REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Second Division

MS. FATIMA L. SIMBRE,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE (CIR), BUREAU OF INTERNAL REVENUE,
Respondents.

CTA CASE NO. 11112

Members:

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

Promulgated: MAR 19 2026

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* filed on March 29, 2023, prays that the Decision dated February 10, 2023 issued by respondent Commissioner of Internal Revenue against petitioner, for its alleged deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), and compromise penalty, in the total amount of Php1,376,202.19, for taxable year 2014, be reversed and set aside.[1]

The Facts

1 Summary of the Case, Pre-Trial Order dated May 27, 2024, Docket – Vol. II, p. 526.

Petitioner Ms. Fatima L. Simbre is an individual taxpayer duly engaged in the hotel business, with a hotel named Farm Side Hotel located at Brgy. 49-B, Raraburan, Laoag City, Ilocos Norte.[2]

Respondent is the duly appointed Commissioner of Internal Revenue who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. Respondent holds office at the Bureau of Internal Revenue ("BIR") National Office building, BIR Road, Diliman, Quezon City.[3]

The BIR issued the *Letter of Authority* (LOA) SN: eLA201100084039/LOA-001-2016-00000123 dated April 8, 2016,[4] issued by OIC – Regional Director ("RD") Eduardo L. Pagulayan, authorizing Revenue Officer ("RO") Mark Angelo Ramos and Group Supervisor ("GS") Jinky Lim of Revenue District Office No. 001 – Laoag City, Ilocos Norte, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2014 to December 31, 2014.

The *Preliminary Assessment Notice* ("PAN") with *Details of Discrepancies* dated August 17, 2017 was then issued.

On October 5, 2017, petitioner received the *Formal Letter of Demand* ("FLD") dated October 2, 2017, with *Details of Discrepancy*,[5] and *Amended Audit Results/Assessment Notices* ("FAN"),[6] in which respondent requested petitioner to pay deficiency income tax, VAT, EWT, and compromise penalty, for taxable year 2014, in the aggregate amount of Php1,376,202.19, inclusive of surcharge, interest, and compromise penalty, to wit:

Tax Type	Assessment No.	Amount
Income tax	IT-eLA84039-01-14-915530163	Php 911,609.43
VAT	VT-eLA84039-01-14-915530163	403,898.23
EWT	WE-eLA84039-01-14-915530163	2,694.52
Compromise penalty	MC-eLA84039-01-14-915530163	58,000.00
	TOTAL	Php1,376,202.19[7]

On October 30, 2017, petitioner filed its *Request to Conduct Administrative Investigation against Revenue Officials of Revenue Region No. 1 – Calasiao, Pangasinan and*

[2] Par. 1, Admitted Facts, *Joint Stipulation of Facts & Issues* (JSFI), Docket – Vol. II, p. 506.
[3] Par. 2, Admitted Facts, JSFI, Docket – Vol. II, p. 506.
[4] Exhibit "P-2", Docket – Vol. II, p. 562; Exhibit "R-1", BIR Records (Exhibit "R-15"), p. 2.
[5] Exhibits "P-5" and "P-6", Docket – Vol. II, pp. 575 to 580; Exhibits "R-8" to "R-8-2", BIR Records (Exhibit "R-15"), at pp. 121 to 127.
[6] Exhibit "R-8", BIR Records (Exhibit "R-15"), at pp. 116 to 120.
[7] Total is actually Php1,376,202.1**8**.

Revenue District Office No.001 – Laoag City, Ilocos Norte and Request for Cancellation/Termination of Final Assessment Notice (FAN) Received by the Undersigned on October 09, 2017 in relation to LOA-001-2016-00000123/eLA201100084039 dated April 08, 2016,[8] addressed to the then BIR Commissioner Caesar R. Dulay,[9] and copy furnished to the Regional Director of Revenue Region No. 1 – Calasiao, Pangasinan, on November 2, 2017.

On February 27, 2018, petitioner received the *Preliminary Collection Letter* ("PCL") dated February 21, 2018.[10] Relative thereto, on March 8, 2018, petitioner filed the letter of even date,[11] addressed to Revenue Region No. 1 RD Clavelina S. Nacar, stating that the alleged assessment for tax year 2014 has not become final and executory, considering that she has a pending protest for resolution, and asserting that her right to due process will be violated if the BIR will pursue the collection while the case is still unresolved.

In reply, OIC-RD Nacar issued the letter dated May 23, 2018,[12] stating that petitioner's letter of protest dated October 30, 2017 at the BIR – National Office, copy furnished the Office of the Regional Director, and received on November 2, 2017, does not constitute a valid letter of protest as prescribed under Revenue Regulations ("RR") No. 18-2013, hence, the assessment still stands and the collection of petitioner's delinquent account is enforced. Likewise, the *Final Notice Before Seizure* ("FNBS") dated May 23, 2018[13] was issued against petitioner.

Subsequently, on June 14, 2018, petitioner filed a *Follow-up Notice Prior to Filing Formal Administrative Case Before the Office of the Ombudsman and/or Other Quasi-Judicial Bodies* dated June 13, 2018,[14] addressed to the then BIR Commissioner Caesar R. Dulay,[15] and copy furnished to RD Nacar on June 18, 2018. In reply, OIC-RD Nacar issued the letter dated July 3, 2018,[16] informing petitioner that they have taken note of her request, in relation to her letter dated October 30, 2017 in protest to the FAN, and that they have referred her case to the Legal Division of Revenue Region No. 1 for resolution.

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8 Exhibit "P-7", Docket – Vol. II, pp. 581 to 594.
9 Erroneously written on the letter as "Hon. Ceasar S. Dulay".
10 Exhibit "P-8", Docket – Vol. II, p. 596.
11 Exhibit "P-9", Docket – Vol. II, pp. 598 to 600.
12 Exhibit "R-11", BIR Records (Exhibit "R-15"), p. 172.
13 Exhibit "R-11-1", BIR Records (Exhibit "R-15"), p. 171.
14 Exhibit "P-10", Docket – Vol. II, pp. 601 to 626.
15 Erroneously written on the letter as "Hon. Ceasar S. Dulay".
16 Exhibit "P-11", Docket – Vol. II, p. 627.

On July 16, 2018, OIC-RD Nacar issued a reply letter to petitioner,[17] in relation to her letters dated March 8, 2018 and October 30, 2017, stating in part that: "[t]**he issuance by this Office of the PCL and the Final Notice before Seizure serves as our decision on your October 30, 2017 protest letter**" and that "the position of this Office as stated in our letter dated May 23, 2018 that the assessment is valid, final and demandable stands."

Subsequently, on October 10, 2018, the *Warrant of Distraint and/or Levy* ("WDL") No. RRI-AMS-001-2018-006 dated October 9, 2018,[18] was received by petitioner.

Hence, petitioner filed on October 15, 2018, a *Petition Prior to Filing Formal Complaint with the Office of the Ombudsman, Secretary of Finance and Other Judicial Bodies* dated October 12, 2018, addressed to the then BIR Commissioner Caesar R. Dulay,[19] seeking, among others, the urgent lifting of the WDL.[20]

Thereafter, several *Warrants of Garnishment* ("WOG") dated November 19, 2018 were issued to various banks.[21]

Petitioner then filed an *Urgent Motion to Lift Warrant of Garnishments issued by the **Chief, Collection Division, JOSEPHINE B. PARAGAS** and Cancel/Terminate Tax Deficiency Assessment in relation to Letter of Authority No. (LOA-001-2016-00000123/eLA201100084039) dated April 08, 2016,* addressed to the then BIR Commissioner Caesar R. Dulay[22] dated December 19, 2018.[23]

On February 10, 2023, respondent issued the *Decision (In the Matter of the Appeal of Ms. Fatima Linog Simbre Against the Warrants of Distraint/Levy and Warrants of Garnishment Enforcing the Collection of the Aggregate Amount of P1,376,202.19 Representing Income Tax, Value-Added Tax, Expanded Withholding Tax and Compromise Penalty for Taxable Year 2014)*,[24] affirming the issuance of the WDL and WOG to enforce payment of the total amount of Php1,376,202.19, representing deficiency income tax, VAT, EWT and compromise penalty for taxable year 2014 against petitioner.

