**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***SPECIAL FIRST DIVISION***

| | |
|---|---|
| **IBMS TECHNOLOGY PHILS. CORPORATION,** | **CTA Case No. 9970** |
| *Petitioner,* | Members: |
| *-versus-* | **DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** | Promulgated: |
| *Respondent.* | OCT 05 2023 1:40PM |

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

# DECISION

**MANAHAN, *J.:***

Before this Court is a *Petition for Review*, praying that the *Formal Assessment Notice* (FAN) dated January 5, 2018, covering deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding tax (FWT), documentary stamp tax (DST), improperly accumulated earnings tax (IAET), and compromise penalty, in the amounts of ₱11,593,917.38, ₱618,371.99, ₱57,838.45, ₱7,933,580.45, ₱1,114,602.74, ₱46,441.78, ₱4,712,177.13, and ₱80,000.00, respectively, inclusive of increments, for taxable period 2014 be cancelled and withdrawn.[1]

## THE PARTIES

Petitioner IBMS Technology Phils. Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address located at Unit 29-C Chatham House Condominium, 116 Valero corner V. A. Rufino Streets, Salcedo Village, Makati City.[2]

---

[1] Prayer, *Petition for Review*, Docket – Vol. I, p. 17.
[2] Parties, *Petition for Review*, Docket – Vol. I, p. 11.

Respondent is the duly appointed Commissioner of Internal Revenue, with principal office address at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

**ANTECEDENTS (ADMINISTRATIVE LEVEL)**

On May 13, 2016, respondent issued *Letter of Authority* (LOA) No. eLA201200035835 dated May 13, 2016,[4] authorizing the examination of petitioner's books of account and other accounting records for deficiency internal revenue taxes, for the period from January 1, 2014 to December 31, 2014.

On December 14, 2017, respondent issued *Preliminary Assessment Notice* (PAN), with *Details of Discrepancies*, covering deficiency income tax of ₱11,463,465.42, VAT of ₱611,604.58, EWT of ₱57,207.63, WTC of ₱7,847,051.97, FWT of ₱1,104,082.19, DST of ₱46,003.42, and IAET of ₱4,662,333.42, inclusive of interests, for taxable year (TY) 2014.[5]

On January 12, 2018, petitioner received the FAN (Parts 1 and 2) dated January 5, 2018, covering deficiency income tax of ₱11,593,917.38, VAT of ₱618,371.99, EWT of ₱57,838.45, WTC of ₱7,933,580.45, FWT of ₱1,114,602.74, DST of ₱46,441.78, IAET of ₱4,712,177.13, and compromise penalty of ₱80,000.00, inclusive of interests and penalties, for TY 2014.[6]

On February 12, 2018, petitioner filed a *Protest/Request for Reinvestigation* against the FAN.[7] Within sixty (60) days therefrom or on April 11, 2018, petitioner submitted the documents in support of its protest.[8]

---

[3] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 176.
[4] Exhibit "P-1", BIR Records, p. 2.
[5] Par. 2, Admitted Facts, JSFI, Docket – Vol. I, p. 176; Exhibit "P-15", BIR Records, p. 512.
[6] Par. 3, Admitted Facts, JSFI, Docket – Vol. I, pp. 176 to 177; Exhibit "P-16", BIR Records, pp. 525 to 538.
[7] Par. 4, Admitted Facts, JSFI, Docket – Vol. I, p. 177; Exhibit "P-17", Docket – Vol. II, pp. 468 to 473.
[8] Exhibit "P-18", Docket – Vol. II, pp. 474 to 475.

## PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on November 7, 2018.[9]

On January 7, 2019, respondent filed his *Manifestation with Motion to Admit Answer,*[10] to which petitioner posted its *Comment/Opposition with Motion* on January 22, 2019.[11] In the said *Motion to Admit,* respondent attached his *Answer,*[12] interposing his special and affirmative defenses.

In the Resolution dated April 12, 2019,[13] the Court granted respondent's *Manifestation with Motion to Admit Answer* and admitted the said *Answer,* and initially set the case for mediation on May 2, 2019.

On May 29, 2019, petitioner filed a *Manifestation with Motion,*[14] praying that the mediation be rescheduled. Thus, in the Resolution dated June 10, 2019,[15] the mediation proceedings was reset to July 8, 2019. After the said proceedings, on January 14, 2020, the mediator filed her *Mediator's Report*, stating that the mediation is unsuccessful.[16]

The Court initially set the case for Pre-Trial Conference on March 5, 2020,[17] but was finally reset to and held on August 27, 2020.[18] Prior thereto, respondent's *Pre-Trial Brief* was filed on March 2, 2020,[19] while petitioner's *Pre-Trial Brief with Manifestation* was submitted on March 3, 2020.[20]

---

[9] Docket – Vol. I, pp. 10 to 19.
[10] Docket – Vol. I, pp. 47 to 50.
[11] Docket – Vol. I, pp. 68 to 69.
[12] Docket – Vol. I, pp. 51 to 55.
[13] Docket – Vol. I, pp. 74 to 75.
[14] Docket – Vol. I, pp. 76 to 77.
[15] Docket – Vol. I, p. 82.
[16] Docket – Vol. I, p. 93.
[17] Refer to the Resolution dated January 22, 2020, Docket – Vol. I, p. 104; *Notice of Pre-Trial Conference* dated January 23, 2020, Docket – Vol. I, pp. 105 to 106.
[18] Refer to *Notice of Resetting* dated February 26, 2020 and June 30, 2020, Docket – Vol. I, pp. 110 and 158, respectively; Minutes of hearing held on, and Order dated, August 27, 2020, Docket – Vol. I, pp. 164 to 168, and 172 to 175, respectively.
[19] Docket – Vol. I, pp. 111 to 118.
[20] Docket – Vol. I, pp. 139 to 143.

Respondent transmitted the *BIR Records* of the present case [consisting of one (1) folder, five hundred seventy-five (575) pages)] on February 5, 2020.[21]

On September 11, 2020, the parties filed their *Joint Stipulation of Facts and Issues*,[22] which was approved in the Resolution dated September 17, 2020,[23] thereby terminating the Pre-Trial. The Pre-Trial Order dated December 9, 2020 was then issued by the Court.[24]

Trial then ensued.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Chervie Rose Janapin,[25] petitioner's Finance Clerk; and (2) Revenue Officer (RO) Roland Dela Torre,[26] as hostile witness.

In the meantime, during the hearing held on July 13, 2021, counsel for respondent manifested that she will dispense with the presentation of RO Dela Torre as her witness, subject to cross examination during RO Dela Torre's presentation as hostile witness of petitioner.[27]

After presentation of RO Dela Torre as hostile witness during the hearing held on March 1, 2022, the Court granted petitioner a period of fifteen (15) days to file *Formal Offer of Evidence*, while respondent was granted the same period within which to file comment. Moreover, considering that respondent is no longer presenting any evidence, the Court gave both parties a period of thirty (30) days to file their respective memorandum.[28]

---

[21] *Compliance* dated February 5, 2020, Docket – Vol. I, p. 107.
[22] Docket – Vol. I, pp. 176 to 178.
[23] Docket – Vol. I, p. 200.
[24] Docket – Vol. I, pp. 255 to 270.
[25] Exhibit "P-207", Docket – Vol. I, pp. 144 to 155; Minutes of hearing held on, and Order dated, March 2, 2021, Docket – Vol. I, pp. 333 to 337.
[26] Minutes of hearing held on, and Order dated, March 1, 2022, Docket – Vol. II, pp. 427 to 427-A, and 428 to 428-A, respectively.
[27] Minutes of the hearing held on, and Order dated, March 1, 2021, Docket – Vol. I, pp. 384 to 388.
[28] Minutes of hearing held on, and Order dated, March 1, 2022, Docket – Vol. II, pp. 427 to 427-A and 428 to 428-A, respectively.

Petitioner filed its *Formal Offer of Evidence* on March 17, 2022.[29] Respondent posted his *Comment and Opposition (To Petitioner's Formal Offer of Evidence dated March 15, 2022) with Manifestation* on March 31, 2022.[30] Respondent also posted a *Motion for Leave of Court to File Demurrer to Evidence*, with attached *Demurrer to* Evidence, on March 31, 2022.[31] Petitioner later filed its *Comment/Opposition with Motion* on April 12, 2022,[32] praying that the *Motion for Leave* be denied, and that RO Dela Torres' Judicial Affidavit dated February 28, 2020, and all attachments thereto, be expunged from the records of the case.

In the Resolution dated June 14, 2022,[33] the Court denied respondent's *Motion for Leave of Court to File Demurrer to Evidence*, but gave petitioner the opportunity to comment on petitioner's *Motion* incorporated in its *Comment/Opposition*. In the same Resolution, the Court admitted petitioner's offered exhibits, *except* for the following:

1. Exhibits "P-9", "P-11" and "P-248", for failure to identify;
2. Exhibits "P-10", "P-11-a", "P-19", "P-19-a", "P-23", "P-25", "P-36", "P-40 to P-41", "P-46", "P-193 to P-195", "P-197 to P-200", "P-232 to P-233", "P-238", "P-293 to P-293-a", "P-297-b to P-297-c", "P-301", "P-305", "P-313", "P-338" and "P-339", for failure to present originals for comparison;
3. Exhibits "P-20", "P-20-a", "P-76", "P-77" and "P-78", for failure to submit duly marked exhibits;
4. Exhibits "P-109", "P-110", "P-111", "P-112", "P-113", "P-248-a", "P-251", "P-251-a" and "P-251-b", for failure to present originals for comparison and for failure to identify; and
5. Exhibits "P-207", "P-217", "P-253" and "P-253-a", for not being found in the records of the case.

On July 22, 2022, petitioner filed a *Motion for Leave to Admit with Tender of Excluded Evidence and Manifestation.*[34]

---

[29] Docket – Vol. II, pp. 429 to 439.
[30] Docket – Vol. II, pp. 995 to 1000.
[31] Docket – Vol. II, pp. 983 to 992.
[32] Docket – Vol. II, pp. 1004 to 1006.
[33] Docket – Vol. II, pp. 1009 to 1015.
[34] Docket – Vol. II, pp. 1017 to 1020.

Respondent, on the other hand, posted his *Comment/Opposition (To Petitioner's Motion for Leave to Admit with Tender of Excluded Evidence and Manifestation)* on August 18, 2022.[35]

*Respondent's Memorandum* was posted on July 20, 2022,[36] while petitioner filed its *Memorandum* on July 22, 2022.[37]

In the Resolution dated August 18, 2022,[38] the Court granted petitioner's *Motion to Expunge the Judicial Affidavit of Revenue Officer Roland S. Dela Torre dated February 28, 2020,* and ordered the Judicial Affidavit of RO Dela Torre dated February 28, 2020 expunged from the records of this case.

On October 20, 2022, the Court issued a Resolution,[39] denying petitioner's *Motion for Leave to Admit*, while noting its *Tender of Excluded Evidence and Manifestation.* Accordingly, the Court made part of the records of the case Exhibits "P-9", "P-10", "P-11", "P-11-a", "P-19", "P-19-a", "P-20", "P-20-a", "P-23", "P-25", "P-36", "P-40 to P-41", "P-46", "P-76", "P-77", "P-78", "P-109", "P-110", "P-111", "P-112", "P-113", "P-193 to P-195", "P-197 to P-200", P-232 to P-233", "P-238", "P-248", "P-248-a", "P-251", "P-251-a", "P-251-a", "P-251-b", "P-293 to P-293-a", "P-297-b to P-297-c", "P-301", "P-305", "P-313", "P-338" and "P-339". In the same Resolution, the Court submitted the present case for decision.

## THE ISSUES

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

"1. Whether the Letter of Authority (LOA) is valid for lack of revalidation on or before the expiration of the 180-day period.

---

[35] Docket – Vol. II, pp. 1057 to 1059.
[36] Docket – Vol. II, pp. 1033 to 1047.
[37] Docket – Vol. II, pp. 1022 to 1032.
[38] Docket – Vol. II, p. 1056.
[39] Docket – Vol. II, p. 1066 to 1070.

2. Whether Petitioner is liable for deficiency Income Tax (IT) of Php11,593,917.38, Value-Added Tax (VAT) of Php618,371.99, Expanded Withholding Tax (EWT) of Php57,838.45, Withholding Tax on Compensation (WTC) of Php7,933,580.45, Final Withholding Tax (FWT) of Php1,114,602.74, Documentary Stamp Tax (DST) of Php46,441.78, Improperly Accumulated Earnings Tax (IAET) of Php4,712,177.13, and Compromise Penalty (MC) of Php80,000.00, inclusive of interests and penalties, for TY 2014, as indicated in the FAN dated 05 January 2018.

3. Whether Petitioner made an overpayment."[40]

***Petitioner's arguments:***

Petitioner argues that the LOA is invalid for lack of revalidation on or before the expiration of the 180-day period; and that even granting, for the sake of argument, that the LOA is valid, petitioner is not liable for the deficiency taxes as enumerated in the FAN.

***Respondent's counter-arguments:***

Respondent contends that failure to revalidate petitioner's LOA does not affect its validity nor the assessment made pursuant to the same; that the requirement on the issuance of *Notice of Informal Conference* was deleted under Revenue Regulations (RR) No. 18-2013 dated November 28, 2013, which amended RR No. 12-99; that respondent has fully complied with the due process requirement under Section 228 of the Tax Code, as amended, and RR No. 12-99, as amended by RR No. 18-2013; that petitioner is liable for the deficiency income tax, VAT, EWT, WTC, FWT, DST, IAET and compromise penalty; and that the necessity of proving that the tax assessment is invalid lies with the party assailing the validity of the assessment.

---

[40] Statement of Issues, JSFI, Docket – Vol. I, p. 177.

## THE COURT'S RULING

The present *Petition for Review* is partially granted.

***The lapse of the audit period does not render the subject LOA invalid and will not have the effect of revoking the authority given thereunder to the concerned RO.***

Petitioner avers that the LOA is invalid because under Revenue Memorandum Order (RMO) No. 19-2015, the report of investigation/verification of cases covered by electronic Letters of Authority (eLAs) shall be submitted by the RO within one hundred eighty (180) calendar days only. Petitioner further alleges that under CTA Case No. 8837 dated March 19, 2018, the non-compliance of the concerned RO within the prescribed period and the required procedure of surrendering the LOA for revalidation would inevitably render the LOA invalid.

Petitioner claims that in the present case, respondent issued the LOA on May 13, 2016, which was received by petitioner on May 20, 2016. The PAN was issued on December 14, 2017, while the FAN was issued on January 5, 2018 which was received by petitioner on January 12, 2018. The period from the time the LOA was received by the petitioner on May 20, 2016 to the time when the PAN and FAN were issued on December 14, 2017 and January 5, 2018, respectively, is already more than eighteen (18) months, which is clearly beyond the six (6) months or 180-day prescribed period.

Petitioner further maintains that after the lapse of the 180-day prescribed period, respondent did not also comply with the required procedure of surrendering the LOA for revalidation. This fact was admitted by RO Dela Torre himself during direct-examination on March 1, 2022 as according to him[41] *"There is no use of revalidating of the Letter of Authority"*.

---

[41] Transcript of Stenographic Notes (TSN), March 1, 2022, p.35. *am*

Petitioner further contends that the non-compliance within the one hundred eighty (180) calendar days to submit the investigation/verification of the case covered by the LOA, and the required procedure for surrendering the LOA for revalidation rendered the LOA invalid. Consequently, this also renders the PAN and FAN invalid. Thus, the PAN and FAN are void and ineffectual and bear no valid fruit.

This Court disagrees with petitioner.

Admittedly, under RMO No. 19-2015[42], there is indeed a 180-day period for regional cases within which to submit a report of investigation. However, nothing therein states that in case the 180-day period to submit the said report of investigation is not observed, the LOA issued will be a nullity. In fact, in the same issuance, it was clearly stated that the failure to render a report of investigation/verification within the time frame shall **not** nullify the eLA. The pertinent portion of RMO No. 19-2015 reads:

> "28. **Failure on the part of the RO to render a report of investigation/verification within the time frame prescribed above shall not nullify the eLA**. The eLA is enforceable even if it remains outstanding beyond the time frame for submission of report of investigation/verification by the RO assigned to the case, subject to the period of limitation under Sections 203 and 222 of the Tax Code of 1997, as amended. However, **the RO who fails to submit the report investigation/verification shall be subject to any applicable administrative sanction**." (*Emphases and underscoring added*)

In this regard, it must also be noted that the requirement of revalidation of LAs for failure to complete audit was already withdrawn beginning June 1, 2010, pursuant to RMO No. 44-2010[43], the pertinent portion of which reads:

> "8. **Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, there is no need for**

---

[42] SUBJECT: BIR Audit Program.

[43] SUBJECT: Electronic Issuance of Letters of Authority.

> **revalidation of the LA even if the prescribed audit period has been exceeded. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions.**" *(Emphasis and underscoring added)*

Moreover, the above provision was reiterated in RMO No. 19-2015, the relevant portion of which reads:

> "29. As stated in Item Number IV.8 of RMO No. 44-2010, it is reiterated that **pending eLAs as of the effectivity of the said Order shall no longer be revalidated.** In case the report of investigation cannot be rendered within the prescribed period, the concerned RO shall prepare a monthly progress report starting from the time such audit report should have been rendered stating therein the reason for the delay in the submission of the report of investigation duly noted by his GS and approved by the RDO/LTD/LTAD. The said progress report/s shall be attached to the docket of the case." *(Emphasis added)*

Clearly, the revalidation of LOAs which should be done "*for failure of the revenue officials to complete the audit within the prescribed period*", has been withdrawn beginning on June 1, 2010. The effect of such failure is merely to subject the concerned RO(s) to applicable administrative sanctions, **not to render null the issued LOA**. More significantly, the lapse of the said period of audit would *not* have the effect of revoking the authority given to the concerned RO(s). Thus, as correctly argued by respondent, the lapse of the 180-day period under RMO No. 19-2015, and the failure to revalidate the LOA, are of no moment; and thus, the same will not have the effect of nullifying the subject tax assessments.

***The assessments are partially upheld.***

In the FAN, the aggregate amount of ₱26,156,929.92, inclusive of surcharges and interests was found to be deficient for taxable year 2014, summarized as follows: om

| Tax Type | Basic Deficiency Tax | Surcharge | Interest | Total |
|---|---|---|---|---|
| Income tax | ₱ 7,439,837.98 | ₱ - | ₱4,154,079.40 | ₱11,593,917.38 |
| Value-Added Tax (VAT) | 385,953.79 | - | 232,418.20 | 618,371.99 |
| Expanded Withholding Tax (EWT) | 35,976.54 | - | 21,861.91 | 57,838.45 |
| Withholding Tax on Compensation (WTC) | 4,934,827.65 | - | 2,998,752.80 | 7,933,580.45 |
| Final Withholding Tax (FWT) | 600,000.00 | 150,000.00 | 364,602.74 | 1,114,602.74 |
| Documentary Stamp Tax (DST) | 25,000.00 | 6,250.00 | 15,191.78 | 46,441.78 |
| IAET | 2,842,648.79 | 710,662.20 | 1,158,866.14 | 4,712,177.13 |
| Compromise penalty | | | | 80,000.00 |
| **TOTAL** | **₱16,264,244.75** | **₱866,912.20** | **₱8,945,772.97** | **₱26,156,929.92** |

## I. Income Tax

Respondent assessed petitioner for deficiency income tax for TY 2014 amounting to ₱11,593,917.38, with details as follows:[44]

| | | | |
|---|---|---|---|
| Taxable Income (Loss) per return | | | ₱ 7,749,577.00 |
| Add: Adjustments/disallowances | | | |
| Disallowed Expenses due to non-withholding (Schedule 1) | | ₱ 247,988.31 | |
| Salaries and Wages not subjected to withholding tax (Schedule 2) | | 20,114,158.05 | 20,362,146.36 |
| Adjusted Taxable Income | | | ₱ 28,111,723.36 |
| | | | |
| Basic Income Tax Due | | | ₱ 8,433,517.01 |
| Less: Tax credits/payments: | | | |
| Prior Year's Excess Credits | | ₱ 673,794.00 | |
| Creditable withholding tax | ₱1,278,092.00 | | |
| Less: Disallowed Creditable Withholding Tax | 958,206.97 | 319,885.03 | 993,679.03 |
| Basic Deficiency Income Tax | | | ₱ 7,439,837.98 |
| Add: Interest (04.16.15 - 01.29.18) | | | 4,154,079.40 |
| **TOTAL AMOUNT DUE** | | | **₱11,593,917.38** |

The following items comprised the deficiency income tax assessment:

| | |
|---|---|
| A. Disallowed Expenses due to non-withholding | ₱ 247,988.31 |
| B. Salaries and Wages not subjected to withholding tax | 20,114,158.05 |
| C. Disallowed Creditable Withholding Tax | 958,206.97 |

[44] Exhibit "P-16", BIR Records, p. 538.

*A. Disallowed Expenses due to non-withholding*

Respondent's examiner found that the following expenses or deductions claimed by petitioner were not subjected to withholding tax, thus disallowed as deduction from gross income pursuant to Section 34(K) of the NIRC of 1997, as amended:[45]

**Schedule 1:**

| Expense/ Income Payments | Per ITR | Per alphalist/ 1601-E | Disallowed Expenses | Rate | EWT Due |
|---|---|---|---|---|---|
| Rent | ₱ 1,166,935.00 | ₱ 1,138,754.05 | ₱ 28,180.95 | 5% | ₱ 1,409.05 |
| Professional fees | 510,370.00 | 290,562.64 | 219,807.36 | 10% | 21,980.74 |
| **TOTAL** | **₱1,677,305.00** | **₱1,429,316.69** | **₱247,988.31** | | **₱23,389.79** |

Petitioner avers that it "religiously withheld and remitted the withholding taxes for rental and professional fees inclusive in the total of ₱1,736,412.84 as evidenced by BIR Form 1604-E[46]".[47] However, the Court notes that the total amount of ₱1,736,412.84 includes all of petitioner's income payments/ expenses for taxable year 2014 and does not solely pertain to withholding tax on rental and professional fees. Meanwhile, respondent disallowed only a portion of petitioner's rental and professional fees that were not subjected to withholding, as shown above.

Petitioner submitted its monthly remittances for the year 2014.[48] However, other than the foregoing documents, petitioner did not explain or substantiate the discrepancy between the amounts of rental and professional fees per ITR and the amounts as shown per remittance returns.

Hence, the disallowance of rental and professional fees expenses for the year 2014 amounting to ₱247,988.31 should remain.

---

[45] Exhibit "P-16", BIR Records, p. 536.
[46] Exhibits "P-250" and "P-250-a", Docket – Vol. II, pp. 743 to 744.
[47] Paragraph 9(a), III. Discussion/Arguments, Memorandum for Petitioner, Docket – Vol. II, pp. 1025 to 1026.
[48] Exhibits "P-67", "P-70", "P-73", "P-132", "P-134", "P-136", "P-138", "P-140", "P-142", "P-144", and "P-146", Docket – Vol. II, pp. 542 to 544 and 607 to 631.

*B. Salaries and Wages not subjected to withholding tax*

Respondent likewise compared the amount of salaries and wages claimed by petitioner as deduction in its income tax return with the total compensation reported in its monthly remittance returns for the year 2014. The discrepancy of ₱20,114,158.05 is disallowed for failure to withhold the corresponding tax on compensation, thus:[49]

**Schedule 2:**

| | | |
|---|---|---|
| Salaries and Wages Per FS/ITR | | ₱ 25,405,954.00 |
| Less: Salaries and Wages per 1601C | | 5,291,795.95 |
| **Salaries & wages not subjected to withholding tax** | | **₱ 20,114,158.05** |
| Multiplied by | ₱ 1,209,036.44 | |
| | ₱ 4,927,985.28 | 24.5341% |
| **Basic Deficiency Withholding Tax** | | **₱ 4,934,827.65** |

Based on records, respondent's total salaries and wages per FS/ITR in the amount of ₱25,405,954.00 consists of the following:

| | |
|---|---|
| Cost of services – Direct labor | ₱ 15,996,777.00[50] |
| Operating expenses - Salaries, wages and employee benefits | 9,409,177.00[51] |
| **Total Salaries & wages per BIR audit** | **₱ 25,405,954.00** |

Petitioner accounted and explained the foregoing discrepancy as follows:[52]

| | | |
|---|---|---|
| **Salaries & wages not subjected to withholding tax** | | **₱ 20,114,158.05** |
| Less: Reconciling items | | |
| 1. Total compensation per BIR Form 1604-CF | ₱ 7,981,916.48 | |
| Less: Per FAN | 5,291,795.95 | ₱ 2,690,120.53 |
| 2. Non-taxable fringe benefits | | 594,139.61 |
| 3. Payments to subcontractors and/or independent contractors | | 12,440,005.03 |
| **Total** | | **₱ 15,724,265.17** |
| **Unaccounted Balance** | | **₱ 4,389,892.88** |

---

[49] Exhibit "P-16", BIR Records, p. 536.
[50] Schedule 2C, Line 20, Exhibit "P-13", BIR Records, p. 280. See also BIR Records, p. 269.
[51] Schedule 4, Line 29, Exhibit "P-13", BIR Records, p. 279. See also BIR Records, p. 268.
[52] Paragraph 9(b), III. Discussion/Arguments, Memorandum for Petitioner, Docket – Vol. II, pp. 1026 to 1028.

First, petitioner argues that respondent's basis on the BIR Forms 1601-C is incorrect because it refers only to remittances of withholding taxes on compensation and are incomplete.[53]

Petitioner's monthly remittances of withholding taxes on compensation for the year 2014 is summarized as follows:

| Exhibit | Month (2014) | Total Compensation | Taxable Compensation | Tax Amount Remitted |
|---|---|---|---|---|
| P-55 | Jan | ₱ - | ₱ - | ₱ 79,691.78 |
| P-58 | Feb | - | - | 81,904.13 |
| P-61 | Mar | - | - | 68,836.60 |
| P-64 | Apr | - | - | 75,903.40 |
| P-114 | May | 552,222.36 | 466,136.10 | 78,776.91 |
| P-116 | Jun | 1,166,012.15 | 1,116,879.04 | 266,079.64 |
| P-118 | Jul | 585,048.24 | 562,241.83 | 81,893.38 |
| P-120 | Aug | 577,245.03 | 554,438.62 | 90,259.94 |
| P-122 | Sep | 582,672.21 | 510,710.04 | 91,159.90 |
| P-124 | Oct | 593,783.04 | 557,053.43 | 85,921.55 |
| P-126 | Nov | 582,672.21 | 540,710.04 | 91,159.90 |
| P-130 | Dec | 652,140.71 | 619,816.18 | 117,449.31 |
| | **TOTAL** | **₱ 5,291,795.95** | **₱ 4,927,985.28** | **₱ 1,209,036.44** |

As shown above, petitioner did not report the amounts of total compensation and total taxable compensation for the months of January to April 2014. Nonetheless, petitioner avers that in its Annual Information Return (BIR Form No. 1604-CF), total compensation for the year 2014 amounts to ₱7,981,916.48. Unfortunately, the said document was denied admission as evidence by the Court for petitioner's failure to present originals for comparison and for failure to identify.[54] As such, it cannot be used to support petitioner's assertion.

Next, petitioner avers that the amount ₱594,139.61[55] pertains to either non-taxable fringe benefits or expenses for entertainment, amusement and recreation, which are recorded

---

[53] Paragraph 9(b), III. Discussion/Arguments, Memorandum for Petitioner, Docket – Vol. II, p. 1026.

[54] Resolution dated June 14, 2022, Docket – Vol. II, p. 1013.

[55] Paragraph 9(b), III. Discussion/Arguments, Memorandum for Petitioner, Docket – Vol. II, p. 1026. See also Annex B of Formal Offer of Evidence, Docket – Vol. II, p. 980.

as part of the salaries and wages account as evidenced by various payment vouchers, official receipts (ORs) or invoices.[56]

Examination of the foregoing documents shows that they are indeed expenses for entertainment, amusement, and recreation for petitioner's employees, which comprise of employees' uniform, expenses for birthday celebrations, anniversary, and Christmas party expenses and giveaways for the year 2014. However, only the amount of ₱135,835.60 is duly substantiated and is not subject to withholding tax, thus, deductible. The rest in the amount of ₱458,304.01 shall be disallowed as deductions from gross income for the reasons detailed as follows:

**Properly substantiated and deductible expenses**

| Exhibit | Date | OR/ Inv. No. | Supplier | Amount |
|---|---|---|---|---|
| P-257-b | 04/08/2014 | 413903 | Amber Golden Chain of Restaurants | ₱ 2,148.21 |
| P-259 | 04/10/2014 | 0012715 | Ordofood Enterprises, Inc. | 270.54 |
| P-261 | 04/24/2014 | 121424 | 7-Eleven Pesuena Enterprises | 17.86 |
| P-262 | 04/24/2014 | 13700 | Chicken's R Us, Inc. | 2,449.11 |
| P-267 | 05/29/2014 | 06100 | Goldilocks Bakeshop Inc. | 379.46 |
| P-268 | 05/29/2014 | 4630 | Clicc, Inc. | 1,585.71 |
| P-270 | 06/19/2014 | 14446 | Chicken's R Us, Inc. | 918.75 |
| P-271 | 06/19/2014 | 001-395961 | Pan de Mla. Food Co. Inc. | 160.71 |
| P-272 | 05/29/2014 | 429396 | Amber Golden Chain of Restaurants | 1,808.93 |
| P-274 | 06/24/2014 | 12316 | National Book Store Inc. | 356.92 |
| P-276-b | 07/21/2014 | 0851 | Gain Tailoring Shop OR# 0851 | 30,566.25 |
| P-278 | 08/08/2014 | 5053 | Clicc, Inc. | 1,644.65 |
| P-279 | 08/08/2014 | 41636 | LSS Fastfood Makati | 600.00 |
| P-280 | 08/08/2014 | 6147 | The Sweet Life by Ange, Co. | 1,400.00 |
| P-284-b | 08/18/2014 | 0853 | Gain Tailoring Shop | 30,566.25 |
| P-286 | 09/15/2014 | 5302 | Clicc, Inc. | 2,812.50 |
| P-287-b | 09/15/2014 | 13377 | Soundway Entertainment Inc. | 13,392.85 |
| P-287-c | 09/15/2014 | 13378 | Soundway Entertainment Inc. | 2,372.90 |
| P-288-b | undated | 0854 | Gain Tailoring Shop | 18,750.00 |
| P- 289-b | 10/10/2014 | 0856 | Gain Tailoring Shop | 18,000.00 |
| P-295 | 12/06/2014 | 00002 | One Pix Photo Booth | 5,634.00 |
| | **Subtotal** | | | **₱135,835.60** |

---

[56] It is noted that in its protest to the FAN, petitioner avers that the amount ₱744,408.60 pertains to either non-taxable fringe benefits or expenses for entertainment, amusement and recreation. Exhibit "P-17", Docket – Vol. II, pp. 469 to 470.

**Supported by documents other than official receipts or invoices**

| | | | | |
|---|---|---|---|---|
| P-255-b | 04/14/2014 | Email & Deposit Slip | Banco de Oro | ₱ 15,000.00 |
| P-260-b | 04/29/2014 | Deposit Slip | Banco de Oro | 12,000.00 |
| P-298-b | 12/16/2014 | Statement of Account | Sodexo Benefits and Rewards Services Phils., Inc. | 150,000.00 |
| | **Subtotal** | | | **₱177,000.00** |

**Supported by ORs or invoices but NOT issued in the name of the company**

| | | | | |
|---|---|---|---|---|
| P-281 | 08/08/2014 | 453767 | Amber Golden Chain of Restaurants | ₱ 1,800.00 |
| P-282 | 08/09/2014 | 06226 | Goldilocks Bakeshop Inc. | 1,397.00 |
| P-283 | 08/09/2014 | 06227 | Goldilocks Bakeshop Inc. | 99.00 |
| | **Subtotal** | | | **₱ 3,296.00** |

**Supported by payment vouchers and cash voucher only**

| Exh. | Date | Voucher No. | Particulars | Amount |
|---|---|---|---|---|
| P-256 | 04/10/2014 | 14 00593 | Payment Voucher | ₱ 3,569.20 |
| P-263 | 04/30/2014 | 14 00660 | Payment Voucher | 15,000.00 |
| P-264 | 05/08/2014 | 14 00710 | Payment Voucher | 3,247.35 |
| P-265 | 05/06/2014 | LMF 140048 | Cash Voucher | 664.00 |
| P-266 | 06/04/2014 | 14 00828 | Payment Voucher | 3,959.10 |
| P-269 | 06/23/2014 | 14 00916 | Payment Voucher | 1,098.75 |
| P-273 | 07/03/2014 | 14 00961 | Payment Voucher | 356.92 |
| P-275 | 07/10/2014 | 14 00982 | Payment Voucher | 1,230.00 |
| P-277 | 08/11/2014 | 14 01091 | Payment Voucher | 5,567.42 |
| P-285 | 09/17/2014 | 14 01284 | Payment Voucher | 3,801.03 |
| P-290 | 10/16/2014 | 14 01412 | Payment Voucher | 7,357.23 |
| P-291 | 11/26/2014 | 14 01620 | Payment Voucher | 2,575.00 |
| P-292 | 11/24/2014 | 14 01568 | Payment Voucher | 5,000.00 |
| P-294 | 12/09/2014 | 14 01696 | Payment Voucher | 3,175.00 |
| P-296 | 12/03/2014 | 14 01686 | Payment Voucher | 100,000.00 |
| | **Subtotal** | | | **₱156,601.00** |

**Claimed twice per Annex B (including VAT portion)**

| | | | | |
|---|---|---|---|---|
| P-259 | 04/10/2014 | 0012715 | Ordofood Enterprises, Inc. | ₱ 303.00 |
| P-262 | 04/24/2014 | 13700 | Chicken's R Us, Inc. | 2,743.00 |
| | **Subtotal** | | | **₱ 3,046.00** |

**Supported by documents which are denied admission as evidence**

| | | | | |
|---|---|---|---|---|
| P-293 | 12/03/2014 | 14 01676 | Payment Voucher | ₱ 5,000.00 |
| P-297-b | 12/03/2014 | 107201 | Shopwise | 110,063.85 |
| | **Subtotal** | | | **₱115,063.85** |

| **VAT Portion of the expenses** | | **OR/Invoice Amount** | **Net of VAT** | **Input Tax** |
|---|---|---|---|---|
| P-257-b | Amber Golden Chain of Restaurants | ₱ 2,400.00 | ₱ 2,148.21 | ₱ 251.79 |
| P-267 | Goldilocks Bakeshop Inc. | 425.00 | 379.46 | 45.54 |
| P-268 | Clicc, Inc. | 1,776.00 | 1,585.71 | 190.29 |

| | | | | |
|---|---|---|---|---|
| P-270 | Chicken's R Us, Inc. | 1,029.00 | 918.75 | 110.25 |
| P-271 | Pan de Mla. Food Co. Inc. | 180.00 | 160.71 | 19.29 |
| P-272 | Amber Golden Chain of Restaurants | 2,020.00 | 1,808.93 | 211.07 |
| P-274 | National Book Store Inc. | 399.75 | 356.92 | 42.83 |
| P-278 | Clicc, Inc. | 1,842.00 | 1,644.65 | 197.35 |
| P-286 | Clicc, Inc. | 3,150.00 | 2,812.50 | 337.50 |
| P-287-b | Soundway Entertainment Inc. | 15,000.00 | 13,392.85 | 1,607.15 |
| P-287-c | Soundway Entertainment Inc. | 2,657.00 | 2,372.90 | 284.10 |
| | **Subtotal** | **₱30,878.75** | **₱27,581.59** | **₱ 3,297.16** |
| | **TOTAL** | | | **₱594,139.61** |

Thus, out of the amount of ₱594,139.61, only ₱135,835.60 can be allowed as deductions from gross income and the remaining ₱458,304.01 should be disallowed for petitioner's failure to properly substantiate and show that the same should not be subjected to withholding tax.

Finally, petitioner argues that the amount of ₱12,440,005.03[57] recorded under salaries and wages are payments to sub-contractors and/or independent contractors.[58] The said expenses were allegedly subjected to 2% withholding tax, which were remitted as part of its total remittances for the taxable year 2014 of ₱1,736,412.84.[59] Further, petitioner maintains that these were recorded as Direct Labor and reported under Cost of Services in its Income Statement.

Petitioner submitted the official receipts and invoices[60] to support its argument. However, the best document to prove that the foregoing expenses were indeed already subjected to withholding taxes would be the alphalist that is a required attachment to the monthly remittance returns. Petitioner did not submit as evidence such alphalists; thus, the Court cannot ascertain whether the corresponding income payments of the subject expenses are indeed included in the remittances.

---

[57] It is noted that in its protest to the FAN, petitioner avers that the amount ₱15,996,777.00 pertains to payments to Third Generation Network Solutions Corp. (TGNSC), a company sub-contractor, and other sub-contractors and/or independent contractors. Exhibit "P-17", Docket – Vol. II, pp. 470 to 471.

[58] Paragraph 9(b), III. Discussion/Arguments, Memorandum for Petitioner, Docket – Vol. II, pp. 1027 to 1028. See also Annex C of Formal Offer of Evidence, Docket – Vol. II, p. 981.

[59] Exhibits "P-250" and "P-250-a", Docket – Vol. II, p.743.

[60] Exhibits "P-299" to "P-346-b", Docket – Vol. II, pp. 813 to 963.

In fine, the disallowed salaries and wages expense is adjusted to the amount of ₱19,978,322.45, computed as follows:

| | |
|---|---|
| Salaries & wages not subjected to withholding tax | ₱ 20,114,158.05 |
| Less: Non-taxable fringe benefits | 135,835.60 |
| **Unaccounted Balance** | **₱ 19,978,322.45** |

*C. Disallowed Creditable Withholding Tax*

Respondent's examiner found that of the claimed creditable withholding taxes for the year 2014 of ₱1,278,092.00, the amount of ₱958,206.97 should be disallowed for being unsupported.[61]

Petitioner counters that it actually supported the creditable withholding tax of ₱1,278,092.00 as evidenced by BIR Form No. 2307[62] issued by its various clients.

However, upon scrutiny, only the amount of ₱835,490.29 is duly supported by certificates of withholding (BIR Forms No. 2307), to wit:

| Exh. | Payor | Income Payment | CWT |
|---|---|---|---|
| P-21 | STI Educational System | ₱ 2,863,375.87 | ₱ 57,267.52 |
| P-22 | Datalec Technology Corp. | 11,267.01 | 121.60 |
| P-24 | IBM Philippines, Inc. | 5,112,500.00 | 102,250.00 |
| P-26 | Business Process Outsourcing Int'l. | 38,483.11 | 384.83 |
| P-27 | Charoen Pokphand Foods | 794,642.86 | 15,892.86 |
| P-28 | Charoen Pokphand Foods | 1,170,000.00 | 23,400.00 |
| P-29 | Charoen Pokphand Foods | 401,785.71 | 8,035.71 |
| P-30 | Concentrix Services Corp. | 470,809.08 | 9,416.18 |
| P-31 | Concentrix Services Corp. | 36,486.08 | 729.72 |
| P-32 | Concentrix Services Corp. | 28,679.50 | 573.59 |
| P-33 | DB&B Philippines Inc. | 186,000.00 | 3,720.00 |
| P-34 | DB&B Philippines Inc. | 186,000.00 | 3,720.00 |
| P-35 | DB&B Philippines Inc. | 158,000.00 | 3,160.00 |
| P-37 | Filinvest Land Inc. | 77,625.00 | 776.25 |
| P-38 | Filinvest Land Inc. | 77,625.00 | 776.25 |

[61] Exhibit "P-16", BIR Records, p. 536.
[62] Exhibits "P-21" to "P-54" and "P-148" to "P-245", Docket – Vol. II, pp. 500 to 537 and "P-632" to "P-737".

| | | | |
|---|---|---|---|
| P-39 | Filinvest Land Inc. | 3,200.00 | 32.00 |
| P-42 | Manulife Data Services Inc. | 1,660,714.29 | 33,214.29 |
| P-43 | Philippine Women's University | 1,785.71 | 35.71 |
| P-44 | Philippine Women's University | 12,946.43 | 258.93 |
| P-45 | Philippine Women's University | 141,011.71 | 1,410.12 |
| P-47 | PH02 Damco Philippines Inc. | 19,967.21 | 399.34 |
| P-48 | Synnex-Concentrix Corp. | 48192.83 | 963.86 |
| P-49 | Synnex-Concentrix Corp. | 43,799.06 | 875.98 |
| P-50 | Synnex-Concentrix Corp. | 396,103.52 | 7,922.07 |
| P-51 | P.J.Lhuillier Inc. | 415,000.00 | 8,300.00 |
| P-52 | Thome Ship Management PTE Ltd. | 399,107.50 | 7,982.15 |
| P-53 | Thome Ship Management PTE Ltd. | 232,143.00 | 4,642.86 |
| P-54 | Thome Ship Management PTE Ltd. | 87,053.50 | 1,741.07 |
| P-148 | Manulife Data Services Inc. | 783,750.00 | 15,675.00 |
| P-149 | Towers Watson Global Business Services Inc. | 401,848.00 | 8,036.96 |
| P-150 | Holy Cross of Davao College Inc. | 5,985,000.00 | 119,700.00 |
| P-151 | IBM Philippines, Inc. | 2,220,000.00 | 44,400.00 |
| P-152 | STI Educational System | 484,483.22 | 9,689.66 |
| P-153 | Ateneo de Manila University | 10,351.86 | 103.52 |
| P-154 | Business Process Outsourcing Int'l. | 19,505.36 | 195.05 |
| P-155 | Concentrix Services Corp. | 117,922.14 | 2,358.44 |
| P-156 | Concentrix Services Corp. | 94,492.25 | 1,889.85 |
| P-157 | Concentrix Services Corp. | 376,647.26 | 7,532.95 |
| P-158 | Concentrix Services Corp. | 316,882.82 | 6,337.66 |
| P-159 | Concentrix Services Corp. | 121,351.98 | 2,427.04 |
| P-160 | Concentrix Services Corp. | 66,251.62 | 1,325.03 |
| P-161 | Concentrix Services Corp. | 52,119.86 | 1,042.40 |
| P-162 | Concentrix Services Corp. | 47,440.16 | 948.80 |
| P-163 | Concentrix Services Corp. | 58,136.18 | 1,162.72 |
| P-164 | Concentrix Services Corp. | 43,799.06 | 875.98 |
| P-165 | Concentrix Services Corp. | 48,192.93 | 963.86 |
| P-166 | Concentrix Services Corp. | 36,222.99 | 724.46 |
| P-167 | Concentrix Services Corp. | 316,882.82 | 6,337.66 |
| P-168 | Concentrix Services Corp. | 65,875.39 | 1,317.51 |
| P-169 | Concentrix Services Corp. | 28,679.51 | 573.59 |
| P-170 | Concentrix Services Corp. | 300,000.00 | 6,000.00 |
| P-171 | Concentrix Services Corp. | 660,000.00 | 13,200.00 |
| P-172 | Concentrix Services Corp. | 760,000.00 | 15,200.00 |
| P-173 | DB&B Philippines Inc. | 372,000.00 | 7,440.00 |
| P-174 | DB&B Philippines Inc. | 360,000.00 | 7,200.00 |
| P-175 | Filinvest Land Inc. | 4,267.00 | 42.67 |
| P-176 | Filinvest Land Inc. | 321,428.50 | 6,428.57 |
| P-177 | NCR Cebu Development Center Inc. | 3,900.00 | 78.00 |
| P-178 | One Stop Warehousing Solutions | 88,081.00 | 880.81 |
| P-179 | PhilHealthCare Inc. | 413,284.50 | 8,265.69 |
| P-180 | Philippine Women's University | 1,785.71 | 35.71 |
| P-181 | Philippine Women's University | 4,017.86 | 80.36 |
| P-182 | Philplans First Inc. | 133,928.57 | 2,678.57 |
| P-183 | Philplans First Inc. | 107,142.86 | 2,142.86 |

| | | | |
|---|---|---|---|
| P-184 | Philplans First Inc. | 72,500.00 | 1,450.00 |
| P-185 | Pointwest Innovations Corp. | 21,538.46 | 430.77 |
| P-186 | P.J.Lhuillier Inc. | 90,771.93 | 1,591.57 |
| P-187 | P.J.Lhuillier Inc. | 38,380.94 | 767.62 |
| P-188 | Thome Ship Management PTE Ltd. | 45,059.50 | 901.19 |
| P-189 | Thome Ship Management PTE Ltd. | 388,839.50 | 7,776.79 |
| P-190 | Thome Ship Management PTE Ltd. | 45,059.50 | 901.19 |
| P-191 | Thome Ship Management PTE Ltd. | 798,214.00 | 15,964.28 |
| P-192 | Thome Ship Management PTE Ltd. | 176,785.50 | 3,535.71 |
| P-196 | Holy Cross of Davao College Inc. | 1,354,125.00 | 27,082.50 |
| P-201 | Business Process Outsourcing Int'l | 5,285.71 | 52.86 |
| P-202 | Accutest Technologies Phils. | 18,086.68 | 180.87 |
| P-203 | DB&B Philippines Inc. | 69,642.86 | 1,392.86 |
| P-204 | DB&B Philippines Inc. | 45,000.00 | 900.00 |
| P-205 | DB&B Philippines Inc. | 22,500.00 | 450.00 |
| P-206 | Concentrix Services Corp. | 79,220.70 | 1,584.41 |
| P-208 | Concentrix Services Corp. | 94,161.82 | 1,883.24 |
| P-209 | Concentrix Services Corp. | 240,000.00 | 4,800.00 |
| P-210 | Concentrix Services Corp. | 14,534.04 | 290.68 |
| P-211 | Concentrix Services Corp. | 660,000.00 | 13,200.00 |
| P-212 | Concentrix Services Corp. | 245,000.00 | 4,900.00 |
| P-213 | DB&B Philippines Inc. | 23,214.29 | 464.29 |
| P-214 | Electro-Systems Industries Corp. | 21,401.79 | 214.02 |
| P-215 | Filinvest Land Inc. | 624,107.00 | 12,482.14 |
| P-216 | Filinvest Land Inc. | 177,678.50 | 3,553.57 |
| P-218 | Filinvest Land Inc. | 80,357.00 | 1,607.14 |
| P-219 | Filinvest Land Inc. | 174,230.00 | 1,742.30 |
| P-220 | NCR Cebu Development Center Inc. | 6,670.00 | 133.40 |
| P-221 | Philippine Women's University | 513,392.86 | 10,267.86 |
| P-222 | Philippine Women's University | 282,200.82 | 5,644.02 |
| P-223 | Philippine Women's University | 499,999.95 | 10,000.00 |
| P-224 | Philplans First Inc. | 214,285.71 | 4,285.71 |
| P-225 | Philplans First Inc. | 267,857.14 | 5,357.14 |
| P-226 | Pointwest Innovations Corp. | 3,800.00 | 76.00 |
| P-227 | Pointwest Innovations Corp. | 9,620.08 | 192.40 |
| P-228 | Thome Ship Management PTE Ltd. | 475,000.00 | 9,500.00 |
| P-229 | Torm Shipping Phils Inc. | 45,106.08 | 902.12 |
| P-230 | Pointwest Innovations Corp. | 33,455.94 | 669.12 |
| P-231 | IBM Philippines, Inc. | 338,750.00 | 6,775.00 |
| P-234 | DHL Global Forwarding Phils. | 49,107.14 | 982.14 |
| P-235 | Towers Watson Global Business Services Inc. | 78,284.71 | 1,565.69 |
| P-236 | Towers Watson Global Business Services Inc. | 217,039.00 | 4,340.78 |
| P-237 | Towers Watson Global Business Services Inc. | 323,613.00 | 6,472.26 |
| P-239 | Holy Cross of Davao College Inc. | 1,363,393.00 | 27,267.86 |
| P-240 | Caspo Incorporated | 3,846.15 | 76.92 |
| P-241 | Concentrix Services Corp. | 60,000.00 | 1,200.00 |
| P-242 | Concentrix Services Corp. | 696,080.00 | 13,921.60 |
| P-243 | Concentrix Services Corp. | 660,000.00 | 13,200.00 |
| P-244 | Pointwest Innovations Corp. | 3,800.00 | 76.00 |

| | | | |
|---|---|---|---|
| P-245 | Pointwest Innovations Corp. | 59,500.00 | 1,190.00 |
| | **TOTAL** | **₱42,130,471.69** | **₱835,490.29** |

Considering the foregoing, the Court finds that only the creditable withholding tax of ₱442,601.71 is unsupported:

| | |
|---|---|
| Creditable withholding tax for TY 2014 | ₱ 1,278,092.00 |
| Less: Creditable Withholding Tax properly supported by BIR Form 2307 | 835,490.29 |
| **Unsupported creditable withholding tax** | **₱ 442,601.71** |

It should be noted that petitioner's income tax payments of ₱372,986.60 for the year 2014 have not been considered by respondent. The amount is broken down below:

| Exhibit | Quarter (2014) | Date Paid | Amount Paid | |
|---|---|---|---|---|
| P-106 to 108 | 1st Qtr. | 05/30/2014 | ₱ 51,441.00 | |
| P-254 to 254-a | 3rd Qtr. | 11/27/2014 | 262,911.60 | ₱ 314,352.60[63] |
| P-13 | 4th Qtr. | | | 58,634.00[64] |
| | **TOTAL** | | | **₱ 372,986.60** |

The Court finds that this amount should be incorporated in the computation of petitioner's deficiency income tax.

In fine, petitioner is liable for deficiency income tax for the year 2014 in the adjusted amount of ₱6,510,495.44, computed thus:

| | | | |
|---|---|---|---|
| Taxable Income per return | | | ₱ 7,749,577.00 |
| Add: Adjustments/disallowances | | | |
| Disallowed Expenses due to non-withholding | | ₱ 247,988.31 | |
| Salaries and Wages not subjected to withholding tax | | 19,978,322.45 | 20,226,310.76 |
| **Adjusted Taxable Income** | | | **₱27,975,887.76** |
| | | | |
| Basic Income Tax Due | | | ₱ 8,392,766.33 |
| Less: Tax credits/payments: | | | |
| Prior Year's Excess Credits | | ₱ 673,794.00 | |
| Income Tax Payment under | | 372,986.60 | |

---

[63] Line 3, Schedule 7 – Tax Credits/Payments, Exhibit "P-13", BIR Records, pp. 266 and 277.

[64] Total amount paid is ₱85,582.00 consisting of income tax due for the quarter of ₱58,634.00 and penalties of ₱26,948.00. See Exhibits "P-13" and "P-14", BIR Records, pp. 261 to 263 and 282.

| | | | |
|---|---|---|---|
| Regular/Normal Rate from Previous Quarters | | | |
| Creditable withholding tax | ₱ 1,278,092.00 | | |
| Less: Disallowed Creditable Withholding Tax | 442,601.71 | 835,490.29 | 1,882,270.89 |
| **Basic Deficiency Income Tax** | | | **₱ 6,510,495.44** |

## II. Value-Added Tax (VAT)

Respondent assessed petitioner for deficiency VAT in 2014, as follows:[65]

| | | |
|---|---|---|
| Taxable Receipts per return | | ₱ 62,618,614.42 |
| Add: Receipts not Subjected to VAT (Schedule 3) | | 3,211,281.69 |
| **Taxable Sales as adjusted** | | **₱ 65,829,896.11** |
| Output Tax Due | | ₱ 7,899,587.53 |
| Less: Input Tax claimed per return | ₱ 8,979,765.02 | |
| Less: Input Tax Carried Forward to Succeeding Period | 2,038,090.63 | 6,941,674.39 |
| **VAT Payable** | | **₱ 957,913.14** |
| Less: Payments per VAT returns | | 571,959.35 |
| **Basic Tax Due** | | **₱ 385,953.79** |
| Add: Interest (01.26.15 - 01.29.18) | | 232,418.20 |
| **TOTAL AMOUNT DUE** | | **₱ 618,371.99** |

### *A. Sales not subjected to VAT*

Respondent's examiner found that, upon comparison of the amount of receipts per ITR as against the amount of receipts subjected to VAT per VAT returns, there are receipts not subjected to VAT amounting to ₱3,211,281.69, hence, assessed and subjected to 12% VAT pursuant to Section 108 of the Tax Code, to wit:[66]

**Schedule 3:**

| | | |
|---|---|---|
| Sales per ITR/FS: | | |
| Regular Sales | ₱ 97,571,953.00 | |
| Other Income | 606,898.00 | ₱ 98,178,851.00 |
| Sales per VAT | | 94,967,569.31 |
| **Sales not subjected to VAT** | | **₱ 3,211,281.69** |

---

[65] Exhibit "P-16", BIR Records, p. 538.
[66] Exhibit "P-16", BIR Records, pp. 535 to 536. *gm*

As shown above, respondent picked up petitioner's reported sales as declared in its ITR, particularly Schedules 1 and 3.[67] However, petitioner asserts that respondent's findings "do not specify the receipts which were not subjected to VAT, hence, defective as it cannot respond to such finding specifically."[68]

Petitioner also avers that some of its transactions are VAT zero-rated and submitted Philippine Economic Zone Authority (PEZA) certifications[69] to support it. Upon examination, the Court finds that respondent clearly considered all of petitioner's sales, including its zero-rated sales for the year 2014, as shown hereafter:

| Exhibit | Period | VATable | Zero-rated | Total Sales |
|---|---|---|---|---|
| P-97 | 1st Qtr. | ₱ 24,131,055.27 | ₱ 1,938,367.45 | ₱ 26,069,422.72 |
| P-100 | 2nd Qtr. | 17,781,377.75 | 4,452,201.62 | 22,233,579.37 |
| P-102 | 3rd Qtr. | 16,642,353.82 | 11,911,135.73 | 28,553,489.55 |
| P-104 | 4th Qtr. | 4,063,827.58 | 14,047,250.09 | 18,111,077.67 |
| | **TOTAL** | **₱62,618,614.42** | **₱ 32,348,954.89** | **₱ 94,967,569.31** |

We cannot subscribe to petitioner's assertion that the assessment is defective for respondent's failure to specify the receipts which were not subjected to VAT. On the contrary, it is incumbent upon petitioner to explain or account for the said discrepancy since respondent clearly indicated the source or how the amount in the above computation was arrived at.

Hence, for petitioner's failure to explain the discrepancy, the subject assessment should remain.

Once again, the Court reiterates that tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a BIR examiner and approved by his

---

67 Exhibit "P-13", BIR Records, pp. 268 to 269.
68 Paragraph 10, III. Discussion/Arguments, Memorandum for Petitioner, Docket – Vol. II, p. 1029.
69 Exhibits "P-109 to P-113" and "P-246", Docket – Vol. II, pp. 572 to 576 and 738.

superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[70]

*B. Input Tax Carried Forward to Succeeding Period*

By the end of the fourth quarter of taxable year 2014, petitioner had ₱2,038,090.63 excess input taxes.[71] Respondent deducted the same from the total input taxes for the taxable year in computing for the input taxes that are to be offset against the output tax due since this shall be carried over to the next succeeding period/quarter(s) as provided under Section 110(B) of the Tax Code as amended.[72]

The Court finds this deduction proper as the carried over excess input tax for the taxable year 2014 may have been utilized to offset against any output tax that petitioner may have incurred in the succeeding taxable period. Besides, petitioner failed to proffer any evidence to establish sufficiently that it did not utilize the said input tax carried over of ₱2,038,090.63 to the succeeding period. Thus, if the Court were to allow this without ascertaining that such excess input tax carried over is still available, taxpayers may end up benefiting twice from it, *i.e.*, tax credit against output VAT in the subsequent periods and payment for deficiency VAT at the expense of the government.

It should be noted that per respondent's FAN, total input taxes for 2014 amounted to ₱8,979,765.02. However, upon verification of its quarterly VAT returns, petitioner's total input taxes amounted to ₱8,980,365.03, to wit:

| Exhibit | Period | Total Input Tax |
|---|---|---|
| P-97 | 1st Qtr. | ₱ 3,133,168.23 |
| P-100 | 2nd Qtr. | 2,225,623.80 |
| P-102 | 3rd Qtr. | 1,145,521.56 |
| P-104 | 4th Qtr. | 2,476,051.44 |
| | **TOTAL** | **₱ 8,980,365.03** |

---

70 *Commissioner of Internal Revenue vs. Traders Royal Bank*, G.R. No. 167134, March 18, 2015.
71 Exhibit "P-105", Docket – Vol. II, p. 570.
72 Exhibit "P-16", BIR Records, p. 535.

Thus, petitioner's total input taxes that are applicable against the output tax due per respondent's audit should be ₱6,942,274.40, computed as follows:

| | |
|---|---|
| Total input tax per VAT returns filed | ₱ 8,980,365.03 |
| Less: Input tax carried over to succeeding period | 2,038,090.63 |
| **Adjusted Allowable input tax** | **₱ 6,942,274.40** |

As to petitioner's VAT payments per returns, while respondent picked up the amount of ₱571,959.35, the Court found that petitioner made total payments amounting to ₱1,138,823.02, as shown below:

| Exhibit | Period | VAT Paid |
|---|---|---|
| P-79 to P-81 | January 2014 | ₱ 929,266.21 |
| P-90 to P-92 | August 2014 | 209,556.81 |
| **Total VAT Payments** | | **₱ 1,138,823.02** |

Upon recomputation, petitioner's deficiency VAT liability assessment for the taxable year 2014 should be cancelled, thus:

| | | |
|---|---|---|
| Taxable Receipts per return | | ₱ 62,618,614.42 |
| Add: Receipts not Subjected to VAT | | 3,211,281.69 |
| Taxable Sales as adjusted | | ₱ 65,829,896.11 |
| | | |
| Output Tax Due | | ₱ 7,899,587.53 |
| Less: Input Tax claimed per return | ₱ 8,980,365.03 | |
| Less: Input Tax Carried Forward to Succeeding Period | 2,038,090.63 | 6,942,274.4 |
| **VAT Payable** | | **₱ 957,313.13** |
| Less: Payments per VAT returns | | 1,138,823.02 |
| **Basic Tax Due** | | **(₱ 181,509.89)** |

## III. Expanded Withholding Tax

In addition to petitioner's rentals and professional fees previously found by respondent as not subjected to withholding tax, the following expenses are likewise found to be not subjected to withholding tax, thus, assessed for deficiency EWT in the total amount of ₱35,976.54: am

**Schedule 4**

| Expense/Income Payments | Per ITR | Per Alphalist/ 1601-E | Disallowed Expenses | Rate | EWT Due |
|---|---|---|---|---|---|
| *Purchase of services & Contractors:* | | | | | |
| Fuel and Oil | ₱ 117,021.00 | | | | |
| Office Supplies | 379,082.00 | | | | |
| Repairs and Maintenance | 101,623.00 | | | | |
| Acquisition of Equipment | 2,465,390.00 | | | | |
| Direct Charges-Materials, Supplies and Facilities | 46,525,080.00 | | | | |
| Sub-total | ₱ 49,588,196.00 | | | | |
| Less: Importations | 18,271,392.82 | | | | |
| TOTAL | ₱ 31,316,803.18 | ₱ 30,058,128.30 | ₱1,258,674.88 | 1% | ₱ 12,586.75 |
| Add: EWT (Schedule 1) | | | | | 23,389.79 |
| **TOTAL** | | | | | **₱ 35,976.54** |

Again, petitioner insists that it withheld and remitted all the required withholding taxes on its payments for rental and professional fees. However, as previously discussed, without supporting documents submitted as evidence, petitioner's mere assertion cannot overcome the presumption of regularity of respondent's assessment.

With regard to the additional EWT assessment of ₱12,586.75, petitioner avers that it cannot be assessed as the company is not listed as one of the Top Twenty Thousand Corporations by the BIR.[73] However, the Court notes that in its monthly remittance returns, petitioner actually withheld as a Top 20,000 Corporation on income payments to local suppliers of goods and services:

| Exhibit | Month | Tax Base | Tax Rate | Tax Required to be Withheld |
|---|---|---|---|---|
| P-132 | May | ₱ 5,001,382.61 | 1% | ₱ 50,013.83 |
| P-134 | Jun | 1,509,730.00 | 1% | 15,097.30 |
| P-136 | Jul | 919,943.00 | 1% | 9,199.43 |
| | | 206,156.50 | 2% | 4,123.13 |
| P-138 | Aug | 212,456.17 | 2% | 4,249.12 |
| | | 524,666.00 | 1% | 5,246.66 |
| P-140 | Sep | 1,219,593.97 | 2% | 24,391.88 |
| | | 1,800,250.11 | 1% | 18,002.50 |
| P-142 | Oct | 841,647.10 | 2% | 16,832.94 |
| | | 3,140,713.34 | 1% | 31,407.13 |
| P-144 | Nov | 1,871,810.50 | 2% | 37,436.21 |

[73] Paragraph 11, III. Discussion/Arguments, Memorandum for Petitioner, Docket – Vol. II, p. 1029.

| | | | | |
|---|---|---|---|---|
| | | 6,961,820.00 | 1% | 69,618.20 |
| P-146 | Dec | 2,774,341.00 | 2% | 55,486.82 |
| | | 1,173,528.00 | 1% | 11,735.28 |

Again, for failure of petitioner to submit evidence to prove otherwise, the assessment for deficiency EWT in the amount of ₱35,976.54 is upheld.

## IV. Withholding Tax on Compensation

As previously discussed, respondent's examiner found salaries and wages that were not subjected to withholding tax on compensation, hence the expense was disallowed as a deduction from gross income. The corresponding withholding tax liability is likewise assessed herein:[74]

<u>**Schedule 2:**</u>

| | | |
|---|---|---|
| Salaries and Wages Per FS/ITR | | ₱ 25,405,954.00 |
| Less: Salaries and Wages per 1601C | | 5,291,795.95 |
| **Salaries & wages not subjected to withholding tax** | | **₱20,114,158.05** |
| Multiplied by | ₱ 1,209,036.44 | |
| | ₱ 4,927,985.28 | 24.5341% |
| **Basic Deficiency Withholding Tax** | | **₱ 4,934,827.65** |

To recall, the Court found that only the non-taxable fringe benefits amounting to ₱135,835.60 can be considered. Accordingly, petitioner is liable for deficiency withholding tax on compensation in the adjusted amount of ₱4,901,501.61, computed as follows:

| | | |
|---|---|---|
| Salaries & wages not subjected to withholding tax | | ₱ 19,978,322.45 |
| Multiplied by: | ₱ 1,209,036.44 | |
| | ₱ 4,927,985.28 | 24.5341% |
| **Basic Deficiency Withholding Tax on Compensation** | | **₱ 4,901,501.61** |

## V. Final Withholding Tax

Respondent's verification disclosed that petitioner failed to withhold and remit the FWT on the cash dividends declared

---

[74] Exhibit "P-16", BIR Records, p. 536. *am*

amounting to ₱600,000.00, hence, assessed pursuant to Section 2.57.1 of RR No. 2-98, as amended.

Petitioner counters that the final tax amounting to ₱840,000.00 was paid and remitted, although BIR Form No. 1601-E was used instead of BIR Form No. 1601-F.[75] However, petitioner's Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E) for the month of April 2014 and the corresponding proofs of payment were denied admission as evidence by the Court.[76]

Thus, for petitioner's failure to proffer evidence to support its claim, the following deficiency FWT assessment should remain:[77]

| **Schedule 5:** | |
|---|---|
| Cash dividends | ₱ 6,000,000.00 |
| Multiplied by: Tax rate | 10% |
| **Basic Deficiency Final Withholding Tax** | **₱ 600,000.00** |

## VI. Documentary Stamp Tax

Respondent's examiner found that petitioner failed to pay the DST on its advances pursuant to Section 179 of the NIRC of 1997, thus, petitioner was assessed as follows:[78]

| **Schedule 6:** | |
|---|---|
| Advances from related parties | ₱ 5,000,000.00 |
| Multiplied by DST Rate | x ₱ 1.00 / ₱200.00 |
| **Basic Deficiency Documentary Stamp Tax** | **₱ 25,000.00** |

Petitioner counters that the subject amount pertains to its "Deposit for Future Subscription and that the proposed increase in capitalization was still pending with the SEC. Hence, subjecting the said deposit to 'Stamp on Debt Instruments' xxx is premature as there was no debt

---

[75] Paragraph V of Exhibit "P-17", Docket – Vol. II, p. 472. See also Paragraph 13, III. Discussion/Arguments, Memorandum for Petitioner, Docket – Vol. II, p. 1030.
[76] Resolution dated June 14, 2022, Docket – Vol. II, pp. 1009 to 1015.
[77] Exhibit "P-16", BIR Records, p. 535.
[78] Exhibit "P-16", BIR Records, pp. 534 to 535. am

instrument then issued."[79] However, petitioner failed to support its allegation with documentary evidence. As a consequence, the foregoing assessment should be upheld.

## VII. Improperly Accumulated Earnings Tax

Respondent's investigation disclosed that petitioner accumulated retained earnings and profits instead of having them distributed as dividends, hence, the latter assessed for IAET pursuant to Section 29 of the 1997 NIRC, as amended, and implemented by RR No. 2-2001, as follows:[80]

| **Schedule 7** | | |
|---|---|---|
| Taxable income for the year | | ₱ 7,749,577.00 |
| Less: Income tax paid | ₱2,351,821.10 | |
| Dividends declared | 6,000,000.00 | 8,351,821.10 |
| Total | | ₱ (602,244.10) |
| Add: Retained Earnings from prior years | | 29,528,732.00 |
| Accumulated Earnings as of Dec. 31, 2014 | | ₱ 28,926,487.90 |
| Less: Amount that may be retained | | 500,000.00 |
| Improperly Accumulated Taxable Income | | ₱ 28,426,487.90 |
| IAET Rate | | 10% |
| **Improperly Accumulated Earnings Tax** | | **₱ 2,842,648.79** |

Petitioner avers that it appropriated its retained earnings for the acquisition of a land/property to be used for its office, considering the high cost of rentals in Makati City and for future expansion.[81] To support its allegation, petitioner submitted a Secretary's Certificate dated July 15, 2020.[82] A reading of the said Secretary's Certificate reveals that at the special meeting of the Board of Directors of the corporation on February 8, 2015, petitioner declared a cash dividend in the amount of ₱4,000,000.00 to qualified stockholders of record as of December 31, 2014, which will be paid on or before April 25, 2015.

Other documents submitted by petitioner purportedly supporting its contentions were denied admission as evidence,

---

[79] Paragraph 14, III. Discussion/Arguments, Memorandum for Petitioner, Docket – Vol. II, p. 1030.
[80] Exhibit "P-16", BIR Records, p. 534.
[81] Paragraph 15, III. Discussion/Arguments, Memorandum for Petitioner, Docket – Vol. II, p. 1030.
[82] Exhibit "P-12", Docket – Vol. II, p. 466.

hence, cannot be considered, namely, the Board Resolution dated April 25, 2014, the Secretary's Certificate dated March 18, 2021 of the board meeting on April 25, 2014, and the appraisal report dated April 17, 2016.

Pursuant to Section 3 of RR No. 2-2001, the following constitute accumulation of earnings for the reasonable needs of the business:

> "SECTION 3. *Determination of Reasonable Needs of the Business.* xxx
>
> For purposes of these Regulations, the following constitute accumulation of earnings for the reasonable needs of the business:
>
> a. Allowance for the increase in the accumulation of earnings up to 100% of the paid-up capital of the corporation as of Balance Sheet date, inclusive of accumulations taken from other years;
> b. Earnings reserved for definite corporate expansion projects or programs requiring considerable capital expenditure as approved by the Board of Directors or equivalent body;
> c. **Earnings reserved for building, plants or equipment acquisition as approved by the Board of Directors or equivalent body;**
> d. Earnings reserved for compliance with any loan covenant or pre-existing obligation established under a legitimate business agreement;
> e. Earnings required by law or applicable regulations to be retained by the corporation or in respect of which there is legal prohibition against its distribution;
> f. In the case of subsidiaries of foreign corporations in the Philippines, all undistributed earnings intended or reserved for investments within the Philippines as can be proven by corporate records and/or relevant documentary evidence." *(Emphasis supplied)*

However, petitioner failed to prove that the appropriation of its retained earnings is for the reasonable needs of the business for lack of evidence.

On the other hand, examination of petitioner's Balance Sheet as of December 31, 2014 shows that petitioner's capital stock amounts to ₱5,000,000.00,[83] not ₱500,000.00 as determined by respondent's examiner.

Thus, respondent's computation of IAET should be adjusted accordingly. Pursuant to the foregoing, petitioner's deficiency IAET should be ₱1,992,648.79, computed as follows:

| | | |
|---|---|---|
| Taxable income for the year | | ₱ 7,749,577.00 |
| Less: Income tax paid | ₱ 2,351,821.10 | |
| Dividends declared - 2014 | 6,000,000.00 | |
| Dividends declared - 2015 | 4,000,000.00 | ₱ 12,351,821.10 |
| Total | | ₱ (4,602,244.10) |
| Add: Retained Earnings from prior years | | 29,528,732.00 |
| Accumulated Earnings as of Dec. 31, 2014 | | ₱ 24,926,487.90 |
| Less: Amount that may be retained | | 5,000,000.00 |
| Improperly Accumulated Taxable Income | | ₱ 19,926,487.90 |
| IAET Rate | | 10% |
| **Improperly Accumulated Earnings Tax** | | **₱ 1,992,648.79** |

## Compromise penalty

Respondent also imposed a compromise penalty of ₱80,000.00 for the following violations:[84]

| Nature of Violation | Violated Provision | Amount Due |
|---|---|---|
| Failure to file and pay the improperly accumulated earnings tax return | Section 29, NIRC | ₱ 40,000.00 |
| Failure to file and pay the documentary stamp tax return | Section 179, NIRC | 30,000.00 |
| Failure to file and pay the final withholding tax return | Section 255, NIRC | 10,000.00 |
| **TOTAL** | | **₱ 80,000.00** |

Respondent's basis for the foregoing is Section 255 of the NIRC, as amended.[85]

Such imposition cannot be sustained. Under Revenue Memorandum Order ("RMO") No. 007-15, compromise penalties are only amounts suggested in settlement of criminal

[83] Schedule 10, Line 13, Exhibit "P-13", BIR Records, p. 276. See also BIR Records, p. 265.
[84] Exhibit "P-16", BIR Records, p. 533.
[85] Exhibit "P-16", BIR Records, p. 533.

liability, and may not be imposed on or exacted from 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.[86] 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.[87]

To recapitulate, petitioner is liable for the following basic deficiency taxes for the year 2014:

| Type of Tax | Basic Deficiency |
|---|---|
| Income tax | ₱ 6,510,495.44 |
| Expanded Withholding Tax (EWT) | 35,976.54 |
| Withholding Tax on Compensation (WTC) | 4,901,501.61 |
| Final Withholding Tax (FWT) | 600,000.00 |
| Documentary Stamp Tax (DST) | 25,000.00 |
| IAET | 1,992,648.79 |
| **TOTAL** | **₱ 14,065,622.38** |

In addition to the foregoing basic deficiency taxes, petitioner is liable to a penalty of 25% surcharge imposed on the basic deficiency taxes pursuant to Section 248(A)(3) of the 1997 NIRC, as amended, which provides:

> "SEC. 248. *Civil Penalties.*—
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> xxx
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; xxx"

---

[86] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 781.

[87] *Commissioner of Internal Revenue vs. Liangga Bay Logging Co., Inc. and the Court of Tax Appeals*, G.R. No. 35266, January 21, 1999, 193 SCRA 92-93.

Moreover, petitioner is liable to pay the deficiency interest at the rates of 20% per annum computed from the date prescribed for its payment until December 31, 2017 and 12% computed from January 1, 2018, upon the effectivity of the TRAIN Law, until the demand made by the Commissioner or his authorized representative on February 5, 2018, in accordance with Section 249(B) of the 1997 NIRC, as amended by TRAIN Law.

To recall, the FAN issued by respondent states:[88]

> "In view thereof, you are requested to pay your aforementioned deficiency tax liabilities through the duly authorized agent bank in which you are enrolled using the **electronic BIR Payment Form (eBIR Form 0605)** within the time as shown in the enclosed assessment notice. xxx"

The said Assessment Notices show a due date of February 5, 2018.[89]

Likewise, petitioner is liable to pay the delinquency interest at the rate of 12% per annum imposed on the basic deficiency tax, 25% surcharge and deficiency interest computed from February 5, 2018 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

Thus, for the taxable year 2014, petitioner is liable to pay the aggregate amount of ₱25,345,346.56, consisting of basic deficiency taxes, surcharges, and deficiency interest computed as of February 5, 2018, detailed as follows:

| | **Income Tax** | **EWT** | **WTC** |
|---|---|---|---|
| Basic deficiency tax | ₱ 6,510,495.44 | ₱ 35,976.54 | ₱ 4,901,501.61 |
| Add: 25% Surcharge | 1,627,623.86 | 8,994.14 | 1,225,375.40 |
| Deficiency Interest on: | | | |
| ***Income Tax*** | | | |
| 20% from April 16, 2015 to Dec. 31, 2017 (P6,510,495.44 x 20% x 991/365 days) | 3,535,288.21 | | |
| 12% from Jan. 1, 2018 to Feb. 5, 2018 (P6,510,495.44 x 12% x 36/365 days) | 77,055.73 | | |

[88] Exhibit "P-16", BIR Records, p. 537.
[89] Exhibit "P-16", BIR Records, pp. 525 to 532.

| | | | |
|---|---|---|---|
| ***EWT*** | | | |
| 20% from Jan. 21, 2015 to Dec. 31, 2017 (P35,976.54 x 20% x 1,076/365 days) | | 21,211.37 | |
| 12% from Jan. 1, 2018 to Feb. 5, 2018 (P35,976.54 x 12% x 36/365 days) | | 425.80 | |
| ***WTC*** | | | |
| 20% from Jan. 21, 2015 to Dec. 31, 2017 (P4,901,501.61 x 20% x 1,076/365 days) | | | 2,889,871.63 |
| 12% from Jan. 1, 2018 to Feb. 5, 2018 (P4,901,501.61 x 12% x 36/365 days) | | | 58,012.29 |
| **Total Amount Due on February 5, 2018** | **₱11,750,463.24** | **₱66,607.85** | **₱ 9,074,760.93** |

| | FWT | DST | IAET |
|---|---|---|---|
| Basic Deficiency Tax | ₱ 600,000.00 | ₱ 25,000.00 | ₱ 1,992,648.79 |
| Add: 25% Surcharge | 150,000.00 | 6,250.00 | 498,162.20 |
| Deficiency Interest on: | | | |
| ***FWT*** | | | |
| 20% from Jan. 21, 2015 to Dec. 31, 2017 (P600,000.00 x 20% x 1,076/365 days) | 353,753.42 | | |
| 12% from Jan. 1, 2018 to Feb. 5, 2018 (P600,000.00 x 12% x 36/365 days) | 7,101.37 | | |
| ***DST*** | | | |
| 20% from Jan. 6, 2015 to Dec. 31, 2017 (P25,000.00 x 20% x 1,081/365 days) | | 14,945.21 | |
| 12% from Jan. 1, 2018 to Feb. 5, 2018 (P25,000.00 x 12% x 36/365 days) | | 295.89 | |
| ***IAET*** | | | |
| 20% from Jan. 16, 2016 to Dec. 31, 2017 (P1,992,648.79 x 20% x 1,076/365 days) | | | 781,773.44 |
| 12% from Jan. 1, 2018 to Feb. 5, 2018 (P1,992,648.79 x 12% x 36/365 days) | | | 23,584.23 |
| **Total Amount Due on February 5, 2018** | **₱ 1,110,854.79** | **₱46,491.10** | **₱ 3,296,168.66** |
| **TOTAL AMOUNT DUE** | | | **₱ 25,345,346.57** |

In addition, petitioner is liable for delinquency interest at the rate of 12% per annum on the respective total amounts still due on February 5, 2018, computed from February 6, 2018 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by TRAIN Law and implemented by Revenue Regulations No. 21-2018.

**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent's VAT assessment and the compromise penalties are **CANCELLED** for lack of merit, while the assessments for deficiency income tax, EWT, WTC, FWT, DST and IAET are **UPHELD**, but with modification. Accordingly, petitioner is **ORDERED TO PAY** respondent the following:

| | Basic Deficiency | 25% Surcharge | Deficiency Interest as of Feb. 5, 2018 | Total |
|---|---|---|---|---|
| Income Tax | ₱ 6,510,495.44 | ₱ 1,627,623.86 | ₱ 3,612,343.94 | ₱ 11,750,463.24 |
| Expanded Withholding Tax (EWT) | 35,976.54 | 8,994.14 | 21,637.17 | 66,607.85 |
| Withholding Tax on Compensation (WTC) | 4,901,501.61 | 1,225,375.40 | 2,947,883.92 | 9,074,760.93 |
| Final Withholding Tax (FWT) | 600,000.00 | 150,000.00 | 360,854.79 | 1,110,854.79 |
| Documentary Stamp Tax (DST) | 25,000.00 | 6,250.00 | 15,241.10 | 46,491.10 |
| IAET | 1,992,648.79 | 498,162.20 | 805,357.67 | 3,296,168.66 |
| **TOTAL** | **₱14,065,622.38** | **₱3,516,405.60** | **₱7,763,318.59** | **₱25,345,346.57** |

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total amount due of **₱25,345,346.57** as of February 5, 2018, as determined above, or equivalent to the amount of ₱8,332.72[90] per day, computed from February 6, 2018 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by TRAIN Law and implemented by Revenue Regulations No. 21-2018.

**SO ORDERED**.

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR**:

**ROMAN G. DEL ROSARIO**
Presiding Justice

Marian Ivy F. Reyes-Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

---

[90] ₱25,345,346.57 multiplied by 12% divided by 365 days.

---

**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