REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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CAGAYAN DE ORO DOCTORS, INC. (MADONNA AND CHILD HOSPITAL)	**CTA Case No. 9260**
Petitioner,	***Members:***
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	***Promulgated:***
Respondent.	AUG 05 2019 1:55 p.m.

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DECISION

UY, *J.*:

Before this Court is an *Amended Petition for Review* filed on February 29, 2016[1] by Cagayan de Oro Doctors, Inc. (Madonna and Child Hospital), as petitioner, against the Commissioner of Internal Revenue, as respondent, praying to set aside respondent's *Final Decision*, finding petitioner liable to pay deficiency value added tax (VAT) and expanded withholding tax (EWT) for taxable year 2010 in the total amount of ₱8,435,104.89.

THE FACTS

Petitioner Cagayan de Oro Doctors, Inc. (Madonna and Child Hospital), is a corporation duly organized and existing under and by

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[1] Docket, pp. 67 to 76.

virtue of the laws of the Republic of the Philippines, with principal place of business at J.V. Seriña St., Carmen, Cagayan de Oro City.[2]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is a public officer authorized under the National Internal Revenue Code (NIRC) of 1997 to examine any taxpayer, including *inter alia,* the power to issue tax assessments, evaluate and decide upon protests relative thereto. He may be served with summons and other court processes at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

On October 19, 2011, respondent issued *Letter of Authority* No. eLA201000060044,[4] authorizing the examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period from January 1, 2010 to December 31, 2010.

Thereafter, a *Notice of Informal Conference* (NIC) was issued by respondent on April 17, 2013.[5]

On August 15, 2013, Assistant Regional Director of the BIR Revenue Region No. 16 issued a *Preliminary Assessment Notice* (PAN),[6] informing petitioner of its liability for deficiency VAT and EWT in the total amount of ₱7,951,922.48, inclusive of legal increments. Petitioner claims that it received the said PAN (under Registry Receipt No. 15630), through a certain Marlon Saluntao, only on November 14, 2013.[7]

Thereafter, the OIC Regional Director of the BIR Revenue Region No. 16, sent petitioner a *Formal Letter of Demand* (FLD)[8] and *Assessment Notices*[9], both dated September 25, 2013, informing petitioner that after investigation of its 2010 internal revenue tax liabilities, it was ascertained that there is still due from petitioner

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[2] Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), paragraph I.1, Docket, p. 277.
[3] Summary of Admitted Facts, JSFI, paragraph I.2, Docket, p. 277.
[4] Exhibit "R-1", BIR Records (Exhibit "R-10"), p. 25.
[5] Exhibit "R-3", BIR Records (Exhibit "R-10"), p. 135.
[6] Exhibits "P27", Docket, pp. 399 to 401; and Exhibits "R-6", "R-6-A", "R-6-B", BIR Records (Exhibit "R-10"), pp. 153 to 155.
[7] Exhibits "P27-A" and "P28-B", Docket, pp. 399 and 402.
[8] Exhibit "P4", Docket, pp. 352 to 354.
[9] Exhibits "P5" to "P5-A", Docket, pp. 355 to 356.

deficiency taxes in the total amount of ₱8,129,184.66[10] under Assessment No. RR 16-098-094-13 for the 2010 taxable year. The said FLD and *Assessment Notices* were received by petitioner on October 12, 2013.[11]

On November 6, 2013, petitioner, through counsel, filed with the BIR a *Letter-protest* to the Assessment No. RR 16-098-094-13 and FLD dated September 25, 2013,[12] invoking the constitutional, legal and jurisprudential proscription against the denial of due process. In the same *Letter-protest*, petitioner strongly denied having received the PAN; but acknowledged receipt of the NIC dated April 17, 2013 and the said FLD on April 19, 2013 and October 12, 2013, respectively.

In reply thereto, the BIR OIC Regional Director issued the letter dated November 21, 2013,[13] informing petitioner that the PAN dated August 15, 2013 was sent through registered mail, and that the said PAN together with the registry return receipt was returned to the BIR Revenue Region No. 16 on October 23, 2013; and that immediately, the PAN was forwarded on October 25, 2013 for mailing to petitioner's given address, with "Madonna and Child Hospital" added in the addressee. According to the Office of the Post Master, the PAN (under Registry Receipt No. 15630) was received by petitioner, through Marlon Saluntao, on November 14, 2013.[14]

On December 6, 2013, petitioner filed a *Letter Reply* dated December 5, 2013,[15] clarifying that the FLD dated September 25, 2013 was received on October 12, 2013, ahead of petitioner's supposed receipt of the PAN on November 14, 2013.

On January 13, 2014, the BIR OIC Regional Director issued an *Amended Formal Letter of Demand* (AFLD) with *Details of*

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[10] This is the rectified statement of the said total amount. In the JSFI, the stated amount is only "₱8,184.66".
[11] Summary of Admitted Facts, JSFI, paragraph I.3, Docket, p. 277.
[12] Exhibits "P6" to "P6-A", Docket, pp. 357 to 361; and BIR Records (Exhibit "R-10"), pp. 167 to 171.
[13] Exhibit "P7" to "P7-A", Docket, p. 361; and BIR Records (Exhibit "R-10"), p. 173.
[14] BIR Records (Exhibit "R-10"), p. 399.
[15] Exhibit "P8" to "P8-B", Docket, p. 362 to 363; and BIR Records (Exhibit "R-10"), pp. 174 to 175.

Discrepancies and *Assessment Notices*, which was received by petitioner on January 14, 2014.[16]

Petitioner then filed the *Letter-protest* dated February 12, 2014 to the AFLD on February 13, 2014,[17] reiterating its arguments in the protest letters dated November 6, 2013 and December 5, 2013, and praying that the questioned tax assessment be reconsidered, set aside and declared unenforceable.

