REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DONATO C. CRUZ TRADING CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9721

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, ***JJ.***

Promulgated:
MAR 19 2021
1:00 p.m.

x---x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by Donato C. Cruz Trading Corp. (**petitioner/DCTC**) pursuant to Rule 8, Section 3(a)[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the reversal and nullification of respondent Commissioner of Internal

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1 Filed on 23 November 2017, Division Docket, pp. 10-66.

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 [R]evenue 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.

Revenue's **(respondent/CIR's)** Final Decision on Disputed Assessment **(FDDA)** dated 26 November 2012[3], holding petitioner liable for expanded withholding tax **(EWT)** and value-added tax **(VAT)** deficiencies in the aggregate amount of ₱5,518,918.97.

Petitioner is a domestic corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It has its principal office at 158-C, Philsugen Road, Singcang, Bacolod City, Negros Occidental.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue **(BIR)** vested with the authority to carry out the functions and duties of said office, among which, is to decide and grant claims of tax refund and execute and implement tax laws, rules and regulations.

FACTS OF THE CASE

On 07 September 2007, respondent issued Letter of Authority **(LOA)** No. 00074813[4] against petitioner, authorizing the examination of petitioner's books and records for tax deficiencies for taxable year **(TY)** 2006.

On 19 February 2008, Officer in-Charge, Regional Director Rodita B. Galanto[5] **(OIC-RD Galanto)**, revalidated the said LOA citing petitioner's failure to submit complete documents needed for the audit investigation.

On 22 September 2020, respondent issued a Preliminary Assessment Notice[6] **(PAN)** with Details of Discrepancy showing petitioner's liability for deficiency EWT and VAT, and penalties in the total amount of ₱5,425,284.46.

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3 Division Docket, p. 37; BIR Records, p. 600.
4 Exhibit "R-1", BIR Records, p. 153.
5 Division Docket, p. 53; BIR Records, p. 240.
6 Id., pp. 54-56; BIR Records, pp. 285-287.

Thereafter, on 20 January 2009[7], petitioner received a Formal Letter of Demand[8] (**FLD**) and Final Assessment Notices[9] (**FANs**). Subsequently, it also received a First and Second Notice to pay deficiency taxes dated 08 September 2010[10] and 22 October 2010[11], respectively.

On 23 January 2009, petitioner filed its protest against the FLD and FANs.[12] Later, on 21 May 2009[13], the BIR issued revised FANs computing anew petitioner's liabilities at ₱5,518,918.97. Petitioner then filed another protest on 07 June 2009.[14] Nevertheless, on 13 December 2012, it received a Final Decision on Disputed Assessment (**FDDA**) dated 26 November 2012.[15] It then filed a request for reconsideration[16] with respondent who, on 24 October 2017, issued his Final Decision dated 04 October 2017[17], denying petitioner's request.

PROCEEDINGS BEFORE THE COURT

On 23 November 2017, petitioner filed the present petition in its bid to reverse respondent's assessment. On 04 January 2018, the Court issued summons[18] on respondent who filed his Answer[19] thereto on 05 April 2010.

Thereafter on 22 May 2018, the Court issued the Notice of Pre-trial Conference[20] ordering the parties to submit their respective pre-trial briefs (**PTBs**). In compliance therewith, respondent filed his PTB[21] on 01 June 2018 while petitioner filed its own PTB[22] on 04 June 2018.

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7 Petition for Review, id., p. 13.
8 BIR Records, pp. 288-290.
9 Id., pp. 291-294.
10 Petition for Review, Division Docket, p. 58; BIR Records, p. 317.
11 Id., p. 59; BIR Records, p. 320.
12 Id., p. 13; BIR Records, pp. 746-764.
13 Id.; BIR Records, pp. 311-316.
14 Id.; BIR Records, p. 376.
15 Supra at note 3.
16 Petition for Review, Division Docket, p. 14.
17 Id., pp. 38-51.
18 Division Docket, p. 75.
19 Id., pp. 192-204.
20 Id., pp. 216-217.
21 Id., pp. 218-222.
22 Id., pp. 223-228.

On 07 June 2018, the Court ordered the parties to submit their Joint Stipulation of Facts and Issues (**JSFI**) within fifteen (15) days from receipt of such order.[23] The parties then filed their JSFI on 22 June 2018.[24]

Upon the termination of the pre-trial conference, trial proceeded where petitioner presented its sole witness, Ruby Tania C. Cruz (**Cruz**) who testified by way of her judicial affidavit.[25]

On the witness stand, aside from identifying petitioner's exhibits, Cruz testified to her roles as petitioner's authorized representative. She further attested to the lack of authority of a certain Liezel Bullahan (**Bullahan**), petitioner's accounting clerk, to receive notices from the BIR. Particularly, the notice of petitioner's designation (**Notice of Designation**) as a top 10,000 corporation[26] which made it liable to withheld EWT.

On 16 July 2018, petitioner filed its Formal Offer of Evidence[27] (**FOE**). In a Resolution dated 03 October 2018[28], the Court resolved to admit petitioner's Exhibits "P-1", "P-8" and "P-8-a"[29] while Exhibits "P-2" to "P-7"[30] were denied admission for petitioner's failure to present the original or certified true copies thereof.

23 See Order dated 07 June 2018, id., p. 233.
24 Id., pp. 235-238.
25 Exhibit "P-8", id., pp. 113-119 (also marked as Exhibit "P-1").
26 Exhibit "R-7", BIR Records, p. 156.
27 Division Docket, pp. 252-255.
28 Id., pp. 265-266.
29

Exhibit	Title
"P-1"	Secretary's Certificate dated 23 November 2017.
"P-8"	Ruby Tania C. Cruz's Judicial Affidavit.
"P-8-a"	Signature of Ruby Tania C. Cruz in her Judicial Affidavit.

30

Exhibit	Title
"P-2"	Letter of Authority No. 00074813 dated 7 September 2007.
"P-3"	Preliminary Assessment Notice (PAN) dated 22 September 2008.
"P-4"	Formal Letter of Demand (FLD) dated 17 December 2008.
"P-5"	Final Assessment Notice dated 17 December 2017.
"P-6"	Revised Formal Letter of Demand dated 18 May 2009.
"P-7"	Revised Final Assessment Notice dated 18 May 2009.

On 22 October 2018, petitioner moved for a partial reconsideration[31] of the above Resolution stating that the originals of said documents are in the custody of respondent.

In the meantime, respondent proceeded with his presentation of evidence. For his part, respondent presented the sole testimony of Revenue Officer (**RO**) Angelee D. Andaya (**Andaya**) who, likewise, testified by way of her judicial affidavit.[32] She identified respondent's evidence and testified on her participation in the audit investigation conducted against petitioner.

After respondent rested his case but prior to the filing of his FOE[33], he informed the Court *via* an Omnibus Motion[34], that some of the evidence he sought to offer could not be authenticated as they were no longer available (having been disposed of after exceeding the BIR's ten-year retention policy). In said motion, respondent thus prayed that he be allowed to present the testimony of RO Edna T. Posecion (**Posecion**) to prove service of said documents on petitioner.

In a Resolution dated 13 August 2019, the Court granted respondent's Omnibus Motion.[35] During a hearing on 28 October 2019, RO Posecion took the witness stand and testified by way of her judicial affidavit[36], wherein she declared that the Notice of Designation was duly served on petitioner.

When respondent finally filed his FOE[37], the Court admitted all of his exhibits in a Resolution dated 28 November 2019.[38]

Still later, on 07 February 2020[39], petitioner manifested that it is merely adopting the allegations in its Petition for Review in lieu of its memorandum. On the other hand, respondent filed his Memorandum

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31 Id., pp. 271-273.
32 Exhibit "R-16", id., pp. 283-287.
33 Filed on 04 November 2019, id., pp. 395-400.
34 Id., pp. 362-364.
35 Id., pp. 383-386.
36 Exhibit "R-17", id., pp. 371-373.
37 Supra at note 33.
38 Division Docket, pp. 403-404.
39 Id., pp. 415-416.

on 05 March 2020.[40] On 02 June 2020, the Court submitted the case for decision.[41]

ISSUE

The main issue for the Court's resolution is whether petitioner is liable to pay its assessed deficiency EWT for TY 2006.

ARGUMENTS

Petitioner challenges the validity of the LOA on account that it did not bear the BIR's dry seal. It also contends that it did not receive the Notice of their Designation (as a top 10,000 corporation thereby making it responsible for the withholding and remittance of EWT.

Petitioner further maintains that even assuming the receipt of such notice, it would still not be liable for EWT on its income payments to its agricultural suppliers of goods for TY 2006. It anchors its contention on Section 3[42] of Revenue Regulations (**RR**) No. 3-2004[43] which it claimed to have suspended the 1% withholding tax on income payments to suppliers of agricultural products under Section 2.57.2(S)[44] of RR 2-98[45], as amended by RR Nos. 17-2003[46], 30-2003[47] and 1-2004.[48]

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40 Id., pp. 419-430.

41 Id., p. 431.

42 **SEC. 3. SUSPENSION.** - In view of the foregoing, the implementation of the above-quoted Section 2.57.2 (S) of Revenue Regulations Nos. 2-98, as amended, is hereby suspended until further notice.

43 Suspending the implementation of withholding tax on income payments made to suppliers of agricultural products under Section 2.57.2(S) of Revenue Regulations 2-98, as amended by RR 17-2003, further amended by RR 30-2003 and 1-2004.

44 (S) Income payments made to suppliers of agricultural products. — Income payments made to agricultural suppliers such as those, but not limited to, payments made by hotels, restaurants, resorts, caterers, food processors, canneries, supermarkets, livestock, poultry, fish and marine products dealers, hardwares, factories, furniture shops and all other establishments, except for income payments to marginal income earners which, as defined in Revenue Regulations 11-2000 dated December 12, 2000, refer to individuals not otherwise deriving compensation as an employee under an employee-employer relationship, but who are self-employed and deriving gross sales/receipts not exceeding P100,000.00 during any 12-month period. – One percent (1%).

The term "agricultural suppliers" refers to suppliers/sellers of agricultural, forest and marine food and non-food products, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefore. "Livestock" shall include cows, bulls and calves, pigs, sheep, goats and other animals similar thereto. "Poultry" shall include fowls, ducks, geese, turkey and others similar thereto. "Marine products" shall

Petitioner also argues that Revenue Memorandum Circular (**RMC**) No. 44-2007[49] issued in July 2007, which clarifies that payments made to agricultural suppliers by a top 10,000 corporation (such as petitioner), was not covered by the suspension under RR 3-2004 and thus, cannot be applied retroactively in TY 2006.

Furthermore, petitioner claims that RMC 44-2007 is not merely an interpretative rule, thus reinforcing its claim that it cannot be retroactively applied to its alleged tax deficiencies for TY 2006. It particularly relies on this Court's Third Division's ruling in *Kerry Food Ingredients Cebu, Inc. v. CIR*[50] (**Kerry**), which found RMC 44-2007 as not interpretative in nature.

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include fish and crustaceans, such as but not limited to, eels, trout, lobsters, shrimps, prawns, oysters, mussels and clams, shells and other aquatic products.

Meat, fruits, fish, vegetables and other agricultural and marine food products, even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, smoking or stripping, including those using advanced technological means of packaging, such as shrink wrapping in plastics, vacuum packing, tetra-pak and other similar packaging method, shall still be covered by this subsection.

Polished and/or husked rice, corn grits, locally produced raw cane sugar and ordinary, salt shall be considered as agricultural food products.

45 Implementing Republic Act (RA) No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

46 Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes.

47 Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Last Amended by Revenue Regulations No. 17-2003, and Revenue Regulations No. 8-98, as Amended, Providing for the Imposition of Final Withholding Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets by Non-resident Aliens, Increasing the Withholding Tax Rates on Certain Income Payments, Inclusion of Certain Income Payments, Sanctions to be Imposed on Payees Who Refuse the Withholding of Tax on Their Income/Receipts, and for Other Purposes.

48 Amending Further Sec. 2.57.2(S) of Revenue Regulations No. 2-98, as Last Amended By Revenue Regulations No. 30-2003, Exempting Marginal Income Earners From Creditable Withholding Tax on Payments Made By Hotels, Restaurants, Resorts, Caterers, Food Processors, Canneries, Supermarkets, Livestock, Poultry, Fish and Marine Product Dealers, Hardwares, Factories, Furniture Shops, and All Other Establishments.

49 Clarifying the Taxability of Agricultural Suppliers for Withholding Tax Purposes In Respect to Sales Made to Top 10,000 Corporations And to the Government In Relation to Revenue Regulations No. 3-2004 Which Suspended the Implementation of Withholding Tax on Income Payments Made to Suppliers of Agricultural Products under Section 2.57.2(S) of Revenue Regulations (RR) No. 2-98, as Amended.

50 CTA Case No. 8593, 09 February 2016.

Respondent, on the other hand, maintains the validity of the assessment and that the subject notice was duly sent by the BIR to petitioner. Respondent also contends that the suspension of the implementation of Section 2.57.2(S) of RR 2-98, as amended, under RR 3-2004 does not carry with it the suspension of petitioner's obligation to withhold as a top 10,000 (now 20,000, pursuant to RR 14-2008[51]) corporation. Respondent also avers that RMC 44-2007 is a mere interpretative regulation that is meant to clarify or explain an existing regulation.

RULING OF THE COURT

After a careful study of the records of the case and the parties' contrasting arguments, the Court finds no merit in the petition.[52]

THE LETTER OF AUTHORITY (LOA) IS VALID.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[53], the Supreme Court, citing Revenue Audit Memorandum Order (**RAMO**) No. 2-95[54], defines a LOA as follows:

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51 Amending Further Section 2.57.2(M) of Revenue Regulations No. 2-98, as Amended, Increasing the Coverage of Withholding Tax Agents Required to Withhold 1% from Regular Suppliers of Goods and 2% from Regular Suppliers of Services from the Top 10,000 Private Corporations to Top 20,000 Private Corporations.

52 The petition was timely filed based on the following pertinent dates:

Date	Action
21 May 2009	Petitioner received the revised FLD with Assessment Notices dated 17 December 2008 (revised as of 18 May 2009).
07 June 2009	Petitioner filed a protest letter addressed to the Regional Director of Revenue Region No. 12 for a request for reconsideration.
13 December 2012	Petitioner received the FDDA issued by Regional Director Perfecto Aranas.
09 January 2013	Petitioner filed a Request for Reconsideration of the FDDA before the CIR.
24 October 2017	Petitioner received the Final Decision of the CIR dated 04 October 2017.

Petitioner timely filed an appeal with this Court on 23 November 2017, within thirty (30) days from receipt of the CIRs adverse decision.

53 813 Phil. 622 (2017); Citation omitted, emphasis and italics in the original text and supplied.

54 Updated Handbook on Audit Procedures and Techniques.

...

The LOA gives **notice to the taxpayer that it is under investigation** for possible deficiency tax assessment; at the same time it **authorizes or empowers a designated revenue officer** to examine, verify, and scrutinize a taxpayer's books and records, in relation to **internal revenue tax liabilities for a *particular period*.**

...

Additionally, RAMO 1-00[55] provides:

...

2. *Serving of Letter of Authority*

...

2.3 A Letter of Authority **must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void** unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on ____________" on the face of the copy of the Letter of Authority issued.[56]

...

As can be gleaned from the foregoing, the following are the requisites of a valid LOA:

...

1) It must be issued by the proper approving official;
2) It must contain the name/s of the designated revenue officer/s, who is/are authorized to examine and scrutinize the taxpayer's books and records;
3) It must cover a particular period, e.g., one (1) taxable year; and,
4) It must be served to the taxpayer within thirty (30) days from its date of issue.

...

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55 Updated Handbook on Audit Procedures and Techniques Volume I (Revision – Year 2000).
56 Emphasis supplied.

In the instant case, a perusal of the LOA would show that it is compliant with all of the foregoing requisites.

First, the LOA was issued and signed by the RD, who is duly authorized to issue LOAs under Section 10[57] of the NIRC of 1997, as amended. *Second,* the LOA specifically named the ROs authorized to examine petitioner's books of accounts and other accounting records. *Third,* the LOA specified the period covered by the authority of the ROs to examine, that is, from 01 January 2006 to 31 December 2006. *Lastly,* the LOA was served on 10 September 2007, which is three (3) days from the LOA's date of issuance, *i.e.*, on 07 September 2007.

Even in the absence of the BIR's dry seal, LOA No. 00074813 remains a valid authority issued to the ROs to examine the books of accounts and other accounting records of petitioner. Nowhere in RAMO 1-00 and in existing jurisprudence is there any mention of a requirement that the LOA must bear a dry seal to be valid.

In insisting that the lack of the BIR's dry seal would invalidate the LOA, petitioner quotes the following portion of the LOA:

> ...
>
> ... This Letter of Authority becomes void if it contains erasures, or if not served to the taxpayer within 30 days from the date hereof, or if dry seal of BIR office is not present.
>
> ...

Although the LOA indeed reflects the above declaration, it could not be doubted that the RD himself had signed it (and it was revalidated in accordance with RAMO 1-00[58] by the OIC-RD). The LOA's validity is thus beyond question.

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[57] Sec. 10. *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

...

(c) Issue Letters of authority for the examination of taxpayers within the region[.]

...

[58] Supra at note 55.

Assuming for the sake of argument that the BIR's dry seal is salient in the LOA's validity, the Court finds that the BIR's seal conspicuously printed and placed beside the RD's signature is sufficient (to insure that the same was issued with the RD's authority).

PETITIONER WAS VALIDLY NOTIFIED THAT IT IS ONE OF THE TOP 10,000 CORPORATIONS FOR EXPANDED WITHHOLDING TAX (EWT) PURPOSES.

Petitioner argues that Section 2.57.2(M) of RR 2-98, as amended, may not be imposed upon it for the reason that it was not properly notified of its designation as a top 10,000 (now top 20,000) corporation. According to petitioner, the service of the subject notice upon Bullahan is invalid.

We disagree.

Section 2.57.2(M) of RR 2-98, as amended by RR 17-2003[59] provides, to wit:

> ...
>
> **Sec. 2.57.2. *Income payments subject to creditable withholding tax and rates prescribed thereon.*** — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> ...
>
> **(M) Income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax.** — Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines

[59] Supra at note 46.

Supplier of goods — One percent (1%)

Supplier of services — Two percent (2%)

Top ten thousand (10,000) private corporations shall include a corporate taxpayer who has been **determined and notified by the Bureau of Internal Revenue (BIR) as having satisfied any of the following criteria**:

...

A corporation shall not be considered a withholding agent for purposes of this Section, unless such corporation has been determined and duly notified, in writing, by the Commissioner that it has been selected as one of the top ten thousand (10,000) private corporations.[60]

...

Based on the afore-quoted provision, it is indispensable that due notice be given to the corporate taxpayer as satisfactory proof that it belongs to the top 10,000 private corporations to warrant its requirement of withholding from its income payments.

In contesting its supposed designation as among the top 10,000 corporations, petitioner insisted that Bullahan was without authority to receive the Notice of Designation pursuant to Section 11, Rule 14 of the 1997 Rules of Court (**ROC**), to wit:

...

Rule 14. Summons.

...

Sec. 11. *Service upon domestic private juridical entity.* - When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

...

We find petitioner's reliance thereon misplaced. *First*, the foregoing rule only applies to service of summons by the courts.

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60 Emphasis supplied.

Second, petitioner denies the receipt *not* of a summons but of a mere notice of its designation as one of the top 10,000 corporations.

Moreover, it is noteworthy that not once did petitioner allege in its protest or in its appeal with this Court that Bullahan did not inform its management of the said notice. Petitioner merely disputes Bullahan's authority to receive such notices from the BIR, as attested to by Cruz in her testimony[61], to wit:

> ...
> 24. Q: You mentioned that the basis of the BIR's findings is the Petitioner's alleged failure to withhold as one of the top 10,000 corporations. Why didn't Petitioner withhold taxes for certain payments as one of the top 10,000 corporations?
>
> A: **Before 2006, Petitioner was not aware that it is included as one of the top 10,000 corporations**. Therefore, the company could not have known that it is required to withhold taxes on certain payments as one of the top 10,000 corporations. Moreover, Petitioner's alleged failure to withhold taxes pertain to payments made to supplier of agricultural products which are considered exempted from withholding taxes thereon pursuant to Sec. 3 of RR No. 3-2004.
> ...
>
> 26. Q: You mentioned that Petitioner was not aware of its inclusion as one of the top 10,000 corporations. What made you say this?
>
> A: Because the company's **authorized representatives never actually received** the notice of designation as withholding agent issued by the BIR. Specifically, the Notice of Designation as Withholding Agent dated 17 February 2004 was only **received by a certain Liezel C. Bullahan, who, despite being an employee of the company, is not authorized to receive such important notices**. Thus, the company **was never validly informed** of its constitution as such.
>
> 27. Q: Who is **Liezel C. Bullahan**?
>
> A: She used to work for the company as an **accounting clerk.**[62]
> ...

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61 Exhibit "P-1", Division Docket, pp. 117-118.
62 Emphasis supplied.

Despite the issues raised regarding Bullahan's authority, Section 3 (m), (q) and (v) Rule 131 of the ROC, provide:

> ...
>
> **Sec. 3.** *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> ...
>
> (m) That official duty has been regularly performed;
>
> ...
>
> (q) That the ordinary course of business has been followed;
>
> ...
>
> (v) That a letter duly directed and mailed was received in the regular course of the mail[.]
>
> ...

Based on the foregoing, it may be presumed that a letter duly sent by the BIR to the taxpayer is received by the latter in the ordinary course of mail. The records show that the subject notice was personally sent to petitioner at its registered address in Brgy. Singcang, Bacolod City and, as admitted by petitioner's own witness, one of its employees received the same. Conversely put, petitioner's argument that it was not aware of the notice sent by the BIR in 2006 is self-serving. Likewise, for its failure to proffer contrary evidence, the presumptions of regularity in the BIR's performance of duty and that the Notice of Designation was received in the ordinary course of mail stand.

PETITIONER IS OBLIGED TO WITHHOLD AS A DULY NOTIFIED TOP 10,000 PRIVATE CORPORATION.

Section 57(B) of the NIRC of 1997, as amended, provides:

> ...
>
> **Sec. 57.** *Withholding of Tax at Source.* —
>
> ...

> (B) *Withholding of Creditable Tax at Source.* — **The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law**, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.[63]
>
> ...

Anent the foregoing, the Secretary of Finance (**SOF**) issued RR 2-98 and further amended the same by issuing RR 17-2003. Section 2.57.2(M) and (S) of RR 2-98, as amended by RR 17-2003, provides:

> ...
>
> Sec. 2.57.2. ***Income payments subject to creditable withholding tax and rates prescribed thereon.*** — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> ...
>
> (M) **Income payments made by the top ten thousand (10,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax.** — Income payments made by any of the top ten thousand (10,000) private corporations, as determined by the Commissioner, to their local/resident supplier of goods and local/resident supplier of services, including non-resident alien engaged in trade or business in the Philippines.
>
> Supplier of goods — One percent (1%)
>
> Supplier of services — Two percent (2%)
>
> ...
>
> (S) **Income payments made to suppliers of agricultural products.** — Income payments made to regular agricultural suppliers such as those, but not limited to, payments made by hotels, restaurants, resorts, caterers, food processors, canneries, supermarket, livestock, poultry, fish and marine food products dealers and all other establishments, except for income payments to

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63 Emphasis supplied.

casual agricultural suppliers where the annual gross purchases therefrom do not exceed P20,000 — One Percent (1%).

The term '**regular agricultural suppliers**' refers to suppliers with whom the taxpayer has transacted at least six (6) transactions, regardless of amount per transaction, either in the previous or current year. The term '**casual agricultural supplier**' refers to suppliers who did not qualify as regular agricultural supplier as defined in the preceding statement.

The term '**agricultural suppliers**' refers to suppliers/sellers of agricultural and marine food products, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor. '**Livestock**' shall include cows, bulls and calves, pigs, sheep, goats and other animals similar thereto. '**Poultry**' shall include fowls, ducks, geese, turkey and others similar thereto. '**Marine food products**' shall include fish and crustaceans, such as but not limited to, eels, trout, lobsters, shrimps, prawns, oysters, mussels and clams.[64]

...

In relation thereto, the SOF suspended Section 2.57.2(S) of RR 2-98 by issuing RR 3-2004, to wit:

...

SEC. 3. SUSPENSION. — In view of the foregoing, the implementation of the above-quoted Section 2.57.2 (S) of Revenue Regulations No. 2-98, as amended, is **hereby suspended** until further notice.[65]

...

As it stands, RR 3-2004 rendered temporarily inoperative Section 2.57.2(S) of RR 2-98, as amended. In herein case, considering that petitioner is engaged in the business of selling fertilizer/feeds products[66], prior to the effectivity of RR 3-2004, its payments to regular agricultural suppliers fall under Section 2.57.2(S) of RR 2-98, as amended, and are subject to 1% EWT. This is due to the fact that the payees are regular agricultural suppliers and such payees are specifically mentioned under Section 2.57.2(S) of RR 2-98 as amended, regardless of the payor's taxpayer type. In addition, Section 2.57.2(M)

64 Emphasis in the original text.
65 Emphasis supplied.
66 BIR Records, p. 143.

of RR 2-98, as amended, mentions that the withholding tax rates for top 10,000 corporations (*i.e.*, 1% for payments for goods and 2% for payments for services) shall apply only if there are **no other tax rates** provided in the Regulations which is not the case for payments made to regular agricultural suppliers. However, upon the effectivity of RR 3-2004 (*i.e.*, 01 March 2004) which temporarily rendered inoperative the provision that specifically mentions regular agricultural suppliers as another category for EWT purposes, petitioner, duly notified as one of the top 10,000 corporations, is thus obliged to subject its income payments to regular suppliers to 1% or 2%, as applicable, under Section 2.57.2(M) of RR 2-98, as amended.

RMC 44-2007 IS AN INTERPRETATIVE REGULATION.

This Court is also unconvinced of petitioner's argument that RMC 44-2007 is not an interpretative regulation and the same cannot be applied retroactively.

When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself already provides. On the other hand, when the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed before that new issuance is given the force and effect of law.[67]

Verily, in *Republic of the Philippines, represented by the Bureau of Food and Drugs (now Food and Drug Administration) v. Drugmaker's Laboratories, Inc., et al.*[68], the Supreme Court held that Administrative Order (**AO**) No. 67, an administrative regulation issued by the Department of Health (**DOH**), and BFAD Circular Nos. 1 and 8, issued by the Food and Drug Administration (**FDA**), were all

[67] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, 453 Phil. 1043 (2003).
[68] 728 Phil. 480 (2014); Citations omitted, emphasis in the original text, underscoring and emphasis supplied.

valid issuances of administrative agencies tasked to implement the law. It discussed the nature and function of interpretative rules, to wit:

> ...
>
> Administrative agencies may exercise quasi-legislative or rule-making powers only if there exists a law which delegates these powers to them. Accordingly, the rules so promulgated must be within the confines of the granting statute and must involve no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of the policy set out in the law itself, so as to conform with the doctrine of separation of powers and, as an adjunct, the doctrine of non-delegability of legislative power.
>
> An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. **Legislative rules** are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. <u>Meanwhile, **interpretative rules** are intended to **interpret, clarify or explain existing statutory regulations** under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules</u>. Finally, **contingent rules** are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.
>
> <u>In general, an administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the "Administrative Code of 1987," on prior notice, hearing, and publication in order to be valid and binding,</u> **<u>except when the same is merely an interpretative rule. This is because "[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed.</u>** When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a

> chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law."
>
> ...

Moreover, in *Chevron Philippines, Inc. (Formerly Caltex Philippines, Inc.) v. Bases Conversion Development Authority and Clark Development Corporation*[69], the Supreme Court has declared that administrative issuances, such as RMC 44-2007, to have the force and effect of law and enjoy the presumption of validity and constitutionality, to wit:

> ...
>
> **Administrative issuances have the force and effect of law.** They benefit from the **same presumption of validity and constitutionality enjoyed by statutes.** These two precepts place a heavy burden upon any party assailing governmental regulations. Petitioner's plain **allegations are simply not enough to overcome the presumption of validity and reasonableness of the subject imposition.**
>
> ...

A careful perusal of RMC 44-2007 issued on 06 July 2007 for the purpose of *"Clarifying the Taxability of Agricultural Suppliers for Withholding Tax Purposes in Respect to Sales Made to Top 10,000 Corporations And to the Government in Relation to Revenue Regulations No. 3-2004 Which Suspended the Implementation of Withholding Tax on Income Payments Made to Suppliers of Agricultural Products Under Section 2.57.2(S) of Revenue Regulations (RR) No. 2-98, as Amended"* would show that the circular merely reiterates and clarifies the effect of RR 3-2004, *i.e.*, the suspension of the implementation of Section 2.57.2(S) of RR 2-98, as amended.

RMC 44-2007 further reiterates that the liability of withholding agents falling under Section 2.57.2(M) of RR 2-98, as amended, or any other provision for that matter is not affected by RR 3-2004. Moreover, it bears emphasis that the preface of the subject circular specifically states that it was intended *"to clarify the position of the Bureau on this issue"*, to wit:

[69] 645 Phil. 84 (2010); Citations omitted and emphasis supplied.

...

BACKGROUND:

In Year 2003, certain amendatory provisions were introduced by Revenue Regulations 17-2003 to Revenue Regulations No. 2-98, which impacted the taxability of agricultural suppliers for withholding tax purposes. These amendatory provisions are as follows:

...

Consequently, in Year 2004, RR 3-2004 was issued suspending the implementation of the provision under Sec. 2.57.2(S) which is the general proviso relating to the imposition of withholding tax on income payments made to agricultural suppliers. Apparently, on the ground of such suspension made, agricultural suppliers desisted from being withheld tax **even if their income payments are derived from payors who happen to be covered by Sec. 2.57.2 (M) and (N) respectively, citing the suspension made by RR3-2004 as their ground for exemption.**

Thus, **this Circular is being issued in order to clarify the position of the Bureau on this issue.**[70]

...

Clearly, when an administrative agency renders an opinion by means of a circular or memorandum, it merely interprets a pre-existing law.[71] RMC 44-2007, therefore, was issued merely to construe the existing provisions of the NIRC of 1997, as amended, in relation to the various types of withholding tax at source. The Circular was not issued or intended to impose additional tax burdens not otherwise found in the law nor in existing regulations.

Although petitioner invokes this Court's Third Division's previous ruling in *Kerry*, it must be stated that the rulings of this Court either acting through one of its divisions or sitting *en banc* are never binding precedents. By the doctrine of *stare decisis*, only decisions of the Supreme Court are controlling. The Supreme Court in *United Coconut Planters Bank v. Spouses Uy*[72] explains, thus:

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70 Emphasis supplied.

71 See *La Suerte Cigar and Cigarette Factory v. Court of Appeals, et al.*, 746 Phil. 433 (2014).

72 *United Coconut Planters Bank v. Spouses Uy*, 823 Phil. 284 (2018).

> ...
>
> ...It is true regardless whether the decisions of the lower courts are logically or legally sound as only decisions issued by this Court become part of the legal system. At the most, decisions of lower courts only have a persuasive effect. Thus, respondents are correct in contesting the application of the doctrine of stare decisis when the CA relied on decisions it had issued.
>
> ...

Given the Court's finding that the BIR's assessment of petitioner is valid, We shall then proceed to determine the extent of the latter's tax liability.

INTEREST MUST BE IMPOSED ON UNDISPUTED ASSESSMENT ITEMS.

Petitioner paid the total amount of ₱33,113.37, as evidenced by the Payment Form (BIR Form No. 0605)[73] and the Metrobank Deposit Slip for Tax Payments[74], for the basic deficiency EWT on the following assessed income payments:

	Income Payment	EWT Rate	EWT Due
Food & Beverage	711,162.37	1%	7,111.62
Kitchen Fuel	10,867.60	1%	108.68
Kitchen Supplies	14,697.78	1%	146.98
Guest Supplies	24,656.38	1%	246.56
Housekeeping Supplies	18,844.50	1%	188.45
Newspaper and Cable	33,259.84	1%	332.60
Banquet Supplies/Expense	50,438.95	1%	504.39
Light & Water	492,472.10	2%	9,849.44
Professional Fees, Legal & Audit	97,151.71	10%	9,715.17
Security Services	711,956.39	2%	14,239.13
Basic Deficiency EWT			42,443.02
Less: Payments *per* filed EWT returns			(9,329.65)
Basic Deficiency EWT			33,113.37

However, petitioner did not pay the related interest.

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[73] BIR Records, p. 736.

[74] Id., p. 737.

Section 249(A), (B), and (C)(3) of the NIRC of 1997, as amended, state:

> ...
>
> **Sec. 249.** *Interest.* -
>
> ***(A) In General.*** - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by the rules and regulations, **from date prescribed for payment until the amount is fully paid.**
>
> *(B) Deficiency Interest.* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the **date prescribed for its payment until the full payment thereof.**
>
> *(C) Delinquency Interest.* - **In case of failure to pay:**
>
> ...
>
> (3) **A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner**, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.[75]
>
> ...

In *Philippine Refining Company (now known as "Unilever Philippines [PRC], Inc.") v. Court of Appeals, et al.*[76], the Supreme Court held:

> ...
>
> **As correctly pointed out by the Solicitor General, the deficiency tax assessment in this case, which was the subject of the demand letter of respondent Commissioner dated April 11, 1989, should have been paid within thirty (30) days from receipt thereof. By reason of petitioner's default thereon, the delinquency penalties of 25% surcharge and interest of 20% accrued** from April 11, 1989. The fact that petitioner appealed the assessment to the CTA and that the same was modified does not relieve petitioner of the penalties incident to delinquency. The

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75 Emphasis supplied.

76 326 Phil. 680 (1996); Citations omitted and emphasis supplied.

> reduced amount of P237,381.25 is but a part of the original assessment of P1,892,584.00.
>
> Our attention has also been called to two of our previous rulings and these we set out here for the benefit of petitioner and whosoever may be minded to take the same stance it has adopted in this case. **Tax laws imposing penalties for delinquencies, so we have long held, are intended to hasten tax payments by punishing evasions or neglect of duty in respect thereof. If penalties could be condoned for flimsy reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the Government and its multifarious activities will be adversely affected.**
>
> **We have likewise explained that it is mandatory to collect penalty and interest at the stated rate in case of delinquency. The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government.** Unquestionably, petitioner chose to turn a deaf ear to these injunctions.
>
> ...

From the afore-cited provisions, it is clear that both the 20% deficiency and delinquency interests are imposable when there is a failure to pay a deficiency tax within the time prescribed for its payment.

In the instant case, petitioner paid the basic deficiency EWT on the undisputed income payments on 09 January 2009[77], which was way beyond the last day prescribed for the remittance of EWT on the 2006 income payments, *i.e.*, on 15 January 2007.[78] Since petitioner failed to pay the deficiency interest on the undisputed portions of the assessment, the imposition of the 20% delinquency interest is also proper. However, the 25% surcharge is unwarranted because the subject undisputed assessment items were paid within the period prescribed in the notice of assessment (attached to the FLD), *i.e.*, on 29 January 2009.[79]

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77 BIR Records, pp. 736-737.

78 Section 2.58(A)(2), RR 2-98, as amended by RR 17-2003.

79 BIR Records, p. 512.

INTEREST AND SURCHARGE MUST BE IMPOSED ON LATE PAYMENTS.

Respondent assessed petitioner interest and surcharge on the amounts declared in the Withholding Tax on Wages (**WTW**) Returns (BIR Form No. 1601-C), EWT Returns (BIR Form No. 1601-E), and VAT Declarations (BIR Form No. 2550-M) and Returns (BIR Form No. 2550-Q) that were belatedly paid, to wit:

Month	Due Date	Date Paid	Tax Paid	Surcharge	Interest	Total
Withholding Tax on Wages						
March	April 10, 2006	April 11, 2006	11,266.58	2,816.64	6.20	2,822.84
June	July 10, 2006	July 11, 2006	10,812.82	2,703.20	5.95	2,709.15
August	September 10, 2006	September 12, 2006	12,567.46	3,141.87	13.82	3,155.69
November	December 10, 2006	December 21, 2006	12,864.52	3,216.13	77.57	3,293.70
Subtotal				*11,877.84*	*103.54*	*11,981.38*
Expanded Withholding Tax						
March	April 10, 2006	April 11, 2006	681.90	170.48	0.38	170.86
June	July 10, 2006	July 11, 2006	680.44	170.11	0.37	170.48
August	September 10, 2006	September 12, 2006	662.22	165.56	0.73	166.29
November	December 10, 2006	December 21, 2006	912.58	228.15	5.50	233.65
Subtotal				*734.30*	*6.98*	*741.28*
Value-Added Tax						
February	March 20, 2006	March 21, 2006	13,528.86	3,382.22	7.44	3,389.66
April	May 20, 2006	May 24, 2006	5,799.30	1,449.83	12.70	1,462.53
May	June 20, 2006	June 21, 2006	10,053.52	2,513.38	5.53	2,518.91
June	July 25, 2006	July 28, 2006	13,531.75	3,382.94	22.19	3,405.13
July	August 20, 2006	August 22, 2006	17,702.93	4,425.73	19.47	4,445.20
August	September 20, 2006	September 25, 2006	9,453.49	2,363.37	25.90	2,389.27
September	October 25, 2006	October 30, 2006	9,484.68	2,371.17	25.99	2,397.16
October	November 20, 2006	November 21, 2006	8,725.99	2,181.50	4.80	2,186.30
November	December 20, 2006	December 22, 2006	18,483.68	4,620.92	20.33	4,641.25
December	January 25, 2007	January 29, 2007	8,785.83	2,196.46	19.24	2,215.70
Subtotal				*28,887.52*	*163.59*	*29,051.11*
TOTAL				41,499.66	274.11	41,773.77

Section 248(A)(4) of the NIRC of 1997, as amended, states:

...

Sec. 248. *Civil Penalties.* -

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

...

(4) **Failure to pay the full or part of the amount of tax shown on any return** required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, **on or before the date prescribed for its payment.**[80]

...

As can be gleaned from the afore-quoted, the 25% surcharge penalty must be imposed should a taxpayer fail to pay the amount of tax due shown on any return in full or in part. Moreover, as pointed out earlier, deficiency interest must be imposed when there is a failure to pay a deficiency tax within the time prescribed for its payment.

In the instant case, petitioner failed to pay the tax due reflected in its returns within the prescribed time provided under the law. As such, the imposition of surcharge and interest are both proper.

For manual filers, such as petitioner, it should however be pointed out that the reckoning point in computing interest for the following returns must be moved to the next business day, as clarified by RMC 65-2016[81]:

Month	Due Date	Day	Adjusted Due Date	Date Paid
Withholding Tax on Wages				
August	September 10, 2006	Sunday	September 11, 2006	September 12, 2006
November	December 10, 2006	Sunday	December 11, 2006	December 21, 2006
Expanded Withholding Tax				
August	September 10, 2006	Sunday	September 11, 2006	September 12, 2006
November	December 10, 2006	Sunday	December 11, 2006	December 21, 2006
Value-Added Tax				
April	May 20, 2006	Saturday	May 22, 2006	May 24, 2006
July	August 20, 2006	Sunday	August 21, 2006	August 22, 2006

Hence, the computation of surcharge and interest on late payments is revised as follows:

80 Emphasis supplied.

81 Clarification on Proper Due Dates for Filing of Returns and Payment of Taxes for the Purpose of Imposition of Penalties for Late Filing and/or Late Payment.

Month	Due Date	Date Paid	Tax Paid	Surcharge	Interest	Total
Withholding Tax on Wages						
March	April 10, 2006	April 11, 2006	11,266.58	2,816.64	6.20	2,822.84
June	July 10, 2006	July 11, 2006	10,812.82	2,703.20	5.95	2,709.15
August	September 11, 2006	September 12, 2006	12,567.46	3,141.87	6.89	3,148.76
November	December 11, 2006	December 21, 2006	12,864.52	3,216.13	70.49	3,286.62
Subtotal				*11,877.84*	*89.53*	*11,967.37*
Expanded Withholding Tax						
March	April 10, 2006	April 11, 2006	681.90	170.48	0.38	170.86
June	July 10, 2006	July 11, 2006	680.44	170.11	0.37	170.48
August	September 11, 2006	September 12, 2006	662.22	165.56	0.36	165.92
November	December 11, 2006	December 21, 2006	912.58	228.15	5.00	233.15
Subtotal				*734.30*	*6.11*	*740.41*
Value-Added Tax						
February	March 20, 2006	March 21, 2006	13,528.86	3,382.22	7.44	3,389.66
April	May 22, 2006	May 24, 2006	5,799.30	1,449.83	3.18	1,453.01
May	June 20, 2006	June 21, 2006	10,053.52	2,513.38	5.53	2,518.91
June	July 25, 2006	July 28, 2006	13,531.75	3,382.94	22.19	3,405.13
July	August 21, 2006	August 22, 2006	17,702.93	4,425.73	9.70	4,435.43
August	September 20, 2006	September 25, 2006	9,453.49	2,363.37	25.90	2,389.27
September	October 25, 2006	October 30, 2006	9,484.68	2,371.17	25.99	2,397.16
October	November 20, 2006	November 21, 2006	8,725.99	2,181.50	4.80	2,186.30
November	December 20, 2006	December 22, 2006	18,483.68	4,620.92	20.33	4,641.25
December	January 25, 2007	January 29, 2007	8,785.83	2,196.46	19.24	2,215.70
Subtotal				*28,887.52*	*144.30*	*29,031.82*
TOTAL				41,499.66	239.94	41,739.60
Less: *Payment made per BIR Form No. 0605*[82]					(92.73)	(92.73)
TOTAL				41,499.66	147.21	41,646.87

WHEREFORE, the foregoing considered, petitioner Donato C. Cruz Trading Corp.'s Petition for Review filed on 23 November 2017 is hereby **PARTIALLY GRANTED**. The Bureau of Internal Revenue's assessment pursuant to Letter of Authority No. 00074813 shall be adjusted as a result. Accordingly, petitioner is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amounts of ₱20,936,310.18, ₱33,082.23 and ₱80,859.58, representing basic deficiency Expanded Withholding Tax and penalties for late payments of Withholding Tax on Wages and Value-Added Tax, respectively, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until 31 December 2017, as determined below:

[82] BIR Records, p. 736.

	EWT	WTW	VAT	TOTAL
Basic Deficiency	3,263,373.09[83]			3,263,373.09
Surcharge (25%)	815,843.27			815,843.27
Deficiency Interest (20%) until January 29, 2009				
EWT - 1/16/07 to 1/29/09 (₱3,263,373.09 x 20% x 726 days/ 365 days)	1,332,171.48			1,332,171.48
Adjustments *Plus:* Interest on paid undisputed assessment items - 1/16/07 to 1/9/09 (₱33,113.37 x 20% x 725 days/ 365 days)	13,154.62			13,154.62
Interest and surcharge on late payments	737.21	11,877.84	29,031.82	41,646.87
Total Amount Due as of January 29, 2009	5,425,279.67	11,877.84	29,031.82	5,466,189.33
Deficiency Interest (20%) from January 30, 2009 to December 31, 2017				
EWT - 1/30/09 to 12/31/17 (₱3,263,373.09 x 20% x 3,258 days/ 365 days)	5,825,791.52			5,825,791.52
Delinquency Interest (20%) from January 30, 2009 to December 31, 2017				
EWT - 1/30/09 to 12/31/17 (₱5,425,279.67 x 20% x 3,258 days/ 365 days)	9,685,238.99			9,685,238.99
WTW - 1/30/09 to 12/31/17 (₱11,877.84 x 20% x 3,258 days/ 365 days)		21,204.39		21,204.39
VAT - 1/30/09 to 12/31/17 (₱29,031.82 x 20% x 3,258 days/ 365 days)			51,827.76	51,827.76
Total Amount Due as of December 31, 2017	20,936,310.18	33,082.23	80,859.58	21,050,251.99

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12% computed from 01 January 2018 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

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83

	Income Payment	EWT Rate	Basic Deficiency EWT
Purchases of goods – VAT	24,290,909.03	1%	242,909.09
Purchases of goods – Non VAT	302,046,400.32	1%	3,020,464.00
TOTAL			**3,263,373.09**

Acceleration and Inclusion (**TRAIN**) and as implemented by RR 21-2018[84], on said deficiency taxes based on the following principal amounts:

Expanded Withholding Tax	₱5,425,279.67
Penalties on Withholding Tax on Wages	11,877.84
Penalties on Value Added Tax	29,031.82

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

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

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

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84 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").