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[17] Exhibit "P-12", Docket – Vol. II, pp. 629 to 631; Exhibit "R-12", BIR Records (Exhibit "R-15"), pp. 243 to 245.
[18] Exhibit "P-13", Docket – Vol. II, p. 632.
[19] Erroneously written on the letter as "Hon. Ceasar S. Dulay".
[20] Exhibit "P-14", Docket – Vol. II, pp. 634 to 655.
[21] Exhibits "P-15" to "P-15-C, Docket – Vol. II, pp. 656 to 659.
[22] Erroneously written on the letter as "Hon. Ceasar S. Dulay".
[23] Exhibit "P-16", Docket – Vol. II, pp. 660 to 683.
[24] Exhibit "P-18", BIR Records (Exhibit "R-15"), pp. 738 to 742.

As earlier stated, petitioner filed the present *Petition for Review* on March 29, 2023.[25]

Within the period granted by the Court,[26] on November 17, 2023, respondent filed his *Answer (To Petition for Review dated 29 March 2023)*,[27] interposing the following special and affirmative defenses, to wit: (1) the Court has no jurisdiction over the case since petitioner failed to elevate the instant case within the reglementary period provided by the Tax Code, as amended, and its implementing rules and regulations, as the PCL is the final decision of the respondent; and (2) assuming without conceding that this Court has jurisdiction over the case, the LOA was properly served to petitioner, therefore the assessment for petitioner's tax deficiencies for taxable year 2014 is valid.

On January 16, 2024, respondent transmitted the *BIR Records* of this case, consisting of one (1) folder.[28]

The Pre-Trial Conference was set and held on March 12, 2024,[29] wherein the parties were ordered to appear before the Court of Tax Appeals ("CTA") Mediation Office on May 13, 2024. However, the latter issued the *No Agreement To Mediate* on May 13, 2024,[30] stating that the parties decided not to have their case mediated.[31] Prior thereto, petitioner's *Pre-Trial Brief*,[32] and *Respondent's Pre-Trial Brief*,[33] were both filed on March 7, 2024.

On April 11, 2024, the parties submitted their *Joint Stipulation of Facts & Issues*,[34] which was admitted and approved by the Court in its Resolution dated April 26, 2024,[35] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated May 27, 2024 was then issued.[36]

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

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[25] Docket – Vol. I, pp. 6 to 23.

[26] Respondent's *Motion for Extension of Time to File Answer* dated October 16, 2023, Docket – Vol. I, pp. 361 to 364; and Minute Resolution dated October 17, 2023, Docket – Vol. I, p. 366.

[27] Docket – Vol. I, pp. 368 to 387.

[28] *Compliance* dated January 15, 2024, Docket – Vol. I, pp. 396 to 398.

[29] Notice of Pre-Trial Conference dated December 5, 2023, Docket – Vol. I, pp. 389 to 390; Minutes of the Hearing held on, and Order dated, March 12, 2024, Docket – Vol. II, pp. 503 to 505.

[30] Docket – Vol. II, p. 523.

[31] Minute Resolution dated May 16, 2024, Docket – Vol. II, p. 524.

[32] Docket – Vol. I, pp. 401 to 405.

[33] Docket – Vol. I, pp. 406 to 410.

[34] Docket – Vol. II, pp. 506 to 512.

[35] Docket – Vol. II, p. 514.

[36] Docket – Vol. II, pp. 526 to 533.

Petitioner offered her own testimony,[37] and the testimony of Ms. Ria A. Sablon,[38] petitioner's duly authorized representative and consultant.

On August 16, 2024, petitioner filed her *Formal Offer of Evidence*,[39] to which respondent filed his *Comment (on Petitioner's Formal Offer of Evidence)* on August 22, 2024.[40] Thereafter, the Court admitted petitioner's offered exhibits, in its Resolution dated October 1, 2024.[41]

For his part, respondent offered the testimonies of the following ROs, namely: (1) Mark Angelo Ramos,[42] and (2) Atty. Faustino B. Lumabao, Jr.[43]

On November 6, 2024, *Respondent's Formal Offer of Evidence* was submitted,[44] to which petitioner filed her *Comment to Respondent's Formal Offer of Evidence* on November 27, 2024.[45] In the Resolution dated January 15, 2025,[46] the Court admitted all of respondent's offered exhibits.

The *Memorandum for Petitioner* was filed on March 21, 2025,[47] while respondent filed his *Manifestation* on February 25, 2025,[48] stating that he is adopting the arguments raised in his *Answer* dated November 17, 2023 as his *Memorandum.*

The case was considered submitted for decision on March 25, 2025.[49]

The Issue

The parties submit the following issue for this Court's resolution:

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37 Exhibit "P-20", Docket – Vol. I, pp. 344 to 356; Minutes of the hearing held on, and Order dated, August 6, 2024, Docket – Vol. II, pp. 536, and 538 to 538-A, respectively.
38 Exhibit "P-19", Docket – Vol. I, pp. 331 to 343; Minutes of the hearing held on, and Order dated, August 6, 2024, Docket – Vol. II, pp. 536, and 538 to 538-A, respectively.
39 Docket – Vol. II, pp. 539 to 544.
40 Docket – Vol. II, pp. 708 to 710.
41 Docket – Vol. II, pp. 714 to 715.
42 Exhibit "R-16", Docket – Vol. I, pp. 417 to 428; Minutes of the hearing held on, and Order dated October 22, 2024, Docket – Vol. II, pp. 716 to 717.
43 Exhibit "R-17", Docket – Vol. I, pp. 464 to 472; Minutes of the hearing held on, and Order dated October 22, 2024, Docket – Vol. II, pp. 716 to 717.
44 Docket – Vol. II, pp. 719 to 727.
45 Docket – Vol. II, pp. 731 to 736.
46 Docket – Vol. II, pp. 739 to 740.
47 Docket – Vol. II, pp. 742 to 749.
48 Docket – Vol. II, pp. 752 to 754.
49 Minute Resolution dated March 25, 2025, Docket – Vol. II, p. __.

> "Whether or not Petitioner is liable to pay the disputed deficiency income tax, value added tax, expanded withholding tax and compromise penalty for taxable year 2014 in the total amount of Php1,376,202.19."[50]

Petitioner's arguments:

Petitioner argues that preponderance of evidence shows that there were serious flaws at the very start, during and at the conclusion of tax audit by the concerned revenue officers; that the RO and the GS who are named in the LOA were not the ones who delivered the same to petitioner; that the LOA is inherently defective on its face, as the specific criteria or criterion used in selecting petitioner as BIR's audit candidate was absent in the subject LOA/eLA; that there was no PAN issued against petitioner; and that respondent's assailed Decision dated February 10, 2023 attempts to foist a lame technicality against petitioner.

Respondent's counter-arguments:

In his *Answer*, respondent contends that the Court has no jurisdiction over the case since petitioner failed to elevate the instant case within the reglementary period provided by the Tax Code, as amended, and its implementing rules and regulations, as the PCL is the final decision of the respondent; and that assuming without conceding that this Court has jurisdiction over the case, the LOA was properly served to petitioner, therefore the assessment for petitioner's tax deficiencies for taxable year 2014 is valid.

<u>Discussion/Ruling</u>

The present *Petition for Review* is partly meritorious.

This Court has jurisdiction to entertain the present appeal.

It bears emphasis that this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[51] Section

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[50] The Issue for Trial, JSFI, Docket – Vol. II, p. 507.

[51] *Commissioner of Internal Revenue vs. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.

7(a)(1) of Republic Act ("RA") No. 1125,[52] as amended by RA No. 9282,[53] reads, in part, 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;**"[54]

The foregoing provision was reiterated under Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (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;**"[55]

Based on the foregoing provisions, this Court has exclusive appellate jurisdiction over decisions, rulings or inactions of respondent. Moreover, the exclusive appellate jurisdiction of this Court is not limited to cases involving decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National

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52 AN ACT CREATING THE COURT OF TAX APPEALS.

53 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.

54 *Emphasis supplied.*

55 *Emphasis supplied.*

Internal Revenue Code ("NIRC") or related laws administered by the BIR. The wording of the provision is clear and simple.[56]

In any case, the party adversely affected by a decision of respondent must still observe the thirty (30) day period to file the appeal before this Court, pursuant to Section 11 of RA No. 1125, as amended by RA No. 9282, which provides as follows:

> "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 law for action as referred to in Section 7(a)(2) herein."[57]

Based on the above provisions, this Court has appellate jurisdiction over decisions, rulings, or inactions of respondent; and the appeal must be filed by the party adversely affected within thirty (30) days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

In the present case, the issue for resolution is the proper reckoning, or the commencement, of the thirty (30) day period as provided above.

Here, petitioner reckoned the thirty (30) day period to appeal to this Court from receipt of the *Decision* dated February 10, 2023 of the respondent on February 27, 2023.[58] On the other hand, respondent argues that the Court has no jurisdiction over the case, since it can be inferred that the PCL is the final decision of the respondent with respect to the protest filed by petitioner on the FLD/FAN dated October 2, 2017. According to respondent, the tenor and language of the PCL issued to petitioner suggest a character of finality and thus, constitutes a final decision on the assessment which is a proper subject of an appeal before this Court.

The Court does not agree with the respondent.

Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner upon which a taxpayer may protest an assessment, including a

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56 *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

57 *Emphasis and underscoring supplied.*

58 Exhibit "P-18", BIR Records (Exhibit "R-15"), pp. 738 to 742; Refer to Q&A Nos. 43 to 45, Exhibit "P-20", Docket – Vol. I, p. 354.

remedy to seek redress of the inaction or decision on the disputed assessment, *viz.*:

> "Section 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**."[59]

As may be gleaned from the foregoing, when a taxpayer protests the assessment issued by respondent, the latter has 180 days from receipt of the relevant supporting documents within which to act on the former's request for reconsideration or reinvestigation. After the lapse of the 180-day period, the concerned taxpayer may appeal to this Court the inaction of respondent or his duly authorized representative within thirty (30) days therefrom. However,

[59] *Emphasis supplied.*

jurisprudence has also recognized that the taxpayer has the *option to await* the respondent's decision before filing a petition for review before this Court notwithstanding the expiration of the 180-day period fixed by law for the respondent to act on the disputed assessments.

In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*,[60] as reiterated in *Light Rail Transit Authority vs. Bureau of Internal Revenue*,[61] the Supreme Court held that in case respondent failed to act on the disputed assessment within the 180-day period, the taxpayer may either: (1) file a petition for review with this Court within 30 days after the expiration of the 180-day period fixed by law for the respondent to act on the disputed assessment; or (2) **await the final decision of the respondent on the disputed assessments and appeal such final decision to this Court within 30 days after receipt of a copy of such decision. This is true even if the 180-day period for the CIR to act on the disputed assessment had already expired.**

The two (2) options are mutually exclusive and resort to one bars the other.[62] This is also consistent with Section 3(a)(2), Rule 4 of the RRCTA, which states that "should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules".

Nonetheless, this Court is not unaware of the case where the Supreme Court considered a collection letter having the character of finality, such as the subject PCL dated February 21, 2018,[63] which may already be considered as respondent's final decision that is appealable to this Court. Particularly, the case referred to is *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* ("*Avon* case"),[64] wherein the High Court ruled as follows:

> "In this case, Avon opted to wait for the final decision of the Commissioner on its protest filed on May 9, 2003.
>
> This Court holds that the **Collection Letter** dated July 9, 2004 **constitutes the final decision of the Commissioner that is appealable to the Court of Tax Appeals**. The **Collection Letter** dated July 9, 2004 **demanded from Avon the payment of the deficiency tax assessments with a warning that should it fail to do so within the required period, summary**

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[60] G.R. No. 168498, April 24, 2007.
[61] G.R. No. 231238, June 20, 2022.
[62] *Light Rail Transit Authority vs. Bureau of Internal Revenue*, G.R. No. 231238, June 20, 2022.
[63] Exhibit "P-8", Docket – Vol. II, p. 596.
[64] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

> **administrative remedies would be instituted without further notice.** The **Collection Letter** was purportedly based on the May 27, 2004 Memorandum of the Revenue Officers stating that Avon 'failed to submit supporting documents within 60-day period.' This **Collection Letter demonstrated a character of finality such that there can be no doubt that the Commissioner had already made a conclusion to deny Avon's request and she had the clear resolve to collect the subject taxes.**
>
> Avon received the **Collection Letter** dated July 14, 2004. Hence, Avon's appeal to the Court of Tax Appeals filed on August 13, 2004 was not time-barred.
>
> **In any case, even if this Court were to disregard the Collection Letter as a final decision of the Commissioner on Avon's protest, the Collection Letter constitutes an act of the Commissioner on 'other matters' arising under the National Internal Revenue Code, which, pursuant to *Philippine Journalists, Inc. vs. CIR,*** [65] **may be the subject of an appropriate appeal before the Court of Tax Appeals.**"[66]

Based on the foregoing jurisprudence, it is clear that a collection letter, having the character of finality, may be treated as respondent's final decision, which, in turn, may already be appealed to this Court.

However, the ruling in the said case rests on different grounds.

Interestingly, in the present case, on March 8, 2018,[67] after the receipt of the PCL, petitioner filed a letter addressed to RD Nacar, questioning the correctness of the issuance of the PCL considering she has a pending protest for resolution. However, pending resolution of the said letter, the FNBS dated May 23, 2018,[68] was issued against petitioner. Thereafter, on July 16, 2018,[69] OIC-RD Nacar issued a reply letter to petitioner, stating in part that: "[t]he issuance by this Office of the PCL and the Final Notice before Seizure serves as our decision on your October 30, 2017 protest letter."

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65 488 Phil. 218 (2004) [Per J. Ynares-Santiago, First Division] (G.R. 162852, December 16, 2004).
66 *Emphasis supplied.*
67 Exhibit "P-9", Docket – Vol. II, pp. 598 to 600.
68 Exhibit "R-11-1", BIR Records (Exhibit "R-15"), p. 171.
69 Exhibit "P-12", Docket – Vol. II, pp. 629 to 631; Exhibit "R-12", BIR Records (Exhibit "R-15"), pp. 243 to 245.

Consequently, on October 10, 2018, the WDL dated October 9, 2018[70] was received by petitioner, to which petitioner immediately filed a *Petition Prior to Filing Formal Complaint with the Office of the Ombudsman, Secretary of Finance and Other Judicial Bodies* dated October 12, 2018, addressed to the then BIR Commissioner Dulay, seeking, among others, the urgent lifting of the WDL.[71] Thereafter, several WOGs dated November 19, 2018 were issued to various banks,[72] to enforce collection of petitioner's alleged deficiency taxes, prompting petitioner to file an *Urgent Motion to Lift Warrant of Garnishments issued by the Chief, Collection Division, JOSEPHINE B. PARAGAS and Cancel/Terminate Tax Deficiency Assessment in relation to Letter of Authority No. (LOA-001-2016-00000123/eLA201100084039) dated April 08, 2016,* addressed to the then BIR Commissioner Dulay dated December 19, 2018.[73]

Similarly, the Supreme Court is mindful of certain cases where it held that the issuance of the WDL constitutes constructive and final denial to the taxpayer's protest, which would trigger the running of the 30-day period to elevate the case to this Court,[74] as laid down in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue.*[75] Hence, in instances when the respondent, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds to distrain and levy or institutes an action for collection in the ordinary courts, this Court has considered this is an implied denial. The taxpayer's remedy then was to appeal to this Court within 30 days from the date that it was notified of the warrant or collection suit.[76] But then again, the said ruling is not applicable in this case.

Here, after the receipt of the WDL and issuance of various WOGs, petitioner filed with respondent, a *Petition*, seeking, among others, the urgent lifting of the WDL, and an *Urgent Motion to Lift* WOG and cancel/terminate the subject tax deficiency assessment, reiterating therein that she has filed a protest but there is no final decision yet, hence, there is no assessment that became final and executory to warrant the collection proceedings. Such action of petitioner made it perfectly clear that she was awaiting respondent's action on her protest. Thus, when the respondent issued the *Decision* dated February 10, 2023, the same constituted the final decision on the disputed assessment, which was appealable to this Court.

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[70] Exhibit "P-13", Docket – Vol. II, p. 632.
[71] Exhibit "P-14", Docket – Vol. II, pp. 634 to 655.
[72] Exhibits "P-15" to "P-15-C, Docket – Vol. II, pp. 656 to 659.
[73] Exhibit "P-16", Docket – Vol. II, pp. 660 to 683.
[74] *Mannasoft Technology Corporation vs. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.
[75] G.R. 162852, December 16, 2004.
[76] *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021.

Thus, since petitioner opted to wait for the final decision of respondent on her protest, which was only issued on February 10, 2023,[77] and received on February 27, 2023,[78] affirming the issuance of the WDL and WOG, the filing of the *Petition for Review* on March 29, 2023[79] is well within the 30-day reglementary period to file an appeal before this Court.

In any case, even if this Court were to disregard the *Decision* dated February 10, 2023, as a final decision of respondent on petitioner's protest, since the said *Decision* also resolved petitioner's appeal against the WDL and WOG, the said *Decision* constitutes an act of respondent on "other matters" arising under the NIRC, which, may be the subject of an appropriate appeal before this Court.

Due process was observed in serving the LOA.

Petitioner argues that the failure of the RO and the GS named in the LOA to serve by themselves the LOA to petitioner contravenes part IV.5 Revenue Memorandum Order ("RMO") No. 44-2010.[80]

On the other hand, respondent avers that the subject LOA, together with the *Checklist of Requirements*, was served on May 3, 2016 by the assigned RO Mark Angelo Ramos and GS Jinky Lim through substituted service, as witnessed by Ms. Maureen Bonoan, Ms. Erlinda Paulino and Mr. Rudy Domingo, barangay officials of Brgy. 50 Buttong, Laoag City, with Revenue Officers (ROs) Ericka Joy Placido and Jenkeen C. de Luna as witnesses, since petitioner was allegedly not present at her registered address, and her employee was also instructed through a phone conversation to refuse the receipt of the LOA or to accept the same but to indicate that the recipient is unauthorized to receive the same.[81]

The Court rules in favor of the respondent.

Under item III.23 of RMO No. 19-2015,[82] the RO assigned to the case shall present or serve the eLA to the concerned taxpayer or his/her

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77 Exhibit "P-18", BIR Records (Exhibit "R-15"), pp. 738 to 742.
78 Q&A No. 43, Exhibit "P-20", Docket – Vol. I, p. 354.
79 Docket – Vol. I, pp. 6 to 23.
80 SUBJECT: Electronic issuance of Letters of Authority.
81 Exhibit "R-4", BIR Records (Exhibit "R-15"), pp. 10 to 11.
82 SUBJECT: BIR Audit Program

representative in accordance with Section 3.1.6 of RR No. 12-99,[83] as amended by RR No. 18-2013.[84]

In connection therewith, Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, clearly states the modes of services of, *inter alia*, notices from the BIR to wit:

> "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
>
> 3.1.6 ***Modes of Service.*** – The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> In case of personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) **Substituted service can be resorted to <u>when the party is not present</u> at the registered or known address under the following circumstances:**
>
> **The notice may be left at the party's registered address, <u>with his clerk or with a person having charge thereof</u>.**

[83] 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.

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

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

<u>If no person is found in the party's registered or known address</u>, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signature of the witnesses.

<u>Should the party be found at his registered or known address of any other place but refuse to receive the notice</u>, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/ professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

xxx xxx xxx."[85]

Considering that the above regulations cover the service of assessment notices only, there are ROs who may not be aware that the same modes of service apply to the service of an eLA despite its adoption in RMO No. 19-2015. Hence, **clarifications** for the proper service of eLA were provided in Revenue Memorandum Circular ("RMC") No. 110-2020, to wit:[86]

"1. The eLA shall be served to the taxpayer through personal service by delivering personally a copy of the eLA at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

Personal or substituted service of the eLA shall be effected by the RO assigned to the case. However, such service may also be made by any BIR employee duly authorized for the purpose.

2. In case personal service is not possible, the eLA shall be served either by **substituted service** or by mail. However, **substituted service can only be resorted to when the party is not present at the registered or known address.**

2.1 Substituted service shall be done as follows:

2.1.1 **The eLA may be left at the party's registered address, with his clerk or with a person having charge thereof.**

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[85] *Emphasis and underscoring supplied.*
[86] SUBJECT: Clarifications on the Proper Modes of Service of an Electronic Letter of Authority.

2.1.2 If the known address is a place where business activities of the party are conducted, the eLA may be left with his clerk or with a person having charge thereof.

2.1.3 If the known address is the place of residence, substituted service can be made by leaving the eLA with a person of legal age residing therein.

2.1.4 **If no person is found in the party's registered or known address, the Revenue Officers (ROs) concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The original copy of the eLA shall be given to said barangay official.** (See required details of acknowledgement of receipt in item no. 4, hereof)

2.1.5 **Should the party be found at his registered or known address or any other place but refuses to receive the eLA, the ROs concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The original copy of the eLA shall be given to said barangay official.** (See required details of **acknowledgement of receipt** in item no. 4, hereof)

'Disinterested witnesses' refer to persons of legal age other than employees of the Bureau of Internal Revenue.

2.2 Service by mail shall be done by sending a copy of the eLA through –

2.2.1 Registered mail with an instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered; or

2.2.2 Reputable professional courier service; or

2.2.3 Ordinary mail, if no registry or reputable courier is available in the locality of the taxpayer.

xxx xxx xxx

4. For eLAs that are **served to the taxpayer through** personal or **substituted service, the following statement shall be indicated** at the back of the duplicate copy of the eLA:

ACKNOWLEDGEMENT OF RECEIPT

(To be accomplished by recipient)

____
Date of Receipt

________________________ Printed Name, with Position/Designation/ Relationship if Made on Behalf of the Taxpayer Named in the eLA	________________________ Signature of Person Acknowledging Receipt
________________________ Printed Name and Position of Barangay Official	________________________ Signature of Barangay Official
________________________ Signature Over Printed Name of Witness	________________________ Signature Over Printed Name of Witness

(To be accomplished by the server)

Please check:
- ☐ No person found in the taxpayer's registered or known address
- ☐ Party refused to receive the assessment notice

I hereby certify that the original copy of this electronic Letter of Authority was duly served by me, same having been received by __________________ on the date mentioned above.

____
Signature Over Printed Name of the Revenue Officer Who Served the eLA

xxx xxx xxx"[87]

While RMC No. 110-2020 was not yet in force at the time the questioned LOA was issued, the same is basically a reiteration of the modes of service provided under Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013, as likewise applicable to the service of eLA as provided in item III.23 of RMC No. 19-2015, and the fact of the subsequent issuance of RMC No. 110-2020 by respondent gives the Court all the more reason to rule, if only for consistency and uniformity, that for an LOA to validly confer authority on a revenue officer

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[87] *Emphasis supplied.*

assigned to examine/investigate a taxpayer, the same should be properly served upon the taxpayer.

Based on the foregoing provisions, the above modes of service apply to the service of an eLA, among others, which may be made through: (1) personal service to the concerned party; (2) substituted service, in specific instances; or (3) service by mail.

With regard to substituted service, like in the present case, the same can be availed of only in specific instances depending on whether the concerned party is present or not, or in case the said party is present, but the same party refuses to receive the notice. **If the party is not present**, the notice may be left at the party's registered or known address, with his/her/its clerk or with a person having charged thereof. If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. **Should the party be found at the registered or known address but refuses to receive the notice**, the concerned revenue officers shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such refusal. In the latter two (2) cases, the notice shall be given to the said barangay official.

Accordingly, substituted service can be resorted to only: (1) when the party is not present at the registered or known address; (2) if no person is found in the party's registered or known address; and (3) when the party is found therein, but refuses to receive the eLA.

In the present case, respondent resorted to substituted service, since petitioner refuses to receive the eLA/LOA. The LOA together with the *Checklist of Requirements* was served on May 3, 2016 by RO Ramos together with GS Lim, as witnessed by Ms. Maureen Bonoan, Ms. Erlinda Paulino and Mr. Rudy Domingo, barangay officials of Brgy. Buttong, Laoag City, and with ROs Ericka Joy Placido and Jenkeen C. De Luna. Petitioner's employee was also instructed through a phone conversation to refuse the receipt of the LOA and the *Checklist of Requirements* or to accept the same but to indicate on the LOA that the recipient is unauthorized to receive the same, hence, RO Ramos and GS Lim sought the help of the barangay officials and their fellow ROs, for the substituted service of the LOA and the *Checklist of Requirements*. The copy of the eLA/LOA was left at the place of business of the taxpayer.[88]

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[88] Exhibit "R-4", BIR Records (Exhibit "R-15"), pp. 10 to 11; Exhibit "P-2", Docket – Vol. II, p. 562; Exhibit "R-1", BIR Records (Exhibit "R-15"), p. 2.

Hence, contrary to petitioner's claim that RO Ramos and GS Lim, who are named in the LOA, were not the ones who physically delivered the same to petitioner,[89] the LOA was actually served by the RO and GS, whose names appear therein,[90] in compliance with RMO No. 44-2010,[91] and RMO No. 110-2020. Faced with two (2) contracting statements, the Court is inclined to give credence to respondent's version in view of the presumption of regularity,[92] as tax authorities enjoy the presumption of regularity in the performance of their duties in relation to tax investigation and assessment.[93]

However, the Court noted that no *Affidavit of Service* or *Acknowledgment of Receipt* as required by paragraph 4 of RMC No. 110-2020 was offered to prove the service of the eLA/LOA, as confirmed by RO Ramos during the hearing held on October 22, 2024.[94] Nonetheless, records show that RO Ramos executed a *Memorandum* dated October 19, 2016,[95] which was reviewed by GS Lim, stating therein the reason why substituted service was resorted to, the date when substituted service was effected, and the witnesses who were present at the time of the service. Moreover, in the subject eLA/LOA, the names and signatures of the barangay officials and the RO/s who were present during the service of the eLA/LOA in the premises of the petitioner, appeared on the face of the eLA/LOA.[96] To the mind of the Court, these documents, taken together, basically sets forth the statement needed to be indicated in the *Acknowledgment of Receipt*, hence, there was substantial compliance with due process requirement in serving the eLA/LOA.

Further, as to petitioner's contention that the LOA is defective since there was no valid selection criterion that was mentioned in the face of the eLA/LOA that serve as the basis for respondent to subject petitioner to tax audit for taxable year 2014, suffice it to state that what is required to be indicated in the LOA pursuant to paragraph III.5 of RMO No. 44-2010 is the basis of the audit (*i.e.*, regular audit program, special audit, etc.). In the subject LOA,[97] it was stated therein that the audit was pursuant to "SEC. 6(A) & SEC. 10(C) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED", hence, the basis of the audit was indicated therein. Thus, although the BIR has set forth certain criteria in the selection of taxpayers for audit, the same is not required to be indicated on the face of the LOA. Moreover, granting that there

89 Q&A No. 12, Exhibit "P-20", Docket – Vol. I, p. 347.
90 Exhibit "R-4", BIR Records (Exhibit "R-15"), pp. 10 to 11; Q&A Nos. 13 and 14, Exhibit "R-16", Docket, pp. 419 to 420.
91 SUBJECT: Electronic issuance of Letters of Authority.
92 Section 3(m), Rule 131, Rules of Court.
93 *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020.
94 Transcript of Stenographic Notes dated October 22, 2024, p. 10.
95 Exhibit "R-4", BIR Records (Exhibit "R-15"), pp. 10 to 11.
96 Exhibit "P-2", Docket – Vol. II, p. 562; Exhibit "R-1", BIR Records (Exhibit "R-15"), p. 2.
97 Exhibit "P-2", Docket – Vol. II, p. 562; Exhibit "R-1", BIR Records (Exhibit "R-15"), p. 2.

was no basis for petitioner to be selected for audit, the same does not invalidate the eLA/LOA, as violation if any, would only result to administrative sanctions against the concerned ROs.[98]

In sum, We see no irregularity in the issuance and service of the subject LOA.

The subject tax assessments are valid and there is no violation of petitioner's right to administrative due process.

Petitioner claims that the assessments made were invalid without the benefit of an honest-to-goodness tax audit.[99] She further avers that there was no PAN issued against her, but instead she received a FAN with FLD dated October 2, 2017.[100]

On the other hand, respondent argues that assessments are presumed correct and made in good faith. All presumptions are in favor of the correctness of the tax assessment.

The Court agrees with the respondent.

A perusal of records would show that due to petitioner's unwillingness to cooperate to have the notices received by her or her representative, the *First Notice* dated June 9, 2016 for presentation and submission of documents and the *Second and Final Notice* dated September 7, 2016 were served to petitioner through registered mail on June 16, 2016[101] and September 19, 2016,[102] respectively.[103] Since petitioner failed to comply with the notices, respondent issued a *Subpoena Duces Tecum* ("SDT") with SDT No. RR1-1-2016 109 dated October 25, 2016.[104]

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[98] Item III. 1 of RMO No. 19-2015, provides:

"III. **POLICIES AND PROCEDURES**

1.The RDO and RD/LTD, LTAD and ACIR-LTS are equally responsible in ensuring that only returns of taxpayers registered within their jurisdiction and **those that match the selection criteria of this Order are selected for issuance of eLAs. Otherwise, they shall be subject to administrative sanctions**." *(Emphasis added)*

[99] Refer to Discussions/Arguments, *Petition for Review*, Docket – Vol. I, at p. 17.
[100] Refer to par. 7 of *Memorandum for Petitioner*, Docket – Vol. II, p. 745.
[101] Exhibits "R-2" and "R-2-1", BIR Records (Exhibit "R-15"), p. 3.
[102] Exhibits "R-3" and "R-3-1", BIR Records (Exhibit "R-15"), p. 4.
[103] Q&A Nos. 15 to 20, Exhibit "R-16", Docket – Vol. I, pp. 420 to 421.
[104] Exhibits "R-5" and "R-5-1", BIR Records (Exhibit "R-15"), pp. 14 and 17, respectively.

Further, as to the PAN dated August 17, 2017,[105] the same was served to petitioner through substituted service on September 5, 2017, since petitioner was reluctant to receive the same, as evidenced by the *Affidavit of Service of Preliminary Assessment Notice* dated September 5, 2017,[106] and the signatures of Barangay Kagawads Ferdinand Barayuga, Jessie Santos and Khevin Abivas as witnesses to the substituted service appearing on the first page of the PAN.[107]

Thus, sufficient service of BIR *Notices* was made to petitioner, however, petitioner continuously refused/ignored the notices despite several opportunities given to submit her records and refute the assessment. Petitioner cannot claim that "no honest-to-goodness tax audit" was made, since procedural due process was accorded to her from the beginning.

Hence, the subject tax assessments are valid and there was no violation of petitioner's right to administrative due process.

Settled is the rule that tax assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[108]

The merits of the subject assessment shall now be addressed/discussed.

Petitioner is liable for deficiency income tax, VAT and EWT.

In the FLD/FAN dated October 2, 2017,[109] respondent assessed petitioner for the following tax deficiencies for taxable year 2014, to wit:

[105] Exhibit "R-7", BIR Records (Exhibit "R-15"), pp. 94 to 99.
[106] Exhibit "R-7-2", BIR Records (Exhibit "R-15"), p. 101.
[107] Exhibit "R-7-1", BIR Records (Exhibit "R-15"), p. 99.
[108] *Ferdinand R. Marcos II vs. Court of Appeals, et al.*, G.R. No. 120880, June 5, 1997.
[109] Exhibits "P-5" and "P-6", Docket – Vol. II, pp. 575 to 580; Exhibit "R-8", BIR Records (Exhibit "R-15"), pp. 116 to 125.

Tax Type	Basic Deficiency Tax	Surcharge	Interest	Compromise Penalty	Total
Income tax	Php 604,977.17	Php 0.00	Php 306,632.26	Php 0.00	Php 911,609.43
VAT	260,005.03	0.00	143,893.20	0.00	403,898.23
EWT	500.00	125.00	69.52	2,000.00	2,694.52
Compromise penalty	0.00	0.00	0.00	58,000.00	58,000.00
Total	**Php865,482.20**	**Php 125.00**	**Php450,594.98**	**Php60,000.00**	**Php1,376,202.18**

I. Income Tax

Respondent issued an assessment against petitioner for alleged deficiency income tax in the total amount of Php911,609.43, inclusive of increments, computed as follows:[110]

Taxable net income per return				**Php 333,238.29**
Add: Disallowed expenses for failure to substantiate (50% Best Evidence Obtainable Rule)				
	Claimed per ITR	50% Disallowance		
Utilities	Php344,897.00	Php172,448.50		
Contributions	75,833.00	37,916.50		
Taxes & Licenses	136,352.00	68,176.00		
	Php557,082.00	Php278,541.00	Php278,541.00	
Disallowed Expense due to Non-withholding (RR No. 12-2013)				
Professional Fee			5,000.00	
Disallowed Expense pursuant to RR No. 1-2014				
Salaries and Wages			946,540.00	
Understatement of PPE:				
Per Access (Tax Declaration)		5,760,450.00		
Per Financial Statement (FS)		5,304,500.00	455,950.00	1,686,031.00
Taxable Net Income per Audit				**Php2,019,269.29**
Income Tax Due Thereon				Php 611,166.17
Less: Supported Tax Payments				
Income Tax Payments				6,189.00
Basic Deficiency Income Tax				**Php 604,977.17**
Add: 20% Interest per Annum from April 16, 2015 to October 30, 2017				306,632.26
Income Tax Payable				**Php 911,609.43**

From the above-computation, respondent assessed petitioner of deficiency income tax on the following grounds:[111]

A. Disallowed operating expenses for failure to substantiate (based on best evidence obtainable)	Php278,541.00
B. Disallowed professional fee due to non-withholding	5,000.00
C. Disallowed salaries and wages due to non-submission of Annual Alphalist of Employees	946,540.00
D. Understatement of Property, Plant, and Equipment (PPE)	455,950.00

[110] Annex II, Exhibit "P-5", Docket – Vol. II, p. 575.
[111] Income Tax, *Details of Discrepancies*, Exhibit "P-6", Docket – Vol. II, p. 579.

A. Disallowed operating expenses for failure to substantiate (based on best evidence obtainable)

According to respondent, despite the efforts exerted by the assigned RO, petitioner failed to comply with the requirements being requested for the conduct of audit. Consequently, a SDT No. RR1-1-2016-109 was issued on October 25, 2016.[112] Notwithstanding the issuance of the SDT, petitioner still failed to submit the required documents. As a result, respondent assessed petitioner based on the best evidence obtainable pursuant to Section 6(B) of the NIRC of 1997, as amended.[113]

On the other hand, petitioner argues that the RO had neither legal nor factual basis to disallow operating expenses based on the best evidence obtainable. Petitioner further contends that the assessment issued on the basis of best evidence obtainable was improper and void *ab initio*.[114]

The Court finds petitioner's contentions untenable.

The deductions for income tax purposes partake of the nature of tax exemptions; hence, if tax exemptions are strictly construed, then deductions must also be strictly construed.[115]

Accordingly, the burden of proof rests upon petitioner that she is, in fact, entitled to deduct from its gross income operating expenses in the total amount of Php557,082.00.[116]

In this case, despite the various BIR *Notices*, petitioner failed to submit supporting documents to substantiate its operating expenses. In view of such failure, respondent applied the 50% rule of approximation in disallowing petitioner's operating expenses pursuant to Section 6(B) of the NIRC of 1997 and as implemented by Sections 2.3 and 2.4(c) of RMC No. 23-2000,[117] as respectively quoted hereunder for easy reference:

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112 Exhibit "R-5", BIR Records (Exhibit "R-15"), p. 14.

113 Item No. 2, Income Tax, *Details of Discrepancies*, Exhibit "P-6", Docket – Vol. II, p. 579.

114 Item letter c, Exhibit "P-7", Docket – Vol. II, p. 591.

115 *Commissioner of Internal Revenue vs. General Foods (Phils.), Inc.*, G.R. 143672, April 24, 2003.

116 The sum of utilities expense of Php344,897.00, SSS, GSIS, PhilHealth, HDMF, and Other Contributions of Php75,833.00, taxes and licenses of Php136,352.00, as reported in petitioner's *Annual Income Tax Return* and Audited Financial Statements, BIR Records (Exhibit "R-15"), pp. 51 and 59, respectively.

117 SUBJECT: Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable".

<u>**Section 6(B) of the NIRC of 1997:**</u>

"SEC 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

xxx xxx xxx

(B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* - **When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.**

In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes."[118]

<u>**Sections 2.3 and 2.4 of the RMC No. 23-2000:**</u>

"SECTION 2. *Prescribed Revenue Procedures.* —

xxx xxx xxx

2.3 *Assessment Based on Best Evidence Obtainable.* — An assessment based on best evidence obtainable is justified when any of the grounds provided by law is clearly established viz:

1. **The report or records requested from the taxpayer are not forthcoming i.e. the records are lost; refusal of the taxpayer to submit such records;**

2. The reports submitted are false, incomplete or erroneous.

In every case where a taxpayer is ordered to be examined and he refuses or fails to submit his records

[118] *Emphasis supplied.*

giving rise to the issuance of a *subpoena duces tecum* pursuant to RMO No. 35-90, the assessment shall only be issued after a criminal case has been instituted for failure to obey summons.

After filing of the complaint against the taxpayer for violation of the *Subpoena Duces Tecum*, the Legal Division/Prosecution Division shall immediately return the docket of the case to the concerned Revenue Officer. The Revenue Officer shall, upon receipt of the docket, immediately proceed to determine the taxpayer's deficiency internal revenue tax liability in accordance with the 'Best Evidence Obtainable.'

2.4 *Existing Revenue Procedures and Jurisprudence Governing Assessment Based on the Best Evidence Obtainable.* — Provided hereunder are the existing revenue procedures and jurisprudence governing issuance of a deficiency tax assessment based on the best evidence obtainable:

xxx xxx xxx

(c) *Assessment Based on Estimate;* ***50% Rule, in the Absence of Receipts to Prove Actual Amount of Expense Deduction.*** — The Court held in the Mariano Zamora case that, **if there is a showing that expenses have been incurred but the exact amount thereof cannot be ascertained due to absence of documentary evidence, it is the duty of the BIR to make an estimate of the deduction that may be allowable in computing the taxpayer's taxable income, bearing heavily against the taxpayer whose inexactitude is of his own making. That disallowance of 50% of the taxpayer's claimed deduction is valid.**"[119]

Based on the foregoing provisions, an assessment based on the best evidence obtainable is justified when the taxpayer refuses or fails to submit the records requested, or when the reports submitted are false, incomplete, or erroneous. Moreover, jurisprudence recognizes the validity of estimating deductible expenses in the absence of supporting documents against the taxpayer

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119 *Emphasis supplied.*

whose inexactness is of its own making.[120] As mentioned earlier, an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous.[121] In this case, the disallowance of fifty percent (50%) of the claimed deductions is proper. Thus, the assessed amount of Php278,541.00 remains valid.

B. Disallowed professional fee due to non-withholding

Respondent's verification disclosed that professional fee amounting to Php5,000.00 was not subjected to EWT. Accordingly, said amount was disallowed as deductible expense and added back to taxable income due to non-withholding pursuant to RR No. 12-2013.[122]

On the other hand, petitioner did not contest respondent's findings and did not present supporting documents to establish that EWT was withheld on the declared professional fee of Php5,000.00.[123]

To reiterate, assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise; and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.[124]

Thus, the disallowance of the professional fee due to non-withholding is upheld.

C. Disallowed salaries and wages due to non-submission of Annual Alphalist of Employees

According to respondent, the salaries and wages amounting to Php946,540.00 were disallowed in full due to petitioner's failure to submit the *Annual Alphalist of Employees* and the *Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes* (BIR Form No. 1604-CF) pursuant to RR No. 1-2014.[125]

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[120] Refer to *Zamora vs. Collector of Internal Revenue, et al., et seq.*, G.R. No. L-15290, L-15280, L-15289, L-15281, May 31, 1963.
[121] *Ferdinand R. Marcos II vs. Court of Appeals, et al.,* supra.
[122] Item No. 3, Income Tax, *Details of Discrepancies*, Exhibit "P-6", Docket – Vol. II, p. 579.
[123] Refer to Exhibit "P-7", Docket – Vol. II, pp. 581 to 594.
[124] Refer to *Sy Po vs. Honorable Court of Tax Appeals, et al.*, G.R. No. 81446, August 18, 1988.
[125] Item No. 4, Income Tax, *Details of Discrepancies*, Exhibit "P-6", Docket – Vol. II, p. 579.

Petitioner, however, contends that the RO has neither a legal nor a factual basis in finding her liable for deficiency on compensation tax because the *Alphalist of Employees* was filed on time.[126]

Nevertheless, petitioner failed to present any documentary evidence to substantiate this claim. The only document referenced in her letter requesting an administrative investigation was a screenshot of her *Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes* (BIR Form No. 1604-CF) and *eSubmission Validation Report.*[127]

Under Section 2.83.3 of RR No. 2-98, as amended by RR No. 1-2014,[128] the non-submission of the *Alphalist of Employees*, which is required to be attached as an integral part of the *Annual Information Return* (BIR Form No. 1604-CF), renders the related expense non-deductible for income tax purposes.[129]

Moreover, petitioner did not formally offer in evidence the purported *Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes* (BIR Form No. 1604-CF) and *e-Submission Validation Report*, that she claims was filed on time.

It bears emphasis that the Court shall consider no evidence which has not been formally offered.[130] Section 8 of RA No. 1125-provides categorically that this Court shall be a court of record and as such it is required to conduct a formal trial (*trial de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[131]

In view of the foregoing, the disallowance of salaries and wages amounting to Php946,540.00 is proper.

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[126] Item letter d, Exhibit "P-7", Docket – Vol. II, p. 591.

[127] Item letter d, Exhibit "P-7", Docket – Vol. II, p. 592.

[128] SUBJECT: Amending the Provisions of Revenue Regulations (RR) No. 2-98, as Further Amended by RR No. 10-2008, Specifically on the Submission of Alphabetical List of Employees/Payees of Income Payments

[129] "Section 2.83.3. *Requirement for list of payees.* — xxx

xxx xxx xxx

The submission of the herein prescribed alphalist where the income payments and taxes withheld are lumped into one single amount (e.g., 'Various employees', 'Various payees', 'PCD nominees', 'Others', etc.) shall not be allowed. **The submission thereof,** including any alphalist that that does not conform with the prescribed format thereby **resulting to the unsuccessful uploading into the BIR system shall be deemed not as received and shall not qualify as a deductible expense for income tax purposes**." *(Emphases added)*

[130] Section 34, Rule 132 of the Revised Rules of Court.

[131] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

D. Understatement of PPE

Respondent's verification disclosed that PPE was understated by Php455,950.00 based on the *Tax Declarations*[132] obtained from the City Assessor's Office,[133] computed as follows:[134]

Tax Declaration No.	Land Area/Type	Class	ZV/Area	Zonal Value	Market Value	Higher
17-067-00266	2191	A	300	Php657,300.00	Php39,440.00	Php657,300.00
17-067-00266	1000	R	300	300,000.00	300,000.00	300,000.00
17-067-00275	329	R	300	98,700.00	98,700.00	98,700.00
17-067-00276	Building			300,660.00	150,330.00	300,660.00
17-067-00278	Machine			640,000.00	320,000.00	640,000.00
17-067-00625	Building			9,343,840.00	4,671,920.00	9,343,840.00
17-067-00277	Building			180,400.00	90,200.00	180,400.00
Total						**Php11,520,900.00**
Share on Property						Php5,760,450.00[135]
Less: PPE per FS						5,304,500.00[136]
Understatement						**Php455,950.00**

Petitioner argues that the RO's findings lack both legal and factual bases. She claims that she made no new purchases of property for taxable year 2014. In addition, she asserts that in reporting PPE for FS presentation, the valuation should be based on cost and not the zonal value nor the market value of the property. She further claims that all the related taxes upon her purchases of property have been paid/remitted to the BIR.[137]

Respondent's presumption that an understatement of PPE gives rise to taxable income is without legal or factual basis.

It bears emphasis that for income to be subject to tax, the following requisites must concur: (1) there must be gain; (2) the gain must be realized or received; and (3) the gain must not be excluded by law or treaty from taxation.[138]

132 BIR Records (Exhibit "R-15"), pp. 23 to 30.
133 Item No. 5, Income Tax, *Details of Discrepancies*, Exhibit "P-6", Docket – Vol. II, p. 579.
134 Annex III, Exhibit "P-5", Docket – Vol. II, p. 576.
135 50% of Php11,520,900.00.
136 BIR Records (Exhibit "R-15"), p. 60.
137 Item letter a, Exhibit "P-7", Docket – Vol. II, pp. 588 to 589.
138 Refer to *Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals, and A. Soriano Corp.*, G.R. No. 108576, January 20, 1999.

These elements are absent in the present case. Respondent assessed petitioner based on the higher of the market value or zonal value *vis-a-vis* the PPE reported in petitioner's FS without citing any legal basis for such assessment.

While, as already intimiated, it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[139]

In fine, petitioner is liable for basic deficiency income tax of Php459,073.17, computed as follows:

Taxable Income per return		Php333,238.29
Add: Adjustments/disallowances		
Disallowed operating expense for failure to substantiate	Php278,541.00	
Disallowed professional fee due to non-withholding	5,000.00	
Disallowed salaries and wages due to non-submission of annual Alphalist of employees	946,540.00	1,230,081.00
Adjusted Taxable Income		**Php1,563,319.29**
Income Tax Due		**Php465,262.17**
Less: Tax Credits/Payments		
Income tax payments		6,189.00
Basic Deficiency Income Tax		**Php459,073.17**

II. VAT

Petitioner is also assessed of deficiency VAT in the amount of Php403,898.23, inclusive of increments, computed as follows:[140]

Sales		Php1,195,110.51
Add: Other Income		-
Total Sales Subject to Value Added Tax		**Php1,195,110.51**
Add: Audit Adjustments		
Discrepancy on Sales per ITR vs. Sales per VAT Returns		
Sales per ITR	Php1,891,860.29	
Sales per Return	1,195,110.51	696,749.78

[139] Refer to *The Collector of Internal Revenue (now Commissioner) vs. Benipayo*, G.R. No. L-13656, January 31, 1962.

[140] Annex II, Exhibit "P-5", Docket – Vol. II, p. 575.

Understatement of PPE		
Per Access (Tax Declaration)	5,760,450.00	
Per FS	5,304,500.00	455,950.00
Total Sales Subject to Value Added Tax per audit		**Php2,347,810.29**
Output Tax		Php281,737.23
Less: Input tax		-
VAT Payable		Php281,737.23
Less: Payments		21,732.20
Value Added Tax Deficiency		**Php260,005.03**
Add: Legal Increments		
20% Interest per Annum from January 21, 2015 to October 30, 2017		143,893.20
Value Added Tax Payable		**Php403,898.23**

Respondent assessed petitioner of deficiency VAT based on the following grounds:[141]

A. Understatement/Discrepancy on declared sales subjected to VAT	Php696,749.78
B. Understatement of PPE	455,950.00
C. Disallowed input tax	118,357.24

A. Understatement/Discrepancy on declared sales subjected to VAT

Upon reconciliation, respondent found a discrepancy between the sales declared in petitioner's VAT Returns and those reflected in her Financial Statements ("FS"). The computation of the resulting understatement or discrepancy in sales is presented below:[142]

Total Gross Sales per FS	Php1,891,860.29
Total Gross Sales per Taxpayer's VAT Returns	1,195,110.51
Total Understatement/Discrepancy on Sales	**Php696,749.78**

Petitioner contends that the RO has neither legal nor factual basis of the findings and can be conclusively a result of lazy work habit and tainted with malice and put heavy burden on a law-abiding taxpayer.[143]

In her letter requesting an administrative investigation,[144] petitioner claims that her sales per Income Tax Return is Php1,891,860.00, while the total sales per VAT Returns amounted to Php1,891,860.21 and provided screenshots of portions of her *Quarterly VAT Returns* (BIR Form No. 2550Q) in support thereof, although some portions of which are blurred/illegible, and no proof whether

[141] Value Added Tax, *Details of Discrepancies*, Exhibit "P-6", Docket – Vol. II, pp. 579 to 580.
[142] Item No. 1, Value Added Tax, *Details of Discrepancies*, Exhibit "P-6", Docket – Vol. II, p. 579.
[143] Item letter b, Exhibit "P-7", Docket – Vol. II, pp. 589 to 591.
[144] Exhibit "P-7", Docket – Vol. II, pp. 581 to 594.

these returns were duly filed. However, petitioner did not formally offer in evidence the said *Quarterly VAT Returns.* As already pointed out earlier, the Court cannot consider evidence that has not been formally offered.

Hence, absent any properly offered and credible evidence to refute respondent's findings, the assessment for discrepancy on petitioner's sales must be sustained.

B. Understatement of PPE

As earlier stated, respondent's verification disclosed that PPE was understated by Php455,950.00 based on the *Tax Declarations*[145] obtained from the City Assessor's Office.[146]

Section 105 of the NIRC of 1997 provides that VAT is imposed on any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods.

Accordingly, VAT liability arises only upon proof of sale, barter, exchange, or lease of goods or properties, or a rendition of services for a consideration in money or its equivalent. In the present case, no such taxable transaction has been established. Absent proof of an actual sale or service performed, there can be no VAT liability. Consequently, the assessment based on the alleged understatement of PPE cannot be sustained and must be cancelled for lack of factual and legal bases.

C. Disallowed Input Tax

Respondent disallowed the input tax of Php118,357.24 due to non-substantiation based on Section 110 of the NIRC of 1997 and RR No. 16-2005, as amended.[147]

To stress, in the absence of credible and sufficient supporting documents, the disallowance of the input tax is proper and must be sustained.

To recapitulate, the assessment for basic deficiency VAT is sustained but in the reduced amount of Php205,291.03, as computed below:

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[145] BIR Records (Exhibit "R-15"), pp. 23 to 30.

[146] Item No. 2, Value Added Tax, *Details of Discrepancies*, Exhibit "P-6", Docket – Vol. II, p. 580.

[147] Item No. 3, Value Added Tax, *Details of Discrepancies*, Exhibit "P-6", Docket – Vol. II, p. 580.

Sales	Php 1,195,110.51
Add: Other Income	-
Total Sales Subject to VAT	**Php1,195,110.51**
Add: Audit Adjustments	
Understatement/Discrepancy on declared sales subjected to VAT	696,749.78
Total Sales subject to VAT	**Php1,891,860.29**
Output Tax Due	Php 227,023.23
Less: Input tax	-
VAT Payable	**Php 227,023.23**
Less: Payments	21,732.20
Basic Deficiency VAT	**Php 205,291.03**

III. EWT

Respondent found that the professional fee paid to petitioner's accountant are subject to deficiency EWT pursuant to Section 244 of the NIRC of 1997, as amended, in relation to Sections 57 to 58, as implemented by RR Nos. 2-98, 6-2001, 12-2001, 14-2002, 17-2003, 30-2003, and 16-2005, computed as follows:[148]

Professional Fee	Php5,000.00	10%	Php500.00
Less: Payments & Credits			-
Withholding Tax Deficiency			**Php500.00**
Add: Legal Increments			
Surcharge			125.00
20% Interest per Annum from January 16, 2015 to October 30, 2017			69.52
Compromise Penalty			2,000.00
EWT Payable			**Php2,694.52**

Here, for failure of petitioner to dispute the findings or prove that EWT was withheld on the Php5,000.00 professional fees,[149] the imposition of deficiency EWT thereon is upheld. To reiterate, tax assessments are presumed correct and made in good faith absent any evidence to the contrary.

IV. Miscellaneous Tax (Compromise penalty)

According to respondent, penalties were imposed for failure to submit/file the *Inventory List*, *Schedule of Taxes and Licenses*, and FS not in conformity with the Philippine Financial Reporting Standards as prescribed by tax rules and regulations. Hence, compromise penalties were proposed, in

[148] Expanded Withholding Tax, *Details of Discrepancies*, Exhibit "P-6", Docket – Vol. II, p. 580; Annex II, Exhibit "P-5", Docket – Vol. II, p. 577.

[149] Refer to Exhibit "P-7", Docket – Vol. II, pp. 581 to 594.

relation to and in addition to the violations penalized under Section 250 of the 1997 Tax Code for the non-filing of said schedules, lists, or information required under Section 255 of the said Code. The compromise penalties imposed were based on RMO No. 19-2007, RMO No. 12-2009, and RMC No. 51-2009, *viz.*:[150]

Under Section 250 of NIRC and RMO No. 7-2015:	
FS not in accordance with PFRS	Php 25,000.00
Non-filing of the following:	
Summary List of Sales and Purchases	10,000.00
BIR Form No. 1604-CF	2,000.00
Annual Alphalist of Employees	10,000.00
VAT Returns (January, February, April-July)	6,000.00
BIR Form No. 1701Q (1st to 3rd Quarters)	3,000.00
BIR Form No. 1601-C (Feb. and Nov.)	2,000.00
Miscellaneous Tax Payable	**Php 58,000.00**

However, it must be stressed that a compromise is, by its nature, mutual in essence.[151] It implies agreement. One party cannot impose it upon the other.[152] Considering that there is no indication that petitioner consented to the subject compromise penalties, and in fact, categorically stated in her letter requesting an administrative investigation that she did not agree to enter into compromise settlement with the BIR,[153] there is even greater reason why the said amount should not be sustained.

ACCORDINGLY, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

Respondent's assessment on compromise penalties for the taxable year 2014 is **CANCELLED** and **SET ASIDE**, for lack of merit, while the assessments for deficiency income tax, VAT, and EWT for the taxable year 2014 are **UPHELD WITH MODIFICATIONS**.

Thus, petitioner is **ORDERED TO PAY** respondent the amount of **Php1,239,154.53**, inclusive of 25% surcharge, 20% deficiency and delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended by Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion" ("TRAIN") Law, and implemented through RR No. 21-2018, computed as follows:

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150 Miscellaneous Tax, *Details of Discrepancies*, Exhibit "P-6", Docket – Vol. II, p. 580; Annex II, Exhibit "P-5", Docket – Vol. II, p. 577.
151 Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue,* G.R. No. 138485, September 10, 2001.
152 *Commissioner of Internal Revenue vs. Abad, et al.,* G.R. No. L-19627, June 27, 1968.
153 Exhibit "P-7", Docket – Vol. II, p. 593.

	Income tax	VAT	EWT	Total
Basic Tax Due	**Php459,073.17**	**Php205,291.03**	**Php500.00**	**Php664,864.20**
Add: **25% Surcharge**	114,768.29	51,322.76	125.00	166,216.05
Add: **20% Deficiency Interest**				
Income Tax: from April 16, 2015 to November 2, 2017 (Php459,073.17 x 20% x 932 days/365)	234,441.75			234,441.75
VAT: from January 27, 2015[154] to November 2, 2017 (Php205,291.03 x 20% x 1,011 days/365)		113,725.61		113,725.61
EWT: from January 16, 2015 to November 2, 2017 (Php500.00 x 20% x 1,022 days/365)			280.00	280.00
Total Amount Due, November 2, 2017[155]	**Php808,283.21**	**Php370,339.40**	**Php905.00**	**Php1,179,527.61**
Add: **20% Deficiency Interest** from November 3, 2017 to December 31, 2017				
Income Tax: Php459,073.17 x 20% x 59 days/365	14,841.27			14,841.27
VAT: Php205,291.03 x 20% x 59 days/365		6,636.81		6,636.81
EWT: Php500.00 x 20% x 59 days/365			16.16	16.16
Add: **20% Delinquency Interest** from November 3, 2017 to December 31, 2017				
Income Tax: Php808,283.21 x 20% x 59 days/365)	26,130.80			26,130.80
VAT: Php370,339.40 x 20% x 59 days/365)		11,972.62		11,972.62
EWT: Php905.00 x 20% x 59 days/365)			29.26	29.26
Total Amount Still Due, December 31, 2017	**Php849,255.28**	**Php388,948.83**	**Php950.42**	**Php1,239,154.53**

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 Php1,179,527.61 as of November 2, 2017, or equivalent to the amount of **Php387.79**[156] per day, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by the TRAIN Law, and implemented by RR No. 21-2018.

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[154] January 25, 2015, the due date for the 4th *Quarterly VAT Return* for taxable year 2014 fell on a Sunday.

[155] The *Assessment Notices* attached to the FLD indicate a due date of November 2, 2017, Exhibit "R-8", BIR Records (Exhibit "R-15"), pp. 117 to 120.

[156] Php1,179,527.61 x 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 distraint 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