REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

UNITED INTERNATIONAL PICTURES AKTIEBOLAG,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9699

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

OCT 14 2021 1:30 pm

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DECISION

DEL ROSARIO, P.J.:

Before this Court is a Petition for Review filed on October 13, 2017 by petitioner United International Pictures Aktiebolag, praying that judgment be rendered reversing and setting aside respondent Commissioner of Internal Revenue's Final Decision on Disputed Assessment dated July 19, 2017 and cancelling and setting aside the alleged deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, and Final Withholding Tax assessments issued against petitioner in the aggregate amount of Seventy-Seven Million Four Hundred Fifty-Two Thousand Three Hundred Ninety-Six Pesos and 33/100 (₱77,452,396.33), inclusive of interest, for taxable year 2010.

THE PARTIES

Petitioner is a duly-registered Philippine branch of United International Pictures Aktiebolag, a corporation duly organized and existing under the laws of Sweden. Petitioner is duly authorized to do business in the Philippines as evidenced by its Securities and Exchange Commission License No. 576. It has its principal office in the Philippines at 18th Floor, Philam Tower, 8767 Paseo de Roxas,

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Makati City. It is also a registered taxpayer with Tax Identification Number 358-892-000.[1]

Respondent is the head of the Bureau of Internal Revenue (BIR), the government agency responsible for the assessment and collection of all national revenue taxes, fees, and charges. He may be served with notices and other court processes at the Legal Division of Revenue Region No. 8, located at the 2nd Floor, BIR Building, 313 Gil Puyat Avenue, Makati City.[2]

THE FACTS

Petitioner is engaged in the business of acquiring and leasing motion pictures.[3]

Petitioner and United International Pictures B.V. (UIP BV)[4] entered into a Licensing Agreement where the latter granted petitioner exclusive license to distribute in the Philippines feature motion pictures including trailers solely for theatrical and non-theatrical exhibition in exchange for a license fee paid by petitioner computed at a percentage of the revenue generated. [5]

By virtue of the Licensing Agreement, petitioner entered into a Distribution Agreement with Solar Entertainment Corporation (Solar) where it granted the latter an exclusive license to exhibit and distribute in the Philippines, feature motion pictures and related trailers designated by petitioner in exchange for Solar to deduct and retain as distribution fee an amount equal to six and a half percent (6 ½ %) of gross receipts inclusive of Value-Added Tax (VAT).[6]

On September 12, 2012, Electronic Letter of Authority[7] No. SN: eLA201000078629 dated September 10, 2012 was issued by

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[1] Par. 2, Petition for Review, *CTA Docket*, Vol. I, p. 11; Par. 1, Pre-Trial Order, *CTA Docket*, Vol. II., p. 551.
[2] Par. 2, Pre-Trial Order, *CTA Docket*, Vol. II., p. 551.
[3] Par. 11, Petition for Review, *CTA Docket*, Vol. I, p. 15; Exhibit "P-1", *CTA Docket*, Vol. III, pp. 1043-1046.
[4] a corporation duly organized in the Netherlands with office address at Berghause Plaza, Koningin Wilhelminaplein 2, 1062 HK, Amsterdam, Netherlands, Exhibit "P-17, *CTA Docket*, Vol. III, pp. 1177-1178.
[5] Exhibit "P-19", *CTA Docket*, Vol. III, pp. 1180-1193.
[6] Exhibit "P-24", *CTA Docket*, Vol. III, pp.1236-1254.
[7] BIR Records, p. 1.

Nestor S. Valeroso, Revenue Regional Director of Revenue Region No. 8-Makati City, authorizing Revenue Officer (RO) Jumaimah Bagul, under the supervision of Group Supervisor Josephine Elarmo, of Revenue District Office No. 50 – South Makati, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2010 to December 31, 2010.

As a result of the audit and examination of petitioner's records, respondent issued on September 16, 2013, a Preliminary Assessment Notice[8] (PAN), with attached Details of Discrepancies,[9] which proposed to assess petitioner for Income Tax, VAT, Expanded Withholding Tax (EWT), and Final Withholding Tax (FWT) in the total amount of Fifty-One Million Nine Hundred Twenty Thousand Two Hundred Seventy-Eight Pesos and 81/100 (₱51,920,278.81) for taxable year 2010. Petitioner received the PAN on even date.[10]

On October 1, 2013, petitioner filed with the Revenue Region No. 8, Office of the Regional Director, a response to the PAN dated October 1, 2013, summarizing its objections to the PAN.[11]

On October 24, 2013, petitioner and respondent executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code,[12] extending the BIR's period to assess petitioner for deficiency internal revenue taxes for taxable year 2010 until October 15, 2014.

On August 11, 2014, petitioner received a Formal Notice of Assessment (FAN),[13] with attached Details of Discrepancies,[14] and Assessment Notices,[15] all dated August 6, 2014, which demanded from petitioner the payment of the alleged Income Tax, VAT, EWT, and FWT for taxable year 2010, in the aggregate amount of Thirty-

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[8] Exhibit "P-4", *CTA Docket*, Vol III, pp. 1050-1051; Exhibit "R-5", BIR Records, pp. 280-281.
[9] *CTA Docket*, Vol III, pp. 1052-1053; BIR Records, pp. 278-279.
[10] Par. 3, Pre-Trial Order, *CTA Docket*, Vol. II, p. 551.
[11] Exhibit "P-5", *CTA Docket*, Vol. III, pp. 1059-1068.
[12] BIR Records, p. 310.
[13] Exhibit "P-7", *CTA Docket*, Vol III, pp. 1085-1086; Exhibits "R-7", BIR Records, pp. 344-345.
[14] Exhibit "P-7", *CTA Docket*, Vol III, pp. 1087-1088; Exhibits "R-7"", BIR Records, pp. 342-343.
[15] Exhibit "P-7", *CTA Docket*, Vol III, pp. 1081-1084; Exhibits "R-7", BIR Records, pp. 346-349.