In response to petitioner's *Protest Letter* dated February 12, 2014, the *Letter* dated April 4, 2014 was issued by the BIR OIC Regional Director,[18] reiterating the BIR's position that there was proper observance of due process required under the Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013. The said *Letter* was received by petitioner on April 15, 2014.[19]

On May 12, 2014, petitioner filed the *Letter Reply* dated May 2, 2014,[20] in response to respondent's *Letter* dated April 4, 2014, maintaining firmly and categorically that the PAN dated August 15, 2013 was received on November 14, 2013 and reiterating its stand and position that under the premises and circumstances, petitioner was denied its constitutionally guaranteed right to due process and consequently the questioned Tax Assessment No. RR-16-098-094-13 under FLD and AFLD dated September 25, 2013 and January 13, 2014, respectively, be considered void and set aside and declared unenforceable.

On May 23, 2014, the BIR OIC Regional Director issued a letter,[21] stating that the entire docket of the case had been forwarded to the Collection Section of RDO No. 98, Cagayan de Oro City, to enforce collection of the assessed deficiency taxes.

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[16] Exhibits "P9", and "P9-A" to "P9-C", Docket, pp. 364 to 368; and Exhibits "R-9", "R-9-A" to "R-9-D", BIR Records (Exhibit "R-10"), pp. 180 to 184.
[17] Exhibits "P10" to "P10-B", Docket, pp. 369 to 371; and BIR Records (Exhibit "R-10"), pp. 187 to 189.
[18] Exhibit "P-23", Docket, p. 396; and BIR Records (Exhibit "R-10"), p. 195.
[19] Exhibit "P-23-A", Docket, p. 396.
[20] Exhibits "P-24" to "P-24-B", Docket, pp. 397 to 398; and BIR Records (Exhibit "R-10"), pp. 200 to 201.
[21] BIR Records (Exhibit "R-10"), p. 203.

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Thus, on June 23, 2014, petitioner filed an *Administrative Appeal* with respondent,[22] assailing the final decision of the BIR OIC Regional Director.

In the meantime, the *Preliminary Collection Letter* dated July 17, 2014 was issued by the BIR against petitioner for the collection of its internal revenue tax liabilities amounting to ₱8,435,104.89.[23]

On January 18, 2016, petitioner received respondent's *Decision* dated January 7, 2016,[24] which denied petitioner's Administrative *Appeal* and ordering petitioner to pay its deficiency VAT and EWT for taxable year 2010 in the total amount of ₱8,435,104.89, broken down as follows:

	BASIC TAX	INTEREST	TOTAL
VAT	₱ 365,610.50	₱ 223,573.33	₱ 589,183.83
EWT	4,852,187.71	2,993,733.35	7,845,921.06
TOTAL	**₱ 5,217,798.21**	**₱ 3,217,306.68**	**₱ 8,435,104.89**

Respondent further stated that the said *Decision* constitutes his final decision.

Thus, petitioner filed the instant *Petition* on February 16, 2016.[25] However, on February 29, 2016, petitioner filed a *Motion to Amend (Petition for Review)*,[26] praying that its *Amended Petition for Review*[27] be admitted. In the Resolution dated March 15, 2016,[28] the Court granted the said *Motion to Amend,* and admitted petitioner's *Amended Petition for Review.*

On April 1, 2016, respondent filed a *Motion for Extension of Time to File Answer*,[29] which was granted by the Court in the Resolution dated April 11, 2016.[30]

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[22] BIR Records (Exhibit "R-10"), pp. 236 to 246.
[23] BIR Records (Exhibit "R-10"), p. 210.
[24] Exhibits "P3" and "P3-A", Docket, pp. 345 to 351; and BIR Records (Exhibit "R-10"), pp. 540 to 550.
[25] Docket, pp. 10 to 27.
[26] Docket, pp. 113 to 114.
[27] Docket, pp. 67 to 76.
[28] Docket, p. 116.
[29] Docket, pp. 119 to 122.
[30] Docket, p. 127.

Respondent filed his *Answer* on May 2, 2016,[31] interposing the special and affirmative defenses, which include among others, the following:

1) the requirement of due process was properly complied with in issuing the FLD/FAN and *Final Decision* on disputed assessment;

2) petitioner twisted the facts of the present case to make it appear that it was not given any opportunity to refute the findings of the respondent as stated in the PAN;

3) the non-receipt of the PAN first mailed cannot in any case invalidate the assessment, as respondent corrected such error and a second copy of PAN was immediately served and received by petitioner on November 14, 2013;

4) the re-mailing of the said PAN cured any defect alleged by petitioner;

5) petitioner was given enough time to refute the preliminary findings of respondent;

6) petitioner was given opportunity to explain its side or the opportunity to seek reconsideration of the action or ruling complained of and the assessment issued was in compliance with Section 228 of the NIRC of 1997, as amended;

7) petitioner is liable to pay its deficiency VAT and EWT;

8) the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong, but also that the taxpayer is right;

9) the presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting; and

10) in the absence of proof of any irregularities in the performance of duties, an assessment duly made by a BIR examiner, and approved by his superior officers will not be disturbed.

On May 11, 2016, respondent filed a *Motion to Defer the Transmittal of BIR Records*,[32] praying that the transmittal of the BIR Records to this Court be deferred until after the filing of his witness'

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[31] Docket, pp. 131 to 139.
[32] Docket, pp. 145 to 147.

affidavit. The said *Motion to Defer* was granted by the Court in the Resolution dated May 16, 2016.[33]

Meanwhile, the Pre-Trial Conference was set on August 9, 2016.[34] However, a *Motion to Reset (August 9, 2016 Pre-Trial)* was filed by petitioner on June 1, 2016,[35] which was granted by the Court in the Resolution dated June 3, 2016[36] and the Pre-Trial Conference was reset to September 20, 2016. On September 9, 2016, petitioner again filed a *Motion to Reset Pre-Trial Conference Scheduled on September 20, 2016*,[37] which was granted by the Court in the Resolution dated September 15, 2016.[38] Thus, Pre-Trial Conference was reset anew to December 6, 2016. On September 14, 2016, petitioner filed its *Pre-Trial Brief*,[39] and the Judicial Affidavit of its witness, Aida M. Yamaro.[40]

On December 1, 2016 however, respondent filed an *Urgent Motion to Defer Pre-Trial*,[41] praying that the scheduled pre-trial conference scheduled on December 6, 2016 be cancelled and re-scheduled to such other date at the convenience of the Honorable Court.

Thereafter, respondent filed a *Manifestation with Motion to Defer Submission of Judicial Affidavits of Respondent's Witnesses* on December 2, 2016,[42] praying that the submission of the Judicial Affidavit of respondent's witnesses be deferred, while simultaneously filing respondent's *Pre-Trial Brief* on the same date, [43] so as not to unduly delay the proceedings of this case.

Considering the filing of *Pre-Trial Brief* by the respondent, the Court denied the *Urgent Motion to Defer Pre-Trial* filed by the respondent on December 1, 2016 during the hearing held on December 6, 2016.[44] Furthermore, there being no objection by petitioner regarding respondent's *Motion to Defer Submission of*

[33] Docket, p. 149.
[34] Notice of Pre-Trial Conference dated May 3, 2016, Docket, pp. 141 to 142.
[35] Docket, pp. 150 to 151.
[36] Docket, p. 154.
[37] Docket, pp. 167 to 170.
[38] Docket, p. 258.
[39] Docket, pp. 172 to 181.
[40] Docket, pp. 183 to 186.
[41] Docket, pp. 259 to 261.
[42] Docket, pp. 263 to 265.
[43] Docket, pp. 267 to 270.
[44] Minutes of Hearing held on December 6, 2016, Docket, p. 272.

Judicial Affidavits filed on December 2, 2016, respondent was allowed to defer the submission of the Judicial Affidavits of his witnesses, while both parties were given a period of twenty (20) days, or until December 26, 2016, to submit their Joint Stipulation of Facts and Issues (JSFI).[45]

On December 21, 2016, petitioner filed a *Motion for Extension of Time (To Submit Joint Stipulation of Facts and Issues)*,[46] which was granted by the Court in the Resolution dated January 11, 2017.[47] The parties filed their *Joint Stipulation of Facts and Issues* on January 3, 2017,[48] which was noted by the Court in the Resolution dated March 2, 2017.[49] The Pre-Trial Order was issued on March 16, 2017.[50]

On March 27, 2017, petitioner filed a *Manifestation and Motion (To Introduce Amendments To and Include Additional Exhibits in the Pre-Trial Order)*,[51] stating that there were items that need to be corrected in the Pre-trial Order. In the Resolution dated April 25, 2017,[52] the Court granted petitioner's *Manifestation and Motion*. Accordingly, the Pre-Trial Order dated March 16, 2017 was amended, insofar as the documentary evidence for petitioner is concerned.

Thereafter, trial ensued. On the part of petitioner, it presented Teresa Victoria J. Tan and Aida M. Yamaro during the hearing held on April 25, 2017 and September 26, 2017, respectively.

Upon conclusion of its presentation of evidence, petitioner filed its *Formal Offer of Evidence* on October 2, 2017.[53] On October 12, 2017, respondent filed his *"Comment/Opposition (On Petitioner's Formal Offer of Evidence dated October 2, 2017)"*,[54] alleging, among others, that respondent objects to the purpose for which some exhibits are being offered for being unintelligible and irrelevant.

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[45] *Ibid.*
[46] Docket, pp. 284 to 285.
[47] Docket, p. 288.
[48] Docket, pp. 277 to 283.
[49] Docket, p. 299.
[50] Docket, pp. 301 to 310.
[51] Docket, pp. 311 to 313.
[52] Docket, pp. 319 to 323.
[53] Docket, pp. 338 to 344.
[54] Docket, pp. 412 to 413.

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The Court resolved petitioner's *Formal of Evidence* in the Resolution dated January 15, 2018,[55] admitting all of petitioner's evidence, except Exhibit "P22-B" for failure to present its original for comparison.

On the part of respondent, Revenue Officer Abdul Razaak D. Batugan testified as respondent's lone witness on February 5, 2018.

Thereafter, respondent filed his *Formal Offer of Evidence* on April 10, 2018.[56] In its *Comment (Re: Respondent's Formal Offer of Evidence)* filed on April 19, 2018,[57] petitioner interposed no objection to the admission of respondent's exhibits as enumerated in his *Formal Offer of Evidence*.

The Court admitted all of respondent's exhibits in the Resolution dated July 31, 2018[58] and directed both parties to file their respective memoranda within thirty (30) days from receipt hereof.

On August 30, 2018, petitioner filed its *Memorandum*[59] Respondent, likewise filed his *Memorandum*[60] on October 5, 2018 which was within the extension period granted in the Resolution dated September 10, 2018.[61] Subsequently, the instant case was deemed submitted for Decision in the Resolution dated October 10, 2018.[62]

Hence, this Decision.

THE ISSUES

As stipulated by the parties, the following issues are submitted for this Court's resolution, to wit:

"1. Whether or not petitioner was denied due process.

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[55] Docket, pp. 418 to 419.
[56] Docket, pp. 438 to 441.
[57] Docket, p. 443.
[58] Docket, pp. 447 to 448.
[59] Docket, pp. pp. 449 to 464.
[60] Docket, pp 471 to 480.
[61] Docket, p. 470.
[62] Docket, p. 483.

2. Whether or not the deficiency tax assessments have factual and legal basis.

3. Whether or not the right of the BIR to assess the said deficiency taxes has already prescribed.

4. Whether petitioner is liable for deficiency Value Added Tax and Expanded Withholding Tax in the aggregate amount of Eight Million Four Hundred Thirty Five Thousand One Hundred Four Pesos and 89/100 (₱8,435,104.89) for the taxable year 2010."[63]

Petitioner's arguments:

Petitioner argues that its right to procedural due process was violated when respondent issued the FLD and FAN prior to service of PAN. Allegedly, the issuance of PAN should precede the service of the FLD and FAN, and that the certification from the Postmaster of Cagayan de Oro City attests to the belated service of PAN to petitioner.

Petitioner likewise contends that the issuance of the amended FLD and FAN was merely an afterthought and was meant to cover up respondent's mistake in serving the original FLD and FAN earlier than the PAN. Petitioner points out that there was no palpable and substantial revision in the findings of tax deficiency between the original and amended versions of the FLD and FAN.

Thus, petitioner submits that the deficiency tax assessments should be cancelled due to lack of factual and legal bases.

Respondent's counter-arguments:

Respondent counter-argues that the requirement of due process was properly complied with in issuing the FLD/FAN and FDDA. According to respondent, since the PAN was undelivered and returned to the BIR together with the registry return receipt on October 23, 2013, it was mailed again to petitioner on October 30, 2013 and was received by petitioner on November 14, 2103. Despite the opportunity given to petitioner to refute the preliminary findings, no documents were submitted to refute it when a protest to the PAN

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[63] *ISSUES TO BE RESOLVED*, JSFI, Docket, p. 277.

was filed. Hence, findings were reiterated in the AFLD. Thus, respondent maintains that petitioner is liable to pay the assessed deficiency VAT and EWT.

Finally, respondent asserts that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that respondent is wrong, but also the taxpayer is right. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting.

THE COURT'S RULING

In the instant Petition for Review. petitioner argues, among others, that its right to due process was violated when respondent issued the FLD prior to the service of the PAN.

We disagree.

Section 228 of the NIRC of 1997 provides for the procedure and manner on which tax deficiency assessments should be issued, viz:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

xxx xxx xxx"

Relative thereto, Revenue Regulation No. 12-99 specifies the due process requirement to be observed in issuing deficiency tax assessments. Pertinent portions of the said RR read:

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, **the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN)** for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he**

> **shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." *(Emphasis and underscoring supplied)*

Based on the foregoing, if there is sufficient basis to assess the taxpayer, respondent or his authorized representative, is mandated to issue a PAN. The taxpayer is then given a period of fifteen (15) days from receipt thereof to respond to the PAN. If the taxpayer fails to respond to the PAN upon the lapse of the fifteen-day period, the taxpayer shall be considered in default and the BIR shall then issue an FLD and assessment notice.

Respondent has complied with the requirements of due process.

Applying the aforequoted provisions in the instant case, this Court finds that respondent has substantially complied with the requirements of due process.

Due process demands that the taxpayer shall be informed, in writing of the legal and factual bases of the assessment, and is given the opportunity to contest the assessment. In other words, so long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[64]

In this case, We find that the requisite assessment notices were issued and served to petitioner, and that petitioner was given the opportunity to contest the assessment.

Records show that the PAN was issued on August 15, 2013,[65] demanding payment of deficiency VAT and EWT for taxable year 2010. However, the said PAN was received by petitioner only on November 14, 2013.[66]

Although the BIR initially issued the FLD and *Assessment Notices* on September 25, 2013, it later issued the AFLD and the corresponding *Assessment Notices* on January 13, 2014.

In other words, after the lapse of the reglementary fifteen-day period from receipt of the subject PAN, the BIR issued the said AFLD and corresponding *Assessment Notices*.

This was confirmed by petitioner's witness, Ma. Teresa Victoria Jardenil Tan, when she testified as follows:

"ATTY. LIM

Q. Just to answer the question, you received the Preliminary Assessment Notice on November 14, 2013, is that correct?

MS. TAN

A. Yes.

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[64] *Juan Calma, et al. vs. Court of Appeals*, et al., G.R. No. 122787, February 9, 1999.
[65] Exhibits "P27-A" and "P28-B", Docket, pp. 399 and 402; and BIR Records (Exhibit "R-10"), p. 399.
[66] Exhibit "P-27-A", Docket, p. 399.

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JUSTICE VICTORINO

Where is that date November 14? The date in the answer is November 21, October 23 and December 2. Where is that date indicated?

ATTY. LIM

I'm sorry your Honor, it's in Question No. 30.

JUSTICE VICTORINO

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ATTY. LIM

30, not 10, your Honor, I'm sorry, your Honor.

Q. So after receipt of such PAN, did you take any actions, or what actions did you take?

MS. TAN

A. After receiving?

ATTY. LIM

Q. Yes.

Yes or no, Ms. Witness?

MS. TAN

A. Yes, ma'am.

ATTY. LIM

Q. What actions did you take?

MS. TAN

A. We continue the filing of the ... we put it as evidence that we received the PAN secondary to the FLD.

ATTY. LIM

Q. What actions did you take again, Ms. Witness? Did you reply to the PAN, yes or no? To the PAN dated November 14, 2013, yes or no?

MS. TAN

A. No, we did not.

ATTY. LIM
Q. You did not reply to the PAN. So after receipt of the PAN on November 14, 2013, you did not reply to such PAN and then you received an Amended Formal Letter of Demand on January 13, 2014?

ATTY. NAPUTO

May I know, your Honor, what number?

ATTY. LIM

Q. When did you receive an Amended Formal Letter of Demand?

MS. TAN

A. We received I think January 13, 2014.

ATTY. LIM

Q. You received an Amended Formal Letter of Demand on January 13, 2014, is that correct?

MS. TAN

B. Yes. Ma'am."[67] *(Emphasis supplied)*

Based on the foregoing testimony, it is confirmed that petitioner received the PAN on November 14, 2013, and that it failed to act or reply to the said PAN. Petitioner's witness likewise confirmed the receipt of the AFLD thereafter.

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[67] Transcript of Stenographic Notes (TSN) during the hearing held on April 25, 2017, pp. 9 to 11.

Evidently, petitioner was accorded its right to be informed of its deficiency tax assessment, and the right to dispute the same.

Petitioner's contention that its right to due process was violated when respondent issued the FLD and *Assessment Notices* on September 25, 2013, which it received on October 12 2013,[68] prior to the service of the PAN on November 14, 2013 deserves scant consideration.

We find it erroneous for petitioner to reckon the date of issuance of the subject tax assessments on September 25, 2013, considering that the same had been effectively superseded and supplanted with the subsequent issuance of the AFLD on January 13, 2014.

To the mind of the Court, the proper basis of the issuance of the said tax assessments should be January 13, 2014, and not September 25, 2013. Thus, there is no merit in petitioner's argument that the FLD and *Assessment Notices* were issued prior to the service of the PAN, considering that the AFLD and *Assessment Notices* were received on January 13, 2014, while the PAN was received on November 14, 2013.

Clearly, petitioner was duly accorded sufficient time to protest the PAN.

In sum, We rule that respondent has substantially complied with the due process requirement in the issuance of the subject tax assessments.

Petitioner failed to prove that the assessment for deficiency VAT and EWT were issued beyond the prescriptive period.

At the outset, it bears noting that while the issue on prescription was among the issues raised by the parties in their *Joint Stipulation of Facts and Issues*, the pleadings submitted by the parties, however, are bereft of any discussion regarding the said issue.

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[68] Exhibit "P4-A", Docket, p. 352.

Nonetheless, for proper disposition of the case, the Court shall resolve whether respondent's right to assess petitioner for the alleged VAT and EWT is barred by prescription.

Section 203 of the NIRC of 1997 specifically provides that respondent has three (3) years to assess and collect an internal revenue tax, 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." *(Emphasis supplied)*

Based on the foregoing provision, the three (3)-year period to assess internal revenue taxes commences from the date of actual filing of return, or after the last day prescribed by law for the filing of the tax return. However, 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.

Hence, for a proper reckoning of the period as to when the right of respondent to assess deficiency taxes commenced, and when the same has already prescribed, the returns should be presented in evidence to prove the dates of their filing.

However, a perusal of the records show that petitioner failed to present in evidence its quarterly VAT returns for the First, Second, Third and Fourth Quarters of taxable year 2010. In the absence of any proof of the filing of the said tax returns, the Court has no basis to determine which portion of the subject assessment is already barred by prescription pursuant to Section 203 of the 1997 NIRC.

Moreover, considering that petitioner wants to avail of the benefits of the three-year prescriptive period under Section 203 of the

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NIRC of 1997, it is incumbent upon petitioner to prove that it indeed filed the subject VAT returns, and that the same were timely filed. Having failed to do so, the conclusion should be that no such return was filed, in which case, the Government has ten (10) years within which to make the corresponding assessments,[69] in accordance with Section 222(a) of the NIRC of 1997, to wit:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) **In the case** of a false or fraudulent return with intent to evade tax or **of failure to file a return, the tax may be assessed**, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the** falsity, fraud or **omission**: xxx." *(Emphases supplied)*

In sum, the Court finds that petitioner failed to present competent evidence to establish its allegation of prescription with regard to the subject deficiency VAT assessment for taxable year 2010.

As regards deficiency EWT, Section 2.58 (A)(2) (a) of RR No. 2-98, as amended by RR No. 6-01, requires that withholding taxes must be deducted and remitted on a monthly basis, to wit:

> "SECTION 2.58. *Returns and Payment of Taxes Withheld at Source.* —
>
> (A) Monthly return and payment of taxes withheld at source. —
>
> xxx xxx xxx
>
> (2) WHEN TO FILE
>
> (a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, **within ten (10) days after the end of each**

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[69] Refer to *Taligaman Lumber Co., Inc. vs. The Collector of Internal Revenue*, G.R. No. L-15716, March 31, 1962.

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> **month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year.**" *(Emphasis supplied)*

In this connection, the following are the dates pertinent to the issuance of the subject deficiency EWT assessment:

Exhibit	Taxable Period	Filing Date	Last Day to File Return	Last Day to Assess
"P-11" [70]	January 2010	February 8, 2010	February 10, 2010	February 10, 2013
"P-12" [71]	February 2010	March 9, 2010	March 10, 2010	March 10, 2013
"P-13" [72]	March 2010	April 7, 2010	April 10, 2010	April 10, 2013
"P-14" [73]	April 2010	May 7, 2010	May 10, 2010	May 10, 2013
"P-15" [74]	May 2010	June 7, 2010	June 10, 2010	June 10, 2013
"P-16" [75]	June 2010	July 7, 2010	July 10, 2010	July 10, 2013
"P-17" [76]	July 2010	August 9, 2010	August 10, 2010	August 10, 2013
"P-18" [77]	August 2010	September 8, 2010	September 10, 2010	September 10, 2013
"P-19" [78]	September 2010	October 7, 2010	October 10, 2010	October 10, 2013
"P-20" [79]	October 2010	November 9, 2010	November 10, 2010	November 10, 2013
"P-21" [80]	November 2010	December 7, 2010	December 10, 2010	December 10, 2013
"P-22" [81]	December 2010	January 10, 2011	January 15, 2011	January 15, 2014

It is clear from the foregoing that when the AFLD was received by petitioner on January 13, 2014, as above shown, respondent's right to assess petitioner for deficiency EWT for the months of January to November 2010, have already prescribed.

Accordingly, only the assessments for deficiency EWT for the month of December 2010 were issued within the three-year prescriptive period allowed by law.

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[70] Exhibit "P-11", Docket, p. 372.
[71] Exhibit "P-12", Docket, p. 374.
[72] Exhibit "P-13", Docket, p. 376.
[73] Exhibit "P-14", Docket, p. 378.
[74] Exhibit "P-15", Docket, p. 380.
[75] Exhibit "P-16", Docket, p. 382.
[76] Exhibit "P-17", Docket, p. 384.
[77] Exhibit "P-18", Docket, p. 386.
[78] Exhibit "P-19", Docket, p. 388.
[79] Exhibit "P-20", Docket, p. 390.
[80] Exhibit "P-21", Docket, p. 392.
[81] Exhibit "P-22", Docket, p. 394.

It must be noted, however, that while this Court finds that respondent's right to assess petitioner for deficiency EWT for the months of January to November 2010 have already prescribed, an examination of the evidence presented shows that petitioner failed to clearly establish which portion of said deficiency EWT pertain to the prescribed months.

Consequently, in the absence of proof to the contrary, this Court is constrained to impute the entire deficiency EWT assessments to the unprescribed portion for taxable year 2010.

Respondent has sufficiently provided factual and legal bases for the subject tax assessments, while petitioner failed to discharge its burden of disputing the presumption of correctness of the subject tax assessment.

The Court shall now determine petitioner's liabilities for deficiency VAT and EWT.

A. <u>On the deficiency VAT</u>:

The alleged deficiency VAT amounting to ₱589,183.83 resulted from (1) underdeclaration of pharmacy sales (2) VAT on rental income and (3) VAT on miscellaneous income,[82] computed as follows:

Total Gross Receipts per Return		₱ 12,457,008.39
Add: Undeclared VATable receipts		
Pharmacy (Outpatient) Receipts per Audit	₱12,822,985.69	
Less: Total Receipts subjected to VAT	12,457,008.39	365,977.30
Rent Income		751,741.00
Miscellaneous Income		1,929,036.00
Total Gross Receipts per Audit		₱15,503,762.69
Multiply by VAT Rate		12%
Output Tax		₱ 1,860,451.52
Less: Input Tax Claimed per VAT Return		1,309,128.02
VAT due and payable		₱ 551,323.50
Less: VAT Withheld/Paid		185,713.00
Basic VAT Deficiency		₱ 365,610.50
Add: 20% interest p.a. (01.26.11 - 02.15.14)		223,573.33
Total VAT Due and Payable		₱ 589,183.83

[82] Exhibit "P3', Docket, p. 346.

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According to respondent, petitioner's underdeclared pharmacy sales is subject to 12% VAT, pursuant to Section 4.109-1(B)(g) of RR No. 16-2005, to wit:

> "Section 4.109-1. *VAT-Exempt Transactions.* —
>
> (A) In general. — 'VAT-exempt transactions' refer to the sale of goods or properties and/or services and the use or lease of properties that is not subject to VAT (output tax) and the seller is not allowed any tax credit of VAT (input tax) on purchases.
>
> The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject to VAT.
>
> (B) *Exempt transactions.* —
>
> (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT:
>
> xxx xxx xxx
>
> (g) Medical, dental, hospital and veterinary services, except those rendered by professionals.
>
> Laboratory services are exempted. **If the hospital or clinic operates a pharmacy or drug store, the sale of drugs and medicine is subject to VAT.**" *(Emphasis supplied)*

Based on the foregoing, if the hospital operates a pharmacy store, the sale of drugs or medicines is subject to VAT. On that basis, respondent assessed petitioner for deficiency VAT on its undeclared pharmacy sales.

Likewise, respondent assessed petitioner for deficiency VAT on its rental income and miscellaneous income. According to respondent, the rental income of ₱ 751,741.00, as an activity related to hospital operations is subject to VAT, pursuant to Section 107 of the NIRC of 1997, as amended, and Section 4.108-3 of RR No. 16-2005.

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As regards the miscellaneous income of ₱1,929,036, respondent argues that the same is subject to VAT considering that it is not specifically listed in nor is it expressly exempted under Section 109 of the NIRC of 1997, as amended, and Section 4.109-1 of RR No. 16-2005.

Nevertheless, despite the foregoing findings, it is noteworthy that petitioner did not controvert the said findings of respondent. Notably, no sufficient evidence was presented by petitioner to refute the undeclared pharmacy sales. Likewise, petitioner did not specifically contest the imposition of VAT on its rental income and miscellaneous income.

It bears emphasis that tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[83] Furthermore, in the absence of proof of any irregularities in the performance of duties, an assessment duly made by a BIR examiner and approved by his superior officers will not be disturbed.[84] Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[85]

In this case, petitioner failed to adduce sufficient evidence to overturn the presumption of correctness of the subject assessment. Accordingly, the Court is constrained to uphold the assessment on deficiency VAT in the amount ₱589,183.83.

B. <u>On the deficiency EWT</u>:

Respondent assessed petitioner with deficiency EWT amounting to ₱7,845,921.06, computed as follows:

Total Professional Fees per billing Statement	₱ 52,771,199.91
Less: Total Professional fees subjected to EWT	20,423,281.85
Total Professional Fees not subjected to EWT	₱ 32,347,918.06
Multiply by Withholding Tax Rate	15%
Total	₱ 4,852,187.71
Add: 20% interest p.a. (01.16.11 - 02.15.14)	2,993,733.35
Total Expanded withholding Tax Due and Payable	₱ 7,845,921.06

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[83] *Rizal Commercial Banking Corporation vs Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, citing *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.

[84] *Bonifacia Sy Po vs Honorable Court of Tax Appeals, et.al.,* G.R. No. 81446, August 18, 1988, citing *Gutierrez vs. Villegas*, L-17117, July 31, 1963,

[85] *Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.

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Respondent determined that petitioner failed to withhold the EWT on professional fees amounting to ₱32,347,918.06. Thus, he assessed petitioner with 15% EWT pursuant to Section 2.57.2(A) of RR No. 2-98, as amended by RR No. 30-2003, which provides as follows:

> "Section 2.57.2. *Income payment subject to creditable withholding tax and rates prescribed thereon.* — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:
>
> (A) *Professional fees, talent fees, etc., for services rendered by individuals.* — On the gross professional, promotional and talent fees or any other form of remuneration for the services of the following individuals - **Fifteen percent (15%), if the gross income for the current year exceeds ₱720,000; and Ten percent (10%), if otherwise**;
>
> xxx xxx xxx
>
> Furthermore, in order to determine the applicable tax rate (10% or 15%) to be applied/withheld by the withholding agent, every individual professional/ talent/ corporate directors herein enumerated, shall periodically disclose his gross income for the current year to the Bureau of Internal Revenue (BIR) by submitting a notarized sworn declaration attached as Annex 'A' hereof in three (3) copies (two (2) copies for the BIR and one (1) copy for the taxpayer), copy furnished all the current payors of the declaration duly stamped received by the BIR (Collection Division of the Regional Office having jurisdiction over the place where the income earner is registered/ Large Taxpayers Collection Division for large taxpayers in Metro Manila/ LTDO for large taxpayers outside Metro-Manila). Sworn declaration may likewise be filed by the income payor on behalf of the professionals/ talents/directors whose services were being rendered exclusively to the aforesaid payor. The disclosure should be filed on June 30 of each year or within fifteen (15) days after the end of the month the professional/talent/ director's income reaches ₱720,000, whichever comes

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> earlier. In case his total gross income is less than ₱720,000 as of June 30, he/she shall submit a second disclosure within fifteen (15) days after the end of the month that his/her gross income for the current year to date reaches ₱720,000. The payee – professional/talent/ director shall furnish each payor a copy of the BIR duly stamped received sworn declaration not later than five (5) days from the date of receipt by the BIR. **In case of failure to submit the June 30 annual declaration/disclosure to the BIR, and to furnish the payor/s a copy thereof, the payor shall withhold the tax at the rate of 15%.**" *(Emphases supplied)*

Based on the foregoing, professional fees are subject to EWT either at ten percent (10%), if the gross income of the professional does not exceed ₱720,000.00 in a year, or fifteen percent (15%), if the professional's gross income exceeds ₱720,000 in a year. In order to determine the applicable tax rate to be applied/withheld, the professional, shall periodically disclose his gross income for the current year to the BIR by submitting a notarized sworn declaration and the same should be filed on June 30 of each year or within fifteen (15) days after the end of the month the professional's income reaches ₱720,000, whichever comes earlier. Moreover, in case of failure to submit the declaration/disclosure, the payor shall withhold a higher tax rate of 15%.

In this case, the 15% EWT was applied by respondent in view of the failure of petitioner to present or submit the annual declaration/disclosure and to prove that the gross income of its payees do not exceed ₱720,000.00.

We sustain the foregoing findings of respondent.

A perusal of the records show that petitioner failed to dispute by substantial evidence the factual and legal findings of respondent, especially the findings that it failed to withhold EWT on professional fees amounting to ₱32,347,918.06. Moreover, in view of the failure to submit the annual declaration/disclosure, the higher rate of 15% EWT shall be applied on the said professional fees pursuant to the afore-cited Section 2.57.2 (A) of RR No. 2-98, as amended by RR No. 30-03.

In view thereof, as in the case of the deficiency VAT, the Court finds that petitioner likewise failed to controvert the assessment for deficiency EWT. Accordingly, the presumption of correctness of respondent's assessment for deficiency EWT in the amount of ₱7,845,921.06 remains.

In sum, this Court finds that the deficiency VAT and EWT assessments have not been satisfactorily rebutted by petitioner and must therefore be upheld.

Imposition of 25% surcharge under Section 248 (A) (3) of the NIRC of 1997, as amended.

Pursuant to Section 248(A)(3) of the NIRC of 1997, as amended, there shall be imposed a penalty equivalent to twenty-five percent (25%) of the amount due in case of non-payment of deficiency tax within the time prescribed for its payment in the notice of assessment, to wit:

> "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:
>
> xxx xxx xxx
>
> 3) **<u>Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment</u>**;"

It is clear from the foregoing that in addition to the tax required to be paid, a twenty-five percent (25%) surcharge is imposed in case of failure of the taxpayer to pay the deficiency tax within the time prescribed for its payment as indicated in the notice of assessment. The payment of the surcharge is mandatory and the BIR is not vested with any authority to waive the collection thereof.[86]

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[86] *Philex Mining Corporation vs Commissioner of Internal Revenue*, G.R. No. 125704, August 28, 1998, citing *Republic v. Philippine Bank of Commerce*, 34 SCRA 361 (1970).

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In *Philippine Refining Company (now known as "Unilever Philippines [PRC], Inc.") vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*,[87] the Supreme Court emphasized the mandatory nature of the collection of penalties in case of delinquency, to wit:

> "...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**..." *(Emphasis supplied)*

Based on the foregoing, the collection of penalty and interest in case of delinquency is mandatory. The imposition of the penalty and interest is intended to discourage delay in the payment of taxes and to compensate the government for the concomitant use of the funds beyond the date when the said tax is supposed to have been paid by the taxpayer.

In this case, a perusal of records shows that on January 13, 2014,[88] the BIR OIC Regional Director issued the *AFLD with Details of Discrepancies* and *Assessment Notices*, directing petitioner to pay the subject deficiency VAT and EWT within "30 days from receipt" thereof. Considering that the said notice of assessment was received by petitioner on January 14, 2014, petitioner had until February 13, 2014 to pay the deficiency tax.

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[87] G.R. No. 118794, May 8, 1996.

[88] Exhibits "P9", and "P9-A" to "P9-C", Docket, pp. 364 to 368; and Exhibits "R-9", "R-9-A" to "R-9-D", BIR Records (Exhibit "R-10"), pp. 180 to 184.

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Accordingly, in view of the failure of petitioner to pay both the deficiency VAT and EWT within the time prescribed as indicated in the Assessment Notices dated January 13, 2014, a 25% surcharge should be imposed on the said deficiency taxes in accordance with Section 248 (A)(3) of the NIRC of 1997, as amended.

Imposition of deficiency and delinquency interests under the TRAIN Law.

Prior to the promulgation of this Decision, Republic Act (RA) No. 10963, otherwise known as the *"Tax Reform for Acceleration and Inclusion"* (TRAIN Law), took effect on January 1, 2018, amending pertinent provisions of the NIRC of 1997, among which is Section 249.[89] The amended provision of Section 249 now reads as follows:

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

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[89] Section 249 of the NIRC of 1997 reads:

> "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 rules and regulations, from the 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:
>
> xxx xxx xxx
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax." *(Emphases supplied)*

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

(C) *Delinquency Interest.* xxx." *(Emphasis supplied)*

Based on the foregoing, the following amendments are introduced by the TRAIN Law, to wit:

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

   Currently, the legal interest rate is 6%,[90] hence the interest rate to be applied on any unpaid amount of tax shall be 12%, which is lower than the twenty (20%) interest imposed under the NIRC of 1997.

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

3. The period for the application of deficiency interest is modified in that it shall still begin from the date prescribed for its payment, but now, it shall end either: until the full payment thereof, **or upon issuance of a notice and demand by the CIR, whichever comes earlier**. Hence, under the TRAIN law, the running of the period for the computation of the deficiency interest may be interrupted by the issuance **of a notice and demand by the CIR.**

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

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

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The principle is well entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[91]

As a corollary, there being no clear legislative intent to retroactively apply the TRAIN law, the same should only be applied prospectively, *i.e.*, beginning January 1, 2018.

Furthermore, tax burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports, tax statutes being *construed strictissimi juris* against the government. Any doubt on whether a person, article or activity is taxable is generally resolved against taxation.[92]

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

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

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. The assessments issued by respondent against petitioner for taxable year 2010 covering deficiency VAT and EWT are **UPHELD**. Accordingly, petitioner is **ORDERED TO PAY** the aggregate amount of **₱18,217,296.15**, representing deficiency VAT and EWT, inclusive of the twenty-five percent (25%) surcharge and twenty percent (20%) deficiency interest and delinquency interest imposed under Section 249(B) and (C), of the NIRC of 1997, amended, respectively, computed until December 31, 2017, as follows:

	VAT	EWT	TOTAL
Basic Tax Due	₱365,610.50	₱4,852,187.71	₱5,217,798.21
Add: 25% Surcharge	91,402.63	1,213,046.93	1,304,449.55
Add: 20% Deficiency interest			
Deficiency interest from January 26, 2011 to February 17, 2016 [₱365,610.50 x 20% x 1849 / 365 days]	370,418.53		370,418.53

[91] *BPI Leasing Corporation vs. Court of Appeals, et al.,* G.R. No. 127624, November 18, 2003.
[92] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.

Deficiency interest from January 16, 2011 to February 17, 2016 [₱4,852,187.71 x 20% x 1859 / 365 days]		4,942,584.63	4,942,584.63
Total Amount Due, February 17, 2016[93]	**₱827,431.65**	**₱11,007,819.27**	**₱11,835,250.92**
Add: Deficiency interest from February 18, 2016 to December 31, 2017 (683 days)			
[₱365,610.50 x 20% x 683 / 365 days]	136,828.48		136,828.48
[₱4,852,187.71 x 20% x 683 / 365 days]		1,815,914.63	1,815,914.63
Add: Delinquency Interest from February 18, 2016 to December 31, 2017			
[₱827,431.65 x 20% x 683 / 365 days]	309,663.46		309,663.46
[₱11,007,819.92x 20% x 683 / 365 days]		4,119,638.66	4,119,638.66
Total Amount Due, as of December 31, 2017	**₱1,273,923.59**	**₱16,943,372.56**	**₱18,217,296.15**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of February 17, 2016 in the amount of **₱11,835,250.92**, as determined above, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, and as implemented by RR No. 21-2018.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[93] Respondent's *Decision* dated January 7, 2016 was received by petitioner on January 18, 2016. In the said *Decision*, respondent ordered petitioner to pay the deficiency tax assessments *"within thirty (30) days from the receipt"* thereof. Such 30-day period ended on February 17, 2016. Refer to Exhibits "P3" and "P3-A", Docket, pp. 345 to 351.

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice