

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Second Division

ZENOREX MARKETING
CORPORATION,

Petitioner,

CTA CASE NO. 11051

Members:

- versus -

RINGPIS-LIBAN, P.J., *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:
SEP 29 2026

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* filed on December 27, 2022, prays that all tax assessments issued by respondent against petitioner on its alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), final withholding tax on VAT (FWVAT), and compromise penalty, in the aggregate amount of Php25,688,206.17, inclusive of increments for calendar year (CY) 2018, be cancelled and declared void.¹

The Facts

Petitioner Zenorex Marketing Corporation is a domestic corporation organized and existing under the laws of the Republic of the Philippines with principal place of business located at 2510 Cityland 10, Tower I, Ayala Avenue

¹ Summary of the Case, Pre-Trial Order dated January 16, 2024, Docket – Vol. I, p. 282.

Salcedo Village, Makati City.² It is registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 50, under Taxpayer Identification Number (TIN) 004-508-460-000.³

Respondent is the Commissioner of Internal Revenue.⁴ He is the head of the BIR, a government agency tasked with the assessment and collection of all national internal revenue taxes, fess, and charges, and the officer tasked to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR.⁵

On May 17, 2019, petitioner received electronic *Letter of Authority* (LOA) No. eLA201600038028 LOA-050-2019-0000355 dated May 15, 2019 for the examination of its books and records for all internal revenue taxes for the period beginning January 1, 2018 until December 31, 2018.⁶

Thereafter, on April 22, 2021, petitioner received a copy of the *Notice of Discrepancy* (NOD) dated April 8, 2021 issued by the BIR.⁷

On October 22, 2021, petitioner received a copy of the *Preliminary Assessment Notice* (PAN) dated October 21, 2021 issued by the BIR. Under the PAN, the BIR assessed petitioner with deficiency taxes, including compromise penalties, in the total amount of Php31,547,404.10⁸, inclusive of interest and surcharges,⁹ to wit:

Imposition	Basic Tax Due	Interest	Surcharge	Total
Income tax	Php12,697,266.13	Php4,003,291.47	-	Php16,700,557.60
VAT	4,543,211.40	1,551,911.23	-	6,095,122.63
EWI	680,581.92	231,136.81	-	911,718.73
WTC ¹⁰	769,438.22	265,361.32	-	1,034,799.54
FWT	3,018,190.10	1,025,026.97	754,547.53	4,797,764.60

² Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 242.

³ Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 243.

⁴ Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 243.

⁵ Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 244.

⁶ Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 244; Exhibit “P-3”, Docket – Vol. II, p. 422; Exhibit “R-1”, BIR Records - Folder 1 (Exhibit “R-14”), p. 1.

⁷ Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 244; Exhibit “P-4”, Docket – Vol. II, pp. 427 to 428; Exhibit “R-3”, BIR Records - Folder 1 (Exhibit “R-14”), pp. 334 to 343.

⁸ The total amount stated in the JSFI is Php31,547,424.10.

⁹ Par. 7, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 244; Exhibit “R-4”, BIR Records - Folder 1 (Exhibit “R-14”), pp. 433 to 439.

¹⁰ That is, *Withholding Tax on Compensation*.

FWVAT	1,207,276.04	418,345.95	301,819.01	1,927,441.00
Penalties	80,000.00			80,000.00
Total	Php22,995,963.81	Php7,495,073.75	Php1,056,366.54	Php31,547,404.10

Subsequently, on November 8, 2021, petitioner filed its *Reply (To the Preliminary Assessment Notice dated October 21, 2021)* dated November 5, 2021.¹¹

On December 1, 2021, petitioner received copy of the *Formal Letter of Demand and Assessment Notices* (FLD/FAN) from the BIR. Under the FLD/FAN, the BIR assessed petitioner with deficiency taxes, including compromise penalties, in the total amount of Php31,746,951.63, inclusive of interest and surcharges,¹² to wit:

Imposition	Basic Tax Due	Interest	Surcharge	Total
Income tax	Php12,586,761.01	Php4,158,803.82	-	Php16,745,564.83
VAT	4,543,211.40	1,620,619.52	-	6,163,830.92
EWI	680,581.92	241,429.44	-	922,011.36
WTC	769,438.22	276,997.76	-	1,046,435.98
FWI	3,018,190.10	1,070,671.93	754,547.53	4,843,409.56
FWVAT	1,207,276.04	436,603.94	301,819.01	1,945,698.99
Penalties	80,000.00			80,000.00
Total	Php22,885,458.69	Php7,805,126.41	Php1,056,366.54	Php31,746,951.61

On December 29, 2021, petitioner filed a *Protest/Request for Reinvestigation* (Re: *Formal Letter of Demand dated December 1, 2021*) against the FLD/FAN.¹³

Petitioner was informed through the letter dated January 13, 2022 from Regional Director Maridur V. Rosario that its protest to the FLD/FAN has been granted, and the letter of protest and the supporting documents will be forwarded to Revenue District Office No. 50 for evaluation and other appropriate action.¹⁴

On November 25, 2022,¹⁵ petitioner received the BIR's *Final Decision on Disputed Assessment* (FDDA) dated November 18, 2022, requiring the payment of

¹¹ Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 244; Exhibit "P-7", Docket – Vol. II, pp. 448 to 465.
¹² Par. 9, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 244; Exhibits "R-5" to "R-12", BIR Records - Folder 1 (Exhibit "R-14"), pp. 443 to 459.
¹³ Par. 10, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 244; BIR Records - Folder 1 (Exhibit "R-14"), pp. 513 to 535.
¹⁴ Par. 11, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 244; BIR Records - Folder 1 (Exhibit "R-14"), p. 537.
¹⁵ Exhibit "R-13.2", BIR Records - Folder 1 (Exhibit "R-14"), p. 606.

deficiency taxes in the amount of Php25,688,206.18¹⁶, inclusive of surcharge, interest and compromise penalties,¹⁷ to wit:

Imposition	Basic Tax Due	Interest	Surcharge	Total
Income tax	Php5,033,495.06	Php2,222,460.45	-	Php7,255,955.51
VAT	6,883,801.99	3,220,487.75	-	10,104,289.74
EWT	680,581.92	317,057.94	-	997,639.86
FWT	3,018,190.10	1,406,063.14	754,547.53	5,178,800.77
FWVAT	1,207,276.04	562,425.25	301,819.01	2,071,520.30
Penalties	80,000.00			80,000.00
Total	Php16,903,345.11	Php7,728,494.53	Php1,056,366.54	Php25,688,206.18

Petitioner filed the present *Petition for Review* on December 27, 2022.¹⁸

Within the period granted by the Court,¹⁹ respondent posted his *Answer* on March 17, 2023,²⁰ interposing the following affirmative defenses, to wit: (1) petitioner was accorded with right to due process; (2) petitioner is liable to pay the assessed deficiency income tax, VAT, EWT, FWT on VAT, and compromise penalty; and (3) all presumptions are in favor of the correctness of the deficiency tax assessments issued by the respondent to herein petitioner for taxable year 2018.

In the Resolution dated April 4, 2023,²¹ the parties were ordered to appear before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA). However, the parties eventually decided not to have their case mediated by the PMC-CTA.²²

The Pre-Trial Conference was set and held on October 24, 2023.²³ Prior thereto, petitioner filed its *Pre-Trial Brief* on October 16, 2023;²⁴ while respondent submitted his *Pre-Trial Brief* on October 18, 2023.²⁵

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¹⁶ The total amount stated in the JSFI is Php25,688,206.17.

¹⁷ Par. 12, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 245; Exhibit “R-13”, BIR Records - Folder 1 (Exhibit “R-14”), pp. 602 to 605.

¹⁸ Docket – Vol. I, pp. 6 to 42.

¹⁹ Respondent’s *Motion for Extension of Time To File Answer* dated February 14, 2023, Docket – Vol. I, pp. 68 to 70; and Resolution dated February 27, 2023, Docket – Vol. I, p. 73.

²⁰ Docket – Vol. I, pp. 74 to 91.

²¹ Minute Resolution dated April 4, 2023, Docket – Vol. I, p. 127.

²² *No Agreement to Mediate* dated June 9, 2023, Docket- Vol. I, p. 130; Resolution dated July 14, 2023, Docket- Vol. I, pp. 132 to 133.

²³ Notice of Pre-Trial Conference dated July 17, 2023, Docket – Vol. I, pp. 134 to 135; and Minutes of the hearing held on, and Order dated, October 24, 2023, Docket – Vol. I, pp. 235 to 237.

²⁴ Docket – Vol. I, pp. 140 to 156.

²⁵ Docket – Vol. I, pp. 157 to 166.

On December 1, 2023, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI),²⁶ which was admitted and approved by the Court in its Resolution dated January 5, 2024,²⁷ thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 16, 2024 was then issued.²⁸

Trial ensued, with the parties presenting their respective testimonial and documentary evidence.

Petitioner offered the testimony of the following witnesses, namely: (1) Ms. Cheryl R. Samonte,²⁹ petitioner's Accounting Manager; and (2) Mr. Mark Anthony V. Pojol,³⁰ the Court-commissioned independent certified public accountant (ICPA).³¹

The ICPA *Report* was submitted on March 15, 2024.³²

On May 29, 2024, petitioner filed its *Formal Offer of Evidence*,³³ to which respondent filed *via* accredited courier his *Comment/ Opposition (to Petitioner's Formal Offer of Evidence dated May 29, 2024)* on June 13, 2024.³⁴ In the Resolution dated August 2, 2024,³⁵ the Court admitted petitioner's exhibits, *except* the following:

1. Exhibits "P-6", "P-8", and "P-10", for failure to submit the duly marked exhibits.
2. Exhibits "P-30", for failure to identify; and
3. Exhibits "P-31" and "P-31-a", for failure to identify. Hence, Exhibits "P-19 and series", "P-20 and series", "P-21 and series", "P-22", "P-23 and series", "P-24", "P-25 and series", "P-27 and series", and "P-29", were likewise denied admission, for failure of the ICPA to certify that they are original copies or faithful reproductions of the original.



²⁶ Docket – Vol. I, pp. 243 to 255.

²⁷ Docket – Vol. I, p. 265.

²⁸ Docket – Vol. I, pp. 282 to 288.

²⁹ Exhibit "P-26", Docket – Vol. I, pp. 344 to 363; and Minutes of the hearing held on, and Order dated, February 29, 2024, Docket – Vol. I, pp. 365 to 367.

³⁰ Exhibit "P-32", Docket – Vol. I, pp. 324 to 337; and Minutes of the hearing held on May 14, 2024, Docket – Vol. I, pp. 395.

³¹ *Oath of Commission* dated January 16, 2024, Docket – Vol. I, p. 289; and Minutes of the hearing held on, and Order dated, January 16, 2024, Docket – Vol. I, pp. 290 to 292.

³² Exhibit "P-31" (not marked), Docket – Vol. I, pp. 370 to 386.

³³ Docket – Vol. II, pp. 396 to 409.

³⁴ Docket – Vol. II, pp. 785 to 793.

³⁵ Docket – Vol. II, pp. 797 to 799.

On September 24, 2024, petitioner filed its *Motion for Partial Reconsideration* (Re: Resolution dated 02 August 2024),³⁶ to which respondent posted his *Comment/Opposition [to Petitioner's Motion for Partial Reconsideration (Re: Resolution dated 02 August 2024)]* on November 25, 2024.³⁷ In the Resolution dated February 7, 2025,³⁸ the Court granted petitioner's *Motion for Partial Reconsideration* (Re: Resolution dated August 2, 2023), and admitted Exhibits "P-6", "P-8", "P-10", "P-30", "P-31", "P-31-a", "P-19 and series", "P-20 and series", "P-21 and series", "P-22", "P-23 and series", "P-24", "P-25 and series", "P-27 and series", and "P-29".

Subsequently, on March 11, 2025, respondent's *Formal Offer of Evidence* was filed,³⁹ to which petitioner filed its *Comment/Opposition [To the Formal Offer of Evidence dated 11 March 2025]* on April 25, 2025.⁴⁰ In the Resolution dated June 27, 2025,⁴¹ the Court admitted all of respondent's exhibits.

Petitioner's *Memorandum* was filed *via* accredited courier on August 8, 2025;⁴² while respondent's *Memorandum* was also filed *via* accredited courier on August 14, 2025.⁴³ Petitioner's *Manifestation [Re: Memorandum dated 14 August 2025]* was filed *via* accredited courier on August 29, 2025.⁴⁴

The present case was submitted for decision on October 1, 2025.⁴⁵

The Issue

The parties stipulated the following issue for the Court's resolution, to wit:

"Whether Petitioner is liable to pay the assessed income tax, VAT, EWT, FWT on VAT, and compromise penalty amounting to Php25,688,206.17, inclusive of increments (*i.e.*, penalties, interest, surcharges) for taxable year 2018."⁴⁶

Petitioner's arguments: ✓

³⁶ Docket – Vol. II, pp. 801 to 814.

³⁷ Docket – Vol. II, pp. 819 to 822.

³⁸ Docket – Vol. II, pp. 827 to 830.

³⁹ Docket – Vol. II, pp. 834 to 841.

⁴⁰ Docket – Vol. II, pp. 845 to 859.

⁴¹ Docket – Vol. II, pp. 865 to 866.

⁴² Docket – Vol. III, pp. 869 to 914.

⁴³ Docket – Vol. III, pp. 918 to 938.

⁴⁴ Docket – Vol. III, pp. 943 to 952.

⁴⁵ Minute Resolution dated October 1, 2025, Docket – Vol. III, p. 954.

⁴⁶ Issue, JSFI, Docket – Vol. I, p. 245.

Petitioner argues that the questioned deficiency tax assessments are void and without legal effect because it has no legal and factual bases as required under Section 228 of the NIRC of 1997; that petitioner is not liable for income tax in the amount of Php7,255,955.51; that petitioner is not liable for VAT amounting to Php10,104,289.74, inclusive of interest in the amount of Php3,220,487.75; that petitioner is not liable for FWT and FWVAT in the amount of Php5,178,800.76 and Php2,071,520.30, respectively; and that petitioner is not liable for compromise penalty in the amount of Php80,000.00.

Respondent's counter-arguments:

Respondent contends that this Court has no jurisdiction over the subject matter of the present *Petition for Review* since there is no disputed assessment to speak of in this case over which the Court may exercise its appellate jurisdiction; that assuming *arguendo* that this Court has jurisdiction over the subject matter of the case, the present petition should be denied for lack of merit; that the subject deficiency tax assessments on income tax, VAT, FWT, FWT on VAT, and compromise penalty, are valid because petitioner was accorded due process in the course of the audit proceeding; that petitioner is liable to pay the assessed deficiency on income tax, VAT, EWT, FWT, FWT on VAT, and compromise penalty; and that all presumptions are in favor of the correctness of the deficiency tax assessments issued by the respondent to herein petitioner for taxable year 2018.

Discussion/Ruling

The present *Petition for Review* has partial merit.

The Court has jurisdiction to take cognizance of the present Petition for Review.

Respondent argues that this Court has no jurisdiction stating that there is no disputed assessment considering that the deficiency tax assessments contained in the FLD/FAN dated December 1, 2021 have become final, executory, and demandable in view of petitioner's failure to file a valid protest. Allegedly, petitioner failed to submit relevant documents to refute the validity of the respondent's findings, within sixty (60) days from the filing of its request for reinvestigation.

The Court does not agree with the respondent.



Section 228 of the NIRC of 1997, provides as follows:

“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: xxx

xxx

xxx

xxx

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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.” (*Emphases and underscoring added*)

Implementing the said Section 228 of the NIRC of 1997, Section 3 of Revenue Regulations (RR) No. 12-99⁴⁷, as amended by RR No. 18-2013⁴⁸, provides, in part, as follows:

⁴⁷ SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

⁴⁸ SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment

“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:

xxx

xxx

xxx

3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN⁴⁹ 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.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term ‘**relevant supporting documents**’ refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term ‘the assessment shall become final’ shall mean the taxpayer is barred from disputing the

⁴⁹ That is, the “*Formal Letter of Demand and Final Assessment Notice*”.

correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.” (*Emphases added*)

On the basis of the foregoing provisions, the form and manner of protests to be filed by the taxpayer concerned have been clearly and distinctively defined. Particularly, a distinction has been made between the two (2) types of protest, *i.e.*, a request for reconsideration and a request for reinvestigation. Clearly, in a request for reconsideration, the plea for reevaluation of the assessment is on the basis of existing records without the need for additional evidence, while in a request for reinvestigation, such plea for re-evaluation is on the basis of newly discovered or additional evidence that the taxpayer intends to present in the reinvestigation. Furthermore, it must be pointed out that the distinction between a request for reconsideration and a request for reinvestigation is significant for the purpose of identifying which request triggers the application or operation of the sixty (60)-day period to submit all relevant supporting documents, as determined by the concerned taxpayer. Apparently, the said sixty (60)-day period applies only to requests for reinvestigation.

In any case, the protest must state the following: (1) the nature thereof whether reconsideration or reinvestigation, and in case of the latter, it must specify the newly discovered or additional evidence the taxpayer intends to present; (2) the date of the assessment notice; and (3) the applicable law, rules, regulations, or jurisprudence on which the protest is based; otherwise, it shall be considered void and without force and effect.

In this case, perusal of the petitioner’s protest letter dated December 29, 2021,⁵⁰ would show that the same complied with Section 228 of the NIRC of 1997, in relation to the above-quoted Section 3 of RR No. 12-1999, as amended by RR No. 18-2013. The said protest letter states: (1) that it is a request for reinvestigation; (2) the date of the FLD/FAN; and (3) the legal bases on which the same is based.

Moreover, it is noteworthy that the *Summary of Admitted Facts* in the JSFI states that petitioner was informed through a letter dated January 13, 2022 that its protest to the FLD/FAN has been granted and the letter of protest and **the supporting documents** will be forwarded to Revenue District Office No. 50 for evaluation and other appropriate action.⁵¹

⁵⁰ BIR Records - Folder 1 (Exhibit “R-14”), pp. 513 to 535.

⁵¹ Par. 11, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 244.

Further, during the re-direct examination of Revenue Officer Geo Kristoff T. Marcos, he confirmed that the petitioner submitted **additional documents** in support of its request for reinvestigation, to wit:

“ATTY. TUICO:

Q. Mr. Witness, **do you confirm that the petitioner submitted additional documents in support of its request for reinvestigation?**

RO MARCOS:

A. **Yes, they submitted.**⁵² (*Emphases added*)

Moreover, the subject FDDA dated November 18, 2022⁵³ states, in part, as follows:

“RESULT OF REINVESTIGATION

Reception and evaluation of additional documents submitted during the conduct of reinvestigation in support to (*sic*) contention set forth in the aforesaid Protest Letter within the reglementary period provided by RR No. 18-2013, disclosed that the same are not the **Relevant Documents** defined in the case of ***CIR vs. First Express Pawnshop Company, Inc., G.R. Nos. 172045-46 dated June 16, 2009, 589 SCRA 253***, where Supreme Court explained that the relevant document are those documents necessary to support the legal basis in disputing assessment, as **determined by the taxpayer.**” (*Underscoring added*)

The foregoing clearly reveals that petitioner indeed submitted additional documents during the conduct of the reinvestigation. Pertinently, as to the definition of the phrase “*relevant supporting documents*” found under Section 228 of the NIRC of 1997, it appears that respondent fails to understand the ruling of the High Court in *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*⁵⁴ To be sure, the pertinent ruling reads:

“The term ‘relevant supporting documents’ should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. **The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand the type of supporting documents that should be submitted.** Otherwise, a taxpayer

⁵² Transcript of Stenographic Notes at the hearing held on March 4, 2025, p. 10.

⁵³ Par. 12, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 245; Exhibit “R-13”, BIR Records - Folder 1 (Exhibit “R-14”), pp. 605 to 602.

⁵⁴ G.R. Nos. 172045-046, June 16, 2009.

will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.”
(*Emphasis and underscoring added*)

Based on the above, the determination of what constitutes “**relevant supporting documents**” rests on petitioner, and not on the BIR or respondent. Thus, whatever document submitted by petitioner, as determined by the latter, is sufficient compliance with the law, and the BIR or respondent should decide the protest on the basis of what is submitted.

Correspondingly, respondent’s allegation that this Court has no jurisdiction over the subject matter of the present *Petition for Review* for failure of petitioner to file a valid protest and for failure to submit relevant documents, lacks basis in fact and in law.

This Court finds that it has jurisdiction to take cognizance of the present *Petition for Review*.

Section 7(a)(1) of RA No. 1125⁵⁵, as amended by RA No. 9282⁵⁶, states as follows:

“SEC. 7. *Jurisdiction.* – **The CTA shall exercise:**

(a) **Exclusive appellate jurisdiction to review by appeal, as herein provided:**

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

“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 ... 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

⁵⁵ AN ACT CREATING THE COURT OF TAX APPEALS.

⁵⁶ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

law for action as referred to in Section 7(a)(2) herein.” (*Emphases added*)

This Court has exclusive appellate jurisdiction, *inter alia*, over decisions of respondent in cases involving “disputed assessments”. In other words, under Section 7(1) of RA No. 1125, as amended, this Court exercises exclusive appellate jurisdiction to review not the assessments themselves, but the decisions involving ***disputed ones*** arising under the NIRC.⁵⁷

Accordingly, counting thirty (30) days from petitioner’s receipt of the FDDA on November 25, 2022,⁵⁸ petitioner had until December 27, 2022,⁵⁹ within which to file its *Petition for Review* with the Court. Considering that the present *Petition for Review* was filed on December 27, 2022, the same is within the prescribed period to appeal. And thus, this Court has jurisdiction to entertain the same.

The Court shall now proceed to the determination of the propriety of the assessment.

Petitioner is partially liable to pay the deficiency tax assessments.

Petitioner vehemently disagrees with the findings of the respondent due to utter absence of factual and legal basis.

On the other hand, respondent avers that all presumptions are in favor of the correctness of the deficiency tax assessments.

Respondent issued the FLD/FAN dated December 1, 2021,⁶⁰ assessing petitioner of deficiency income tax, VAT, EWT, WTC, FWT, FWVAT, and compromise penalties, for taxable year 2018, in the aggregate amount of Php31,746,951.64, including increments, as summarized below:

Tax Type	Basic	Surcharge	Interest	Total
Income tax	Php 12,586,761.01	Php -	Php 4,158,803.82	Php 16,745,564.83

⁵⁷ Refer to *People of the Philippines vs. Sandiganbayan (Fourth Division), et al.*, G.R. No. 152532, August 16, 2005.

⁵⁸ Exhibit “R-13.2”, BIR Records - Folder 1 (Exhibit “R-14”), p. 606.

⁵⁹ December 25, 2022, falls on a Sunday, while December 26, 2022 was declared a special non-working day throughout the Philippines pursuant to Proclamation No. 115 by issued President Ferdinand Marcos, Jr. (series of 2022).

⁶⁰ Par. 9, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 244; Exhibits “R-5” to “R-12”, BIR Records - Folder 1 (Exhibit “R-14”), pp. 443 to 459.

VAT	4,543,211.40	-	1,620,619.52	6,163,830.92
EWT	680,581.92	-	241,429.44	922,011.36
WTC	769,438.22	-	276,997.76	1,046,435.98
FWT	3,018,190.10	754,547.53	1,070,671.93	4,843,409.56
FWVAT	1,207,276.04	301,819.01	436,603.94	1,945,698.99
Compromise penalties	80,000.00	-	-	80,000.00
Total	Php22,885,458.69	Php1,056,366.54	Php7,805,126.41	Php31,746,951.64

As already established, on December 29, 2021, petitioner filed a *Protest/ Request for Reinvestigation (Re: Formal Letter of Demand dated December 1, 2021)* against the FLD/FAN.⁶¹

Per respondent’s FDDA dated November 18, 2022,⁶² respondent dropped the assessment on deficiency WTC, adjusted the assessments on deficiency income tax and VAT, and retained the assessments on deficiency EWT, FWT, FWVAT, and compromise penalties, for taxable year 2018, in the aggregate amount of Php25,688,206.17, inclusive of increments, summarized as follows:

Tax Type	Basic	Surcharge	Interest	Total
Income Tax	Php 5,033,495.06	Php -	Php 2,222,460.45	Php 7,255,955.51
VAT	6,883,801.99	-	3,220,487.75	10,104,289.74
EWT	680,581.92	-	317,057.94	997,639.86
FWT	3,018,190.10	754,547.53	1,406,063.14	5,178,800.76 ⁶³
FWVAT	1,207,276.04	301,819.01	562,425.25	2,071,520.30
Compromise penalty	80,000.00	-	-	80,000.00
Total	Php16,903,345.11	Php1,056,366.54	Php7,728,494.53	Php25,688,206.17

Instead of discussing the deficiency assessments in the order presented above, the Court finds it appropriate to first determine the propriety of the assessment for deficiency EWT, since the Court’s findings therein would affect the computation of the deficiency income tax assessment.

I. Deficiency EWT

Upon verification, respondent found that petitioner failed to withhold/remit the correct withholding tax due on income payments for goods, services/contractors, rental, sales discounts, and management and consultancy fees amounting to Php9,127,539.00. Consequently, pursuant to Section 2.57.2 of

⁶¹ Par. 10, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 244; BIR Records - Folder 1 (Exhibit “R-14”), pp. 513 to 535.
⁶² Exhibit “R-13” or “P-10”, BIR Records - Folder 1 (Exhibit “R-14”), pp. 602 to 605.
⁶³ Sum should be Php5,178,800.77; With Php0.01 rounding-off difference.

RR No. 2-98, as amended, respondent assessed petitioner for deficiency EWT in the amount of Php997,639.86, including interest, computed as follows:⁶⁴

<u>Income payments subject to EWT</u>	<u>Per ITR/AFS</u>	<u>Per BIR Form No. 1601-EQ</u>	<u>Disallowed expenses</u>	<u>EWT rates</u>	<u>EWT due</u>
Purchase of goods					
Fuel and oil	Php 313,899.00				
Office supplies	1,231,696.00				
Repairs & maintenance - (materials & supplies)	402,217.00				
Additions to PPE	747,718.00				
	<u>Php2,695,530.00</u>	Php943,663.00	Php1,751,867.00	1%	Php17,518.67
Purchase of services/contractors					
Advertising and promotion	Php1,190,061.00				
Communications, light and water	1,097,620.00				
Insurance	321,102.00				
Other services	22,386,681.00				
Representation and entertainment	683,353.00				
Transportation and travel	2,109,790.00				
Others:					
Delivery and shipping expense	591,535.00				
Christmas expense	588,046.00				
Bank charges	620,025.00				
Dues and subscription	313,604.00				
Referral expense	78,807.00				
Service fees	1,057.00				
	<u>Php29,981,681.00</u>	26,073,357.60	3,908,323.40	2%	78,166.47
Rental	7,886,089.00	7,312,799.40	573,289.60	5%	28,664.48
Sales discounts (Deemed as rebates or commission)	1,564,823.00	-	1,564,823.00	10%	156,482.30
Management and consultancy fee	2,665,000.00	-	2,665,000.00	15%	399,750.00
Total	<u>Php63,891,868.31⁶⁵</u>	<u>Php34,329,820.00</u>	<u>Php8,711,436.00⁶⁶</u>		<u>Php680,581.92</u>
Less: Additions to PPE		Php747,718.00			
Christmas expense		588,046.00	1,335,764.00		
TOTAL			<u>Php9,127,539.00</u>		

⁶⁴ Items III and I(A), Exhibit "R-5" or "P-8", BIR Records - Folder 1 (Exhibit "R-14"), pp. 447 and 449, respectively; Item III, Exhibit "R-13" or "P-10", BIR Records - Folder 1 (Exhibit "R-14"), p. 604.

⁶⁵ Should be Php44,793,123.00.

⁶⁶ Should be Php10,463,303.00.

Basic tax due	Php 680,581.92
Add: 12% Interest (02.01.19 to 12.18.22)	317,057.94
TOTAL AMOUNT DUE	<u>Php997,639.86</u>

Petitioner argues that the assessment of deficiency EWT has no basis in fact and in law.

The Court agrees with petitioner.

Section 228 of the NIRC of 1997 explicitly requires that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.⁶⁷ The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.⁶⁸ The requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement. Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void but also finds no validation in any provision in the Tax Code.⁶⁹

The same requirement under Section 228 is consistent with the constitutional guarantee of due process under the 1987 Constitution, which states that “[n]o person shall be deprived of life, liberty, or property without due process of law.” Thus, the taxpayer must be adequately informed of the factual and legal bases of the assessment to properly contest the same and submit supporting evidence, should it opt to do so.

In addition to the requirement to state the law and facts on which the assessment is made, Section 3 of RR No. 12-99, as amended by RR No. 18-2013, mandates that the PAN shall detail the facts and the law, rules and regulations, or jurisprudence.

However, in the attached *Details of Discrepancies* per PAN dated October 21, 2021, respondent merely states:⁷⁰

⁶⁷ *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

⁶⁸ *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

⁶⁹ Refer to *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

⁷⁰ Item III, Exhibit “R-4” or “P-6”, BIR Records - Folder 1 (Exhibit “R-14”), p. 434.

“Since you failed to withhold/remit the correct withholding tax due on income payments previously disallowed as deductions from gross income (*refer to **Schedule 1***), you are still liable to pay the deficiency withholding tax due thereon amounting to **Php680,581.92** pursuant to *Section 2.57.2 of RR No. 2-98, as amended.*”

Based on respondent’s *Memorandum*, the findings resulted from the reconciliation of the income payments declared by petitioner in its Income Tax Return/Audited Financial Statement (ITR/AFS) for taxable year 2018 *vis-à-vis* the amount reported by petitioner in BIR Forms No. 1601-EQ which it filed for the year 2018.⁷¹

Respondent’s computation shows that respondent merely identified certain expense accounts reflected in petitioner’s ITR/AFS, classified them into groups (purchase of goods, purchase of services/contractors, rental, sales discounts, and management and consultancy fee) and subjected these accounts to different EWT rates, without specifying the particular transactions covered, the reasons why such transactions were deemed subject to withholding tax and the applicable provision or subsection under Section 2.57.2 of RR No. 2-98, as amended, that would justify the same.

On this note, the Court finds as instructive the ruling in *Ortiz Memorial Chapel Inc., represented by Ronald Ortiz vs. Commissioner of Internal Revenue*,⁷² where the Supreme Court held that the BIR’s general reference to Section 32 of the NIRC failed to satisfy the statutory and constitutional requirements of due process in tax assessments, thus:

“Likewise, the BIR’s reliance on Section 32 of the NIRC is equally unavailing. Section 32 is a comprehensive provision defining ‘gross income’ and listing a broad range of taxable and exempt items. Under paragraph (A), gross income ‘means all income derived from whatever source,’ and includes eleven categories such as compensation, business income, gains from property dealings, interests, rents, royalties, dividends, annuities, and others. Paragraph (B), on the other hand, enumerates exclusions from gross income, such as life insurance proceeds, gifts, compensation for injuries, retirement benefits, and treaty-exempt income, among others. The sheer breadth of this provision underscores that it provides general definitions and classifications; it does not, by itself, specify what constitutes undeclared income in a particular case.

⁷¹ Par. 42, Docket – Vol. III, pp. 929 to 930.

⁷² G.R. No. 278483, December 3, 2025.

Without any indication of which specific subsection of Section 32 was invoked or how it was applied to OMCI's transactions, the citation of this provision is too general to inform the taxpayer of the legal bases of the assessment. A taxpayer confronted with such a vague reference cannot reasonably discern the nature of the supposed violation or determine how to effectively respond. The right to protest presupposes knowledge of what is being contested. Without such clarity, the taxpayer is deprived of a meaningful opportunity to be heard – an outcome the Constitution itself forbids." (*Emphasis added*)

Similarly, in the present case, respondent merely stated its reliance on Section 2.57.2 of RR No. 2-98, as amended, as basis for the deficiency EWT assessment, without identifying the specific subsection applicable to the alleged assessed accounts.

It is worth emphasizing that Section 2.57.2 of RR No. 2-98, as amended, consists of several subsections imposing varying EWT rates for specific classes of payees on different categories of income payments. Despite these several classes of payees or distinctions of income payments that may be subject to various EWT rates under different bases, respondent's assessment failed to identify the specific transactions involved, the nature of such transactions, the identities of the payees, the relevant factual details for the imposition of EWT, and the precise provision or subsection of Section 2.57.2 of RR No. 2-98, as amended, allegedly applicable to such income payment transactions.

Absent any indication of which specific subsection of Section 2.57.2 of RR No. 2-98, as amended, was invoked or how it was applied to the alleged accounts, the citation of this provision is too general to inform petitioner of the legal bases of the assessment. Respondent's general reference to Section 2.57.2 of RR No. 2-98, as amended, failed to meet the statutory and constitutional requirements of due process in tax assessment.

Hence, the assessment merely identified the certain expense categories and imposed alleged corresponding EWT rates without sufficiently stating the factual and legal bases therefor. Such generalized findings deprived petitioner of a meaningful opportunity to verify the transactions involved, ascertain the applicable withholding tax rules, and prepare an informed protest with proper substantiation therefor.



Accordingly, for falling short of compliance with the due process requirements under Section 228 of the NIRC of 1997, the deficiency EWT assessment for taxable year 2018 in the total amount of Php997,639.86 shall be cancelled.

II. Deficiency Income Tax

Petitioner was assessed of deficiency income tax for taxable year 2018 in the amount of Php7,255,955.51, including interest, computed as follows:⁷³

Taxable income per return			Php13,291,053.00
Add: Discrepancies per reinvestigation			
Disallowed expenses due to non-withholding		Php9,127,539.00	
Overclaimed salaries, wages and benefits		351,267.42	
Disallowed sales discount claimed as expense		1,564,823.00	
Disallowed expenses due to non-substantiation		742,526.00	11,786,155.42
Taxable income per reinvestigation			<u>Php25,077,208.42</u>
Income tax Due			Php 7,523,163.00
Less: Total tax credits/payments, net of carry-over			
Less: Discrepancies per reinvestigation		Php3,987,316.43	
Disallowed creditable withholding taxes	Php 22,688.49		
Disallowed prior years excess tax credits carried over other than MCIT	1,474,960.00	1,497,648.49	2,489,667.94
Basic tax due			Php5,033,495.06
Add: 12% Interest (04.16.19 to 12.18.22)			<u>2,222,460.45</u>
TOTAL AMOUNT DUE			<u>Php7,255,955.51</u>

Notably, the income tax assessment arose from the following items:

a. Disallowed Expenses due to Non-withholding	Php9,127,539.00
b. Overclaimed Salaries, Wages and Benefits	351,267.42
c. Disallowed Sales Discount claimed as Expense	1,564,823.00
d. Disallowed Expenses due to Non-substantiation	742,526.00
e. Disallowed Creditable Withholding Taxes	22,688.49
f. Disallowed Prior Years Excess Tax Credits Carried Over Other than Minimum Corporate Income Tax (MCIT)	1,474,960.00

a. Disallowed Expenses due to Non-withholding - Php9,127,539.00

⁷³ Exhibit "R-13" or "P-10", BIR Records - Folder 1 (Exhibit "R-14"), p. 605.

This assessment was based on the same finding as in the deficiency EWT assessment, that petitioner failed to withhold/remit the correct EWT on certain income payments totaling Php9,127,539.00, as required under Section 2.57.2 of RR No. 2-98, as amended. Accordingly, the expenses were disallowed as deductions from petitioner's gross income pursuant to Section 34(K) of the NIRC of 1997, as amended.⁷⁴

As discussed earlier in the deficiency EWT assessment, respondent failed to clearly state the factual and legal bases of the EWT assessment. Therefore, the disallowance of petitioner's claimed expenses in the amount of Php9,127,539.00 is likewise devoid of factual and legal bases.

b. Overclaimed Salaries, Wages and Benefits - Php351,267.42

Based on the PAN and FLD, respondent's reconciliation of salaries, wages and benefits claimed by petitioner in its ITR with those reported in the *Alphalist of Employees* (BIR Form No. 1604-CF), disclosed overclaimed salaries, wages and benefits amounting to Php3,304,682.66. Invoking Section 34(A) of NIRC, as amended, the respondent disallowed the alleged overclaimed amount as deduction from gross income for income tax purposes.⁷⁵

In the FDDA, respondent's reinvestigation disclosed that the herein item pertains to non-taxable employee benefits such as *de minimis* benefits given to petitioner's rank and file employees and retirement fund set up by the petitioner for its employees which was properly substantiated with reconciliation and Cash Disbursement Vouchers (CDV) submitted by the petitioner. Hence, respondent adjusted the disallowance of alleged overclaimed salaries, wages and benefits to Php351,267.42 as computed below:⁷⁶

Salaries, wages and benefits per ITR		Php26,232,844.00
Less: Salaries, wages and benefits per Alphalist		
Taxable compensation	Php10,699,739.17	
Non-taxable compensation	12,228,422.17	22,928,161.34
Overclaimed salaries, wages and benefits per FLD/FAN		Php 3,304,682.66
Less: Adjustment per reinvestigation		
Non-taxable employee benefits substantiated with CDV	Php 953,415.24	
Retirement fund supported with cash vouchers	2,000,000.00	2,953,415.24
Adjusted balance per reinvestigation		<u>Php 351,267.42</u>

⁷⁴ Items III and I(A), Exhibit "R-5" or "P-8", BIR Records - Folder 1 (Exhibit "R-14"), pp. 447 and 449.

⁷⁵ Item I(B), Exhibit "R-4" or "P-6", BIR Records - Folder 1 (Exhibit "R-14"), p. 435; Item I(B), Exhibit "R-5" or "P-8", BIR Records - Folder 1 (Exhibit "R-14"), p. 448.

⁷⁶ Schedule 1, Exhibit "R-13" or "P-10", BIR Records - Folder 1 (Exhibit "R-14"), p. 603; Schedule 2, Exhibit "R-5" or "P-8", BIR Records - Folder 1 (Exhibit "R-14"), p. 448.

Petitioner argues that it has fully substantiated the expenses it claimed representing salaries, wages, and benefits. It refers to the Annex B of the *Reply-Letter to the PAN* which outlines the petitioner's reconciliation worksheet showing non-taxable employee benefits included in the reported salaries and wages in the 2018 AFS but were not included in the amounts reported in BIR Form No. 1601-C.⁷⁷

However, the foregoing reconciliation⁷⁸ is self-serving and does not provide a comprehensive reconciliation of the amounts in question. Moreover, petitioner failed to submit before this Court the *Alphabetical List of Employees*, the filed BIR Forms No. 1601-C, and other corroborating evidence to substantiate its contention that the Php351,267.42 disallowed by the respondent pertains to non-taxable employee benefits included in the salaries and wages reported in the AFS for taxable year 2018, and that such amount was not reported in BIR Form No. 1601-C.

Correspondingly, the disallowance of salaries, wages, and benefits amounting to Php351,267.42 is upheld.

c. Disallowed Sales Discount claimed as Expense - Php1,564,823.00

Respondent's audit disclosed that petitioner failed to provide documents or evidence to support the Php1,564,823.00 sales discounts it claimed as deduction for income tax purposes. Hence, the said amount has been disallowed as deduction from petitioner's gross income pursuant to Section 32 of the NIRC, as amended.⁷⁹

Petitioner's witness, Ms. Cheryl R. Samonte, asserts that petitioner is allowed to claim as a deduction from gross income the sales discounts extended to its customers under Section 2(h)(2) of RR No. 8-2018, that the sales discounts are deducted by the petitioner from its sales to its customers, and that these sales discounts are not received by petitioner from its customers."⁸⁰

Moreover, the ICPA notes "that Sec. 4.106-9 of RR No. 16-2005, as amended, provides that discounts determined and granted at the time of sale, which are expressly indicated in the invoice, the amount thereof forming part of the gross sales duly recorded in the books of accounts shall be allowed as

⁷⁷ Pars. 73 and 74, Petitioner's *Memorandum*, Docket – Vol. III, p. 900.

⁷⁸ Annex B, BIR Records - Folder 3 (Exhibit "R-14"), pp. 429 to 432.

⁷⁹ Item I(C), Exhibit "R-5" or "P-8", BIR Records - Folder 1 (Exhibit "R-14"), p. 448.

⁸⁰ Q&A No. 50, Exhibit "P-26", Docket – Vol. I, p. 356.

discounts from the gross selling price. Further, sales discounts indicated in the invoice at the time of sale, the grant of which is not dependent upon the happening of a future event, may be excluded from the gross sales within the same month/quarter it was given. Accordingly, I verified that the sales discounts, although not indicated in their respective sales invoices, were still provided and actually incurred by Zenorex at the time of payment and in the same month/quarter it was given. The disallowed sales discounts claimed as expenses amounting to Php1,564,823.00 can thus be excluded from the gross sales.”⁸¹

Hence, petitioner avers that the sales discounts involved were duly determined and granted at the time of sale, which are expressly indicated in the cash receipts, the amount thereof forming part of the gross sales duly recorded in its books of accounts. Further, the same sales discounts were not dependent upon the happening of a future event.⁸²

To support the sales discounts granted to its customers, which it claimed as expense, petitioner submitted its *Summary of Sales Discount* and *Cash Receipt* vouchers for the taxable year 2018.⁸³

Notably, there is a discrepancy of Php1,455.97, which is the difference between Php1,566,278.97⁸⁴ (total per petitioner’s *Summary of Sales Discount*) and Php1,564,823.00⁸⁵ (amount reported per Annual ITR for taxable year 2018).

Nevertheless, the mere submission of a summary/schedule and the presentation of cash receipt vouchers do not, by themselves, sufficiently substantiate the claimed sales discounts. As held in *Towne & City Development Corporation vs. Court of Appeals*,⁸⁶ a voucher is simply a documentary record of a business transaction.

Consequently, for petitioner’s failure to present the underlying sales invoices or other competent documentary evidence from which the alleged discounts could be traced, verified and established, the disallowed sales discounts claimed as expense in the amount of Php1,564,823.00, shall remain.

d. Disallowed Expenses due to Non-substantiation - Php742,526.00

⁸¹ Q&A No. 24, Exhibit “P-32”, Docket – Vol. I, p. 329.

⁸² Par. 57, Petitioner’s *Memorandum*, Docket – Vol. III, p. 896.

⁸³ Exhibits “P-7-a” and “P-7-a-1” to “P-7-a-42”, USB dated March 15, 2024, as covered by Amended ICPA Report dated March 15, 2024 (deemed marked as Exhibit “P-31”), Docket – Vol. I, p. 370.

⁸⁴ Exhibit “P-7-a”, USB dated March 15, 2024, as covered by Amended ICPA Report dated March 15, 2024 (deemed marked as Exhibit “P-31”), Docket – Vol. I, p. 370.

⁸⁵ Line 36, Schedule 4, Exhibit “P-2”, Docket – Vol. II, p. 418.

⁸⁶ G.R. No. 135043, July 14, 2004.

Based on the FLD, respondent's verification disclosed that petitioner failed to submit supporting documents or evidence to support some of its expenses amounting to Php21,707,131.92, claimed as deduction against gross income per AFS/ITR, in violation of Section 34(A)(1)(b) of the NIRC, as amended, as follows:⁸⁷

Purchases (Importation of goods without SAD)	Php 20,663,568.31
Christmas and anniversary expense	219,695.61
Retirement plan expense	81,342.00
Loss on foreign exchange	742,526.00
Disallowed expenses due to non-substantiation	<u>Php21,707,131.92</u>

After reinvestigation, respondent considered petitioner's contentions and lowered the finding of non-substantiation to Php742,526.00, leaving the loss on foreign exchange allegedly unsubstantiated. Below is the computation provided by the respondent in the FDDA:⁸⁸

Disallowed expenses due to non-substantiation	Php21,707,131.92
Less: Adjustment per reinvestigation	
Domestic purchases of goods	Php20,663,568.31
Christmas and Anniversary expenses	219,695.61
Retirement plan expense	81,342.00
Adjusted balance per re-investigation	<u>Php 742,526.00</u>

Petitioner offered in evidence the *Schedule of Gain or Loss on exchange rate For Year 2018* and the corresponding *Bank of the Philippines Settlement Advices*, to substantiate its claim that it incurred a net foreign exchange loss for the year 2018 from its foreign exchange transactions.⁸⁹

A perusal of the submitted documents shows that foreign currency remittances were indeed made. The foreign exchange gains or losses reflected in the *Cash or Check Vouchers* appear to have been determined based on the difference between the actual amounts remitted, net of bank charges, and the original amounts payable under the corresponding *Accounts Payable*.

However, petitioner failed to present corroborating evidence establishing the original amounts of the underlying transactions that gave rise to the claimed foreign exchange losses upon settlement. Verification of the underlying transactions is necessary, as the original amounts payable constitute the basis for

⁸⁷ Item I(D), Exhibit "R-5" or "P-8", BIR Records - Folder 1 (Exhibit "R-14"), p. 448.

⁸⁸ Item I(B), Exhibit "R-13" or "P-10", BIR Records - Folder 1 (Exhibit "R-14"), p. 603.

⁸⁹ Exhibits "P-21" and "P-21-a" to "P-21-ll", USB dated March 15, 2024.

determining whether an exchange gain or loss, if any, arose from the subsequent settlement.

Accordingly, for failure to substantiate the same with sufficient evidence, the Court shall uphold respondent's disallowance of the claimed foreign exchange loss amounting to Php742,526.00

e. Disallowed Creditable Withholding Taxes - Php22,688.49

Respondent's verification and reinvestigation disclosed that Php22,688.49 of creditable withholding taxes claimed per ITR was unsupported, thus, was disallowed pursuant to Section 2.58.3(B) of RR No. 02-98, as amended.⁹⁰

Petitioner asserts that all creditable withholding taxes for the year 2018 was properly supported by relevant BIR Form No. 2307. For this purpose, petitioner submitted its *Summary Alphabetical of Withholding Taxes* (SAWT) for 2018.⁹¹

Pursuant to Section 2.58.3(B) of RR No. 2-98, as amended, a claim for tax credit is given due course only when: (i) the income payment has been declared as part of the gross income; and (ii) the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee, to wit:

“Sec. 2.58.3. *Claim for Tax Credit or Refund.* —

xxx

xxx

xxx

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and **the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.**”
(*Emphasis added*)

However, petitioner failed to submit to this Court the corresponding *Certificates of Creditable Tax Withheld at Source* (BIR Forms No. 2307) to substantiate

⁹⁰ Item I(C), Exhibit “R-13” or “P-10”, BIR Records - Folder 1 (Exhibit “R-14”), p. 603; Item I(E), Exhibit “R-5” or “P-8”, BIR Records - Folder 1 (Exhibit “R-14”), p. 448.

⁹¹ Par. 84, Petitioner's *Memorandum*, Docket – Vol. III, p. 903; Exhibit “P-23 and series”, USB dated March 15, 2024.

and enable the Court to verify its claim that the entire amount of creditable withholding tax claimed is duly supported.

Moreover, since the *Certificate of Creditable Tax Withheld at Source* is the competent proof to establish that taxes are withheld,⁹² the SAWT, by itself, is insufficient to substantiate the claim. Given the benefit of the SAWT, of the Php1,688,982.00 in creditable withholding taxes claimed in the Annual ITR for taxable year 2018,⁹³ a review of the SAWT submitted by petitioner to this Court reveals that only Php1,400,282.72⁹⁴ was withheld during the year.

Hence, the disallowed creditable withholding tax of Php22,688.49 shall be maintained.

f. Disallowed Prior Years Excess Tax Credits Carried Over Other than MCIT - Php1,474,960.00

Respondent's verification disclosed that the petitioner failed to provide relevant documents to prove the validity and existence of the prior year's excess credits claimed as tax credits in its ITR amounting to Php1,474,960.00. Hence, the said tax credits were disallowed in relation to Section 76 of the Tax Code.⁹⁵

It should be noted that pursuant to Section 2.58.3(C) of RR No. 2-98, the submission of the previous year's *Annual ITR* is necessary to prove the "*Prior Year's Excess Credits*" before the same can be automatically allowed as credit against the income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, *viz.*:

"Sec. 2.58.3. *Claim for Tax Credit or Refund.* —

xxx xxx xxx

(C) Excess Credits. — An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall **automatically be allowed as a credit** against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, **provided he submits with his income tax return, a copy**

⁹² *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

⁹³ Sum of Php677,359.00 and Php1,011,623.00, Lines 5 and 6, Schedule 7, Exhibit "P-2", Docket – Vol. II, p. 419.

⁹⁴ Exhibit "P-23 and series", USB dated March 15, 2024.

⁹⁵ Item I(F), Exhibit "R-5" or "P-8", BIR Records - Folder 1 (Exhibit "R-14"), p. 447.

of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.” (Emphases added)

Accordingly, respondent has the authority to determine the veracity of the “Prior Year’s Excess Credits Other Than MCIT” of Php1,474,960.00 in petitioner’s 2018 *Annual ITR*,⁹⁶ by comparing the said amount with that reported in the 2017 *Annual ITR*, as these form part of the tax total tax credits reported in the 2018 *Annual ITR*.

In this case, petitioner failed to submit in evidence its *Annual ITR* for the taxable year 2017. Without it, the Court has no means to verify the existence and validity of its “Prior Year’s Excess Credits Other Than MCIT” in the total amount of Php1,474,960.00 for taxable year 2018.

Consequently, respondent’s disallowance of Php1,474,960.00 unsupported prior years excess tax credits carried over other than MCIT shall be upheld.

In sum, petitioner is liable for basic deficiency income tax in the reduced basic amount of Php2,295,232.89 for the taxable year 2018, computed as follows:

Taxable Income per Income Tax Return			Php 13,291,053.00
Add:	Adjustments per investigation		
	Overclaimed Salaries, Wages and Benefits	Php 351,267.42	
	Disallowed Sales Discount claimed as Expense	1,564,823.00	
	Disallowed Expenses due to non-substantiation	742,526.00	2,658,616.42
Adjusted Taxable Income			Php 15,949,669.42
Income Tax Due (30%)			Php 4,784,900.83
Less:	Total Tax Credits/Payments	Php3,987,316.43	
	Less: Adjustments/disallowances		
	Disallowed Creditable Withholding Taxes	22,688.49	
	Disallowed Prior Years Excess Tax Credits Carried Over other than MCIT	1,474,960.00	2,489,667.94
Basic Deficiency Income Tax			Php2,295,232.89

III. Deficiency VAT

⁹⁶ Line 1, Schedule 7, Exhibit “P-2”, Docket – Vol. II, p. 419.

In the FLD dated December 1, 2021, respondent assessed the petitioner for deficiency VAT in the amount of Php6,163,830.92, inclusive of interest, as computed below:⁹⁷

Taxable receipts per VAT return		Php195,159,202.41
Add: Discrepancies per investigation		
Disallowed zero-rated sales	Php 385,705.70	
Disallowed exempt sales	500,584.48	886,290.18
Taxable receipts per investigation		<u>Php196,045,492.59</u>
 Output tax due		 Php 23,525,459.11
Less: Net creditable input taxes	Php20,189,269.34	
Less: Discrepancy per investigation		
Disallowed input taxes - unsupported	6,883,802.00	13,305,467.34
VAT payable		Php 10,219,991.77
Less: Payments per returns		<u>5,676,780.37</u>
Basic tax due		Php 4,543,211.40
Add: Interest 12% (01.26.19 to 01.14.22)		<u>1,620,619.52</u>
TOTAL AMOUNT DUE		<u>Php6,163,830.92</u>

Subsequently, in the FDDA, respondent dropped its disallowances pertaining to zero-rated sales and exempt sales. It thereafter assessed the petitioner for deficiency VAT for the taxable year 2018 in the amount of Php10,104,289.74, including interest, as reflected in the computation below:⁹⁸

Taxable receipts subject to 12% VAT per returns		<u>Php195,159,202.41</u>
 Output tax due		 Php 23,419,104.29
Less: Total creditable input taxes, net of carry over	Php18,568,443.05	
Less: Discrepancy per reinvestigation		
Disallowed input taxes - unsupported	6,883,802.00	11,684,641.05
VAT payable		Php 11,734,463.24
Less: VAT payments		<u>4,850,661.25</u>
Basic tax due		Php 6,883,801.99
Add: 12% Interest (01.26.19 to 12.18.22)		<u>3,220,487.75</u>
TOTAL AMOUNT DUE		<u>Php10,104,289.74</u>

*Total creditable input taxes, net of carry over -
Php20,189,269.34/Php18,568,443.05; and VAT payments - Php4,850,661.25*

⁹⁷ Exhibit "R-5" or "P-8", BIR Records - Folder 1 (Exhibit "R-14"), p. 451.

⁹⁸ Exhibit "R-13" or "P-10", BIR Records - Folder 1 (Exhibit "R-14"), p. 604.

Apparently, as shown above, apart from the dropped disallowances, the respondent also modified the amount of “*Net creditable input taxes*” or “*Total creditable input taxes, net of carry over*”, from Php20,189,269.34 in the FLD to Php18,568,443.05 in the FDDA. It likewise reduced the amount of “*Payments per returns*” or “*VAT payments*” from Php5,676,780.37, as stated in the FLD, to Php4,850,661.25 in the FDDA. Notably, these modifications were made without any explanation or stated factual and legal bases in the FDDA.

Absent factual and legal bases, the petitioner would be deprived of its right to due process, particularly its opportunity to be duly apprised of, and to respond to the factual and legal grounds underlying such modifications.

Moreover, a review of the petitioner’s *Quarterly Value-Added Tax Returns*⁹⁹ (BIR Form No. 2550-Q) disclosed that it reported total creditable input tax for the taxable year 2018 amounting to Php20,189,269.34, as computed below:

Year 2018	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
Input tax on Domestic Purchases of Goods Other than Capital Goods	Php 38,914.58	Php 20,485.82	Php 11,257.87	Php 33,239.19	Php 103,897.46
Input tax on Importation of Goods Other than Capital Goods	3,976,685.00	2,416,256.00	3,678,225.00	5,713,930.00	15,785,096.00
Input tax on Domestic Purchase of Services	1,063,843.80	-	1,062,088.98	967,067.06	3,092,999.84
Input tax on Services Rendered by Non-residents	-	1,207,276.04	-	-	1,207,276.04
Total	Php5,079,443.38	Php3,644,017.86	Php4,751,571.85	Php6,714,236.25	Php20,189,269.34

⁹⁹ Exhibit “P-24”, USB dated March 15, 2024.

Accordingly, consistent with the amounts originally determined by respondent in the PAN¹⁰⁰ and FLD, the Court shall retain the figures stated in the FLD, namely, “*Net Creditable Input Taxes*” in the amount of Php20,189,269.34 and “*Payments per Returns*” in the amount of Php5,676,780.37.

Disallowed input taxes – unsupported - Php6,883,802.00

Respondent’s verification and vouching of *Single Administrative Documents* (SAD) disclosed that only Php13,305,467.34 was properly substantiated. Hence, the remaining amount of Php6,883,802.00 has been disallowed in accordance with the provision of Section 110 of the NIRC, in relation to Sections 113 and 237 of the same Code and Section 4.110-8 of RR No. 16-2005 as amended by RR No. 13-2018, as follows:¹⁰¹

Input tax on current purchases claimed per VAT returns	Php 20,189,269.34
Less: Input tax substantiated with supporting documentary evidence	13,305,467.34
Disallowed input taxes - unsupported	<u>Php6,883,802.00</u>

It is of fatal importance for petitioner to provide supporting documents to prove that the input taxes claimed were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, as implemented by Sections 4.110-1 to 4.110-3 and 4.110-8 of RR No. 16-2005, as amended.

Thus, in order to prove entitlement to credits for input taxes due or paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but more importantly, these documents must comply with the invoicing requirements under Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended.

Upon review of the *official receipts* (ORs) and *sales invoices* (SIs) offered by the petitioner in support of its input taxes,¹⁰² the Court finds that, Php28,087.58 input taxes on current purchases for taxable year 2018 was substantiated and may be recognized as valid input taxes, as enumerated below:

Exhibit “P-25” page reference	Date	Supplier's Name	Purchase Amount	Input VAT
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¹⁰⁰ Item II, Exhibit “R-4” or “P-6”, BIR Records - Folder 1 (Exhibit “R-14”), p. 438.
¹⁰¹ Item II(C), Exhibit “R-5” or “P-8”, BIR Records - Folder 1 (Exhibit “R-14”), p. 447.
¹⁰² Exhibit “P-25”, USB dated March 15, 2024.

page 2	Jan. 3, 2018	Anson Emporium Corporation	Php 21,875.00	Php 2,625.00
page 519	Feb. 14, 2018	Federal Express Pacific, LLC	500.00	60.00
page 1277	Apr. 19, 2018	Three-Top Tires and Batteries Corp	5,803.57	696.43
page 1336	Apr. 28, 2018	Three-Top Tires and Batteries Corp	5,089.29	610.71
page 1490	May 18, 2018	Three-Top Tires and Batteries Corp	13,928.57	1,671.43
page 1617	Apr. 23, 2018	SM Retail, Inc	25,761.85	3,091.42
page 1627	Apr. 1, 2018	ICTSI	9,656.21	1,158.75
page 1633	Apr. 26, 2018	ICTSI	11,160.20	1,339.22
page 1637	May 3, 2018	ICTSI	4,025.00	483.00
page 1657	June 20, 2018	ICTSI	4,307.00	516.84
page 1661	Sep. 11, 2018	ICTSI	9,881.00	1,185.72
page 1842	Aug. 24, 2018	Meralco	5,713.16	667.12
page 1997	Sep. 13, 2018	Three-Top Tires and Batteries Corp	6,696.43	803.57
page 2026	Sep. 19, 2018	SM Retail, Inc	22,161.15	2,659.34
page 2109	Oct. 24, 2018	Meralco	5,617.00	657.58
page 2417	Dec. 26, 2018	International Industrial Association Inc	223.21	26.79
page 2561	Oct. 17, 2018	SM Retail, Inc	17,078.70	2,049.44
page 2562	Nov. 21, 2018	SM Retail, Inc	15,769.66	1,892.36
page 2660	Dec. 14, 2018	Corrhin's Catering	49,107.14	5,892.86
TOTAL			Php234,354.14	Php28,087.58

From the foregoing, the disallowance of unsupported input taxes shall be adjusted to Php6,855,714.42.¹⁰³

Accordingly, the basic deficiency VAT for taxable year 2018 shall be modified to Php4,408,769.00, computed as follows:

Taxable Receipts subject to 12% VAT per Returns		Php195,159,202.41
Output Tax Due		Php 23,419,104.29
Less: Total creditable input taxes per FLD	Php20,189,269.34	
Less: Disallowed Input Taxes - Unsupported	6,855,714.42	13,333,554.92
VAT Payable		Php 10,085,549.37
Less: VAT Payments per FLD		5,676,780.37
Basic Tax Due		Php4,408,769.00

- IV. Deficiency FWT
V. Deficiency FWVAT

¹⁰³ Php6,883,802.00 less Php28,087.58.

Respondent’s verification disclosed that petitioner failed to withhold and remit the FWT and FWVAT on its payments made for services rendered by Non-Resident Foreign Corporation (NRFC) amounting to Php10,060,633.67, as reflected in its VAT returns. Hence, the same was subjected by respondent to 30% FWT in the amount of Php3,018,190.10 pursuant to Section 2.57.1 of RR No. 2-98, as amended by RR No. 11-2018, and 12% FWVAT in the amount of Php1,207,276.04 pursuant to Section 4.114.2(b)(3) of RR No. 16-2005, in relation to Section 4.114 of RR No. 2-98, as amended, computed as follows:¹⁰⁴

Services rendered by Non-Resident Foreign Corporation (NRFC)	Php10,060,633.67
Multiplied by: FWT rate	30%
Basic tax due	Php3,018,190.10
Services rendered by NRFC	Php10,060,633.67
Multiplied by: Final withholding of VAT	12%
Basic tax due	Php1,207,276.04

A perusal of petitioner’s *Quarterly Value-Added Tax Returns*¹⁰⁵ for the taxable year 2018 submitted to this Court reveal that there is indeed Php10,060,633.67 in Line 21K – Services Rendered by Non-residents for the 2nd quarter of taxable year 2018.¹⁰⁶

Petitioner alleges that there were no payments made to non-resident foreign entities for taxable year 2018 and that the amount in the VAT return was only an inadvertent mistake committed by an employee of M.N. Business Solution, a third-party accounting service provider contracted by the petitioner, to prepare and file its VAT Returns on its behalf.¹⁰⁷

To refute the respondent’s findings, petitioner submitted its summary list of purchases for the 2nd quarter of 2018 and supporting ORs and SIs.¹⁰⁸ However, the total input tax reflected in the summary list of purchases for the 2nd quarter of 2018 submitted by the petitioner does not tally with the amount reported in the Quarterly VAT Return for the same period. Moreover, a scrutiny of the supporting documents reveals that only Php305,871.66 of input tax equivalent to Php2,549,045.65 purchases of services are proven to be rendered by domestic entities, as follows:

Exhibit “P-27 and series”	Supplier Name	Gross Amount	VATable Amount	Input VAT
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¹⁰⁴ Items V and VI, Exhibit “R-5” or “P-8”, BIR Records - Folder 1 (Exhibit “R-14”), p. 446.

¹⁰⁵ Exhibit “P-24”, USB dated March 15, 2024.

¹⁰⁶ Exhibit “P-24”, USB dated March 15, 2024, p. 7.

¹⁰⁷ Par. 101, Petitioner’s *Memorandum*, Docket – Vol. III, pp. 909 to 910.

¹⁰⁸ Exhibit “P-27 and series”, USB dated March 15, 2024.

page reference				
9 of 226	Front Cargo Forwarders Inc	Php 6,267.41	Php 5,595.90	Php 671.51
22 of 226	Prudential Guarantee and Assurance Inc	16,928.80	15,115.00	1,813.80
24 of 226	Entom Pest Control & General Services Corporation	5,500.00	4,910.71	589.29
33 of 226	Prudential Guarantee and Assurance Inc	22,545.60	20,130.00	2,415.60
39 to 41 of 226	Federal Express Pacific LLC	1,680.00	1,500.00	180.00
45 of 226	FVR Skills and Services Exponents, Inc	263,681.60	235,430.00	28,251.60
51 of 226	FVR Skills and Services Exponents, Inc	453,117.09	404,568.83	48,548.26
56 of 226	Federal Express Pacific LLC	1,120.00	1,000.00	120.00
64 and 66 of 226	Federal Express Pacific LLC	1,120.00	1,000.00	120.00
80 of 226	LZC Holdings Inc	54,606.92	48,756.18	5,850.74
82 of 226	Prudential Guarantee and Assurance Inc	9,100.00	8,125.00	975.00
85 of 226	Entom Pest Control & General Services Corporation	5,500.00	4,910.71	589.29
91 of 226	FVR Skills and Services Exponents, Inc	477,101.68	425,983.64	51,118.04
133 of 226	FVR Skills and Services Exponents, Inc	70,341.60	62,805.00	7,536.60
161 of 226	FVR Skills and Services Exponents, Inc	429,709.22	383,668.95	46,040.27
196 of 226	Meralco	2,437.15	2,188.38	248.77
198 of 226	Enji Alkaline Water Corp	1,545.00	1,379.46	165.54
199 of 226	TNT Express Worldwide (Phils.) Inc	1,412.44	1,261.11	151.33
202 of 226	FVR Skills and Services Exponents, Inc	406,856.54	363,264.77	43,591.77
204 of 226	Philippine Span Asia Carrier Corp	59,700.26	53,303.80	6,396.46
206 of 226	German Club Inc	3,700.00	3,303.57	396.43
219 of 226	Cocolife	560,946.00	500,844.64	60,101.36



TOTAL	Php2,854,917.31	Php2,549,045.30	Php305,871.66
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Therefore, the basic deficiency assessment on FWT and FVAT shall be modified and reduced to Php2,253,476.51 and Php901,390.60, respectively, as computed below:

Services rendered by NRFC per VAT return	Php10,060,633.67
Less: Domestic purchases of services supported by OR	2,549,045.30
Adjusted Services rendered by NRFC	Php7,511,588.37
Multiplied by: FWT rate	30%
Basic tax due - FWT	Php2,253,476.51

Adjusted Services rendered by NRFC	Php7,511,588.37
Multiplied by: FVAT rate	12%
Basic tax due - FVAT	Php901,390.60

VI. Compromise Penalty

Respondent imposed compromise penalty of Php80,000.00 against petitioner for its failure to file and pay an internal revenue tax at the time or times required by law or regulation pursuant to the schedule of suggested compromise penalties prescribed under Revenue Memorandum Order (RMO) No. 7-2015, as amended, broken down as follows:¹⁰⁹

Nature of Violation	Violated Provision	Amount Due
Failure to file and pay final withholding tax	Section 2.57.1, RR 2-1998	Php40,000.00
Failure to file and pay final withholding of VAT	RR 16-2005	40,000.00
Total		Php80,000.00

In *San Miguel Corporation v. Commissioner of Internal Revenue*,¹¹⁰ the Court clarified that a compromise penalty should not be imposed if the taxpayer does not agree to a compromise considering that a compromise, by its very nature, must be mutual. Moreover, since compromise penalties are amounts suggested in the settlement of criminal tax liability, there must first be an imposition of criminal tax liabilities. Otherwise, a compromise penalty should not be imposed and collected, to wit:

“[T]he compromise penalty should not be imposed on SMC, as compromise is, by its nature, mutual in essence. The records do not show that SMC agreed to the compromise penalty.”

¹⁰⁹ Exhibit “R-5” or “P-8”, BIR Records - Folder 1 (Exhibit “R-14”), p. 450.

¹¹⁰ G.R. Nos. 257697 and 259446, April 12, 2023.

This is bolstered by the fact that SMC disputed the assessment made by the CIR. It must also be noted that compromise penalty are amounts suggested in the settlement of criminal tax liability. Since SMC's case does not involve criminal tax liabilities, the compromise penalty should not have been imposed and collected.”

Accordingly, such imposition cannot be sustained. Under RMO 7-2015, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.¹¹¹ Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be cancelled. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.¹¹²

To summarize, petitioner is liable for a total of Php9,858,868.40 basic deficiency taxes for the taxable year 2018, to wit:

Type of Tax	Amount of Basic Deficiency Tax
Income Tax	Php2,295,232.89
VAT	4,408,769.00
EWT	-
FWT	2,253,476.51
FWVAT	901,390.00
Total	Php9,858,868.40

WHEREFORE, in view of the foregoing, the present *Petition for Review* is **PARTIALLY GRANTED**.

Accordingly, respondent’s assessments against petitioner for deficiency EWT and compromise penalty for taxable year 2018, should be **CANCELLED** for lack of merit; while the assessments for deficiency income tax, VAT, FWT, and FWVAT for taxable year 2018 are **UPHELD WITH MODIFICATIONS**.

¹¹¹ *Phil. International Fair, Inc. vs. The Collector of Internal Revenue*, G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 781.

¹¹² *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.*, G.R. No. L-35266, January 21, 1999, 193 SCRA 92-93.

Consequently, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **Php15,779,997.64**, inclusive of surcharge and deficiency interest imposed under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended, computed as follows:

	Income tax	VAT	FWT	FWVAT	Total
Basic Tax Due	Php2,295,232.89	Php4,408,769.00	Php2,253,476.51	Php901,390.00	Php9,858,868.40
Add: 25% Surcharge	573,808.22	1,102,192.25	563,369.13	225,347.50	2,464,717.10
Add: 12% Deficiency Interest					
Income Tax:					
12% Deficiency Int. from April 16, 2019 to Jan. 14, 2022 [$\text{Php}2,295,232.89 \times 12\% \times 1,005/365\text{days}$]	758,370.10				758,370.10
VAT:					
12% Deficiency Int. from Jan. 26, 2019 to Jan. 14, 2022 [$\text{Php}4,408,769.00 \times 12\% \times 1,085/365\text{days}$]		1,572,662.26			1,572,662.26
FWT:					
12% Deficiency Int. from Feb.1, 2019 to Jan. 14, 2022 [$\text{Php}2,253,476.51 \times 12\% \times 1,079/365\text{days}$]			799,397.64		799,397.64
FWVAT:					
12% Deficiency Int. from Jan. 11, 2019 to Jan. 14, 2022 [$\text{Php}901,390.00 \times 12\% \times 1,100/365\text{days}$]				325,982.14	325,982.14
Total Amount Due –January 14, 2022 ¹¹³	Php3,627,411.21	Php7,083,623.51	Php3,616,243.28	Php1,452,719.64	Php15,779,997.64

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid deficiency taxes due of **Php15,779,997.64** as of January 14, 2022, as determined above, or equivalent to the amount of $\text{Php}5,187.94^{114}$ per day, computed from January 15, 2022 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, also known as *Tax Reform for Acceleration and Inclusion* and as implemented by RR No. 21-2018.

¹¹³ January 14, 2022 is the due date for payment as appearing in the Assessment Notices, Exhibits "R-6" to "R-12", BIR Records - Folder 1 (Exhibit "R-14"), pp. 453 to 459.

¹¹⁴ $\text{Php}15,779,997.64$ multiplied by 12% divided by 365 days.

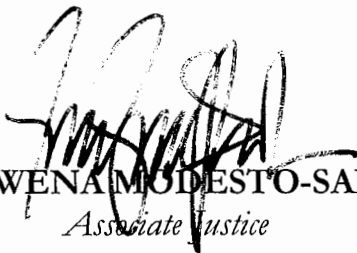
Lastly, pursuant to Section 13 of RA No. 9282, considering that this decision is partly favorable to the national government, the BIR, through respondent, is hereby authorized to seize and distrain any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of petitioner in sufficient quantity to satisfy the tax or charge with any increment thereto incident to delinquency.

SO ORDERED.

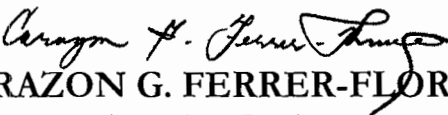


MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



CORAZON G. FERRER-FLORES
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.



MA. BELEN M. RINGPIS-LIBAN
Presiding Justice