Three Million Five Hundred Eight-Five Thousand Nine Hundred Eighty-One Pesos and 35/100 (₱33,585,981.35), exclusive of interest, broken down as follows:

Basic Tax Type	**Amount**
Income Tax	₱ 8,724,476.45
VAT	₱ 4,687.55
EWT	₱ 1,452,126.36
FWT	₱ 23,404,690.99
Total:	**₱ 33,585,981.35**

On September 10, 2014, petitioner filed a Request for Reconsideration,[16] contesting the alleged deficiency income tax, VAT, EWT, and FWT for taxable year 2010.

On September 14, 2017, petitioner received a Final Decision on Disputed Assessment (FDDA) [17] with attached Details of Discrepancies[18] for Income Tax, VAT, EWT, FWT, all dated July 19, 2017.

Aggrieved, petitioner filed the present Petition for Review[19] on October 13, 2017.

On January 18, 2018, respondent filed his Answer[20] through registered mail, setting forth special and affirmative defenses.[21]

On June 18, 2018, respondent filed his Pre-Trial Brief[22] through registered mail; while petitioner filed its Pre-Trial Brief[23] on June 22, 2018.

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[16] Exhibit "P-8", *CTA Docket*, Vol III, pp. 1090-1101.
[17] Exhibit "P-9", *CTA Docket*, Vol III, pp. 1137-1138; Exhibit "R-9", BIR Records, pp. 421-424.
[18] *Id.*, pp. 1139-1140.
[19] *CTA Docket*, Vol. I, pp. 10-39.
[20] *CTA Docket*, Vol. I, pp. 209-212.
[21] Respondent's special and affirmative defenses are quoted under "Parties' Arguments".
[22] *CTA Docket*, Vol. I, pp. 505-507.
[23] *CTA Docket*, Vol. II, pp. 487-504.

The Pre-Trial Conference was held on December 6, 2018.[24] The Pre-Trial Order[25] was issued on January 15, 2019. The Court also terminated the Pre-Trial Conference in the same Order.

During trial, petitioner presented documentary and testimonial evidence. It presented the following witnesses: Irene Jose, who testified by way of her Judicial Affidavit,[26] and Nita Dhumal, who testified by way of a Deposition.[27] Petitioner's formally offered exhibits, as contained in its Formal Offer of Documentary Exhibits[28] filed on July 15, 2019, were admitted in evidence in the Resolution[29] dated September 25, 2019.

Respondent also presented his documentary and testimonial evidence. Respondent offered the testimony of RO Jumaimah Bagul, who testified by way of her Judicial Affidavit.[30] Respondent's formally offered exhibits, as contained in his Formal Offer of Evidence[31] posted on March 16, 2020 *via* registered mail and received by the Court on June 2, 2020, were admitted in the Resolution dated July 30, 2020.[32] In the same Resolution, the Court ordered the parties to file their respective memoranda within thirty (30) days from receipt thereof.

On September 25, 2020, petitioner filed *via* electronic mail (email) and in Court a Motion for Time to File Memorandum,[33] which the Court expunged from the records of the case in the Resolution[34] dated October 23, 2020 for being a prohibited pleading.

On November 5, 2020, petitioner filed *via* email a Motion for Reconsideration and to Admit[35] the attached Memorandum. The

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[24] Order dated December 6, 2018, *CTA Docket*, Vol. I, p. 539.
[25] *CTA Docket*, Vol. II, pp. 550-557.
[26] Exhibits "P-26" and "P-26-a", Judicial Affidavit executed on June 13, 2018, *CTA Docket*, Vol. I, pp. 461-465.
[27] Exhibits "P-25", Transcript of Deposition dated May 10, 2019, *CTA Docket*, Vol. II, pp. 965-1008.
[28] *CTA Docket*, Vol III, pp. 1026-1042.
[29] *CTA Docket*, Vol III, pp. 1260-1261.
[30] Exhibits "R-10" and "R-10-a", Judicial Affidavit dated January 7, 2019, *CTA Docket*, Vol. II, pp. 560-565.
[31] *CTA Docket*, Vol III, pp. 1271-1273.
[32] *CTA Docket*, Vol III, pp. 1304-1305.
[33] *CTA Docket*, Vol III, pp. 1306-1310.
[34] *CTA Docket*, Vol. III, p. 1688.
[35] *CTA Docket*, Vol. III, *unpaginated*.

Court denied petitioner's Motion for Reconsideration in the Resolution[36] dated November 26, 2020.

Despite the given period, both parties failed to file their respective memoranda.[37] The case was submitted for decision on October 23, 2020.[38]

THE ISSUE[39]

The sole issue for consideration of the Court is whether petitioner is liable for deficiency Income Tax, VAT, EWT, and FWT in the amounts of ₱14,642,778.83, ₱8,072.86, ₱2,508,796.94, and ₱40,435,611.34, respectively, for taxable year 2010.

THE PARTIES' ARGUMENTS

Petitioner puts forth the following arguments:

(i) Respondent violated petitioner's right to due process as the issuance of the FAN and the FDDA was not preceded by the issuance of an amended PAN (notwithstanding substantial increase in the withholding tax rate originally imposed in the PAN).

(ii) Respondent erred in upholding the deficiency Income Tax assessment on the following grounds:

a) Petitioner's alleged liability for deficiency Income Tax from undeclared income from unaccounted billboard income for 2010 was already extinguished by payment;

b) There is no basis for disallowing the expense under Section 34(K) of the National Internal Revenue Code (NIRC) of 1997, as amended;

c) Petitioner made an overpayment in its Annual Income Tax Return in 2010, and is therefore entitled

[36] *CTA Docket*, Vol. III, *unpaginated.*
[37] Respondent failed to file his memorandum as per Records Verification dated October 9, 2020.
[38] *Supra* Note 29.
[39] Pre-Trial Order, *CTA Docket*, Vol. III, pp. 551-552.

to carry over its excess credit to the succeeding taxable years; and,

d) Assuming *arguendo* that petitioner did not make an overpayment in 2010 and was not entitled to carry-over excess tax payments to the succeeding year, the proper remedy for respondent is to add back such excess amount to the Income Tax due in the succeeding taxable year/s and not to disallow the tax credit in 2010.

(iii) Respondent erred in upholding the VAT assessment on the following grounds:

a) Petitioner's liability for deficiency VAT assessment on undeclared billboard income for 2010 was already extinguished by payment;

b) Petitioner made an overpayment in its Quarterly VAT Return for the fourth quarter in 2010 and is therefore entitled to carry over its excess credit to the succeeding year; and,

c) Assuming *arguendo* that petitioner had no excess input VAT in 2010 and was not entitled to carry-over excess tax payments to the succeeding year, the proper remedy for respondent is to add back such excess input VAT to the output VAT due in the succeeding taxable year/s and not to disallow the input VAT in 2010.

(iv) Respondent erred in imposing EWT on the Distribution Fee on the following grounds:

a) The Distribution Fee was paid by petitioner to Solar for actual services rendered by the latter to the former. The Distribution Fee does not constitute gross payment to resident individuals and corporate cinematographic film owners, lessors, or distributors that is subject to EWT under Section 2.57.2(D) of Revenue Regulations (RR) No. 2-98; and,

b) The Distribution Fee is not expressly enumerated in RR No. 2-98 as being subject to EWT.

(v) Respondent erred in upholding the deficiency FWT on the following grounds:

(a) Petitioner correctly withheld taxes on the royalties and branch profit remittance based on the rates provided in the Republic of the Philippines-Netherlands (RP-Netherlands) Tax Treaty and Republic of the Philippines-Sweden Tax Treaty (RP-Sweden), respectively; and,

(b) Petitioner properly availed of the rates provided under the RP-Netherlands Tax Treaty and RP-Sweden Tax Treaty.

Respondent, on the other hand, raises the following counter-arguments:

(i) An RR, the issuance of which is authorized by statute, has the force and effect of law (*Vitug & Acosta Tax Law and Jurisprudence, 3rd Edition, p. 55)*;

(ii) Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed (*Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109*);

(iii) The FDDA, which adopted the findings in the FAN, reflects the internal revenue tax liabilities of petitioner for the taxable year 2010, states the grounds thereof:

(a) Income Tax -

(1) Income payments on billboard was not explained nor accounted in petitioner's Financial Statement/Income Tax Return; thus, they are considered undeclared sources of income pursuant to Section 27 in relation to Section 32 of the NIRC of 1997, as amended.

(2) Petitioner did not subject to withholding tax several expenses; hence, it was disallowed pursuant to Section 34(K) of the NIRC of 1997, as amended.

(3) Petitioner's excess tax credit carried over to the succeeding year in the amount of ₱783,625.00 was added back under the presumption that the aforesaid excess tax credit has already been credited against the estimated quarterly Income Tax liabilities for the taxable quarter/s of the succeeding taxable years, *i.e.* taxable year 2011 pursuant to Section 76 of the NIRC of 1997, as amended.

(b) VAT-

(1) There was undeclared income from unaccounted billboard pursuant to Sections 105 and 108 of the NIRC of 1997, as amended.

(2) Petitioner's excess input tax carried over to the succeeding periods/years in the amount of ₱834,712.39 was deducted from the total tax credit since the same was carried over and credited against the output tax due on the succeeding quarters/years pursuant to Section 110(B) of the NIRC of 1997, as amended.

(c) EWT – petitioner failed to withhold/remit the correct withholding tax due on agency fee which was previously allowed as deduction from gross income; hence, it is liable to pay deficiency withholding tax thereon pursuant to Section 2.57.2 (D) of RR No. 2-98, as amended.

(d) FWT – petitioner failed to withhold and remit the final tax on payments made to non-resident foreign entities previously allowed as deduction from gross income; hence, petitioner is liable to pay deficiency final withholding tax thereon pursuant to Section 2.57.1 of RR No. 2-98, as amended.

(iv) Taxes are the lifeblood of the government and should be collected without unnecessary hindrance (*Commissioner of Internal Revenue vs. Algue, Inc.,* L-28896, February 17, 1988).

THE COURT'S RULING

The Petition for Review was timely filed; hence, the Court has jurisdiction over the case

Before delving into the merits of the case, the Court shall first determine whether the Petition for Review was filed within the prescribed period under the NIRC of 1997, as amended.

Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner upon which tax deficiency assessments should be issued and protested, *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 pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> 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.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> If the protest is denied in whole or in part, or is **not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days** from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.** (*Boldfacing supplied*)

Corollary thereto, Section 3 of RR No. 12-99, as amended by RR No. 18-13, provides:

> "**SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —**
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> **3.1.1 *Preliminary Assessment Notice (PAN).*** — If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show 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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> **3.1.4 *Disputed Assessment.*** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) **Request for reconsideration** — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) **Request for reinvestigation** — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> xxx xxx xxx

> If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
>
> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
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> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
>
> xxx" (*Boldfacing supplied*)

In *Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue*,[40] the Supreme Court enumerated the remedies a taxpayer may avail when the CIR or his authorized representative wholly or partially denies its protest, *viz.*:

1. **If the protest is wholly or partially denied by the CIR *or* his authorized representative, then the taxpayer may appeal to the Court of Tax Appeals (CTA) within 30 days from receipt of the whole or partial denial of the protest.**

2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.

3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting

[40] G.R. No. 208731, January 27, 2016.

> documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

Relatedly, Section 11 of Republic Act No. 1125,[41] as amended, in relation to Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals,[42] provides that a party adversely affected by the decision or inaction of the CIR may appeal to the CTA by a petition for review within thirty (30) days after the expiration of the period fixed by law.

In this case, petitioner received the FDDA dated July 19, 2017 on September 14, 2017. Petitioner had thirty (30) days therefrom, or until October 14, 2017 within which to file its Petition for Review before the CTA. The Petition for Review was timely filed on October 13, 2017. Thus, the Court has acquired jurisdiction to take cognizance of the present case.

Petitioner's right to due process was not violated albeit the non-issuance of an amended PAN

Petitioner argues that its right to due process was violated as the issuance of the FAN and FDDA was not preceded by the

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

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

issuance of an amended PAN to reflect the increase in the EWT rate from two percent (2%) as indicated in the PAN to five percent (5%).[43]

The Court finds petitioner's argument bereft of merit.

There is nothing in Section 228 of the NIRC of 1997, as amended, and in RR No. 12-99, as amended, which requires the issuance of an Amended PAN. Section 3.1.1 of RR No. 12-99 is explicit that the FLD/FAN shall be issued within fifteen (15) days from receipt of the taxpayer's response to the PAN.

In this case, petitioner received the PAN on September 18, 2013 which laid out the initial findings of respondent. Petitioner filed its response to the PAN on October 13, 2013. On August 11, 2014, petitioner received the FAN with attached Details of Discrepancies and Assessment Notices. The attached Details of Discrepancies states that upon further verification by respondent, he concluded that pursuant to Section 2.57.2(D) of RR No. 2-98, the withholding tax rate applicable was five percent (5%) instead of two percent (2%) as previously used in the original investigation. The change in the tax rate was based on the relevant provision of RR No. 2-98. The FAN states in writing the facts and the law on which the EWT assessment was based.

Petitioner was given the opportunity to contest the application of the five percent (5%) EWT rate. Hence, there is no basis to hold that there was a violation of petitioner's right to due process for the non-issuance of an amended PAN.

The Court shall proceed to rule on the substantive aspects of the assessments against petitioner.

I. INCOME TAX

Respondent assessed petitioner of basic deficiency Income Tax and interest amounting to ₱19,800,976.14, computed as follows:

Taxable Income per return		₱ 77,608,125.00
Add: Undeclared Income from unaccounted billboard	₱ 39,062.64	
Disallowed expenses due to non-withholding	29,042,527.19	29,081,589.83
Adjusted Taxable Income		₱ 106,689,714.83

[43] Exhibit "P-4", *CTA Docket*, Vol. III, pp. 1050-1053.

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Income Tax Due		₱ 32,006,914.45
Less: Tax Credits/Payments		
Prior year's excess tax credits	₱ 2,297,880.00	
Creditable income tax withheld per BIR Form No. 2307	20,060,857.00	
Tax payments	1,707,326.00	
Total	₱ 24,066,063.00	
Less: Excess Tax Credit carried over to succeeding year	783,625.00	23,282,438.00
Basic Tax Due		₱ 8,724,476.45
Add: Interest (04.15.11 - 08.18.17)		11,076,499.69
TOTAL AMOUNT DUE		**₱ 19,800,976.14**

The computation by respondent of the basic deficiency Income Tax hinges on the following items of assessment:

ITEM	AMOUNT
A. Undeclared Income from unaccounted billboard	₱ 39,062.64
B. Disallowed expenses due to non-withholding	₱ 29,042,527.19
C. Excess Tax Credit carried over to succeeding year	₱ 783,625.00

A. Undeclared Income from Unaccounted Billboard — ₱39,062.64

Respondent assessed the amount of ₱39,062.64 representing undeclared income from unaccounted billboard which were allegedly not subjected to Income Tax. The assessed amount is the resulting difference between the income payments per alphalist amounting to ₱6,595,845.80 and petitioner's income as declared in the Annual Income Tax Return (AITR)[44] amounting to ₱6,556,783.16.

This item of assessment has a corresponding deficiency Income Tax of ₱11,718.79 and interest thereon amounting to ₱7,981.62, or a total amount due of ₱19,700.41, as shown below:

Undeclared Income from Unaccounted Billboard	₱ 39,062.64
Multiplied by corporate IT rate	30%
Corresponding deficiency IT	₱ 11,718.79
Add: Interest (04.16.11 - 09.10.14)	7,981.62
Total Amount Due	**₱ 19,700.41**

Petitioner claims that this item of assessment should be cancelled since it had already paid the corresponding deficiency

[44] Exhibit "P-12", *CTA Docket*, Vol. III, pp. 1146-1148.

Income Tax and interest thereon as evidenced by Payment Form[45] (BIR Form No. 0605) with Reference No. 29140000962667 and UBP Payment Status[46] with Reference No. 29140000962667 and Payment Transaction No. 147547015. These documents show that payment in the amount of ₱19,700.41 was made on September 10, 2014.

Considering that the amount paid by petitioner tallies with the total amount due arising from this particular item of assessment, it is only proper for the Court to cancel this item of assessment.

B. Disallowed Expenses due to Non-Withholding — ₱29,042,527.19

The other item of assessment arose from petitioner's alleged failure to withhold taxes on its expenses amounting to ₱29,042,527.19. Finding that petitioner failed to withhold EWT on the distribution fees paid by petitioner to its local distributor, Solar, respondent disallowed the said amount as deduction from petitioner's gross income pursuant to Section 34(K) of the NIRC of 1997, as amended.

Petitioner argues that there is no basis for disallowing the expense as it is not subject to EWT. Petitioner contends that the 5% EWT is imposed only when payment is made to resident individuals and corporate cinematographic film owners, lessors, or distributors, and when payment is for film rentals. Petitioner also contends that the distribution fees paid by it to Solar are not film rentals but simply compensation for services in connection with the distribution and exhibition of its motion pictures in the Philippines.

Petitioner's argument deserves scant consideration.

Section 2.57.2 of RR No. 2-98 dated April 17, 1998 provides a list of income payments that are subject to creditable withholding tax which includes gross payments to corporate cinematographic film owners, lessors or distributors, thus:

> "Section 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* – Except as herein

[45] Exhibit "P-10", *CTA Docket*, Vol. III, pp. 1141-1144.
[46] Exhibit "P-11", *CTA Docket*, Vol. III, p. 1145.

> 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:
>
> xxx xxx xxx;
>
> **(D) *Cinematographic film rentals and other payments* – On gross payments to resident individuals and corporate cinematographic film owners, lessors or distributors – Five percent (5%).**"

A plain reading of the afore-quoted provision shows that payments other than for cinematographic film rentals are subject to withholding tax for as long as it is paid to resident individuals and corporate cinematographic film owners, lessors, and distributors.

Stated differently, it is not solely the "gross rentals" which are subject to five percent (5%) withholding tax, but the more general term of "gross payments". As long as the payment to a cinematographic film distributor is made in connection with the **distribution of cinematographic films**, such is evidently subject to withholding tax.

In the case at bar, the Distribution Agreement[47] executed by petitioner and Solar granted the latter an exclusive license to exhibit and distribute in the Philippines feature motion pictures and related trailers designated by petitioner. As compensation, Solar was entitled to deduct and retain as distribution fee an amount equal to six and a half percent (6½%) of gross receipts inclusive of VAT. Clause 4 of the Agreement enumerates the core obligations of Solar, namely: pre-distribution, marketing, distribution, and post-distribution of the motion pictures. Truth to tell, petitioner even admitted that the distribution fee received by Solar are payments for services related to the distribution of its cinematographic films, to wit:

> "73. In this case, the Distribution Fee paid by Petitioner to Solar is not for film rentals. In fact, it is Petitioner which is the party providing the films to Solar. The Distribution Fee is simply the consideration for several **pre-distribution, marketing, distribution, and post-distribution services** that Solar is obliged to render under Clause 4 of the Distribution Agreement between Petitioner and Solar.

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[47] Exhibit "P-24", *CTA Docket*, Vol. III, pp. 1236-1254.

> 74. While the fee received by Solar was denominated as "distribution fee," the amounts received were actually **payments for certain services rendered by Solar in connection with the exhibition of motion pictures in the Philippines** and not rentals for motion pictures. What should therefore be considered is the nature of the payment and not the label attached to it."[48] (*Boldfacing supplied*)

An examination of the agreement shows that Solar is, without a doubt, considered a **cinematographic film distributor** and the distribution fees paid under the Distribution Agreement evidently fall under Section 2.57.2(D) of RR No. 2-98. Concomitantly, respondent correctly stated in the FAN and FDDA that the distribution fees paid by petitioner to Solar for the pre-distribution, marketing, distribution, and post-distribution services that Solar rendered to petitioner are subject to 5% EWT.

Based on the foregoing, the Court finds that respondent correctly disallowed petitioner's payment of distribution fees in the amount of ₱29,042,527.19 as allowable deduction to its gross income in accordance with Section 34(K) of the NIRC of 1997, as amended.

C. Excess Tax Credits Carried Over to Succeeding Period — ₱783,625.00

Respondent added back petitioner's total excess tax credits at year-end 2010 in the amount of ₱783,625.00 under the presumption that the tax benefit of this amount has already been credited against the estimated quarterly Income Tax liabilities for the taxable quarter of the succeeding taxable years, *i.e.*, TY 2011 onwards, pursuant to Section 76 of the NIRC of 1997, as amended.

Petitioner argues that it properly carried over its excess tax credits in accordance with Section 76 of the NIRC of 1997, as amended, and that the excess tax credits should not be added back since the tax benefit will be in the succeeding year and at most it may only be assessed in the said succeeding year.

Petitioner's argument is meritorious.

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[48] Petition for Review, *CTA Docket*, Vol. I, p. 32.

Respondent failed to provide the factual and legal bases for the disallowance of the stated amount as he only alleged, as stated in the Details of Discrepancy attached to the FDDA, that petitioner carried over the tax credits sourced from TY 2010 and prior years. There is nothing in Section 76 of the NIRC of 1997, as amended that disallows the availment of excess tax credits in succeeding years, as it, in fact, allows such carry-over. The requirement to state in writing the factual and legal bases of an assessment is part of a taxpayer's right to due process. [49] Failure to observe such requirement renders the assessment void.[50]

Moreover, it was likewise improper for respondent to disallow the said excess tax credits because any tax benefit derived by petitioner from the carry-over of said amount redounds to the succeeding TY 2011. Since the tax benefit is in the succeeding year, which is outside the scope of the present assessment covering TY 2010, petitioner may, at most, only be assessed in the said succeeding year.

In view thereof, the only item of disallowance that the Court shall uphold is the disallowed expenses due to non-withholding amounting to ₱29,042,527.19. Thus, the basic deficiency Income Tax now stands at ₱7,929,132.66, computed as follows:

Taxable Income per return		₱ 77,608,125.00
Add: Disallowed expenses due to non-withholding		29,042,527.19
Adjusted Taxable Income		106,650,652.19
Income Tax Due		31,995,195.66
Less: Tax Credits/Payments		
Prior year's excess tax credits	₱ 2,297,880.00	
Creditable income tax withheld per BIR Form No. 2307	20,060,857.00	
Tax payments	1,707,326.00	
Total	24,066,063.00	24,066,063.00
Basic Tax Due		**₱ 7,929,132.66**

II. EXPANDED WITHHOLDING TAX

In view of the discussion above with regard to petitioner's failure to subject its payment of distribution fees to Solar in the amount of ₱29,042,527.19, the Court shall sustain the assessment

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[49] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corp.*, G.R. Nos. 215534 & 215557, April 18, 2016.
[50] Section 228, NIRC of 1997, as amended.

for basic deficiency EWT of ₱1,452,126.36 or five percent (5%) of ₱29,042,527.19.

III. VALUE-ADDED TAX

Respondent assessed petitioner of basic deficiency VAT and interest amounting to ₱10,844.29.

It should be noted that in the PAN and FAN, the deficiency VAT, inclusive of interest, amounted to ₱8,072.86. This amount was paid by petitioner on September 8, 2014 as evidenced by Payment Form (BIR Form 0605)[51] with Reference No. 291400009588904 and UBP Payment Status[52] with Reference No. 291400009588904 and Payment Transaction No. 1475093.

Considering that the payment of this item of assessment has been sufficiently established, there is no basis to include the same in the FDDA. Thus, the Court finds it appropriate to cancel this item of assessment.

IV. FINAL WITHHOLDING TAX

Finding that petitioner under-withheld final withholding taxes on royalty payments and branch profit remittances it made in taxable year 2010, respondent assessed petitioner of basic deficiency FWT and interest amounting to ₱54,273,234.12, computed as follows:

	PER FS/ITR	RATE	TAX DUE
Income payments to Cinematographic Film Owner/Royalty Expense	₱ 223,886,754.81	25%	₱ 55,971,688.70
Branch Profit Remittance	29,411,983.20	15%	4,411,797.48
Total			60,383,486.18
Less: Tax paid per return			36,978,795.19
Amount Still Due			23,404,690.99
Add: Interest (01.16.11 to 08.18.17)			30,868,543.13
TOTAL AMOUNT DUE			**₱ 54,273,234.12**

Respondent imposed twenty-five percent (25%) FWT on the royalty payments made by petitioner to UIP BV, and fifteen percent (15%) FWT on the branch profit remittances made by petitioner to

[51] Exhibit "P-13", *CTA Docket*, Vol. III, pp. 1150-1152.
[52] Exhibit "P-14", *CTA Docket*, Vol. III, p. 1153.

United International Pictures AB (UIP AB) head office, in accordance with Sections 2.57(I)(2) and (H)(2) of RR No. 2-98, respectively, to wit:

> "Section 2.57. *Withholding of Tax at Source*
>
> xxx xxx xxx
>
> (H) *Income Payment to a Resident Foreign Corporation.* – The following forms of income shall be subject to final withholding tax in the hands of a foreign corporation, based on the gross amount thereof and at the rate of tax prescribed therefor:
>
> xxx xxx xxx
>
> (2) *Tax on Branch Profit Remittances* – On any profit remitted by the Philippine branch of a foreign corporation to its head office abroad based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof except those registered with the Philippine Economic Zones Authority (PEZA) and other companies within the special economic zones such as Subic Bay Metropolitan Authority (SBMA) and Clark Development Authority (CDA) – Fifteen percent (15%).
>
> xxx xxx xxx
>
> (I) *Income Derived From All Sources Within the Philippines by Non-Resident Foreign Corporation.* – The following shall be subject to final withholding tax based on the gross amount of income and at the rate of tax prescribed therefor:
>
> xxx xxx xxx
>
> (2) Gross income from all sources within the Philippines derived by non-resident cinematographic film owners, lessors or distributors – Twenty five percent (25%).

Petitioner counters that it withheld the correct taxes on both the royalties and branch profit remittances using the rates found in the RP-Netherlands Tax Treaty [53] and RP-Sweden Tax Treaty, [54] respectively. Petitioner argues that it is entitled to avail of the benefits

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[53] *Convention Between the Kingdom of The Netherlands and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, September 20, 1991.
[54] *The Convention Between the Republic of the Philippines and the Kingdom of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, November 1, 2003.

under the said treaties albeit its non-filing of tax treaty relief applications with the BIR.

As aptly insisted by petitioner, a tax treaty relief application is not necessary for a taxpayer to avail of the benefits or the reliefs provided under a tax treaty executed by the Philippines with a foreign country.

In *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*,[55] the Supreme Court ruled that the filing of a tax treaty relief application is not indispensable in availing of the benefits of tax treaties. It went further to hold that the BIR must not impose additional requirements that would negate the availment of the reliefs provided in the tax treaty. Pertinent parts of the Supreme Court's pronouncement are quoted hereunder:

> "A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken. Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. **The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements.** More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.
>
> Likewise, **it must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period.** We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.
>
> Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, **the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.**

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[55] G.R. No. 188550, August 19, 2013.

> The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involves an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. **But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.**" (*Boldfacing supplied*)

Clearly, petitioner's failure to file any tax treaty relief application does not *ipso facto* deprive it of its entitlement to tax treaty relief.

A. Royalties

Petitioner made royalty payments in the amount of ₱223,886,754.81 to UIP BV, which is a non-resident foreign corporation duly organized and with principal office in the Netherlands. To prove such status, petitioner offered in evidence: (1) UIP BV's duly authenticated Deed of Incorporation[56] dated July 13, 1982; (2) duly authenticated tax residency certificate[57] of UIP BV for taxable year 2010 dated October 9, 2017; (3) UIP BV's Certificate of Non-Registration of Company[58] dated October 18, 2007 issued by the Securities and Exchange Commission (SEC), stating that its records do not show the registration of UIP BV; and, (4) Licensing Agreement between petitioner and UIP BV with effective date of May 11, 2005.[59]

The following relevant provisions of the RP-Netherlands Tax Treaty are applicable, *viz.*:

> "**Article 12**
> **ROYALTIES**
>
> xxx xxx xxx
>
> 2. However, such royalties may also be taxed in the State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:

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[56] Exhibit "P-16", *CTA Docket*, Vol. III, pp. 1156-1176.
[57] Exhibit "P-17", *CTA Docket*, Vol. III, pp. 1177-1178.
[58] Exhibit "P-18", *CTA Docket*, Vol. III, p. 1179.
[59] Exhibit "P-19", *CTA Docket*, Vol. III, pp. 1180-1193.

> a) 10 per cent of the gross amount of the royalties where the royalties are paid by an enterprise registered, and engaged in preferred areas of activities in that State; and
>
> **b) 15 per cent of the gross amount of the royalties in all other cases.**" (*Boldfacing supplied*)

In *Residents of Lower Atab & Teacher's Village vs. Sta. Monica Industrial & Development Corporation*,[60] the Supreme Court defined "beneficial ownership" as follows:

> "Beneficial ownership has been defined as ownership recognized by law and capable of being enforced in the courts at the suit of the beneficial owner. xxx Usually, beneficial ownership is distinguished from naked ownership, which is the enjoyment of all the benefits and privileges of ownership, as against possession of the bare title to property."

With the submission of UIP BV's Deed of Incorporation, tax residency certificate, and SEC Certificate of Non-Registration of Company, petitioner has duly proven that UIP BV is a corporation duly formed and organized in the Netherlands. Under the Licensing Agreement between petitioner and UIP BV, the royalties paid to the latter are sourced from the rental payments made to petitioner for the exhibition and distribution in the Philippines of motion pictures owned by UIP BV. Thus, it can be said that UIP BV has beneficial ownership of the royalties paid by petitioner since the royalty payments are the compensation for the use by petitioner of the films owned by UIP BV.

B. Branch Profit Remittance

Petitioner made branch profit remittances in the amount of ₱29,411,983.20 to United International Pictures B.V. head office, which is a non-resident foreign corporation duly organized, and with principal office, in Sweden. To prove such status, petitioner offered in evidence the following: (1) Articles of Association (in Swedish language) of UIP AB;[61] (2) duly authenticated English translation of the Articles of Association of UIP AB;[62] and, (3) duly authenticated tax residency certificate[63] for taxable year 2010 of UIP AB.

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[60] G.R. No. 198878, October 15, 2014.
[61] Exhibit "P-21", *CTA Docket*, Vol. III, pp. 1214-1220.
[62] Exhibit "P-21-A", *CTA Docket*, Vol. III, pp. 1221-1230.
[63] Exhibit "P-22", *CTA Docket*, Vol. III, pp. 1231-1233.

Since petitioner remitted branch profits to its head office in Sweden, the relevant provision of the RP-Sweden Tax Treaty, particularly Article 10(6) thereof, is applicable, *viz.*:

> "**Article 10**
> **DIVIDENDS**
>
> xxx xxx xxx
>
> 6. Nothing in this Convention shall prevent either Contracting State from imposing, apart from the corporate income tax, **a tax on remittance of profits by a branch to its head office provided that the tax so imposed shall not exceed 10 per cent of the amount remitted**. If any Convention for the avoidance of double taxation concluded by the Philippines with a third State after the date of signature of this Convention any provision which excludes any item of income covered by Article 8 (Shipping and Air Transport) of this Convention from the tax mentioned in this paragraph or reduces the rate to a rate which is lower than 10 per cent, such exclusion or lower rate shall automatically apply between Sweden and the Philippines. (*Boldfacing supplied*)

Applying the rates provided in the two (2) abovementioned tax treaties, the total FWT due from petitioner amounted to ₱36,524,211.54. This amount is, however, lower than the total amount of FWT petitioner has already paid per its FWT returns of ₱36,978,795.19, broken down below:

REMITTANCES	EXHIBIT NO.	AMOUNT
For the royalty payments		
BIR Form No. 1601-F for January 2010	P-20a	₱ -
BIR Form No. 1601-F for February 2010	P-20b	778,670.23
BIR Form No. 1601-F for March 2010	P-20c	616,241.94
BIR Form No. 1601-F for April 2010	P-20d	1,990,789.59
BIR Form No. 1601-F for May 2010	P-20e	12,692,761.86
BIR Form No. 1601-F for June 2010	P-20f	6,770,149.79
BIR Form No. 1601-F for July 2010	P-20g	-
BIR Form No. 1601-F for August 2010	P-20h	5,327,694.37
BIR Form No. 1601-F for September 2010	P-20i	2,475,472.44
BIR Form No. 1601-F for October 2010	P-20j	876,806.58
BIR Form No. 1601-F for November 2010	P-20k	2,509,010.07
BIR Form No. 1601-F for December 2010	P-20l	-
For the branch profit remittance		
BIR Form No. 1601-F	P-23	2,941,198.32
Total FWT Remittances		**₱ 36,978,795.19**

Deducting the total amount of FWT paid per returns of ₱36,978,795.19 from the total final withholding tax due of

₱36,524,211.54, an excess payment of ₱454,583.65 had been made by petitioner, as computed below:

	PER FS/ITR	RATE	TAX DUE
Income payments to Cinematographic Film Owner/Royalty Expense	₱ 223,886,754.81	15%	₱ 33,583,013.22
Branch Profit Remittance	29,411,983.20	10%	2,941,198.32
Total FWT due			36,524,211.54
Less: Total FWT Remittances per BIR Form No. 1601-F			36,978,795.19
Amount Still Due (Excess Payment)			₱ (454,583.65)

In view of the resulting excess payment of FWT, the Court finds that this item of assessment is cancelled.

Tax assessments made by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment.[64] Thus, the burden of proof lies with the taxpayer in controverting the tax assessment.[65]

In summary, petitioner has discharged such burden but only in relation to the assessments for deficiency VAT and FWT. The assessments for deficiency Income Tax and EWT are sustained with modification.

WHEREFORE, in light of the foregoing, the Petition for Review filed by United International Pictures Aktiebolag on October 13, 2017 is hereby **PARTIALLY GRANTED**. The assessments issued by the Bureau of Internal Revenue against petitioner for taxable year 2010 covering deficiency VAT and FWT are **CANCELLED AND SET ASIDE**. On the other hand, the deficiency Income Tax and Expanded Withholding Tax assessments are **AFFIRMED with MODIFICATIONS**.

Accordingly, United International Pictures Aktiebolag is **ORDERED TO PAY** the Bureau of Internal Revenue the amount of **₱33,351,074.68** and **₱6,226,944.00** representing deficiency Income Tax and Expanded Withholding Tax, respectively, or the total amount of **₱39,578,018.68**, inclusive of twenty-five percent (25%) surcharge, twenty percent (20%) deficiency interest, and twenty percent (20%)

[64] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.
[65] *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*, G.R. No. 213943, March 22, 2017.

delinquency interest imposed on deficiency Income Tax and Expanded Withholding Tax under Sections 248 (A)(3), and 294(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, detailed below:

		Income Tax	EWT	TOTAL
Basic Tax Due	₱	7,929,132.66	1,452,126.36	9,381,259.02
Add: 25% Surcharge		1,982,283.16	363,031.59	2,345,314.75
Deficiency Interest from April 16, 2010 to September 08, 2014 (₱7,929,132.66 x 20% x 1,607/365 days)		6,981,981.47		6,981,981.47
Deficiency Interest from January 16, 2010 to September 08, 2014 (₱1,452,126.36 x 20% x 1,697/365 days)			1,350,278.59	1,350,278.59
Total Amount Due, September 08, 2014	₱	16,893,397.29	3,165,436.54	20,058,833.83
Deficiency Interest from September 09, 2014 to December 31, 2017	₱			
(₱7,929,132.66 x 20% x 1,210/365 days)		5,257,123.57		5,257,123.57
(₱1,452,126.36 x 20% x 1,210/365 days)			962,779.67	962,779.67
Delinquency Interest from September 09, 2014 to December 31, 2017				
(₱16,893,397.29 x 20% x 1,210/365 days)	₱	11,200,553.82		11,200,553.82
(₱3,165,436.54 x 20% x 1,210/365 days)			2,098,727.79	2,098,727.79
Total Amount Due, December 31, 2017	**₱**	**33,351,074.68**	**6,226,944.00**	**39,578,018.68**

In addition, United International Pictures Aktiebolag is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10693, also known as the Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts:

TAX	AMOUNT
Income Tax	₱ 16,893,397.29
Expanded Withholding Tax	3,165,436.54

The Commissioner of Internal Revenue, his authorized representatives, or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the deficiency Value-Added Tax and Final Withholding Tax for taxable year 2010. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice