[60] Respondent then stipulated on the identification of the Letter dated 15 December 2022 by BPI showing that respondent had already secured ₱136,958,945.60 from petitioner's BPI account.[61] On 18 May 2023, the Court granted petitioner's motion, reducing the bond to ₱55,920,924.80[62], which petitioner complied[63] and the Court approved the surety bond on 03 July 2023.[64]

Reverting to the main case, on 29 September 2022, respondent filed a "Motion to Admit Pre-Trial Brief"[65] and his or her Pre-Trial Brief[66], which the Court granted on 12 October 2022.[67]

During the Pre-Trial Conference, the parties were granted a period of 30 days to file the Joint Stipulation of Facts and Issues (**JSFI**), or until 28 November 2022.[68] Accordingly, on 28 November 2022, they filed their JSFI[69], which the Court approved on 15 December 2022.[70]

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[57] Id., pp. 749-758.
[58] See Records Verification dated 28 December 2022, id., p. 786.
[59] See Resolution dated 31 January 2023, id., pp. 788-793.
[60] Id., pp. 794-796.
[61] See Order dated 16 March 2023, id., p. 824.
[62] See Resolution dated 18 May 2023, id., pp. 853-855.
[63] See Compliance dated 09 June 2023, id., pp. 857-859.
[64] See Resolution dated 03 July 2023, id., pp. 915-916.
[65] Id., pp. 706-709.
[66] Id., pp. 711-716.
[67] See Resolution dated 12 October 2022, id., p. 733.
[68] See Order dated 27 October 2022, id., pp. 745-747.
[69] Id., pp. 768-783.
[70] See Resolution dated 15 December 2022, id., p. 784.

The pre-trial proceedings were then terminated accordingly.[71] Consequently, the Pre-Trial Order[72] was issued on 23 February 2023.

In the Resolution issued on 29 May 2023, the present case was transferred to the Court's First Division pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023.[73]

In the trial that ensued subsequently, petitioner presented Matas and Independent Certified Public Accountant (**ICPA**) Joel C. Romano (**Romano**), who all testified *via* their respective judicial affidavits.

On the witness stand, Matas testified that she supervised petitioner's compliance with tax laws, including the filing and payment of returns with the BIR, and confirmed that: (1) petitioner received two LOAs – LOA No. 124-2018-00000024 dated 24 September 2018 and LOA No. 124-2019-00000044 dated 14 February 2019, authorizing examination of its books for all internal revenue taxes for CY 2017; (2) during audit, the respondent required the execution of waivers of the period to assess, and petitioner, through Santiago, executed four (4) waivers dated 05 December 2019, 01 June 2020, 14 August 2020, and 21 January 2021, though some lacked receipt or acceptance dates and the last was executed after the earlier waiver's expiry; (3) petitioner received a PAN dated 03 December 2020, which it protested on 22 December 2020; (4) respondent thereafter issued an FLD/FAN dated 22 June 2021, assessing deficiency income tax, VAT, withholding taxes, ET and penalties for CY 2017; (5) petitioner filed a protest on 28 July 2021, supported by transmittal letters dated 24 and 27 September 2021; (6) respondent ultimately issued an undated FDDA signed by CIR Dulay which petitioner received on 15 December 2021; and (7) the assessment items have no factual and legal bases.[74]

During her cross-examination, Matas acknowledged that her recollection was that petitioner executed only three (3) waivers and that, while she facilitated their signing and signed as witness, the CFO held authority to sign; she confirmed petitioner filed a reply to the PAN and

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[71] Id.
[72] Id., pp. 801-810.
[73] Id., p. 856.
[74] See Judicial Affidavit of Jo-Anne T. Matas dated 12 January 2022, Exhibit "P-58", id., Volume I, pp. 104-129.

a protest against the FLD/FAN but did not raise prescription in either; she admitted petitioner settled portions of the assessments after receipt of the FDDA and that those payments were not explicitly made "under protest." On re-direct examination, she clarified that despite the absence of a written "under protest" notation, petitioner continued to dispute the deficiency tax assessments.[75]

No re-cross examination followed.[76]

Upon the completion of Matas's testimony, petitioner presented ICPA Romano who recounted that: (1) with respect to the income tax assessment, he reconciled nearly all discrepancies, leaving only ₱249,980.94 and ₱1,934,814.20 as unsupported or unreconcilable, thus reducing the deficiency income tax to ₱655,437.98; (2) on VAT assessment, he found that respondent's findings on unsupported zero-rated sales were largely substantiated, except for ₱15,117,140.77, resulting in a reduced deficiency VAT of ₱1,814,056.89; and (3) taken together, petitioner's basic deficiency tax liability for CY 2017 amounted merely to ₱2,469,494.87.[77]

During his cross-examination, ICPA Romano testified that he reviewed petitioner's invoices and found them compliant with invoicing requirements. Later, when confronted with specific documents, Exhibits "P-86", "P-87" and "P-88", wherein (1) a customer's signature predated the sales invoice, (2) the signature on the SBMA tax exemption documents was illegible and (3) a sales invoice was dated outside the covered period, he clarified that these irregularities were examined but not accepted as valid supporting documentation. Consequently, those invoices were disallowed.[78]

No redirect examination followed.[79]

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75 TSN dated 10 August 2023, pp. 17-22.
76 Id., p. 22.
77 See Judicial Affidavit of Joel C. Romano dated 20 October 2023, Exhibit "P-103", Division Docket, Volume III, pp. 1324-1376.
78 TSN dated 25 October 2023, pp. 8-9.
79 Id., p. 9.

Pursuant to the Court's Order dated 25 October 2023[80], petitioner filed its FOE[81] on 14 November 2023. In due course, respondent filed a "Comment (on Petitioner's [FOE])"[82] on 17 November 2023.

On 30 January 2024, the Court issued a Resolution admitting all of petitioner's evidence, except for Exhibit "P-40"[83] (which was excluded for not being found in the case records).[84]

On 13 February 2024, petitioner sought reconsideration through a "Motion for Partial Reconsideration to the Resolution dated 30 January 2024"[85], praying that Exhibit "P-40" be likewise admitted since it is identical to Exhibit "P-92".[86] According to petitioner, the Court had already admitted the latter exhibit. In its Resolution dated 27 May 2024[87], the Court granted the motion and admitted Exhibit "P-40."

On 30 July 2024, respondent offered the testimony of his or her sole witness RO Serquiña, who testified *via* her judicial affidavit.[88]

On the witness stand, RO Serquiña declared that: (1) she was duly authorized to participate in the audit of petitioner's internal revenue taxes for calendar year 2017 pursuant to a valid LOA; (2) in the course of the examination, petitioner executed five (5) waivers, thereby validly extending the period of assessment until 30 June 2021; (3) the issuance of the FLD/FAN on 22 June 2021 was thus made well within the reglementary period; and (4) the deficiency assessments were supported by both factual findings and law.[89]

80 Division Docket, Volume III, pp. 1378-C-1378-D.
81 Id., pp. 1380-1397.
82 Id., pp. 1456-1458.
83

| Exhibit No. | Description |
|---|---|
| "P-40" | SBMA Certificate of Registration and Tax Exemption of Westcoast Automotive Corporation dated May 30, 2016. |

84 See Resolution dated 30 January 2024, Division Docket, Volume III, pp. 1463-1465.
85 Id., pp. 1466-1468.
86 USB.
87 See Resolution dated 27 May 2024, Division Docket, Volume III, pp. 1489-1490.
88 See Order dated 30 July 2024, id., pp. 1492-1493.
89 See Judicial Affidavit of RO Joann Serquiña dated 18 April 2022, Exhibit "R-21", id., Volume I, pp. 416-428.

In her cross-examination, RO Serquiña affirmed that: (1) the undeclared revenue of ₱1,356,219.86 was computed by comparing petitioner's Summary List of Sales with the data of its customers from the BIR RELIEF System, Summary Alphalist of Withholding Taxes, BIR Form No. 2307, and Expanded Withholding Tax Alphalist; (2) she verified the figures using the BIR's electronic database rather than the clients' actual documents; (3) while confirmation letters were sent to petitioner's customers, only some replied, and no certifications were secured; (4) the undeclared purchases of ₱1,305,440.34 were derived from a comparison between petitioner's Summary List of Purchases and the sales declared by its suppliers, but again, no supplier certifications were obtained; (5) the undeclared importations worth ₱188,257.99 were based solely on Bureau of Customs (**BOC**) data without examination of petitioner's import documents; and (6) when asked whether she possessed proof of the signatory's written authority to execute the waivers, she stated she could not recall.[90]

On 09 August 2024, respondent filed his or her FOE[91] consisting of Exhibits "R-1" to "R-20", inclusive of sub-markings. On 15 August 2024, petitioner filed "Comment and Opposition (to Respondent's [FOE])."[92]

In the Resolution dated 03 October 2024[93], the Court admitted all respondent's exhibits and granted the parties a period of 30 days within which to file their respective memoranda. Respondent filed his or her Memorandum[94] on 04 November 2024. On the other hand, petitioner filed its Memorandum[95] on 07 November 2024. On 25 November 2024, the present case was submitted for decision.[96]

## ISSUES

As can be gleaned from the parties' JSFI[97], the issues for Our resolution are –

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90 TSN dated 30 July 2024, pp. 8-14.
91 Division Docket, Volume III, pp. 1496-1512.
92 Id., pp. 1522-1523.
93 Id., pp. 1529-1531.
94 Id., pp. 1532-1554.
95 Id., pp. 1558-1657.
96 See Minute Resolution dated 25 November 2024, id., p. 1659.
97 See supra at note 69.

I.
WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S (CIR'S) PERIOD TO ASSESS HAD ALREADY PRESCRIBED.

II.
WHETHER PETITIONER FORD GROUP PHILIPPINES, INC. IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX (VAT), WITHHOLDING TAX ON COMPENSATION (WTC), EXPANDED WITHHOLDING TAX (EWT), EXCISE TAX AND ADMINISTRATIVE PENALTIES, FOR CALENDAR YEAR (CY) 2018.

III.
WHETHER PETITIONER FORD GROUP PHILIPPINES, INC. IS ENTITLED TO THE REFUND OF THE AMOUNT OF ₱279,522,131.45.

## ARGUMENTS

In support of its petition, petitioner principally argues that the waivers of the defense of prescription under Section 222(b)[98] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, were improperly executed. Specifically, the waivers allegedly did not conform to the formal requisites laid down in RMO No. 20-90[99], Revenue Delegation Administrative Order (**RDAO**) No. 05-01[100], and jurisprudence such as *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[101] and *Commissioner of Internal Revenue v. FMF Development Corporation*.[102] Further, the waivers were not duly signed by an authorized officer, not notarized and were not timely accepted by the BIR before the expiration of the preceding waiver. Thus, the waivers did not validly extend the three (3)-year prescriptive period to assess, rendering the assessments issued on 22 June 2021 void for having been made beyond the allowable period.

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

...

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

99 Supra at note 34.

100 Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations

101 G.R. No. 162852, 16 December 2004.

102 G.R. No. 167765, 30 June 2008.

Petitioner also contends that the deficiency income tax, VAT, WTC, EWT, ET and administrative penalties assessed against it lack evidentiary and legal foundation. It disputes the finding of undeclared revenues and unaccounted purchases, arguing that these were based merely on computerized matching of third-party data from the BIR RELIEF system without verification or corroborating documents. It invokes RMO No. 46-2004[103] which requires the BIR to secure sworn confirmations from third parties when discrepancies arise. Petitioner emphasizes that tax assessments must rest on actual facts and not presumptions.

Petitioner thus maintains that respondent's collection efforts, including the issuance of WDL and WOGs, were illegal, considering the pendency of the judicial proceedings. It avers entitlement to a refund of ₱136,958,945.60 already collected by respondent through garnishment, claiming such sum was wrongfully applied against a void assessment.

Respondent counters that: (1) petitioner's five (5) waivers are valid and binding; (2) they complied with the requisites under RMO No. 14-2016[104], which superseded RMO No. 20-90.[105] Under this prevailing issuance, a valid waiver merely requires (a) the date of execution, (b) the taxpayer's signature or that of its duly authorized representative and (c) the expiry date of the period waived; (3) the waivers need not bear the BIR's date of acceptance or acknowledgment to be effective, as they take legal effect immediately upon the taxpayer's execution thereof; (4) the assessments were timely issued within the period extended by the valid waivers; (5) petitioner is estopped from oppugning their validity after having benefited from extensions of time to submit accounting records and documents during audit; (6) petitioner failed to overcome the presumption of correctness and validity of the tax assessments; and (7) the deficiency assessments have factual and legal bases.

On the assessment items, respondent details that his or her findings stemmed from verified data from third-party sources and internal records. He or she maintains that petitioner is liable for:

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103 Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

104 Supra at note 33.

105 Supra at note 34.

(**a**) deficiency income tax of ₱121,982,384.61 due to undeclared revenues, unaccounted purchases and importations and disallowed deductions such as unsupported advertising and promotions expenses; (**b**) deficiency value-added tax of ₱148,027,955.63 arising from undeclared revenues and zero-rated sales to a Subic Bay Freeport (**SBF**) entity not entitled to VAT exemption under RA 7916[106] and RA 9400[107]; (**c**) deficiency withholding taxes (compensation and expanded) totaling ₱6,719,449.10 for unremitted or unwithheld amounts; (**d**) deficiency excise tax of ₱3,874.51 for unreported oils and lubricants subject to excise; and (**e**) administrative penalties of ₱200,000.00 under Section 255[108] of the NIRC of 1997, as amended, and RMO No. 7-2015.[109]

## <u>RULING OF THE COURT</u>

Before delving into the merits of the case, We find it propitious to first resolve whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS (CTA) HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

At the outset, it should be emphasized that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[110] Section 7 of RA 1125[111], as amended by RA 9282[112], provides:

> ...
> **Sec. 7.** *Jurisdiction.* — The CTA shall exercise:

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106 Supra at note 36.

107 AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

108 **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*

109 The Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.

110 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019 citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

111 AN ACT CREATING THE COURT OF TAX APPEALS.

112 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.][113]

...

Moreover, Section 11 of RA 1125, as amended by RA 9282, in relation to Section 3(a), Rule 8 of the RRCTA, provides for the period when the taxpayer may invoke the CTA's jurisdiction in order to question an FDDA, to wit:

...

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within thirty (30) days</u> after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**

SEC. 3. *Who may appeal; period to file petition.* —

(a) **A party adversely affected by a decision, ruling** or the inaction **of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed <u>within thirty days</u> after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[114]

...

[113] Emphasis supplied and italics in the original text.
[114] Italics in the original text, emphasis and underscoring supplied.

Accordingly, in case of the CIR's adverse decision or ruling, the taxpayer is given 30 days to file a Petition for Review with the CTA.

Here, it is undisputed that petitioner received the FDDA (which is the adverse decision appealable to this Court) issued by the CIR on 15 December 2021.[115] It thus had 30 days from the said date, or until 14 January 2022, to file a Petition for Review with the CTA. However, *per* Supreme Court (**SC**) Administrative Circular (**AC**) No. 01-2022[116], the filing periods of any and all pleadings and other court submissions that would fall due in the month of January 2022 were extended until 01 February 2022. Considering that the said date was a special non-working holiday[117], petitioner timely filed the instant Petition for Review on 02 February 2022.[118]

Proceeding to the resolution of the substantial issues raised, and after a careful and thorough evaluation of the parties' respective evidence and the applicable laws, rules and regulations, the Court finds **partial merit** in the instant petition.

THE TAX ASSESSMENTS WERE ISSUED WITHIN THE PRESCRIBED PERIOD TO ASSESS.

Petitioner asseverates that the government's right to assess the alleged deficiency taxes has long prescribed, there being no valid waiver extending the period to assess.

Petitioner's argument is unavailing.

At the threshold, it bears emphasis that the period for respondent to assess and collect[119] deficiency taxes is limited only to three (3) years by Section 203 of the NIRC of 1997, as amended, to wit:

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115 Supra at note 4.

116 Extension of the Deadlines for the Filing of Any and All Pleadings and Other Court Submissions Falling Due in the Month of January 2022 in All Courts.

117 Presidential Proclamation No. 1236, 29 October 2021.

118 Supra at note 1.

119 See *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*, G.R. No. 258947, 29 March 2022.

...

SEC. 203. *Period of Limitation Upon Assessment and Collection.* – **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, **That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.** For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[120]

...

This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation by not indefinitely extending the period of assessment and depriving the taxpayer of the assurance that the taxpayer will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[121]

Thus, in the present case, respondent only had three (3) years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment, to wit:

| Tax Type | Tax Return | Actual Day of Filing | Last Day of Filing [122][123] | Last Day of Assessment |
|---|---|---|---|---|
| Income Tax | CY 2017 BIR Form No. 1702-RT (Annual Income Tax Return [**AITR**]) | 13 April 2018[124] | 15 April 2018 | 15 April 2021 |
| VAT | 1st quarter 2017 BIR Form No. 2550-Q | 10 May 2018[125] | 25 April 2018 | 10 May 2021 |

120 Emphasis supplied and italics in the original text.
121 See *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, 16 December 2004.
122 See Section 52(D), NIRC of 1997, as amended.
123 Section 114(A), NIRC of 1997, as amended.
124 Exhibit "P-9", Division Docket, Volume II, pp. 534-543.
125 Exhibit "P-19", id., pp. 562-563.

| | | | | |
|---|---|---|---|---|
| | 2nd quarter 2017 BIR Form No. 2550-Q | 17 May 2018[126] | 25 July 2018 | 17 May 2021 |
| | 3rd quarter 2017 BIR Form No. 2550-Q | 24 May 2018[127] | 25 October 2018 | 24 May 2021 |
| | 4th quarter 2017 BIR Form No. 2550-Q | 31 May 2018[128] | 25 January 2018 | 31 May 2021 |

However, with respect to withholding taxes and ET, petitioner neither proffered as evidence the corresponding filed returns nor alleged the actual filing dates thereof. Since prescription is a matter of defense that a taxpayer must prove[129], petitioner, having failed to discharge such burden, cannot thus successfully avail of the defense of prescription as regards the foregoing taxes.

Anent the deficiency income tax and VAT assessments, petitioner maintains that the issuance of the FLD/FAN on 22 June 2021[130] occurred beyond the period to assess.

The Court disagrees.

One of the recognized circumstances that interrupt the running of the three (3)-year prescriptive period for the assessment of internal revenue taxes is embodied in Section 223 of the NIRC of 1997, as amended, which states:

> ...
>
> **SEC. 223.** *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period **during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter;** when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being

126 Exhibit "P-21", id., pp. 566-567.
127 Exhibit "P-23", id., pp. 570-571.
128 Exhibit "P-25", id., pp. 574-575.
129 See *Commissioner of Internal Revenue v. Marily Development Corporation*, G.R. No. 263794, 02 April 2025.
130 Supra at note 19.

> assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.[131]
>
> ...

From the foregoing, by operation of law, the original three (3)-year prescriptive period may be suspended during a period where respondent or the authorized representative is prohibited from making the assessment and for sixty (60) days thereafter. In this regard, Section 4(z)[132] of RA 11469[133], which declared a national emergency due to the Corona Virus Disease 2019 (**COVID-19**) pandemic, and the subsequent issuance of RR Nos. 11-2020[134] and 12-2020[135], must be taken into account. These regulations excluded from the computation of prescriptive periods the days when affected areas were under Enhanced Community Quarantine (**ECQ**) or Modified Enhanced Community Quarantine (**MECQ**), recognizing that the BIR (specifically the LTS[136], who conducted the audit of petitioner's books for CY 2017) could not perform audit, assessment, or collection functions during such periods. Accordingly, in computing the prescriptive period to assess from 2018 to 2021, the following restrictive quarantine periods imposed in the National Capital Region (**NCR**) must be considered:

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131 Emphasis supplied and italics in the original text.

132 Section 4. *Authorized Powers.* - Pursuant to Article VI. action 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. The President shall have the power to adopt the following temporary emergency measures to respond to crisis brought by the pandemic:

...

(z) Move statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under Community Quarantine[.]

133 AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECIDED NATIONAL POLICY AND FOR OTHER PURPOSES.

134 Amends Section 2 of the Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timeliness for the filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal as One Act".

135 Amends Revenue Regulations No. 10-2020, as Amended by Revenue Regulations No. 11-2020, Relative to the Extension of Statutory Deadlines and Timelines for the Filing and Submission of Any Document and the Payment of Taxes Pursuant to Section 4(z) of Republic Act No. 11469, Otherwise Known as "Bayanihan to Heal as One Act".

136 Situated at BIR National Office Building, Senator Miriam Defensor-Santiago Avenue, Diliman, Quezon City.

| Dates | Imposed Quarantine Restriction | Number of days | COVID-19-related Issuances |
|---|---|---|---|
| 01 June 2020 to 15 June 2020 | GCQ | 15 | Inter-Agency Task Force (IATF) Resolution No. 40, 27 May 2020 |
| 16 June 2020 to 30 June 2020 | GCQ | 15 | IATF Resolution No. 46-A, 15 June 2020 |
| 01 July 2020 to 15 July 2020 | GCQ | 15 | IATF Resolution No. 50-A, 29 June 2020 |
| 16 July 2020 to 31 July 2020 | GCQ | 16 | IATF Resolution No. 55-A, 14 July 2020 |
| 01 August 2020 to 03 August 2020 | GCQ | 3 | IATF Resolution No. 60-A, 30 July 2020 |
| **04 August 2020 to 18 August 2020** | **MECQ** | **15** | **Memorandum from the Executive Secretary dated 03 August 2020** |
| 19 August 2020 to 31 August 2020 | GCQ | 13 | IATF Resolution No. 64, 17 August 2020 |
| 01 September 2020 to 30 September 2020 | GCQ | 30 | IATF Resolution No. 66, 27 August 2020 |
| 01 October 2020 to 31 October 2020 | GCQ | 31 | IATF Resolution No. 75-A, 28 September 2020 |
| 01 November 2020 to 30 November 2020 | GCQ | 30 | IATF Resolution No. 81, 26 October 2020 |
| 01 December 2020 to 31 December 2020 | GCQ | 31 | Memorandum from the Executive Secretary from 01 December 2020 |
| 01 January 2021 to 31 January 2021 | GCQ | 31 | Memorandum from the Executive Secretary from 01 January 2021 |
| 01 February 2021 to 28 February 2021 | GCQ | 28 | Memorandum from the Executive Secretary from 29 January 2021 |
| 01 March 2021 to 28 March 2021 | GCQ | 28 | Memorandum from the Executive Secretary from 27 February 2021 |
| **29 March 2021 to 30 April 2021** | **ECQ/MECQ** | **33** | **Memorandum from the Executive Secretary from 27 March 2021; IATF-EID Resolution No. 108-A, 04 April 2021; IATF-EID Resolution No. 109-A, 10 April 2021** |
| **01 May 2021 to 14 May 2021** | **MECQ** | **14** | **IATF-EID Resolution No. 113-A, 29 April 2021** |
| 15 May 2021 to 31 May 2021 | GCQ | 17 | IATF-EID Resolution No. 115-A, 13 May 2021 |
| 01 June 2021 to 30 June 2021 | GCQ | 30 | IATF-EID Resolution No. 118-A, 31 May 2021; IATF-EID Resolution No. 121, 14 June 2021 |
| 01 July 2021 to 31 July 2021 | GCQ | 31 | IATF-EID Resolution No. 124, s. 2021, 30 June 2021; IATF-EID Resolution No. 127-E, 15 July 2021 |
| 01 August 2021 to 05 August 2021 | GCQ | 5 | **IATF-EID Resolution No. 130-A, 29 July 2021** |
| **06 August 2021 to 20 August 2021** | ECQ | **15** | |

| | | | |
|---|---|---|---|
| **21 August 2021 to 31 August 2021** | **MECQ** | **11** | **IATF-EID Resolution No. 134, 19 August 2021** |
| **01 September 2021 to 07 September 2021** | | **7** | **IATF-EID Resolution No. 135-A, 26 August 2021** |
| **08 September 2021 to 15 September 2021** | | **8** | **IATF-EID Resolution No. 137, 07 September 2021** |
| 16 September 2021 to 30 September 2021 | GCQ | 15 | IATF-EID Resolution No. 136-F, 06 September 2021 |
| 16 September 2021 to 15 March 2022 | Alert Levels 4, 3, 2 and 1[137] | 181 | Guidelines on the Pilot Implementation of Alert Levels System for COVID-19 Response in the National Capital Region, 13 September 2021; IATF-EID Resolution No. 141-A, 30 September 2021; IATF-EID Resolution No. 143-A, 14 October 2021 |

From the foregoing tabulation, apart from 16 March 2020 to 31 May 2020 *per* RMC No. 136-2020[138], NCR was also under: (*i*) MECQ from 04 August 2020 to 18 August 2020 for fifteen (15) days; (*ii*) ECQ/MECQ from 29 March 2021 to 14 May 2021 for forty-seven (47) days; and (***iii***) ECQ/MECQ from 06 August 2021 to 15 September 2021 for forty-one (41) days, to wit:

| **Tax Type** | **Last Day of Assessment** | **First Extension** (16 March 2020 to 31 May 2020 and 04 August 2020 to 18 August 2020)[139] | **Second Extension** (29 March 2021 to 14 May 2021)[140] | **Third Extension** (06 August 2021 to 15 September 2021)[141] |
|---|---|---|---|---|
| Income Tax | 15 April 2021 | 13 November 2021 | 28 February 2022 | 09 June 2022 |
| VAT | 10 May 2021 | 08 December 2021 | 25 March 2022 | 04 July 2022 |
| | 17 May 2021 | 15 December 2021 | 01 April 2022 | 11 July 2022 |
| | 24 May 2021 | 22 December 2021 | 08 April 2022 | 18 July 2022 |
| | 31 May 2021 | 29 December 2021 | 15 April 2022 | 25 July 2022 |

Pursuant to RR Nos. 11-2020 and 12-2020, 60 additional days must be added to each quarantine period, resulting in a total of **<u>four hundred twenty (420) days</u>** (one hundred thirty-seven [137] days *per* RMC No. 136-2020[142] and 75,107 and 101 days *per* RR Nos. 11-2020 and 12-2020).

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137 The highest Alert Level imposed in Metro Manila was Alert Level 4, during which government agencies, such as the BIR, were already required to be fully operational.

138 Clarification on the Suspension of the Statute of Limitation Provided Under Revenue Regulations (RR) No. 11-2020.

139

| | | | | |
|---|---|---|---|---|
| 16 March 2020 to 31 May 2020 | 77 | + | 60 = | 137 |
| 04 August 2020 to 18 August 2020 | 15 | + | 60 = | <u>75</u> |
| **Total** | | | | **212 days** |

140 29 March 2021 to 14 May 2021 — 47 + 60 = 107 days

141 06 August 2021 to 15 September 2021 — 41 + 60 = 101 days

142 Supra at note 138.

days to be excluded from the computation of the prescriptive period to assess. Thus, even without resorting to the subject waivers, the government's right to assess did not prescribe. The restrictive quarantines in the NCR automatically suspended the running of the statute of limitations under Section 223 of the NIRC of 1997, as amended.

Accordingly, when respondent issued the FLD/FAN on 22 June 2021, the assessment was well within the extended prescriptive period recognized by law. Hence, petitioner's contention that the waivers' alleged formal defects rendered the assessment void is misplaced, as no waiver was necessary to sustain the timeliness of respondent's action. The extension of the period to assess was effected not by contract, but by law itself.

Having disposed of the issue of prescription, the Court shall now proceed to address, in *seriatim*, the merits of the deficiency tax assessments *per* assessment item.

DEFICIENCY TAX ASSESSMENTS AND
EACH ASSESSMENT ITEM

I. <u>DEFICIENCY INCOME TAX FOR CALENDAR YEAR 2017</u>

Respondent assessed petitioner the amount of ₱139,542,820.34, composed of ₱97,200,628.67 basic deficiency income tax and interest of ₱42,342,191.67, based on the following computation:[143]

| | | |
|---|---|---|
| Taxable Income | | ₱67,897,596.00 |
| Add: Discrepancies *per* Investigation | | |
| 1. Undeclared Revenue | ₱1,356,219.86 | |
| 2. Undeclared Source of Revenue - Purchases | 1,305,440.34 | |
| 3. Undeclared Source of Revenue - Importations | 188,257.99 | |
| 4. Income not Subjected to Income Tax - VAT > [AITR] | 40,999,580.20 | |
| 5. Unsupported Additions to PPE | 3,721,207.46 | |
| 6. Disallowed Depreciation Expense - Unsupported | 3,947,887.38 | |
| 7. Unnecessary Foreign Advertising Expense | 270,033,065.45 | 321,551,658.68 |
| Taxable Income *per* Investigation | | 389,449,254.68 |
| Tax Rate | | 30% |
| Income Tax Due | | 116,834,776.40 |

[143] See Exhibit "P-36", supra at note 4, p. 657.

| | | |
|---|---|---|
| Less: Tax Credits/Payments | | |
| Prior Year's Excess Credits Other than MCIT | 271,138,903.00 | |
| Add: Creditable Withholding Tax for 2017 | 380,382,132.00 | |
| *Subtotal* | 651,521,035.00 | |
| Less: Deductions from Tax Credits | | |
| Excess Carry-over to Succeeding Period | 609,074,609.64 | |
| Excess MCIT over RCIT | 22,077,146.00 | |
| 8. Unsupported CWT | 735,131.63 | |
| *Subtotal* | 631,886,887.27 | 19,634,147.73 |
| Deficiency Income tax | | 97,200,628.67 |
| Add: Interest | | 42,342,191.67 |
| **Total Amount Due** | | **₱139,542,820.34** |

In essence, respondent's computation of petitioner's alleged deficiency income tax is based on the following assessment items:

| Item | Amount |
|---|---|
| 1. Undeclared Revenue | ₱1,356,219.86 |
| 2. Undeclared Source of Revenue - Purchases | 1,305,440.34 |
| 3. Undeclared Source of Revenue - Importations | 188,257.99 |
| 4. Income not Subjected to Income Tax - VAT > AITR | 40,999,580.20 |
| 5. Unsupported Additions to PPE | 3,721,207.46 |
| 6. Disallowed Depreciation Expense - Unsupported | 3,947,887.38 |
| 7. Unnecessary Foreign Advertising Expense | 270,033,065.45 |
| 8. Unsupported CWT | 735,131.63 |

Of the eight (8) assessment items, petitioner admits liability for six (6) items, which have since been settled. Thus, the controversy is narrowed to Item Nos. 4 and 7, the only remaining disputed matters. The issues now before Us are confined solely to these two (2) contested items, all others having been extinguished by voluntary payment.

A. INCOME NOT SUBJECTED TO INCOME TAX - ₱40,999,580.20

Respondent's verification disclosed that after comparing the sales/revenue reported *per* VAT Returns[144] and those reported in the CY 2017 AITR[145], there were payments which were subjected to VAT but not declared in the AITR. Thus, this difference is added to the gross income subject to 30% income tax pursuant to Section 27[146] of the NIRC of 1997,

[144] Exhibits "P-19", "P-21", "P-23" and "P-25", Division Docket, Volume II, pp. 562-563, 566-567, 570-571 and 574-575, respectively.
[145] Exhibit "P-9", id., pp. 534-543.
[146] **SEC. 27**. *Rates of Income Tax on Domestic Corporations.*

as amended, in relation to Sections 31[147] and 32[148] of the NIRC of 1997, as amended.

ICPA Romano identified the following reconciling items for the noted discrepancy of ₱40,999,580.20:[149]

| | |
|---|---|
| 1. Training expenses with corresponding dealer share | ₱46,969,140.03 |
| 2. Sales returns of parts | 3,295,375.28 |
| 3. Off-invoice sales discounts | 21,167,142.87 |
| 4. Sales discounts | (53,571.44) |
| 5. Foreign exchange revaluations | (18,990.14) |
| 6. Discount on sales of demo units | (23,579,927.24) |
| 7. Subsidy from third parties | (7,102,130.98) |
| 8. Other adjustments | 1,239,367.39 |
| 9. Harmonized Remuneration Scheme | 594.65 |
| 10. Other adjustments subject to VAT | (1,143,129.46) |
| 11. Unaccounted difference | 225,709.24 |
| **Total** | **40,999,580.20** |

A.1 Training expenses with corresponding dealer share

ICPA Romano found that the adjustment pertains to reclassification of a portion of Net Sales *per* Audited AFS/AITR, originally recorded under Revenue – Vehicle Dealer [Account (**Acct.**) 23A01A00], into a reduction of marketing expense under Admin – Sales Promo Prog Expense (Acct. 25A01920). The reclassification allegedly represents the dealer's share in the training expenses billed by a third-party supplier. The selling price reflected in petitioner's sales invoices already includes the dealer's proportionate share in the training costs of dealer personnel. At month-end, this amount is reclassified in petitioner's books from net sales to other income (or as reduction from selling expense).[150]

The foregoing may be illustrated by the following accounting entries:[151]

147 **SEC. 31**. *Taxable Income Defined.*
148 **SEC. 32**. *Gross Income.*
149 Exhibit "P-60", Division Docket, Volume III, p. 1133.
150 Id., p. 1121.
151 Id.

| | | |
|---|---|---|
| DR | A/R - Vehicles. (Acct. 06A) | XX |
| CR | Revenue – Vehicle Dealer (Acct. 23A01A00) | XX |
| CR | A/P-VAT (Acct 18P01-POVT) | XX |
| To record initial sale | | |

| | | |
|---|---|---|
| DR | Revenue – Vehicle Dealer (Acct. 23A01A00) | XX |
| CR | Admin – Sales Promo Prog Expense (Acct. 25A01920) | XX |
| To record the adjustment in relation to training expenses at month end | | |

| | | |
|---|---|---|
| DR | Cash | XX |
| CR | A/R - Vehicles. (Acct. 06A) | XX |
| To record collection of the revenue as reflected in the sales invoice | | |

Based on the foregoing, it *appears* that the reclassification does not have an impact on petitioner's net taxable income subject to income tax since it merely affects presentation and does not alter petitioner's taxable net taxable income. Although the reclassified amount ceases to form part of gross revenue, it correspondingly reduces the related expense, thereby neutralizing any impact on taxable income.

Nevertheless, petitioner's supporting evidence proves **insufficient** to substantiate its claim. It merely presented the following: (1) journal vouchers[152]; and (2) general ledger (**GL**) extracts for the relevant accounts: Revenue – Vehicle Dealer (Acct. 23A01A00)[153] and Admin – Sales Promo Program Expense (Acct. 25A01920).[154] Conspicuously absent, however, is the tracing and reconciliation of the declared selling or marketing expenses in the AITR. If petitioner's position is that the reclassification yields a *nil* effect on income because the same amount is recognized as a reduction of an expense rather than as additional revenue, then it necessarily bears the burden of proving that the **corresponding reduced expense was indeed declared in its AITR**. Absent such showing, petitioner's assertion remains unsupported by competent evidence. Accordingly, the Court could not consider the said reconciling item.

A.2 <u>Sales returns of parts</u>
A.3 <u>Off-invoice sales discounts</u>

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152 Exhibits "P-71-a" to "P-71-l", USB.
153 Exhibits "P-99-a", id.
154 Exhibits "P-99-e", id.

Petitioner claims the following sales returns and discounts were deducted from its revenue subject to income tax but not considered in its VAT Returns:[155]

| | |
|---|---|
| Sales returns of parts | ₱3,295,375.28 |
| Off-invoice sales discounts | 21,167,142.87 |
| **Total** | **₱24,462,518.15** |

As ICPA Romano had found, *sales returns of parts* pertain to actual sales returns and allowances during CY 2017 where no output VAT was reversed, as reflected in the journal entries reproduced below:[156]

| | | |
|---|---|---|
| DR | Accounts Receivable (Acct. 06B - P&A) | XX |
| CR | Revenues Parts & Accessories - Dealers Gross (Acct. 23A21A40) | XX |
| CR | A/P-VAT (Acct. 18P01-POVT) | XX |
| To record initial sale | | |
| DR | Revenues Parts & Accessories - Dealers Gross (Acct. 23A21A40) | XX |
| CR | Accounts Receivable (Acct. 06B - P&A) | XX |
| To record the adjustment on sales reversal of parts | | |

However, petitioner only submitted the following: (1) journal vouchers for the reversal of the parts sales[157]; and (2) GL extract for Revenues Parts & Accessories - Dealers Gross (Acct. 23A21A40).[158]

It bears noting that Section 34[159] of the NIRC of 1997, as amended, requires that no deduction from gross income shall be allowed unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records. In this case, the journal vouchers and GL extracts could not be considered as adequate records to substantiate the sales returns since these documents fail to disclose: (1) the nature of the return; (2) the actual return date; (3) specific goods/parts returned; and (4) the identity of the customer making the return. Jurisprudence teaches us that the Court may consider only those supported by credible evidence and **which appear to have been**

155 Exhibits "P-19", "P-21", "P-23" and "P-25", supra at note 144.
156 Exhibit "P-60", Division Docket, Volume III, p. 1122.
157 Exhibit "P-72", USB.
158 Exhibit "P-133", id.
159 **SEC. 34**. *Deductions from Gross Income.*

**genuinely incurred in connection with the trade or business of the taxpayer.**[160]

As to *off-invoice sales discounts,* ICPA Romano observed that this reconciling item represents additional cash discounts granted to dealers on the sale of Everest and EcoSport units, which were not reflected in the corresponding sales invoices. In such cases, petitioner grants its dealers a cash subsidy equivalent to the unclaimed discount and records the same as follows:[161]

| | | |
|---|---|---|
| DR | Accounts Receivable (Acct. 06B - P&A) | XX |
| CR | Revenue – Vehicle Dealer (Acct. 23A01A00) | XX |
| CR | A/P-VAT (Acct. 18P01-POVT) | XX |
| To record initial sale | | |

| | | |
|---|---|---|
| DR | Variable Marketing [W]holesale (Acct. 23A01B21_VRWS) | XX |
| CR | Accounts Payable-Outside -Audited Invoices (Acct. 18A) | XX |
| To record the additional discount granted to the dealer | | |

| | | |
|---|---|---|
| DR | Accounts Payable-Outside -Audited Invoices (Acct. 18A) | XX |
| CR | Cash | XX |
| To record the subsidy provided to dealers equivalent to the amount of cash discount not reflected in the sales invoice on initial sale | | |

To substantiate these transactions, petitioner submitted: (1) journal vouchers[162]; (2) GL extracts for Variable Marketing Wholesale (Acct. 23A01B21_VRWS)[163], which is a contra-revenue account; and (3) credit notes issued to its dealers.[164]

Considering that petitioner has satisfactorily demonstrated the nature of the discounts, identified the specific dealers who benefited therefrom, and established that these were legitimately incurred in the ordinary course of business, the Court holds that the same shall not form part of petitioner's taxable income for income tax purposes.

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160 *H. Tambunting Pawnshop, Inc., v. Commissioner of Internal Revenue*, G.R. No. 173373, 29 July 2013.
161 Exhibit "P-60", Division Docket, Volume III, p. 1123.
162 Exhibit "P-98", USB.
163 Exhibit "P-99-c", id.
164 Exhibits "P-73-a" to "P-73-ab", id.

A.4 Sales discounts
A.5 Foreign exchange revaluations
A.8 Other adjustments
A.9 Harmonized Remuneration Scheme
A.10 Other adjustments subject to VAT
A.11 Unaccounted difference

In this instance, petitioner failed to present any schedule or documentary evidence to substantiate the claimed reconciling items. Bare allegations, without the support of competent proof, cannot be accorded evidentiary weight.[165] The Court, therefore, finds no basis to consider these items, for it is well settled that tax deductions, like tax exemptions, must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and one who claims a deduction must be able to prove by preponderant evidence.[166] Absent such substantiation, the Court is constrained to disregard the same.

A.6 Discount on sales of demo units

As similarly observed by ICPA Romano, the adjustment pertains to the recording of sales discounts granted at the time of sale, which were initially booked as direct deductions from the sales account instead of being reflected in a separate contra-revenue account.[167]

Petitioner avers that this constitutes a negative adjustment, *i.e.*, a reduction from the revenue *per* AITR to arrive at the amount of revenue *per* VAT Returns, emphasizing that while revenues subjected to income tax are reported at gross, those subjected to VAT are reported at net. Accordingly, petitioner maintains that the adjustment bears no effect on its net taxable income, since it merely reclassifies the discount previously deducted from sales to a contra-revenue account. This reclassification, petitioner explains, results in lower net sales *per* VAT Returns because the amounts reflected therein are based on discounted revenues appearing in the sales invoices, in contrast to the gross revenues reported in the AITR.

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165 See *Andrea Mayor and Vergel Romulo v. Lourdes Masangkay y Belen and Leonardo Belen*, G.R. No. 151035, 03 June 2004.
166 See *H. Tambunting Pawnshop, Inc., v. Commissioner of Internal Revenue*, supra at note 160.
167 Exhibit "P-60", Division Docket, Volume III, p. 1124.

To substantiate its claim, petitioner presented journal vouchers showing the recording of the discounts under a contra-revenue account.[168] It likewise submitted GL extracts for Revenue – Vehicle Dealer (Acct. 23A01A00)[169] and Variable Marketing – Wholesale (Acct. 23A01A21)[170], which confirm that (1) the discounts were duly recorded in a separate account, and (2) the revenue remained reported at gross for income tax purposes.

Accordingly, the Court finds the foregoing reconciling item to be proper.

A.7 <u>Subsidy from third parties</u>

ICPA Romano explained that this reconciling item refers to subsidies petition received from third parties in the form of cash in connection with the discounted sale of specific Mustang units. The pertinent accounting entries are shown below:[171]

| | | |
|---|---|---|
| DR | Accounts Receivable (Acct. 06B - P&A) | XX |
| CR | Rev Veh-Var Mktg Retail. (Acct. 23A01A21) | XX |
| CR | A/P-VAT (Acct. 18P01-POVT) | XX |
| To record initial sale | | |

| | | |
|---|---|---|
| DR | Cash (Acct. 08) | XX |
| CR | Rev Veh-Var Mktg Retail. (Acct. 23A01A21) | XX |
| To record receipt of the cash subsidy | | |

| | | |
|---|---|---|
| DR | Rev Veh-Var Mktg Retail. (Acct. 23A01A21) | XX |
| CR | Variable Marketing [W]holesale (Acct. 23A01B21_VRWS) | XX |
| To record the reduction of discount as a result of the subsidy | | |

Petitioner asserts that this constitutes a negative adjustment, arguing that while the subsidy was subjected to income tax, it was not subjected to VAT. The adjustment impacts its taxable income since the reclassification, *i.e.,* reducing the contra-revenue account, effectively increases the recorded sales for income tax purposes. Moreover, because

168 Exhibits "P-74-a" to "P-74-i", USB.
169 Exhibits "P-99-a", id.
170 Exhibits "P-99-d", id.
171 Exhibit "P-60", Division Docket, Volume III, p. 1125.

the sales reflected in the VAT Returns are based on discounted selling prices *per* sales invoices, the VAT computation excludes the subsidy, thereby resulting in lower net sales for VAT purposes.

Section 32[172] of the NIRC of 1997, as amended, provides that gross income means all income from whatever source. Thus, the subsidies petitioner received properly form part of its taxable income subject to income tax, absent any specific exclusion.

Considering that the nature thereof was supported by journal vouchers[173] and GL extracts for Rev Veh-Var Mktg Retail. (Acct. 23A01A21)[174] and Variable Marketing wholesale (Acct. 23A01B21_VRWS), the Court finds petitioner's treatment of the subsidies for income tax purposes to be proper.[175]

*To summarize,* the Court sustains the assessment item – *Income not subjected to income tax*, in the adjusted amount of ₱50,514,495.55, computed as follows:

| | | Amount |
|---|---|---|
| Sales *per* VAT Returns | | ₱45,305,053,909.85 |
| Sales *per* AITR | | 44,174,326,916.00 |
| **Difference** | | **1,130,726,993.85** |
| | | |
| Reconciling items: | | |
| Variance properly accounted for by petitioner before the BIR | 1,089,727,413.65[176] | |
| *Per* Court's examination - | | |
| Off-invoice sales discounts properly deducted *per* AITR but not in deducted in the VAT Returns | 21,167,142.87 | |
| Discount on sales of demo units not reflected under sales in AITR but deducted in petitioner's VAT Returns | (23,579,927.24) | |
| Subsidy from third parties properly subjected to income tax but not declared in petitioner's VAT Returns | (7,102,130.98) | **1,080,212,498.30** |
| **Unreconciled amount** | | **₱50,514,495.55** |

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172 Supra at note 148.
173 Exhibit "P-75", USB.
174 Exhibit "P-99-f", id.
175 Exhibit "P-99-c", id.
176 Annex D of the FDDA, Exhibit "P-61", id.

B. UNNECESSARY FOREIGN ADVERTISING EXPENSE - ₱270,033,065.45

Respondent's audit revealed that petitioner claimed advertising and promotions expenses amounting to ₱270,033,065.45 which were allegedly unsubstantiated or unnecessary, leading to their disallowance for income tax purposes.

The foreign advertising expense can further be broken down as follows:[177]

| | |
|---|---|
| 1. Foreign media companies | ₱112,009,053.21 |
| 2. Non-resident related parties for petitioner's share in regional marketing expenses | 158,024,012.24 |
| **Total** | **₱270,033,065.45** |

ICPA Romano observed that the first category of foreign advertising expenses, *i.e.*, payments to *foreign media companies*, refers to billings from Mindshare Philippines, Inc. (**Mindshare**), a division of WPP Marketing Communications, Inc., which included invoices from foreign media suppliers such as Facebook Ireland Ltd., Google Asia Pacific Pte. Ltd., and Twitter Asia Pacific Pte. Ltd., for digital and online campaigns promoting petitioner's products in the Philippine market. The second category pertains to petitioner's payments to its foreign affiliates for shared marketing materials distributed across the Association of Southeast Asian Nations (**ASEAN**) region, including the Philippines.[178]

The statutory test of deductibility requires three (3) conditions for a business expense to be deductible namely: (1) the expense must be ordinary and necessary; (2) it must be paid or incurred within the taxable year; and (3) it must be paid or incurred in carrying on a trade or business.[179] In addition, not only must the taxpayer meet the statutory test of deductibility, the taxpayer must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same

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177 Exhibit "P-60", Division Docket, Volume III, pp. 1127-1128.

178 Id.

179 *Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. L-26911 and L-26924, 27 January 1981.

will be disallowed.[180] The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction.[181]

Respondent contends that petitioner failed to meet these requirements, arguing that as an importer of Ford vehicles, parts and accessories in the Philippines whose end-customers are limited to local car dealers, petitioner's advertising should be confined to the local market. Hence, respondent deems foreign advertising expenses, including those billed through Ford Services (Thailand) Company Limited (**FST**) and Ford Motor Company (**FMC**), to be unnecessary. Respondent further maintains that the reasonableness of the amounts cannot be verified through the contracts presented, which enumerate services but omit rates, and that several items remain unsubstantiated.

The Court is not persuaded.

In *Atlas Consolidated Mining & Development Corp. v. Commissioner of Internal Revenue*[182], the Supreme Court explained what constitutes "ordinary and necessary", to wit:

> ...
>
> While it is true that there [are] a number of decisions in the United States delving on the interpretation of the terms "ordinary and necessary" as used in the federal tax laws, no adequate or satisfactory definition of those terms is possible. Similarly, this Court has never attempted to define with precision the terms "ordinary and necessary." There are however, certain guiding principles worthy of serious consideration in the proper adjudication of conflicting claims. Ordinarily, **an expense will be considered "necessary" where the expenditure is appropriate and helpful in the development of the taxpayer's business.** It is "ordinary" when it connotes a payment which is **normal in relation to the business of the taxpayer and the surrounding circumstances**. The term "ordinary" does not require that the payments be habitual or normal in the sense that the same taxpayer will have to make them often; the payment may be unique or non-recurring to the particular taxpayer affected.

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180 *Esso Standard Eastern, Inc. (Formerly, Standard-Vacuum Oil Company) v. The Commissioner of Internal Revenue*, G.R. Nos. L-28508-9, 07 July 1989.

181 *Atlas Consolidated Mining & Development Corporation. v. Commissioner of Internal Revenue*, supra at note 179.

182 Supra; Citations omitted and emphasis supplied.

> There is thus no hard and fast rule on the matter. The right to a deduction depends in each case on the particular facts and the relation of the payment to the type of business in which the taxpayer is engaged. The intention of the taxpayer often may be the controlling fact in making the determination. Assuming that the expenditure is ordinary and necessary in the operation of the taxpayer's business, the answer to the question as to whether the expenditure is an allowable deduction as a business expense must be determined from the nature of the expenditure itself, which in turn depends on the extent and permanency of the work accomplished by the expenditure.
>
> ...

As can be gleaned from the foregoing, an expense is "necessary" when it is appropriate and helpful in the development of the taxpayer's business, and "ordinary" when it is normal or usual in light of the taxpayer's operations and the surrounding circumstances. The frequency or recurrence of the expenditure is immaterial; what is decisive is its reasonable connection to and utility for the taxpayer's business.

Measured against this legal yardstick, the identity of the supplier—whether local or foreign—is irrelevant. What matters is the nature and purpose of the services rendered and whether they are integral to petitioner's operations. It must be underscored that modern advertising has evolved beyond traditional media. Nowadays, advertising through media comes in many different forms, from traditional forms, such as broadcast (*i.e.*, television and radio) and print (*i.e.*, newspapers, magazines, signs, and billboards), to new forms, such as websites, apps, emails, podcasts, blogs and social networks or what they call digital advertising.[183] The latter are frequently provided by foreign suppliers.

In the present case, petitioner is primarily engaged in wholesale distribution and importation of automotive vehicles, parts and components and to provide services relating to the same in the Philippines.[184] Moreover, the Statements of Account (**SOAs**)[185] from Mindshare and the corresponding invoices[186] from the foreign media

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183 See Gordon B., et. al., Inefficiencies in Digital Advertising Markets, 85 Journal of Marketing 7 (2021)

184 Exhibits "P-1" and "P-2", supra at note 5.

185 Exhibit "P-77", USB.

186 Id.

suppliers clearly indicate as nature or description that the advertisements were directed toward promoting Ford products within the Philippines. These services, though procured abroad, directly advance petitioner's marketing efforts and strengthen its presence in the Philippine market. Thus, satisfying the statutory test of deductibility

The Court notes, however, that certain advertising expenses amounting to ₱339,697.89 were incurred outside CY 2017 and must therefore be disallowed for income tax purposes:

| Exhibit No. | Foreign Media Invoice Date | Foreign Media Supplier | Foreign Media Invoice No. | Amount in Php |
|---|---|---|---|---|
| P-77-hq | 11/21/2016 | XAXIS ASIA PACIFIC PTE LTD | MA0003082/1 | ₱45,697.89 |
| P-77-hr | 12/31/2016 | TWITTER ASIA PACIFIC PTE LTD | 62069965A | 294,000.00 |
| **Total** | | | | **₱339,697.89** |

As stated, the statutory test of deductibility also requires that, among others, the expense must be paid or incurred within the taxable year.[187] Section 45[188] of the NIRC of 1997, as amended, further provides that "the deductions . . . shall be taken for the taxable year in which paid or accrued or paid or incurred, dependent upon the method of accounting upon the basis of which the net income is computed".[189] Accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions.[190]

In this case, petitioner employs the accrual method of accounting.[191] Revenue Audit Memorandum Order (**RAMO**) No. 01-2000[192] (which governed audit procedures for CY 2017) provides that under the accrual method of accounting, expenses not being claimed as deductions by a taxpayer in the current year when they are incurred cannot be claimed as deduction from income for the succeeding year.[193] Thus, a taxpayer who is authorized to deduct certain

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187 Supra at pp. 34-35.
188 **SEC. 45.** *Period for which Deductions and Credits Taken.*
189 *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, G.R. No. 172231, 12 February 2007.
190 Id.
191 Exhibit "P-58", supra at note 74, p. 116.
192 Updated Handbook on Audit Procedures and Techniques.
193 *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, supra at note 189.

expenses and other allowable deductions for the current year but failed to do so cannot deduct the same for the next year. The accrual method relies upon the taxpayer's right to receive amounts or latter's obligation to pay them, in contrast to actual receipt or payment, which characterizes the *cash method of accounting*.[194] Amounts of income accrue where the right to receive them become fixed, where there is created an enforceable liability. Similarly, liabilities are accrued when fixed and determinable in amount, without regard to indeterminacy merely of time of payment. For a taxpayer using the accrual method, the determinative question is, *when do the facts present themselves in such a manner that the taxpayer must recognize income or expense?*[195]

The accrual of income and expense is permitted when the "All-Events Test" has been met. This Test demands: (1) fixing of a right to income or liability to pay; and (2) the availability of the reasonable accurate determination of such income or liability.[196] Absolute precision is not required; what is essential is that the facts known at year-end are sufficient to reasonably establish the liability.[197] The burden of proving compliance with these requisites rests upon the taxpayer.

In this case, the records show that the questioned expenses were incurred and determinable in CY 2016. As such, these should have been recognized and recorded in 2016, *not* in 2017. Hence, they properly fall under the category of out-of-period expenses and are not deductible from petitioner's CY 2017 gross income for income tax purposes.

As regards the foreign advertising expenses classified as *non-resident related parties for petitioner's share in regional marketing expenses*, the Court finds that petitioner has sufficiently shown their ordinary and necessary character.

The "2017 Cost Certification to Services Agreement" executed between petitioner and FMC[198], together with the corresponding invoices[199], clearly demonstrate that the advertising expenses paid to FMC were incurred in furtherance of petitioner's business operations,

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194 Id.
195 Id.
196 Id.
197 Id.
198 Exhibit "P-81", USB.
199 Exhibit "P-79", id.

specifically to support vehicle launches, business and product strategy development, and customer engagement and experience initiatives. These covered, among others, advertisement production costs, advertising agency fees, dealer training and development, market studies and product communications.

Similarly, under the "2017 Cost Certification to Services Agreement" executed between petitioner and FST[200], the invoices[201] and supporting documentation reveal that the services rendered were directed toward regional marketing support designed to promote petitioner's vehicles and strengthen its brand presence within ASEAN markets. The services included: (1) advertisement production costs, *i.e.*, the creation of materials adaptable for use in local markets such as photographs and videos for brochures, websites, and training modules; (2) advertising agency fees, reflecting the coordination and quality control exercised by the Ford Regional/ASEAN Office over agency activities across the region, including creative development, strategic planning, and research; (3) product and brand communications, encompassing the creation of marketing content for publication in digital and print media; and (4) market studies and consultancy services, covering consumer research, customer satisfaction surveys, and centralized reporting for customer experience management.

From the foregoing, the Court holds that these expenses bear a reasonable relation to petitioner's business operations and are thus ordinary and necessary within the contemplation of law. They are appropriate and helpful in advancing petitioner's commercial objectives and maintaining competitiveness in the automotive market.

Accordingly, the Court sustains petitioner's deduction of the aforesaid foreign advertising expenses as proper and allowable business expenses. Nonetheless, the Court affirms, in part, the disallowance of the out-of-period foreign advertising expenses amounting to ₱339,697.89, these being improperly claimed in a taxable year other than that in which they were incurred.

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200 Exhibit "P-82", id.
201 Exhibit "P-80", id.

In sum, petitioner should be held liable for the remaining basic deficiency income tax in the amount of ₱15,256,257.47, computed as follows:

| | | |
|---|---|---|
| Taxable Income | | ₱67,897,596.00 |
| Add: Discrepancy *per* Investigation | | |
| 1. Undeclared Revenue | ₱1,356,219.86 | |
| 2. Undeclared Source of Revenue - Purchases | 1,305,440.34 | |
| 3. Undeclared Source of Revenue - Importations | 188,257.99 | |
| *4. Income not Subjected to Income Tax - VAT > [AITR]* | *50,514,495.55* | |
| 5. Unsupported Additions to PPE | 3,721,207.46 | |
| 6. Disallowed Depreciation Expense - Unsupported | 3,947,887.38 | |
| *7. Unnecessary Foreign Advertising Expense* | - | |
| *Out-of-period Advertising Expense* | *339,697.89* | 61,373,206.47 |
| Taxable Income *per* Investigation | | 129,270,802.47 |
| Tax Rate | | 30% |
| Income Tax Due | | 38,781,240.74 |
| Less: Tax Credits/Payments | | |
| Prior Year's Excess Credits Other than MCIT | 271,138,903.00 | |
| Add: Creditable Withholding Tax for 2017 | 380,382,132.00 | |
| *Subtotal* | 651,521,035.00 | |
| Less: Deductions from Tax Credits | | |
| Excess Carry-over to Succeeding Period | 609,074,609.64 | |
| Excess MCIT over RCIT | 22,077,146.00 | |
| 8. Unsupported CWT | 735,131.63 | |
| *Subtotal* | 631,886,887.27 | 19,634,147.73 |
| **Basic Deficiency Income tax** | | **₱19,147,093.01** |
| Less: Payments made for | | |
| Undeclared Revenue | 406,865.96 | |
| Undeclared Source of Revenue - Purchases | 391,632.10 | |
| Undeclared Source of Revenue - Importations | 56,477.40 | |
| Unsupported Additions to PPE | 1,116,362.24 | |
| Disallowed Depreciation Expense - Unsupported | 1,184,366.21 | |
| Unsupported CWT | 735,131.63 | 3,890,835.54 |
| **Remaining Basic Deficiency Income Tax** | | **₱15,256,257.47** |

II. DEFICIENCY VALUE-ADDED TAX (VAT) FOR CALENDAR YEAR 2017

Based on the records, petitioner was assessed of deficiency VAT in the amount of ₱148,027,955.63, inclusive of interest, computed as follows:[202]

202 Exhibit "P-36", supra at note 4, p. 659.

| | | |
|---|---|---|
| VATable Sales/ Receipts *per* Return | | ₱44,470,187,069.61 |
| Add: Discrepancy *per* Investigation | | |
| 1. Undeclared Revenue | ₱1,356,219.86 | |
| 2. Undeclared Source of Revenue - Purchases | 1,305,440.34 | |
| 3. Undeclared Source of Revenue - Importations | 188,257.99 | |
| 4. Zero Rated Sales Subject to VAT | 829,750,639.26 | 832,600,557.45 |
| Taxable Income *per* Investigation | | 45,302,787,627.06 |
| Tax Rate | | 12% |
| Output Tax | | 5,436,334,515.25 |
| 5. VAT on Deficiency Excise Tax - Petroleum | | 3,874.51 |
| Total Output Tax | | 5,436,338,389.76 |
| Less: Input Tax Credits | | |
| Allowable Input Tax *per* Return | 5,734,919,626.62 | |
| Less: Carried Over to Succeeding Period | 398,497,178.26 | |
| *Subtotal* | 5,336,422,448.36 | |
| Less: Disallowed Input Tax | | |
| 6. Invalid TIN | 896,209.19 | |
| 7. Unsupported Claim for Input Tax | 105,404.55 | |
| 8. Disallowed Input Tax - Invoicing Violations | 338,448.99 | 5,335,082,385.63 |
| Value Added Tax Due | | 101,256,004.13 |
| Less: Tax Credits/Payments | - | |
| Deficiency VAT | | 101,256,004.13 |
| Add: 12% Interest *per* Annum (01.25.18 - 11.30.21) | | 46,771,951.50 |
| **Total Amount Due** | | **₱148,027,955.63** |

Respondent assessed petitioner of deficiency VAT based essentially on these items, to wit:

| Item | Amount |
|---|---|
| 1. Undeclared Revenue | ₱1,356,219.86 |
| 2. Undeclared Source of Revenue - Purchases | 1,305,440.34 |
| 3. Undeclared Source of Revenue - Importations | 188,257.99 |
| 4. Zero-Rated Sales Subject to VAT | 829,750,639.26 |
| 5. VAT on Deficiency Excise Tax - Petroleum | 3,874.51 |
| 6. Invalid TIN | 896,209.19 |
| 7. Unsupported Claim for Input Tax | 105,404.55 |
| 8. Disallowed Input Tax - Invoicing Violations | 338,448.99 |

Petitioner concedes liability for seven (7) out of the eight (8) assessment items, all of which have been duly settled.[203] Consequently, the controversy has been narrowed to Item No. 4, the sole remaining disputed assessment.

[203] Exhibits "P-41" and "P-42", supra at note 24.

A. ZERO RATED SALES SUBJECT TO VALUE-ADDED TAX - ₱ 829,750,639.26

Respondent's audit revealed that alleged zero-rated sales of vehicles and car parts to Westcoast Automotive Corporation [doing business under the trade name "Ford Subic"][204] (**Westcoast/Ford Subic**), an entity registered with Subic Bay Metropolitan Authority (**SBMA**), should be subject to 12% VAT pursuant to Sections 106[205] and 108[206] of the NIRC of 1997, as amended.

*First*, respondent argues that under RA 7916[207], only "merchandise or goods" used in connection with the registered activity of an ECOZONE enterprise qualify for VAT exemption. The term "merchandise or goods" encompasses raw materials, supplies, equipment, machinery, spare parts and packaging materials intended for use in production within the ECOZONE. Since automobiles are not used in production activities, they cannot be considered "merchandise or goods" entitled to exemption.

*Second*, respondent invokes RMC No. 25-99[208], which clarifies that VAT exemption applies only to the importation of specialized vehicles, such as payloaders and graders, directly related to a registered enterprise's activity. The circular explicitly excludes service vehicles from exemption, as these are not directly connected with the registered enterprise's primary operations. Further, PEZA's policy denies tax incentives for such vehicles due to the absence of an effective monitoring system to ensure their use in registered activities.

Thus, according to respondent, sales of automobiles to Westcoast do not qualify as zero-rated transactions, and are therefore subject to 12% VAT.

On the other hand, petitioner asseverates that sales to Westcoast properly fall under the category of export sales contemplated in Section

204 Exhibits "P-96" and "P-97", USB.

205 **SEC. 106**. *Value-Added Tax on Sale of Goods or Properties.*

206 **SEC. 108.** *Value-Added Tax on the Sale of Services, and Use or Lease of Properties.*

207 Supra at note 36.

208 Supra at note 37.

4.106-5[209] of RR No. 16-2005[210], which recognizes sales to SBMA-registered enterprises as zero-rated transactions, being sales to persons or entities exempt under special laws. It emphasizes that the Subic Bay Freeport Zone (**SBFZ**) is a separate customs territory under Section 12[211] of RA 7227[212], as affirmed in *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[213] (**Toshiba**), where the Supreme Court held that sales from the customs territory to economic zones (**ECOZONEs**) constitute constructive exports under the Cross-Border Doctrine.

Consistent with this, Sections 43(a) and 48 of the Implementing Rules and Regulations (**IRRs**) of RA 7227 declare that articles brought into the SBFZ from the customs territory are deemed exported and therefore zero-rated for VAT purposes. Likewise, RMC No. 50-2007[214] explicitly states that sales from the customs territory to SBFZs are considered export sales subject to 0% VAT.

---

209 **SEC. 4.106-5**. ***Zero-Rated Sales of Goods or Properties.*** — ...
The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

...

(a) ***Export Sales.*** — ...

...

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

***"Considered export sales under Executive Order No. 226"*** shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided*, further, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not. (Underscoring supplied)

210 Consolidated Value-Added Tax Regulations of 2005.

211 **SEC. 12.** *Subic Special Economic Zone.*

212 AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.

213 G.R. No. 150154, 09 August 2005; Citations omitted and emphasis supplied.

214 Tax Treatment of Sale, Barter or Exchange of Goods or Properties or Sale or Exchange of Services Made by Suppliers from the Customs Territory to Registered Freeport Zone Enterprises in the Subic Freeport Zone (SFZ), the Clark Freeport Zone (CFZ), as well as the Poro Point Freeport Zone (PPFZ), and Vice Versa under Sections 12 and 15 of Republic Act No. 7227, as amended by Republic Act No. 9400.

Petitioner's arguments are well-taken.

Section 12 of RA 7227[215], as amended by RA 9400[216], otherwise known as the Bases Conversion and Development Act of 1992, reads as follows:

> ...
>
> SEC. 12. *Subic Special Economic Zone.* — ...
>
> ...
>
> (b) **The Subic Special Economic Zone shall be operated and managed as a <u>separate customs territory</u>** ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines;
>
> (c) The provision of existing laws, rules and regulations to the contrary notwithstanding, **no national and local taxes shall be imposed <u>within the Subic Special Economic Zone</u>**. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone, namely: the City of Olongapo and the municipalities of Subic, San Antonio, San Marcelino and Castillejos of the Province of Zambales; and the municipalities of Morong, Hermosa and Dinalupihan of the Province of Bataan, on the basis of population (50%), land area (25%), and equal sharing (25%).[217]
>
> ...

The IRR[218] of RA 7227 provides:

---

215 Supra at note 212.

216 Supra at note 107.

217 Italics in the original text, emphasis and underscoring supplied.

218 Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone (SSEFZ) and the Subic Bay Metropolitan Authority (SBMA) Under Republic Act No. 7227, otherwise known as the "Bases Conversion and Development Act of 1992."

...

SECTION 3. *Definitions.* — For purposes of these Rules, these terms shall be understood to have the following meanings:

...

g. *SBF Enterprise* — refers to **any business entity or concern within the SBF duly registered with and/or licensed by the SBMA** to operate any lawful economic activity within the SBF.

h. *Certificate of Registration* — **refers to the certificate issued by the SBMA representing the registration of the business entity as an SBF Enterprise.**

...

SECTION 21. *Effect of Issuance of Certificates.* — **Issuance of the Certificate of Registration or Residency to an SBF Enterprise or Resident, respectively, shall entitle and subject the business enterprise or resident to all the benefits and obligations under the Act and these Rules**, and other regulations that may be promulgated by the SBMA, subject to the provisions of Section 5 and 13 hereof.[219]

...

From the foregoing, since the SBFZ is viewed as a separate customs territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the SBFZ are considered exports to a foreign country subject to 0% VAT. By analogy, in the case of *Toshiba,* the Supreme Court elucidated thusly —

...

This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.**

... An ECOZONE or a Special Economic Zone has been described as —

---

219 Italics in the original text, emphasis and underscoring supplied.

> ... [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

> **The Philippine VAT system adheres to the Cross[-]Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) [12%] VAT.[220]

> ...

The Cross-Border Doctrine mandates "that no VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the taxing authority".[221] On the other hand, the Destination Principle requires that "goods and services are taxed only in the country where these are consumed."[222]

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220 Supra at note 213; Citations omitted and emphasis supplied.

221 *Commissioner of Internal Revenue v. Filminera Resources Corporation*, G.R. No. 236325, 16 September 2020; Citations omitted.

222 Id.

Based on the foregoing, in order for a sale of goods and services to SBMA-registered entities within the SBFZ to qualify for VAT zero-rating under Sections 106(A)(2)(a)(5)[223] and 108(B)(3)[224] of the NIRC of 1997, as amended, the following essential elements must be present —

1. The sale was made by a VAT-registered person; and,

2. The sale of goods must be to an SBMA-registered entity; and

3. It must be shown that the goods were consumed, or the services were rendered in the SBFZ.

It is undisputed that petitioner is a VAT-registered entity, which fulfills the *first* essential element.[225]

Relative to the *second* essential element, the sales under consideration are the sales to Westcoast. To prove that Westcoast is duly registered with SBMA, petitioner presented Westcoast's Certificates of Registration and Tax Exemption (**CRTEs**) dated 30 May 2016 and 30 May 2017, covering the period 30 May 2016 to 29 May 2018, which includes the period subject of the present case – thereby satisfying the *second* essential element.

---

223 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* –
(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
...
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) *Export Sales.* - The term '*export sales*' means:
...
(5) Those considered export sales under Executive Order No. 226, otherwise known as the "Omnibus Investments Code of 1987," and other special laws[.]

224 **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –
...
(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
...
(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjected the supply of such services to zero percent (0%) rate[.]

225 Exhibit "P-4", supra at note 6.

Anent the *third* essential element, the Supreme Court, in *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[226] (**2016 Coral Bay**), denied Coral Bay's appeal upon finding that the *locus* of the subject purchases of goods and services was **within the ECOZONE** and that such purchases were destined for consumption therein. Consequently, the transactions should have been zero-rated, and Coral Bay was not entitled to claim a refund for purchases already falling within the ambit of 0% VAT, to wit:

> ...
>
> The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan. Its plant site was specifically located inside the Rio Tuba Export Processing Zone — a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03, which provides[.]
>
> ...

*Apropos* is the recent case of *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[227] (**2025 Coral Bay**), the Supreme Court sustained Coral Bay's appeal, holding this time that Coral Bay had sufficiently established that the goods in question were consumed, and the services rendered, **outside the ECOZONE**, viz:

> ...
>
> **VAT is a tax on consumption.** As such, the [C]ross-[B]order [D]octrine and the destination principle apply. Indeed, the situs of VAT is determined by **where goods are consumed or where services are rendered**.
>
> ...
>
> Applied to the present case, the CTA *En Banc* erred in treating Coral Bay as an absolutely VAT-exempt entity and declaring that its purchase of services outside of the ecozone should likewise be subject to zero-rating.

---

226 G.R. No. 190506, 13 June 2016; Citations omitted.

227 G.R. Nos. 251333-34, 05 March 2025; Citations omitted and emphasis supplied.

> **Having been consumed outside of the ecozone, the cross-border doctrine finds no application**. The same could not have been deemed "exported" to Coral Bay. Having been rendered within the Philippines' customs territory, it is naturally subject to national internal revenue laws such as VAT.
>
> ...

By parity of reasoning, sales to SBMA-registered enterprises are *not* automatically zero-rated. It is still incumbent upon the taxpayer to establish the *locus* of the transaction, *i.e.*, the place of consumption of goods or the rendering of services, is within the SBFZ, which is recognized as a separate customs territory *akin* to an ECOZONE.

In the case at bar, petitioner has satisfactorily discharged this burden. The sales invoices[228] issued to Westcoast explicitly state: (1) the description of the vehicles or parts sold; (2) the dates and destinations of delivery; and (3) the acknowledgment of receipt by Westcoast personnel within the SBFZ. These details unmistakably show that the *locus* of the subject transactions was within the SBFZ.

Accordingly, the Court holds that the *third* essential element of zero-rating under the Cross-Border Doctrine has been duly satisfied, except for specific noted exceptions hereinafter discussed.

ICPA Romano recommended the disallowance of the following items:[229]

| Annex of the Amended ICPA Report | Particulars | Amount |
|---|---|---|
| W | Zero-rated sales of parts to Ford Subic/Westcoast supported by duly signed invoices where the customer signature is dated earlier than the sales invoice date | ₱50,833.54 |
| X | Zero-rated sales of parts to Ford Subic/Westcoast supported by duly signed invoices where the customer signature is not legible | 14,937.26 |
| Y | Zero-rated sales of parts to Ford Subic/Westcoast supported by duly signed invoices where the | 49,578.21 |

228 Exhibits "P-83", "P-84", "P-85", "P-86", "P-87" and "P-88" (inclusive of sub-markings), USB.
229 Exhibit "P-60", Division Docket, Volume III, pp. 1155-1156; *cf.* see p. 1157.

| | | |
|---|---|---|
| | sales invoice date is dated outside of the covered period | |
| Z | Zero-rated sales of vehicles to Ford Subic/Westcoast with no supporting documents | 14,563,489.00 |
| AA | Zero-rated sales of parts to Ford Subic/Westcoast with no supporting documents | 271,679.19 |
| AB | Other income from Ford Subic/Westcoast considered as zero-rated sales with no supporting documents | 165,909.93 |

The Court sustains the disallowance of the foregoing sales, the same having been insufficiently substantiated. Petitioner failed to establish, with preponderant evidence, that the alleged transactions were consumed or rendered within the SBFZ. In several instances, no supporting documents were adduced, invoice dates falling outside CY 2017 or the fact of receipt remained unproven, owing to illegible customer signature.

Nonetheless, as regards the zero-rated sales of parts bearing customer signatures "dated earlier than the corresponding sales invoice", the Court finds that these sales may still be properly considered since the invoices in support thereof were duly dated within CY 2017 and the fact of delivery to the SBFZ was sufficiently shown within the same taxable period.

Moreover, upon further scrutiny of the records, the Court cannot sustain the reconciling item amounting to ₱12,125,044.24. Although ICPA Romano observed that said amount pertained to an "erroneous declaration in the Q4 2017 VAT Return," no adequate explanation was offered beyond a mere schedule showing a variance between the Summary List of Sales (**SLS**) and the VAT Return.[230]

The Court notes that if the said amount were indeed not a sales item, it should have appeared in the reconciliation between the AITR and VAT Returns (given that it was included in the latter). Unfortunately, no such reconciliation exists. Considering this, the Court finds no basis to accord credence to ICPA Romano's finding on this point.

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230 Annex AC, id., pp. 1248-1251.

It bears stressing that this Court is not bound by the findings of the court-commissioned ICPA. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case. It is only persuasive in nature and not conclusive upon the Court. Section 3, Rule 13 of the RRCTA, provides:

> ...
> SEC. 3. *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**[231]
> ...

Thus, while the ICPA is commissioned to assist the Court in determining the merits of a taxpayer's case, its findings and conclusions are not conclusive upon the Court. The Court remains free to either fully or partially adopt, or entirely disregard, the ICPA's findings after conducting its own verification and evaluation of the evidence on record.[232] In other words, the Court will still examine and verify the documents that the ICPA audited or reviewed.

*To summarize,* the Court sustains the assessment item – *Zero Rated Sales Subject to VAT,* in the reduced amount of ₱27,191,351.47, computed as follows:

| | | Amount |
|---|---|---|
| Disallowed zero-sales *per* FDDA | | ₱829,750,639.26 |
| Less: Allowed Reconciling Items | | |
| Duly supported zero-rated sales of vehicles to Ford Subic/Westcoast | 785,244,051.29 | |
| Duly supported zero-rated sales of parts to Ford Subic/Westcoast | 17,086,583.09 | |
| Duly supported zero-rated sales of parts to Ford Subic/Westcoast where the amount of sales is not properly aligned in the zero-rated sales line in the breakdown, but | 177,819.87 | |

231 Italics in the original text, emphasis and underscoring supplied.
232 See *Tullett Prebon (Philippines), Inc. v. Commissioner of Internal Revenue*, G.R. No. 257219 (Formerly UDK No. 16941), 15 July 2024.

| | | |
|---|---|---|
| with "VAT ZERO RATED" stamp on its face | | |
| Zero-rated sales of parts to Ford Subic/Westcoast supported by duly signed invoices where the customer signature is dated earlier than the sales invoice date | 50,833.54 | 802,559,287.79 |
| **Remaining disallowed zero-sales** | | **₱27,191,351.47** |

In fine, petitioner should be held liable for the remaining basic deficiency VAT in the amount of ₱3,262,962.17, computed as follows:

| | | |
|---|---|---|
| VATable Sales/ Receipts *per* Return | | ₱44,470,187,069.61 |
| Add: Discrepancy *per* Investigation | | |
| 1. Undeclared Revenue | ₱1,356,219.86 | |
| 2. Undeclared Source of Revenue - Purchases | 1,305,440.34 | |
| 3. Undeclared Source of Revenue - Importations | 188,257.99 | |
| *4. Zero Rated Sales Subject to VAT* | *27,191,351.47* | *30,041,269.66* |
| Taxable Income *per* Investigation | | 44,500,228,339.27 |
| Tax Rate | | 12% |
| Output Tax | | 5,340,027,400.71 |
| 5. VAT on Deficiency Excise Tax - Petroleum | | 3,874.51 |
| Total Output Tax | | 5,340,031,275.22 |
| Less: Input Tax Credits | | |
| Allowable Input Tax *per* Return | 5,734,919,626.62 | |
| Less: Carried Over to Succeeding Period | 398,497,178.26 | |
| *Subtotal* | 5,336,422,448.36 | |
| Less: Disallowed Input Tax | | |
| 6. Invalid TIN | 896,209.19 | |
| 7. Unsupported Claim for Input Tax | 105,404.55 | |
| 8. Disallowed Input Tax - Invoicing Violations | 338,448.99 | 5,335,082,385.63 |
| **Value Added Tax Due** | | **₱4,948,889.59** |
| Less: Payments made for | | |
| 1. Undeclared Revenue | 162,746.38 | |
| 2. Undeclared Source of Revenue - Purchases | 156,652.84 | |
| 3. Undeclared Source of Revenue - Importations | 22,590.96 | |
| 5. VAT on Deficiency Excise Tax - Petroleum | 3,874.51 | |
| 6. Invalid TIN | 896,209.19 | |
| 7. Unsupported Claim for Input Tax | 105,404.55 | |
| 8. Disallowed Input Tax - Invoicing Violations | 338,448.99 | 1,685,927.42 |
| **Remaining Basic Deficiency VAT** | | **₱3,262,962.17** |

III. DEFICIENCY WITHHOLDING TAX ON COMPENSATION (WTC), EXPANDED WITHHOLDING TAX (EWT), EXCISE TAX (ET) AND COMPROMISE PENALTY FOR CALENDAR YEAR 2017

Petitioner admits liability for WTC, EWT, ET and compromise penalty, which have since been extinguished by voluntary payment.[233]

**As a final note, while this Court must shield taxpayers from unlawful exactions, it equally upholds the government's right to collect what is lawfully due. Taxes, after all, are the very lifeblood that sustains the government.[234] They are the price each citizen pays for the privilege of living in a civilized society, where peace is kept, justice is dispensed and progress is pursued.[235]**

**For its part, the government absolutely bears the reciprocal duty to translate such collections into tangible and intangible benefits, *i.e.*, schools that educate, hospitals that heal, roads that connect and institutions that improve the lives of the people and enhance their moral and material values.**[236]

**WHEREFORE**, premises considered, the Petition for Review filed by petitioner Ford Group Philippines, Inc. is **PARTIALLY GRANTED**. The assessment on deficiency income tax and value-added tax shall be adjusted as a result. Accordingly, petitioner is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amounts of **₱15,256,257.47** and **₱3,262,962.17**, representing basic deficiency income tax and value-added tax, respectively, inclusive of the 25% surcharge, 12% deficiency interest imposed thereon under Sections 248(A)(3), 249(B) of the NIRC of 1997, as amended, respectively, as determined below:

| | Income Tax | VAT | TOTAL |
|---|---|---|---|
| **Basic** | ₱15,256,257.47 | ₱3,262,962.17 | ₱18,519,219.64 |
| **Surcharge (25%)** | 3,814,064.37 | 815,740.54 | 4,629,804.91 |

233 Exhibits "P-44", "P-45", "P-47", "P-48", "P-50", "P-51", "P-53" and "P-54", Division Docket, Volume III, pp. 1445-1454.

234 See *Commissioner of Internal Revenue, v. Stradcom Corporation*, G.R. No. 255520, 21 April 2025; citing *Commissioner of Internal Revenue, v. Algue, Inc., and the Court of Tax Appeals*, G.R. No. L-28896, 17 February 1988.

235 See *Commissioner of Internal Revenue, v. Algue, Inc., and the Court of Tax Appeals*, id.

236 Id.

| | | | |
|---|---|---|---|
| **Deficiency Interest (12%) until 15 December 2021**[237] | | | |
| Income Tax - 4/16/18 to 12/15/21 (₱15,256,257.47 x 12% x 1,340 days/ 365 days) | 6,721,112.88 | - | **6,721,112.88** |
| VAT - 1/26/18 to 12/15/21 (₱3,262,962.17 x 12% x 1,420 days/ 365 days) | - | 1,523,311.65 | **1,523,311.65** |
| ***Total Amount Due as of 15 December 2021*** | **₱25,791,434.72** | **₱5,602,014.36** | **₱31,393,449.08** |

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12% computed from 16 December 2021 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018[238], on said deficiency taxes based the following principal amounts:

| | |
|---|---|
| Income Tax | ₱25,791,434.72 |
| Value-Added Tax | 5,602,014.36 |

**SO ORDERED.**

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

**I CONCUR:**

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

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237 Deadline for payment stated in FDDA.

238 Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law).

## ATTESTATION

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

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice
First Division Acting Chairperson

## CERTIFICATION

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

**MA. BELEN M. RINGPIS-LIBAN**
Acting Presiding Justice