REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TRANSNATIONAL PLANS, INC.,
Petitioner,

CTA Case No. 8291

Members:

- versus-

Castañeda, *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUL 13 2015

3:00 p.m.

x- x

AMENDED DECISION

COTANGCO-MANALASTAS, *J.*:

For resolution are the following:

1. Petitioner's *Motion for Reconsideration [Re: Decision dated February 20, 2015]*[1] filed on March 10, 2015, without respondent's comment despite due notice; and

2. Respondent's *Motion for Partial Reconsideration (of the Decision Promulgated on 20 February 2015)*[2] filed through registered mail on March 10, 2015 and received by the Court on March 23, 2015 with petitioner's *Comment (to Respondent's Motion for Partial Reconsideration)* filed on April 15, 2015.

The parties assail the Decision of this Court dated February 20, 2015, which partially granted the petition, as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessments covering taxable year 2006 for deficiency income tax in the amount of ₱2,737,817.02 and compromise

[1] Docket, pp. 829-871.
[2] Docket, pp. 883-887.

penalties in the amount of ₱132,000.00 shall be **CANCELLED AND WITHDRAWN**. However, the assessments for deficiency VAT, withholding tax on compensation, EWT and DST for the same taxable year shall be **UPHELD WITH MODIFICATIONS**.

Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of ₱12,170,268.00, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Value added tax	₱8,577,964.14	₱2,144,491.04	₱10,722,455.18
Withholding tax on compensation	803,789.33	200,947.33	1,004,736.66
Expanded withholding tax	59,693.82	14,923.46	74,617.28
Documentary stamp tax	294,767.10	73,691.78	368,458.88
Total	**₱9,736,214.39**	**₱2,434,053.61**	**₱12,170,268.00**

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT, withholding tax on compensation, EWT and DST computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

Tax Type	Basic Tax	Deficiency Interest Computed from
Value-added tax		
1st Quarter	₱2,027,456.35	25-Apr-06
2nd Quarter	2,472,369.26	25-Jul-06
3rd Quarter	1,998,169.38	25-Oct-06
4th Quarter	2,079,969.15	25-Jan-07
	8,577,964.14	
Withholding tax on compensation	803,789.33	15-Jan-07
Expanded withholding tax	59,693.82	15-Jan-07
Documentary stamp tax	294,767.10	05-Jan-07

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱12,170,268.00 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from April 15, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Petitioner anchors its motion for reconsideration on the following grounds:

1. The right of respondent to assess petitioner's deficiency value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT) and documentary stamp tax (DST) for taxable year 2006 has already prescribed.

2. The Court acted without and/or in excess of its jurisdiction when it increased the assessment of respondent in her Final Decision on Disputed Assessment (FDDA) to the prejudice of the petitioner.

    i. The Court's jurisdiction is only to review and not to assess or collect.

    ii. The power to assess and collect exclusively belongs to respondent.

    iii. Petitioner's right to due process has been violated.

    iv. Prescription has already set it.

3. There are pieces of evidence proving that petitioner's clients are seafarers whose premium payments should not form part of petitioner's gross receipts subject to VAT.

4. The official receipts evidencing the trust fund contributions should not have been excluded by the Court.

5. The basis of the premium collections of the petitioner should not have been ₱104,642,334.87 as based on the audited financial statements (AFS).

6. The AFS and alphalist prove no deficiency WTC.

7. The EWT is properly alleged and substantiated by the petitioner.

8. The DST is properly alleged and substantiated by the petitioner.

9. Computation of delinquency interest is invalid.

For her part, respondent prays in her motion for partial reconsideration that petitioner be likewise ordered to pay the amount of ₱2,737,817.02 for deficiency income tax and the amount of ₱132,000.00 for compromise penalties for calendar year 2006.

Respondent emphasizes that the net operating loss in the amount of ₱16,308,626.00 was not considered in arriving at the deficiency income tax for taxable year 2006 since the same was carried over in the succeeding three (3) years. Petitioner offered as evidence its AFS for 2009 to prove that the said amount simply expired without being utilized. However, this is contrary to the report stated in page 57 of the AFS wherein its independent auditor stated that as of December 31, 2009, the amount of Net Operating Loss Carry-Over (NOLCO) applied in 2009 from 2006: ₱5,324,519.00 while the amount that expired: ₱10,984,107.00. When the net operating loss is carried over in the succeeding 3 years, whether utilized or not, the same will not be considered during the year of audit.

Moreover, respondent maintains that the compromise penalty was imposed pursuant to Revenue Memorandum Order No. 1-90 amounting to ₱25,000.00 due to the following violations: (1) failure to file list of regular suppliers; (2) failure to file alphalist of income payments not subjected to withholding tax; (3) failure to file Monthly Alphabetical List of Payees (MAP); and (4) failure to maintain subsidiary books as required under Section 113 and Section 223 of the National Internal Revenue Code (NIRC).

In its comment, petitioner stresses that it never had the opportunity to fully utilize its taxable loss for year 2006, amounting to ₱16,308,626.00 as NOLCO; only the amount of ₱5,324,519.00 was utilized in the taxable year 2009, as pointed out by respondent, and the balance amounting to ₱10,984,107.00 expired in the year 2009. However, even considering such utilization, there is still an unutilized 2006 NOLCO amounting to ₱10,984,107.00 which would still cover the alleged taxable income of ₱4,266,710.21 stated in the FDDA of respondent which she has not taken into account. Moreover, the available NOLCO in the aggregate amount of ₱24,175,355.00 pertaining to prior taxable years 2003-2005 which remained unapplied in 2006 is more than enough to offset against the alleged taxable income per audit stated by respondent in the FDDA.

As to the compromise penalty, petitioner emphasizes that no compromise was reached by the parties, therefore, a compromise penalty could not be imputed.

The Court will discuss the parties' arguments in *seriatim.*

Prescription

Petitioner argues that the right of respondent to assess deficiency taxes (VAT, WTC, EWT and DST) against petitioner for taxable year 2006 is already barred by the statute of limitations. The Court is not precluded from resolving the issue of prescription regardless of whether the issue was raised in the petition or not and is in fact mandated to resolve the issue of prescription in accordance with the ruling of the Supreme Court in *Bank of the Philippine Islands vs. Commissioner of Internal Revenue,* G.R. No. 181836, July 9, 2014.

Section 1, Rule 9 of the Rules of Court expressly provides that:

> "Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, **when it appears from** the pleadings or **the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the **action is barred** by prior judgment or **by the statute of limitations, the court shall dismiss the claim.**" (*Emphasis supplied*)

In *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[3], the Supreme Court held that:

> **"If the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense.** In *Heirs of Valientes v. Ramas,* we ruled that the CA may *motu proprio* dismiss the case on the ground of prescription despite failure to raise this ground on appeal. **The court is imbued with sufficient discretion to review**

[3] G.R. No. 181836, July 9, 2014.

> **matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. More so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time.**" (*Emphasis supplied; Citations omitted*)

In view of the foregoing, the Court shall proceed to determine whether the evidence on record show that the right of respondent to assess deficiency taxes has already prescribed.

Section 203 of the NIRC of 1997, as amended, mandates that respondent should make an assessment for deficiency taxes within three (3) years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later, *to wit*:

> "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."

In this connection, the time of filing of the quarterly VAT returns is provided for under Section 114(A) of the NIRC of 1997, as amended, while that of WTC and EWT monthly returns under Section 7 of Revenue Regulations (RR) No. 09-01, as last amended by RR 26-02 and that of DST monthly returns under Section 5 of RR No. 06-01, *to wit*:

> SEC. 114. *Return and Payment of Value-Added Tax.* –
>
> (A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

Section 7. TIME OF FILING OF RETURN. – For purposes of filing returns under the EFPS, the taxpayers classified under the following business industries shall be required to file the Monthly Withholding Tax Returns, except withholding of Value-Added Tax; Monthly VAT Declarations; and Monthly Percentage Tax Returns, on or before the dates prescribed and presented herein-below:

BUSINESS INDUSTRY	*MONTHLY WITHHOLDING TAX RETURNS EXCEPT WITHHOLDING OF VALUE ADDED TAX*	*MONTHLY VAT DECLARATIONS AND MONTHLY PERCENTAGE TAX RETURNS*
Group A x x x Insurance and Pension Funding x x x	• Fifteen (15) days following end of the month	• Twenty five (25) days following end of the month

SECTION 5. *Time for Filing of Documentary Stamp Tax Returns and the Payment of Taxes Due Thereon.* — xxx

(2) For large taxpayers, Section 4(3.6) of Revenue Regulations No. 1-98 is hereby amended to read as follows:

"SECTION 4. *Filing of Returns and Payment of Taxes.—*

xxx xxx xxx

3. *When to File and Pay*

3.6 Documentary Stamp Taxes

Large taxpayers shall pay their documentary stamp taxes within five (5) days after the close of the month when the taxable document was made, signed, issued, accepted or transferred by the filing of the documentary stamp tax returns, through purchase or actual affixture or by imprinting the documentary stamps through a documentary stamp tax metering machine."

Applying the above provisions of law and regulations, the following are the dates pertinent to the subject deficiency tax assessments:

(a) Quarterly Value-Added Tax Returns [BIR Form No. 2550-Q]

Exhibit	Taxable Quarter (2006)	Date of Filing	Last Day to File Return	Last Day of the 3-Year Period to Assess	Date of Receipt of Final Assessment Notice (FAN)[4]
"MM"	**1st**	**April 25, 2006**	**April 25, 2006**	**April 25, 2009**	**October 9, 2009**
"N"	**2nd**	**July 25, 2006**	**July 25, 2006**	**July 25, 2009**	**October 9, 2009**
"O"	3rd	October 23, 2006	October 25, 2006	October 25, 2009	October 9, 2009
"P"	4th	January 25, 2007	January 25, 2007	January 25, 2010	October 9, 2009

(b) Monthly Remittance Returns of Income Taxes Withheld on Compensation [BIR Form No. 1601-C]

(c) Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) [BIR Form No. 1601-E]

(d) Documentary Stamp Tax Declarations/Returns [BIR Form No. 2000]

(d.1) Pre-Need Plans

The Court noted that the corresponding returns for WTC, EWT and DST (pre-need plans) were not presented in evidence. Hence, the Court cannot make a proper ruling on whether the respondent's right to assess petitioner for deficiency WTC, EWT and DST (pre-need plans) has already prescribed.

Although the said returns can be found in the BIR records, the Court cannot consider the same because they were not formally offered in evidence pursuant to Section 34, Rule 132 of the Rules of Court, which provides that "[t]he court shall consider no evidence which has not been formally offered."

(d.2) Bonds, Loan Agreements

Exhibit	Taxable Month (2006)	Date of Filing	Last Day to File Return	Last Day of the 3-Year Period	Date of Receipt of FAN
"Y"	**January**	**February 2, 2006**	**February 6, 2006[5]**	**February 6, 2009**	**October 9, 2009**
"Z"	**February**	**March 6, 2006**	**March 6 , 2006[6]**	**March 6, 2009**	**October 9, 2009**
"AA"	**March**	**April 5, 2006**	**April 5, 2006**	**April 6, 2009[7]**	**October 9, 2009**
"BB"	**April**	**May 4, 2006**	**May 5, 2006**	**May 5, 2009**	**October 9, 2009**
"CC"	**May**	**June 5, 2006**	**June 5, 2006**	**June 5, 2009**	**October 9, 2009**
"DD"	**June**	**July 5, 2006**	**July 5, 2006**	**July 6, 2009[8]**	**October 9, 2009**
"EE"	**July**	**August 4, 2006**	**August 7, 2006[9]**	**August 7, 2009**	**October 9, 2009**
"FF"	**August**	**September 5, 2006**	**September 5, 2006**	**September 7, 2009[10]**	**October 9, 2009**

[4] FAN was dated on September 24, 2009.
[5] February 5, 2006 fell on a Sunday
[6] March 5, 2006 fell on a Sunday.
[7] April 5, 2009 fell on a Sunday.
[8] July 5, 2009 fell on a Sunday.
[9] August 5, 2006 fell on a Saturday.
[10] September 5, 2009 fell on a Saturday.

*	September		October 5, 2006		October 9, 2009
"GG"	October	November 4, 2006	November 6, 2006[11]	November 6, 2009	October 9, 2009
"HH"	November	December 4, 2006	December 5, 2006	December 7, 2009[12]	October 9, 2009
"II"	December	January 4, 2007	January 5, 2007	January 5, 2010	October 9, 2009

*DST return for September 2006 was not presented in evidence.

Based on the foregoing tables, respondent's deficiency assessments on petitioner's VAT for the first and second quarters and DST (for bonds, loan agreements) from January to August of taxable year 2006 had already prescribed.

Increase in Deficiency Assessments

Petitioner points out that the increase of Premium Collections in the total amount of ₱104,007,120.97 (₱104,642,334.87 - ₱635,213.90 representing trust fund contributions) as basis for computing VAT and the additional imposition of 25% surcharge, 20% deficiency interest and 20% delinquency interest on the ₱12,170,268.00 and on the accrued 20% deficiency interest, which are totally absent in respondent's FDDA, is effectively a new assessment for VAT, WTC, EWT and DST for taxable year 2006. It should be emphasized that this is only the first time the petitioner was informed of such increase of the amount of Premium Collections and the additional imposition of surcharge, deficiency interest and delinquency interest.

Petitioner argues that the Court's jurisdiction is only to review and not to assess or collect. The power to assess and collect exclusively belongs to respondent. Republic Act No. 1125, creating the Court of Tax Appeals, did not give it a blanket authority to decide any and all tax disputes. The Court's jurisdiction does not include making assessments against the taxpayer by increasing and making additional impositions, which respondent did not find proper against the taxpayer under the FDDA; and worse, ordering the collection thereof without petitioner having been given the opportunity to assail the same administratively. These unsolicited findings of the Court inevitably violated petitioner's right to due process. To maintain the assailed Decision, the Court will be allowing the collection of taxes against the petitioner who was not given the opportunity to question nor assail the validity of such findings.

[11] November 5, 2006 fell on a Sunday.
[12] December 5, 2009 fell on a Saturday.

At the outset, it bear emphasis that the hearing before the Court of Tax Appeals partakes of a trial *de novo* and the Tax Court is authorized to receive evidence, summon witnesses, and give both parties, the Government and the taxpayer, opportunity to present and argue their sides, so that the true and correct amount of the tax to be collected, may be determined and decided, whether resulting in the increase or reduction of the assessment appealed to it.[13]

However, the Court likewise recognizes the petitioner's right to due process and fair play. The essence of due process is the opportunity to be heard, logically preconditioned on prior notice, before judgment is rendered.[14] Hence, the revision or modification of the assessment made by the Court should not be offensive to the basic rules of fair play, justice and due process.

a. Increase of Premium Collections

The Court does not agree with petitioner's argument that the increase of premium collections resulted in a "new" assessment, thus, petitioner was not given the opportunity to question the validity of such findings.

In her deficiency VAT assessment, respondent arrived at the amount of ₱67,446,873.36 as the "Collection of premiums per VAT O.R.s" which was used as basis for computing the deficiency VAT. However, the Court did not adopt this amount and revised the same to ₱104,642,334.87[15] since this amount was reflected as petitioner's total premium collections in its trial balance and AFS for taxable year 2006.

Courts decide cases on the basis of the evidence presented by the parties. In the assessment of the facts, reason and logic are used.[16] In the instant case, evidence dictates that the petitioner had total premium collections of ₱104,642,334.87, and not the amount of ₱67,446,873.36 as found by the respondent. Thus, it cannot be said that the findings of the Court resulted in a "new" assessment. The

[13] *Collector of Internal Revenue vs. Batangas Transportation Company & Laguna-Tayabas Bus Company*, G.R. No. L-9692, January 6, 1958.
[14] *Republic of the Philippines vs. Caguioa, et al.*, G.R. No. 174385, February 20, 2013.
[15] Further reduced by ₱635,213.90 representing trust fund contributions, thus, only ₱104,007,120.97 was subjected to VAT.
[16] *Manzano vs. Perez, Sr., et al.*, G.R. No. 112485, August 9, 2001.

Court merely determined the true and correct amount of the tax to be collected.

Petitioner correctly pointed out that, citing the cases of *Commissioner of Internal Revenue vs. Reyes*[17], *Kent vs. Micarez*[18], and *Commissioner of Internal Revenue vs. Metrostar Superama, Inc.*[19], a party (like herein petitioner) should be afforded the fullest opportunity to establish the merits of its case before any collection may be made against it, *to wit*:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.

There is no question that the petitioner was informed of the assessment of deficiency taxes, except with regard to the increase of premium collections which is the issue at hand. Notwithstanding that the findings of the Court resulted in the increase of the assessment, the subject matter remains the same as that of the original. Hence, petitioner was afforded the opportunity to present its case. In fact, the Court based its findings on the evidence adduced by the petitioner itself. Thus, the increase of premium collections is valid.

Since prescription had set in, only the premium collections for the third and fourth quarters shall be subject to VAT. Accordingly, petitioner is liable for basic deficiency VAT in the amount of ₱4,078,138.53, as computed below:

	3rd Quarter[20]	**4th Quarter**[21]	**Total**
	(In Philippine Pesos)		
Collection of Premiums	24,130,998.13	24,312,940.15	48,443,938.28
Less: Trust Fund Contributions Properly Supported by VAT ORs	300,219.10	166,951.25	467,170.35

[17] G.R. No. 159694, January 27, 2006.
[18] G.R. No. 185758, March 9, 2011.
[19] G.R. No. 185371, December 8, 2010.
[20] Decision, p. 50.
[21] Decision, p. 50.

Net Premium Collections	23,830,779.03	24,145,988.90	47,976,767.93
Add: Surcharges on Lapsed Plans	928,034.56	754,544.00	1,682,578.56
Processing Fees	79,755.03	108,323.01	188,078.04
Other Income	464,326.39	293,007.53	757,333.92
Commission Income	121,713.95	55,511.95	177,225.90
Total Receipts Subject to VAT	25,424,608.96	25,357,375.39	50,781,984.35
Tax Rate	12%	12%	
Output Tax	3,050,953.08	3,042,885.05	6,093,838.13
Add: Disallowed Input Tax	1,867.89	1,932.26	3,800.15
Less: Input Tax	66,176.73	113,053.30	179,230.03
VAT Due	2,986,644.24	2,931,764.01	5,918,408.25
Less: VAT Paid	988,474.86	851,794.86	1,840,269.72
Basic Deficiency VAT	**1,998,169.38**	**2,079,969.15**	**4,078,138.53**

b. Imposition of Surcharge and Interest

The Court notes that even though the imposition of the 25% surcharge and 20% delinquency interest was not present in the FDDA, still, the imposition of the 20% deficiency interest is present in the FDDA. Hence, petitioner cannot say it is the first time it was informed of the imposition of the 20% deficiency interest. Unfortunately for petitioner, the imposition of the 25% surcharge, 20% deficiency interest and 20% delinquency interest is mandated by law, hence, petitioner cannot escape its payment on the ground that respondent did not impose the same in the FDDA.

The delay in the payment of the deficiency tax within the time prescribed for its payment in the notice of assessment justifies the imposition of a 25% surcharge in consonance with Section 248(A)(3) of the NIRC of 1997, as amended[22]. The payment of the surcharge is mandatory and the Bureau of Internal Revenue (BIR) is not vested with any authority to waive the collection thereof.[23]

On the other hand, the imposition of 20% deficiency interest is mandated pursuant to Section 249(B) of the NIRC of 1997, as amended, while the imposition of 20% delinquency interest is mandated pursuant to Section 249(C) of the NIRC of 1997, as amended.

[22] *Dr. Felisa L. Vda. de San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin vs. Commissioner of Internal Revenue*, G.R. 138485, September 10, 2001.
[23] *Philex Mining Corp. vs. Commissioner of Internal Revenue*, et al., G.R. No. 125704, August 28, 1998.

It is mandatory to collect penalty and interest at the stated rate in case of delinquency. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature — they are compensation to the State for the delay in payment, or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State.[24]

Premium Payments from Seafarers

Petitioner contends that the Court disregarded its claim that its main clients are seafarers for its alleged failure to present proof thereof. However, there are pieces of evidence proving that petitioner's clients are seafarers whose premium payments should not form part of petitioner's gross receipts subject to VAT. Based on the oral testimony of Ms. Ma. Veronica S. Lao Guico (Exhibit "SSS"), she testified that among petitioner's clients are seaman or seafarers. Petitioner also presented its Articles of Incorporation (Exhibit "D") proving that its clients, among others, are seamen or seafarers. These pieces of evidence remained unrebutted as respondent never questioned them at the time of the trial and when the same was formally offered.

However, as found by the Court in the assailed Decision, petitioner failed to adduce evidence in support of its assertion. Well-settled is the rule that tax assessments are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise. Petitioner failed to discharge this burden. The testimony of petitioner's witness and presentation of the Articles of Incorporation are not enough to convince this Court of its allegation that its premium collections were from seafarers not subject to VAT.

Trust Fund Contribution per Official Receipts

According to the assailed Decision, only ₱635,213.90 would be considered as the trust fund contributions of the petitioner based on its official receipts. Petitioner argues that no explanation was provided as to why the petitioner's other

[24] *Republic of the Philippines vs. The Philippine Bank of Commerce*, G.R. No. L-20951, July 31, 1970 and *Philippine Refining Company (now known as "Unilever Philippines, Inc.") vs. Court of Appeals, et al.*, G.R. No. 118794. May 8, 1996.

VAT official receipts were not included in the computation of the trust fund contribution to be excluded from the amount being subjected to VAT. Moreover, assuming *arguendo*, that this Court correctly found that there were discrepancies in connection with the compliance of the petitioner with the invoicing requirements provided by the rules, the same should not be rigidly applied to the point that such rules will obstruct rather than serve the broader interests of justice.

Contrary to petitioner's claim, the assailed Decision provided the reason why only ₱635,213.90 was included in the computation of the trust fund contributions. Quoted below is the pertinent portion of the assailed Decision:

> "Be that as it may, petitioner has to comply with the invoicing requirements as provided under Section 113 of the NIRC of 1997, as amended, thus:
>
> > 'SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
> >
> > xxx xxx xxx
> >
> > (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
> >
> > xxx xxx xxx
> >
> > (d) If the sale involves goods, properties or services **some of which are subject to and some of which are VAT zero-rated or VAT-exempt**, the invoice or **receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components**, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale." *(Emphasis supplied)*
>
> In the instant case, the trust fund contributions which were separately indicated in petitioner's VAT official receipts as "NONVAT (Trust Fund)" only amounted to ₱635,213.90, detailed as follows:"

In other words, trust fund contributions evidenced by VAT official receipts that did not separately indicated the same as "NONVAT" will not be considered as trust fund contributions for violation of the invoicing requirements as provided under Section 113 of the NIRC of 1997, as amended. As found by the Court in the assailed Decision, trust fund contributions which were separately indicated in petitioner's VAT official receipts as "NONVAT (Trust Fund)" only amounted to ₱635,213.90. From the above-quoted provision pertaining to VAT invoicing, compliance therewith is mandatory as the word "shall" is used.

Deficiency WTC

Petitioner argues that there is no need for it to show proof of the nature of the amounts of ₱3,338,758.51 and ₱59,510.00. There can be no deficiency WTC since the AFS and alphalist on which respondent based her claim have an equal and same computation of salaries and wages of ₱6,418,727.00.

The Court does not agree. Assessments are *prima facie* presumed correct and made in good faith. It is the taxpayer and not the BIR who has the duty of proving otherwise.[25] Hence, it is upon petitioner to show proof that the provision for quarterly allowance in the amount of ₱3,338,758.51 and per diems in the amount of ₱59,510.00 paid to petitioner's employees are not subject to withholding tax on compensation. Unfortunately, petitioner failed to do so.

While it is true that the amount of ₱6,418,727.00 salaries and wages shown per petitioner's AFS is the same as that reflected in its alphalist, however, respondent found that there were other forms of compensation reflected in petitioner's AFS which should be subject to WTC, namely, (1) provision for quarterly allowance in the amount of ₱3,338,758.51 and (2) per diems in the amount of ₱59,510.00.

In its letter-reply[26] to the Preliminary Assessment Notice (PAN), petitioner admitted that the provision for quarterly allowance represents actual disbursements paid to employees but alleged that the said account included *de minimis* and other benefits of relatively small value, reimbursements of related company costs and other expenses not subject to income tax on compensation.

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[25] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. Nos. 104151 & 105563, March 10, 1995.

[26] Exhibit "KK", p. 13.

Although under Section 2.78.1(A)(3) and Section 2.78.1(A)(6)(b) of RR No. 02-98, *de minimis* and other benefits of relatively small value, reimbursements of related company costs and other expenses are not subject to WTC, petitioner did not present documentary evidence to establish its assertion that the amount of ₱3,338,758.51 actually pertains to such non-taxable *de minimis* benefits and reimbursements of company costs/expenses. Hence, the findings of respondent are in order.

With reference to the Per Diems in the amount of ₱59,410.00, the same formed part of the ₱233,510.00 Per Diems which petitioner accounted for in its letter-reply[27] to the PAN as follows:

Payment to TPI Directos/Non-employees	₱ 174,100.00
Payment to Employees	59,410.00
Total	**₱233,510.00**

According to petitioner, payments to its directors and non-employees were subjected to expanded withholding tax. However, as regards the payment to employees in the amount of ₱59,410.00, subject of the assessment, petitioner did not present evidence to show that the same is not compensation income[28] subject to WTC under Section 2.78.1 of RR No. 2-98. Thus, respondent's deficiency WTC assessment on this item shall remain.

Deficiency EWT

a. Professional Fees

Petitioner maintains that the account listed as "Administrative and management fees" in the total of ₱545,455.00 are pure reimbursements of costs transactions, which do not partake the nature of an income payment, hence,

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[27] Exhibit "KK", p. 13.

[28] SECTION 2.78.1. *Withholding of Income Tax on Compensation Income.* —

(A) *Compensation Income Defined.* — In general, the term "compensation" means all remuneration for services performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the Code.

The name by which the remuneration for services is designated is immaterial. Thus, salaries, wages, emoluments and honoraria, allowances, commissions (e.g. transportation, representation, entertainment and the like); fees including director's fees, if the director is, at the same time, an employee of the employer/corporation; taxable bonuses and fringe benefits except those which are subject to the fringe benefits tax under Sec. 33 of the Code; taxable pensions and retirement pay; and other income of a similar nature constitute compensation income.

not subject to EWT. Such claim was properly alleged in petitioner's petition for review and respondent did not put the same in issue nor did respondent present allegations or evidence to the contrary, thus, it must necessarily be deemed admitted.

Contrary to petitioner's argument, it has the duty of proving that the said account is not subject to EWT by presenting evidence to support its claim, which it failed to do so. The Court cannot simply rely on petitioner's allegation as basis for the cancellation of this assessment.

b. Rentals

Petitioner stresses that the Court has mentioned that the payments related to transactions to U-Bix Corporation for rentals are properly reflected in the alphalist. As such, the same is evidence of the amount of the transactions between petitioner and the said party, which has not been controverted. Furthermore, the fact that the miscellaneous expenses pertaining to casual or non-regular suppliers of petitioner was never questioned nor put in issue by the respondent, the same is deemed a fact of the case which need not have been supported by proof, thus explaining the lack of documentary evidence pertaining to the same.

To recall, respondent arrived at the deficiency EWT assessment on rentals after comparing the rentals per FS/ITR with those reflected per alphalist, as shown below[29]:

Rentals per FS/ITR	₱ 718,805.05
Rentals per Alphalist	545,838.60
Rentals not subjected to EWT	₱ 172,966.45
Tax Due (5%)	**₱ 8,648.35**

In its protest letter[30], petitioner accounted for the discrepancy in rentals of ₱172,966.45, as follows:

TESI Network Support	₱ 40,000.00
TESI Network Support – Accrual	30,000.00
Payments to U-Bix for rentals of photocopier	13,480.74
Other various accruals of miscellaneous expenses	89,485.71
Total	**₱172,966.45**

[29] Exhibit "R-15", BIR Records, p. 784.
[30] Exhibit "E", p. 18.

As found by this Court in the assailed Decision, only the rentals pertaining to TESI Network Support are exempt from EWT[31].

With regard to the alleged payments to U-BIX for rentals of photocopier, although there were payments relating to U-Bix Corporation reflected in the Alphalist of Payees Subject to Expanded Withholding Tax as of December 31, 2006[32], it cannot be traced therefrom the alleged EWT payment of ₱269.61. Said alphalist merely shows that petitioner had paid EWT in the aggregate amount of ₱1,073.79, consisting of the following:

Withholding Agent	ATC Code	Amount of Income Payment	Tax Rate	Amount of Tax Withheld
U-Bix Corporation	WC160	₱ 19,598.50	2%	₱ 391.97
U-Bix Corporation	WC100	13,636.40	5%	681.82
Total				**₱ 1,073.79**

Petitioner failed to present supporting documents which would show the actual nature of the assessed income payments of ₱13,480.74, broken down below, in order for this Court to ascertain the EWT rate applicable thereto[33]:

Date	Reference No.	Rental
17-May-06	539692	₱ 1,818.18
6-Jul-06	666460	1,818.18
4-Aug-06	666588	2,571.66
7-Sep-06	666782	1,818.18
25-Oct-06	667016	1,818.18
25-Oct-06	667017	1,818.18
11-Dec-06	667249	1,818.18
Total		**₱ 13,480.74**

Moreover, petitioner failed to provide the detailed composition of the income payments of ₱19,598.50 and ₱13,636.40 reflected per alphalist in order for this Court to determine that the assessed income payment of ₱13,480.74 was included therein. Hence, respondent's deficiency EWT assessment on the income payments to U-BIX shall stand.

With regard to the miscellaneous expenses that were not subjected to EWT, again, the petitioner has the burden of proving that these expenses pertain to casual or non-regular suppliers exempt from EWT, which petitioner failed to do so.

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[31] Decision, p. 56.
[32] BIR Records, p. 207.
[33] BIR Records, p. 502.

Deficiency DST

a. DST on Premiums

Petitioner contends that the Court cannot use as basis the amount of ₱104,642,335.00 as the premium collections for the year 2006 considering this is beyond the amount that respondent has already alleged in its FDDA (*i.e.*, ₱103,378,870.77). The basis for this instant case of any alleged deficiency tax should be only that as encompassed in the respondent's assessment, so as not to violate petitioner's right to due process.

As discussed earlier, the increase of premium collections shall be sustained.

In petitioner's case, the Court finds that there is no violation of due process in using ₱104,642,335.00, instead of ₱103,378,870.77, as the reference in determining petitioner's DST liability since said amount was reflected in petitioner's trial balance and AFS for the year 2006 as its premium collections for the year 2006 as compared to the amount of ₱103,378,870.77 which did not tally with the trial balance and AFS of petitioner. Moreover, comparing the deficiency DST assessment (on premiums – pre need plans) of respondent amounting to ₱44,269.37 with the modified assessment of ₱46,741.21 shows that the assessment was not drastically changed.

To reiterate, petitioner failed to prove that, of the total premium collections of ₱104,642,335.00, the amount of ₱46,743,245.00 (₱104,642,335.00 less ₱57,899,090.00) was related to plans issued prior to March 20, 2004 and was already previously subjected to DST. Mere allegation without adducing documentary evidence is not enough. Hence, the assessment was upheld with slight modification.

b. DST on Loan Agreements

Petitioner insists that it has presented its witness Ms. Veronica Lao Guico to testify on the surrounding facts and the basis pertaining to the DST on loan agreements of petitioner. Testimony of the witness in itself is evidence in accordance with the Rules of Court. Furthermore, what was in issue in the said instance was the amount of the DST considering the error of the petitioner's accountant. The issue was not the presence of the loan agreements or the amount of the said agreements.

However, the testimony of petitioner's witness is not enough. Considering that petitioner has the burden of proof to rebut the presumption of correctness of the assessment, then petitioner should present evidence that will convince this Court that its allegation is true. As held in the assailed Decision, petitioner should have presented in evidence the loan agreements because these documents would have proven the veracity of petitioner's claim that the correct tax base for DST on loans was only ₱12,545,224.97 and not ₱62,276,610.00 as reflected in its monthly DST returns.

On account of prescription, petitioner shall be assessed for deficiency DST on bonds & loan agreements for the months of September to December 2006.

Accordingly, petitioner is liable for deficiency DST on bonds and loan agreements in the amount of ₱84,542.29, as computed below:

Taxable Month	Bonds and loan agreements	DST Paid per Return
September	₱ 5,875,130.00	₱ 5,900.00
October	6,788,690.00	6,788.69
November	4,559,570.00	4,559.57
December	4,182,320.00	5,238.00
Total	**₱21,405,710.00**	**₱22,486.26**

Bonds & loans subject to tax	₱ 21,405,710.00
Tax rate	1/200
DST due	₱ 107,028.55
Less: DST paid per return	22,486.26
Basic deficiency DST on bonds & loan agreements	₱ **84,542.29**

To recap, petitioner is liable for basic deficiency DST in the revised total amount of ₱131,283.50 as computed bellows:

Basic Deficiency DST on:	
Premiums – Pre-Need Plans (Decision, p. 60)	₱ 46,741.21
Bonds & loan agreements	84,542.29
Total Basic Deficiency DST	₱ **131,283.50**

NOLCO

In her motion, respondent argues that since petitioner's NOLCO was carried over in the succeeding 3 years, whether utilized or not, the same was not considered in arriving at the deficiency income tax for taxable year 2006.

However, the Court agrees with petitioner that even though ₱5,324,519.00 out of the ₱16,308,626.00 NOLCO for 2006 was utilized in 2009, the balance amounting to ₱10,984,107.00 would still cover the disallowances as recomputed by the Court amounting to P3,641,823.35. Hence, petitioner would still have suffered a net loss of ₱7,342,283.65. Thus, the deficiency income tax assessment for taxable year 2006 was properly cancelled.

Moreover, granting, for the sake of argument, that petitioner actually deducted in full its 2006 net loss as NOLCO in the succeeding years and the said deduction was found not proper as petitioner did not incur a net loss in 2006, the same can only be the subject of assessment in the subsequent year it was claimed as a deduction. Said NOLCO is beyond the scope of the present assessment; it can only be the subject of assessment on the taxable year when it is claimed as a deduction[34].

Compromise Penalties

Respondent insists petitioner should be ordered to pay the compromise penalties in the total amount of ₱132,000.00. However, as discussed in the assailed Decision, a compromise penalty cannot be imposed since no compromise agreement was reached between the parties. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[35]

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration [Re: Decision dated February 20, 2015]* is hereby **PARTIALLY GRANTED** and the Court's Decision dated February 20, 2015 is **MODIFIED**. The cancellation and

[34] *AR Realty Holdings Co., Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8239, April 1, 2014 citing *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 7830, December 11, 2012.

[35] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. and the Court of Tax Appeals*, G.R. No. L-35266, January 21, 1991.

withdrawal of the assessments covering taxable year 2006 for deficiency income tax in the amount of ₱2,737,817.02 and compromise penalties in the amount of ₱132,000.00 is **AFFIRMED**. However, the assessments for deficiency VAT, WTC, EWT and DST for the same taxable year is **UPHELD IN PART**.

Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **₱6,341,131.48**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Value-Added Tax	₱ 4,078,138.53	₱ 1,019,534.63	₱ 5,097,673.16
Withholding Tax On Compensation	803,789.33	200,947.33	1,004,736.66
Expanded Withholding Tax	59,693.82	14,923.46	74,617.28
Documentary Stamp Tax	131,283.50	32,820.88	164,104.38
Total	**₱ 5,072,905.18**	**₱ 1,268,226.30**	**₱ 6,341,131.48**

In addition, petitioner is **ORDERED TO PAY** respondent the following:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT, WTC, EWT and DST computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

Tax Type	Basic Tax	Deficiency Interest Computed from
Value-Added Tax		
3rd Quarter	₱ 1,998,169.38	October 25, 2006
4th Quarter	2,079,969.15	January 25, 2007
	₱ 4,078,138.53	
Withholding Tax On Compensation	803,789.33	January 15, 2007
Expanded Withholding Tax	59,693.82	January 15, 2007
Documentary Stamp Tax	137,183.50	January 5, 2007

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱6,341,131.48 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from April 15, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

Respondent's *Motion for Partial Reconsideration (of the Decision Promulgated on 20 February 2015)* is **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice