REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HEWLETT-PACKARD PHILIPPINES CORPORATION, *Petitioner,*	**CTA Case No. 10851**
	Members: **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
- versus -	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	MAR 18 2025 3:42 p.m.

x---x

DECISION

REYES-FAJARDO, *J.*:

This Petition for Review[1] filed by Hewlett-Packard Philippines Corporation on April 18, 2022 assails the Final Decision on Disputed Assessment (FDDA) dated March 14, 2022, issued by the Bureau of Internal Revenue (BIR), finding it liable for deficiency Improperly Accumulated Earnings Tax (IAET) for Fiscal Year (FY) ending October 31, 2019 in the amount of ₱116,194,066.65, inclusive of surcharges, interest, and penalties.

PARTIES

Petitioner Hewlett-Packard Philippines Corporation is a corporation duly organized and existing under Philippine laws.[2] It is registered with the BIR under Taxpayer Identification Number 003-956-294-00000, with address at 25th Floor Twenty-Five Seven Mckinley

---

1 Docket- Vol. I, pp. 6 to 17.
2 Exhibits "P-2" and "P-3," Docket - Vol. III, pp. 697 to 707.

1229

Bldg., 25th Street Cor. 7th Avenue Bonifacio Global City Fort Bonifacio, Taguig City.[3]

Respondent is the Commissioner of Internal Revenue, charged with the assessment and collection of all national internal revenue taxes, fees and charges, and enforcement of all forfeitures, penalties and fines connected therewith.[4]

FACTS

On September 16, 2020, OIC-Assistant Commissioner Manuel V. Mapoy of the Large Taxpayers Service LT Regular Audit Division (ACIR Mapoy) issued Letter of Authority (LOA) No. 116-2020-00000262, authorizing Revenue Officer (RO) Francis Elvin Ordonez and Group Supervisor (GS) Ma. Theresa Carillo, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period November 1, 2018 up to October 31, 2019.[5]

On May 24, 2021,[6] petitioner received a Notice of Discrepancy dated May 18, 2021.[7]

On September 16, 2021,[8] petitioner received a Preliminary Assessment Notice (PAN) for alleged deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), fringe benefits tax (FBT), final withholding tax (FWT), final withholding VAT, IAET, documentary stamp tax (DST), and compromise penalty, for the FY ending October 31, 2019 in the amount of ₱3,417,180,120.29, inclusive of surcharges and interests.[9]

---

3 Exhibit "P-4," Docket - Vol. III, pp. 708 to 710.

4 Par. 1.a, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket - Vol. I, p. 662.

5 Par. 1.c, Stipulation of Facts, JSFI, Docket - Vol. I, p. 663. Refer also to Exhibit "P-17," Docket - Vol. I, p. 843; and Exhibit "R-1," BIR Records (Exhibit "R-13"), p. 1.

6 Exhibit "P-7," Docket - Vol. III, pp. 786 to 793; Exhibit "R-4," BIR Records (Exhibit "R-13"), pp. 275 to 282.

7 Par. 1.d, Stipulation of Facts, JSFI, Docket - Vol. I, p. 663.

8 Par. 1.e, Stipulation of Facts, JSFI, Docket - Vol. I, p. 663.

9 Exhibit "P-8," Docket - Vol. III, pp. 794 to 802; and Exhibit "R-6," BIR Records (BIR Records "R-13"), pp. 667 to 675.

On October 1, 2021, petitioner filed its reply to the PAN.[10]

On October 26, 2021, ACIR Mapoy issued another LOA No. 116-2021-00000380, authorizing RO Francis Elvin Ordonez and GS Ma Iris Cristy Pascua, to examine petitioner's books of accounts and other accounting records of petitioner for all internal revenue taxes covering FY ended October 31 2019.[11]

On November 10, 2021, petitioner received a Formal Letter of Demand and Audit Result/Assessment Notices (FLD/FAN), assessing it for deficiency income tax, VAT, EWT, IAET, and compromise penalty, in the amount of ₱177,178,654.02, inclusive of surcharges and interests.[12]

On November 12, 2021, petitioner paid portions of the deficiency taxes assessed in the FLD/FAN in the amount of ₱66,984,633.59, composed of the following:

Tax Type	Basic Tax	Interest	Total
IT	₱51,195,075.43	₱10,755,173.65	₱61,950,249.08[13]
VAT	1,374,010.96	325,697.06	1,699,708.02[14]
EWT	2,606,187.17	613,489.32	3,219,676.49[15]
Compromise penalties			115,000.00[16]
TOTAL AMOUNT PAID			**₱66,984,633.59**

On December 10, 2021, petitioner filed a protest-letter against the deficiency IAET assessment, and requested for a reinvestigation of said assessment. It attached therewith documents in support thereof.[17]

On March 17, 2022, petitioner received the Final Decision on Disputed Assessment (FDDA) Parts I and II with Audit Result/Assessment Notices, all dated March 14, 2022, denying its

10 Exhibit "P-9," Docket - Vol. III, pp. 803 to 815.

11 Par. 13, *Petition for Review*, vis-à-vis par. 2, *Answer*, Docket - Vol. I, pp. 8 and 578, respectively; Exhibit "R-9," BIR Records (Exhibit "R-13"), p. 822.

12 Exhibit "P-10," Docket - Vol. III, pp. 816 to 826; Exhibits "R-8" and "R-8-1," BIR Records (Exhibit "R-13"), pp. 811 to 821.

13 Exhibits "P-12" and "P-12-1," Docket - Vol. III, pp. 833 to 834.

14 Exhibits "P-13" and "P-13-1," Docket - Vol. III, pp. 835 to 836.

15 Exhibits "P-14" and "P-14-1," Docket - Vol. III, pp. 837 to 838.

16 Exhibits "P-15" and "P-15-1," Docket - Vol. III, pp. 839 to 840.

17 Exhibit "P-11," Docket - Vol. III, pp. 827 to 832.

1231

protest on the deficiency IAET assessment in the FLD/FAN.[18] In said FDDA, petitioner was still assessed deficiency IAET in the amount of ₱116,194,066.65, inclusive of surcharge, interest, and compromise penalty, broken down as follows:

Tax Type	Basic Tax	Interest up to June 30, 2022	Surcharge	Compromise Penalty	Total
IAET	₱80,397,095.20	₱15,647,697.65	₱20,099,273.80		₱116,144,066.65
Compromise penalty				₱50,000.00	50,000.00
TOTAL AMOUNT DUE	**₱80,397,095.20**	**₱15,647,697.65**	**₱20,099,273.80**	**₱50,000.00**	**₱116,194,066.65**

On April 18, 2022, petitioner posted its Petition for Review, docketed as CTA Case No. 10851,[19] to which respondent posted his *Answer* on September 19, 2022.[20] The case was initially raffled to the Court's First Division.

On February 9, 2023, the Pre-Trial Conference was held.[21]

On March 7, 2023, the parties filed their Joint Motion to Admit Attached Joint Stipulation of Facts and Issues,[22] attaching said Joint Stipulation of Facts and Issues (JSFI).[23] On May 9, 2023, the Court issued a Pre-Trial Order.[24]

Trial ensued during which, petitioner presented as witness: (1) its Treasurer, Jennifer Golde-Casiano,[25]; and (2) its External Tax Consultant, Ray Allen H. Silva.[26]

---

18 Exhibit "P-1," Docket - Vol. III, pp. 690 to 696; Exhibits "R-11," "R-12" and "R-12-1," BIR Records (Exhibit "R-13"), pp. 916 to 922.

19 Docket - Vol. I, pp. 6 to 23.

20 Docket - Vol. I, pp. 578 to 584.

21 Notice of Pre-Trial Conference dated December 6, 2022, Docket - Vol. I, pp. 596 to 598; Minutes of the hearing held on, and Order dated, February 9, 2023, Docket - Vol. I, pp. 648 to 650, and 652 to 654, respectively.

22 Docket - Vol. I, pp. 658 to 661.

23 Docket - Vol. I, pp. 662 to 670.

24 Docket - Vol. II, pp. 1172 to 1183.

25 Exhibit "P-27," Docket - Vol. II, pp. 701 to 713; Order dated April 25, 2023, Docket - Vol. II, pp. 1163 to 1164.

26 Exhibit "P-19," Docket - Vol. I, pp. 170 to 179; Order dated April 25, 2023, Docket - Vol. II, pp. 1163 to 1164.

1232

On May 16, 2023, petitioner filed its *Formal Offer of Evidence*,[27] to which respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on May 29, 2023.[28]

In the Resolution dated June 26, 2023,[29] the Court admitted petitioner's offered exhibits.

Meanwhile, in the Notice of Resolution dated May 30, 2023, this case was transferred from the First Division to the Third Division of the Court.[30]

To prove his defense, respondent presented his witness, RO Francis Elvin Ordonez.[31]

On October 12, 2023, Respondent's Formal Offer of Evidence was filed,[32] to which petitioner filed its Comment on the Respondent's Formal Offer of Evidence on October 20, 2023.[33]

Through Resolution dated January 18, 2024,[34] the pieces of evidence offered by respondent were admitted.

Under Minute Resolution dated March 18, 2024,[35] this case was submitted for decision, considering the respective filing of petitioner's Memorandum on February 21, 2024,[36] and respondent's Manifestation on February 28, 2024,[37] stating that he is adopting the arguments raised in his Answer as his Memorandum.

---

27 Docket – Vol. III, pp. 681 to 689.
28 Docket – Vol. III, pp. 1167 to 1169.
29 Docket – Vol. III, pp. 1174 to 1175.
30 Docket – Vol. III, p. 1171.
31 Exhibit "R-14," Docket Vol – I, pp. 632 to 641; Order dated, September 28, 2023, Docket – Vol. III, pp. 1177 to 1179.
32 Docket – Vol. III, pp. 1180 to 1186.
33 Docket – Vol. III, pp. 1188 to 1190.
34 Docket – Vol. III, pp. 1194 to 1195.
35 Minute Resolution dated March 18, 2024, Docket - Vol. III, p. 1201.
36 Docket – Vol. III, pp. 1202 to 1219.
37 Docket – Vol. III, pp. 1196 to 1198.

1233

ISSUE

Is petitioner liable for the deficiency IAET and compromise penalty for FY ending October 31, 2019 including its increments and interest in the amount of ₱116,194,066.65?[38]

ARGUMENTS

Petitioner argues that it is not subject to IAET under Section 29 of the 1997 National Internal Revenue Code (NIRC), as amended, for the following reasons: *one,* it is a publicly- held corporation; and *two,* it accumulated its earnings for the reasonable needs of the business to meet working capital requirements.

Given that the IAET assessment has no legal and factual basis, petitioner concludes that said assessment should be cancelled.

Respondent counters that petitioner improperly accumulated earnings and is liable for the deficiency IAET for FY ending October 31, 2019 under Section 29 of the NIRC, as amended. Respondent also claims that petitioner is liable for compromise penalty for its failure to pay the deficiency tax. Respondent finally maintains that the deficiency tax assessment is presumed correct where evidence to the contrary is wanting.

RULING

The Petition is granted.

The Court has exclusive appellate jurisdiction to review on appeal decisions of respondent in cases involving disputed assessments, among others. The aggrieved party must appeal respondent's decision within thirty (30) days from receipt thereof. Section 7(a)(1), in relation to Section 11 of Republic Act (RA) No. 1125,[39] as amended by RA No. 9282 respectively read:

SEC. 7. Jurisdiction. - The CTA shall exercise:

---

[38] See stipulation of Issue, JSFI, Docket – Vol. I, p. 663.

[39] An Act Creating the Court of Tax Appeals.

1234

> 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 or other laws administered by the Bureau of Internal Revenue;
> >
> > ...
>
> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> ....[40]

As alleged in its Petition for Review, on March 17, 2022, petitioner received the FDDA.[41] Counting thirty (30) days therefrom, petitioner had until April 16, 2022 to file an appeal before the Court. Since April 16, 2022, fell on a Saturday, the petition for review was timely filed on April 18, 2022 vesting the Court with jurisdiction over CTA Case No. 10851.

Next, the merits.

Respondent assessed petitioner for deficiency IAET for FY ending October 31, 2019, in the amount of ₱80,397,095.20. According to the former, the latter retained earnings as of October 31, 2019 exceeded the total amount which may be retained by it, with the following computation:[42]

Taxable Income for the year		₱ (33,444,490.00)
Add: Income subject to final tax		

---

[40] Boldfacing supplied. The above provisions are also provided in Section 3(a)(1), Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals.

[41] Paragraph 12, Petition for Review dated June 6, 2018. Docket (Vol. I), p. 12.

[42] Par. IV, Details of Discrepancies, FLD, Exhibit "R-8," BIR Records (Exhibit "R-13"), at p. 811; Exhibit "P-10," Docket - Vol. III, at p. 821.

1235

NOLCO	₱ -	
Interest exempt from tax	-	
Interest Income subjected to FWT	2,697,856.00	2,697,856.00
Total		₱ (30,746,634.00)
Less: Income Tax paid	₱ -	
Dividends declared/paid	-	-
Total		₱ (30,746,634.00)
Add: Retained earnings from prior years		865,416,586.00
Accumulated Earnings as of October 31, 2019		₱ 834,669,952.00
Less: Amount that may be retained		30,699,000.00
Improperly Accumulated Taxable Earnings		₱ 803,970,952.00
Tax Rate		10%
Basic Tax Due		**₱ 80,397,095.20**

Petitioner justifies the retention of earnings for FY ending October 31, 2019 faulted by respondent, insisting that said earnings would be used for the reasonable needs of its business, *i.e.*, to meet its working capital requirements; hence, exempted from IAET under Section 29 of the NIRC, as amended.

The Court agrees with petitioner.

Section 29(A) of the NIRC, as amended, imposes 10% IAET on improperly accumulated corporate[43] earnings. Nevertheless, Section 29(E) [44] thereof considers accumulation of said earnings as proper, when it would be utilized for the reasonable needs or *anticipated* needs of the business. As elaborated in Sections 2 and 3 of RR No. 2-2001:[45]

> SEC. 2. *Concept of Improperly Accumulated Earnings Tax (IAET).* – Pursuant to Section 29 of the Code, there is imposed for each taxable year, in addition to other taxes imposed under Title II of the Tax Code of 1997, a tax equal to 10% of the improperly accumulated taxable income of corporations formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting the earnings and profits of the corporation to accumulate instead of dividing them among or distributing them to the shareholders.

---

43 This does not include accumulated earnings of publicly-held corporations, banks and other non-bank financial intermediaries, and insurance companies. See Section 29(B)(2) of the NIRC, as amended.

44 Section 29 (E) Reasonable Needs of the Business. – For purposes of this Section, the term 'reasonable needs of the business' includes the reasonably anticipated needs of the business.

45 SUBJECT: Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997.

1236

...

The touchstone of the liability is the purpose behind the accumulation of the income and not the consequences of the accumulation. Thus, **if the failure to pay dividends is due to some other causes, such as the use of undistributed earnings and profits for the reasonable needs of the business, such purpose would not generally make the accumulated or undistributed earnings subject to the tax**. However, if there is a determination that a corporation has accumulated income beyond the reasonable needs of the business, the 10% improperly accumulated earnings tax shall be imposed.[46]

...

SEC. 3. *Determination of Reasonable Needs of the Business.* – Accumulation of earnings or profits (including undistributed earnings or profits of prior years) is unreasonable if it is not necessary for the purpose of the business, considering all the circumstances of the case. To determine the 'reasonable needs' of the business in order to justify an accumulation of earnings, these Regulations hereby adhere to the so-called **'Immediacy Test'** under American jurisprudence as adopted in this jurisdiction. **Accordingly, the term *'reasonable needs of the business'* are hereby construed to mean the immediate needs of the business, including reasonably anticipated needs. In either case, the corporation should be able to prove an immediate need for the accumulation of the earnings and profits, or the direct correlation of anticipated needs to such accumulation of profits.** Otherwise, such accumulation would be deemed to be not for the reasonable needs of the business, and the penalty tax would apply.

...

Revenue Audit Memorandum Order (RAMO) No. 1-00[47] was more exact in that undistributed income may be considered as properly accumulated if said profits is retained for working capital needed by the business:

XI. Audit of Minimum Corporate Income Tax and Improperly Accumulated Earnings Tax

...

B. Improperly Accumulated Earnings Tax

---

46 Boldfacing supplied.

47 Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000).

1237

In accordance with Section 29 (A) of the Tax Code, an improperly accumulated earnings tax equal to ten percent (10%) of the improperly accumulated taxable income is imposed for each taxable year on the improperly accumulated taxable income of each corporation identified under Section 27 (B) of the Tax Code.

The improperly accumulated earnings tax shall be determined as follows:

...

2. Determine the reasonableness of the accumulation of profits or earnings and if the same is required for the purposes of the business, considering all the circumstances of the case.

...

2.3 Require the taxpayer to submit documentary proof negating the clear preponderance of evidence that the profits were permitted to accumulate beyond the reasonable needs of the company's business. The accumulation of surplus for the reasonable needs of the business is not prevented if the purpose is not to prevent the imposition of the tax upon the shareholders. Undistributed income may be considered as properly accumulated in the following cases:

a. **The profit is retained for working capital needed by the business ...;**[48]

In turn, *Richardson Steel Corporation, et al. v. Union Bank of the Philippines*[49] explained the term "working capital" in this wise:

"**Working capital" is a financial metric that represents operating liquidity of a business. Operating liquidity means the capability of the company to meet its near-term obligations as they come due**. Otherwise stated, along with the company's fixed assets, such as property, plant and equipment, working capital forms part of the operating capital that funds maturing short-term debt and operational expenses.[50]

To demonstrate that its accumulated profits for FY ending October 31, 2019 was retained for working capital needed by the

---

48 Bolfacing supplied.
49 G.R. No. 224235, June 28, 2021
50 Boldfacing supplied.

1235

business, petitioner presented its Audited Financial Statements (AFS) covering the years 2019 and 2018, with the following details:[51]

	October 31	
	2019	**2018**
Current Assets		
Cash in banks	596,508,144	472,569,995
Receivables	215,702,863	742,102,628
Current portion of finance lease receivables	75,280,656	34,428,757
Inventories	234,978,475	54,376,874
Loan to a related party	-	200,000,000
Other current assets	421,025,752	412,805,500
Total Current Assets	*1,543,495,890*	*1,916,283,754*
Current Liabilities		
Accounts payable and accrued expenses	1,048,034,667	1,578,877,189
Current portion of		
Contract and refund liabilities	326,885,957	-
Deferred revenue	-	285,867,589
Accrued compensated absences	1,539,312	-
Total Current Liabilities	*1,376,459,936*	*1,864,744,778*

Cyanamid Philippines, Inc. v. The Court of Appeals, et al.,[52] explained that the ratio of current assets to current liabilities may be used to determine the sufficiency of working capital.

Petitioner's AFS[53] as of October 31, 2019 show petitioner's total current assets amount to ₱1,543,495,890.00. Meanwhile, the same AFS show that its total current liabilities are worth ₱1,376,459,936.00, consisting of accounts payable and accrued expenses and current portion of contract and refund liabilities and accrued compensated absences. By deducting petitioner's 2019 current assets of ₱1,543,495,890.00 with its 2019 current liabilities of ₱1,376,459,936.00, one might be led to conclude that petitioner had a positive working capital to the extent of ₱167,035,954.00. Yet, this picture is, at best, incomplete.

To be precise, if the dividends were declared by petitioner for FY ending October 31, 2019, in the amount of ₱803,970,952.00, then its total

---

51 Exhibit "P-5," Docket - Vol. III, pp. 711 to 776.
52 G.R. No. 108067, January 20, 2000.
53 Exhibit "P-5-5," Docket - Vol. III, p. 723.

1239

current liabilities for said year would balloon to ₱2,180,430,888.00 (₱1,376,459,936.00+₱803,970,952.00). In other words, should said declaration push through, then petitioner would be placed under a *negative* working capital for FY ending October 31, 2019. This justifies petitioner's retention of ₱803,970,952.00 to meet its working capital requirement for said year. To illustrate:

2019			
	Financial Statements ending October 31, 2019	Dividends to be declared per BIR	Revised Values
Current Assets	₱1,543,495,890.00		₱1,543,495,890.00
Current Liabilities	₱1,376,459,936.00	₱803,970,952.00	**₱2,180,430,888.00**[54]

In addition, witness Jennifer Golde-Casiano testified that petitioner barely had enough liquidity to cover its short-term liabilities in the following twelve (12)-month period. She explained that petitioner would be in a negative working capital position if dividends were declared and paid in 2019.[55]

Most importantly, even witness RO Francis Elvin Ordonez admitted in open court that petitioner's working capital is insufficient for FY ending October 31, 2019, and therefore, should not be burdened by deficiency IAET under Section 29 of the NIRC, as amended:

> ATTY. CARBONELL
>
> Your Honor, our question was, in the said audited financial statements if they were able to conduct a review of the working capital ratio of the petitioner if it can be subjected to IA[ET].
>
> ...
> JUSTICE MANAHAN
>
> Did you examine the working capital ratio, the question is answerable by yes or no.
>
> MR. ORDONEZ
>
> A Yes, Your Honor.

---

54 Boldfacing supplied.
55 Exhibit "P-27" (Q&A Nos. 19 to 21), Docket - Vol. III, p. 708. s

124

ATTY. CARBONELL

The follow up question, Your Honors.

Q Based on your review of the working capital ratio of the petitioner, can it be subjected to IA[ET]?

MR. ORDONEZ

A Actually, during the 2019 no, for the fiscal year ending October 31, 2019 no.

...

ATTY. CAYETANO

Q You mentioned earlier during your Cross-Examination that the company during the time of that audit for October [31, 20]19 is not subjectable to IA[ET], correct?

MR. ORDONEZ

A I confirm that the working capital is not sufficient.

ATTY. CAYETANO

Q And why was this still subject to IA[ET] for your audit this taxable year?

MR. ORDONEZ

A Because apparently according to Revenue Regulations 2-01 if I'm not mistaken, the taxpayer has 1 year after the close of the taxable period to declare dividends. Then after, if it is not able to declare dividends, the 15 days after that one year period, then it shall pay IA[ET]. That is why I still assessed IA[ET] after the close of the taxable year.[56]

All these observations yield a sole conclusion—petitioner's earnings for FY ending October 31, 2019 were properly retained for the working capital needed by the business. Thus, petitioner should not be subjected to IAET under Section 29 of the NIRC, as amended.

It is true that petitioner should be exempted from IAET under Section 29 of the NIRC, as amended. However, petitioner is wrong in arguing that it should be exempted from IAET because it is a publicly-held corporation.

---

56 Transcript of Stenographic Notes dated September 28, 2023, pp. 10,11 and 13. Boldfacing supplied.

1241

Petitioner anchors its exemption from the imposition of IAET on Section 29 (b) (2) (a) of the NIRC, as amended, which states that the IAET shall not apply to, among others, publicly-held corporations:

> SEC. 29. *Imposition of Improperly Accumulated Earnings Tax.* —
>
> (B) *Tax on Corporations Subject to Improperly Accumulated Earnings Tax.* –
>
> . . .
>
> (2) **Exceptions. — The improperly accumulated earnings tax as provided for under this Section shall not apply to:**
>
> **(a) Publicly-held corporations;**
>
> . . .[57]

Significantly, Section 4 of Revenue Regulations (RR) No. 2-2001[58] defines the term closely-held corporations for purposes of IAET imposition. In turn, said RR clarifies the term publicly-held corporations as those corporation at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by at least twenty-one (21) or more individuals. Said RR, too, states that stock owned directly or indirectly by or for a corporation, shall be considered as being owned proportionately by its shareholders, partners or beneficiaries:

> SEC. 4. Coverage. The 10% Improperly Accumulated Earnings Tax (IAET) is imposed on improperly accumulated taxable income earned starting January 1, 1998 by domestic corporations as defined under the Tax Code and which are classified as closely-held corporations. Provided, however, that Improperly Accumulated Earnings Tax **shall not apply** to the following corporations:
>
> . . .
>
> **c. Publicly-held corporations;**
>
> . . .

57 Boldafcing supplied.
58 SUBJECT: Implementing the Provision on Improperly Accumulated Earnings Tax Under Section 29 of the Tax Code of 1997.

1242

> For purposes of these Regulations, closely-held corporations are those corporations **at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals. Domestic corporations not falling under the aforesaid definition are, therefore, publicly-held corporations.**
>
> **For purposes of determining whether the corporation is closely held corporation, insofar as such determination is based on stock ownership, the following rules shall be applied:**
>
> (1) ***Stock Not Owned by Individuals.*** **- Stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries.**
>
> ... [59]

Indeed, to be considered as a publicly-held corporation under Section 4 of RR No. 2-2001, one must look into the direct or indirect ownership of the corporation. If at least 50% in value of the outstanding capital or at least 50% of the total combined voting power of all classes of stock entitled to vote are owned by at least twenty-one (21) or more individuals who own said shares, the same is classified as a publicly-held corporation. If a share is owned by a corporate shareholder, the same shall be considered as being owned proportionately by the corporation's shareholders, partners or beneficiaries.

In this case, the Court looks into the direct or indirect ownership of shares in petitioner. Petitioner presents Schedule 10 and Schedule 11 of its Annual Income Tax Return for 2018/2019 which states that the capital stock of petitioner is 30,699,000 and that the registered name of the shareholders and their capital contributions are as follows:

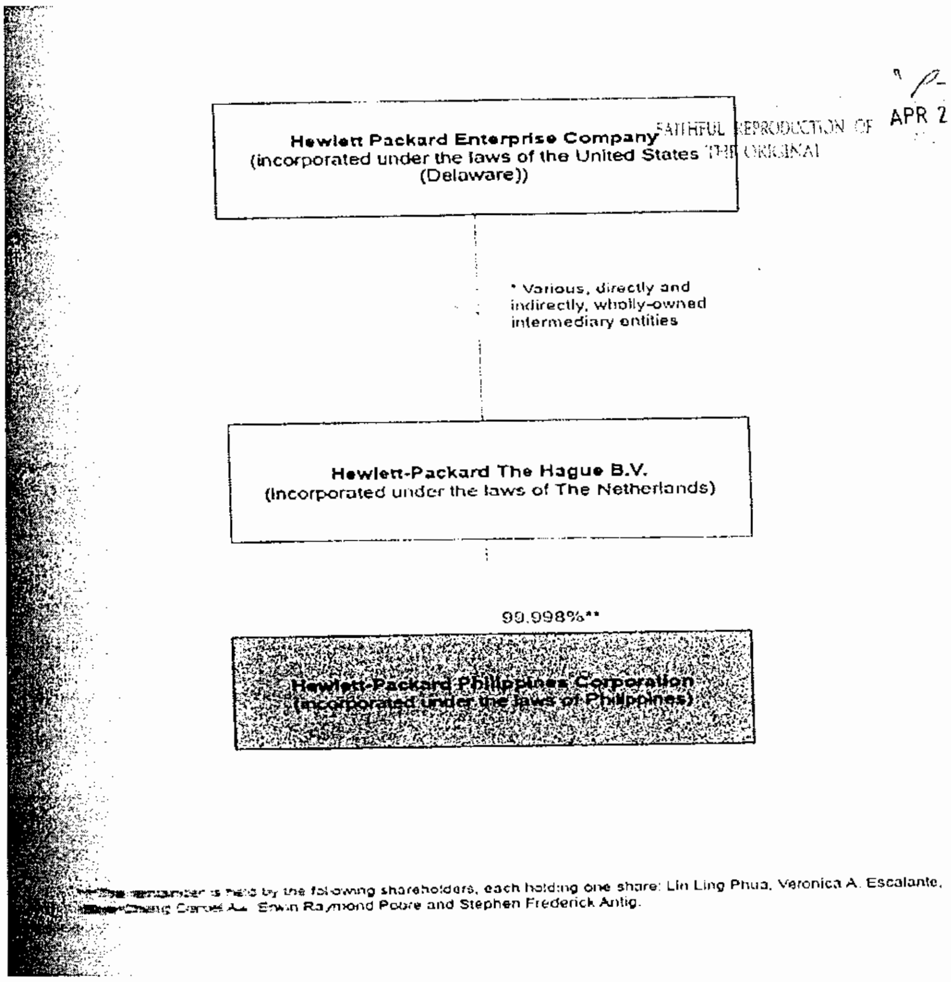
HP THE HAGUE B.V.	30,698,500
VERONICA ESCALANTE	1
SHYE CHENG DANIEL AW	1
EDWIN RAYMOND POBRE	1
LIN LING PHUA	1
STEPHEN FERDERICK ANTIG	1

[59] Boldfacing supplied.

1243

Since there are less than 21 shareholders, petitioner can only qualify as a publicly-held corporation if HP The Hague B.V. is a publicly-held corporation itself, since HP The Hague B.V. "shall be considered as being owned proportionately by the corporation's shareholders, partners or beneficiaries."

Petitioner alleges that HP The Hague B.V. is a publicly-held corporation because its ultimate parent company HPE is a publicly-held corporation. What petitioner claims is that its ultimate parent company Hewlett Packard Enterprise Company (HPE), is a publicly-held corporation through the diagram presented to the Court as reproduced below:



Petitioner presented the following documents to prove that HPE is a publicly-held corporation on the New York Stock Exchange with 57,374 stockholders on record as of October 31, 2019:

1. Hewlett Packard Enterprise Company Organizational Chart for Hewlett-Packard Philippines Corporation as of October 31, 2019 and September 28, 2022;[60]

2. Hewlett Packard Enterprise Company Form-10K For the Fiscal Year ended October 31, 2021,[61] with an entry under "Name of each exchange on which registered" of "New York Stock Exchange";[62]

3. HPE's Statistical Summary Report Totals by Ownership Code as of October 31, 2019;[63]

4. Apostilled Officer's Certificate issued on March 29, 2023 by HPE's Senior Vice President, General Counsel and Corporate Secretary, Rishi Varma;[64]

5. Apostilled Transfer Agent's Certificate issued on March 28, 2023 by Equinti Trust Company, registered and duly-appointed transfer agent of HPE responsible for maintaining its shareholder records;[65]

6. Beneficial Ownership Table from the HP Proxy Statement 2020 submitted by HPE to the United States Securities and Exchange Commission for the year 2020;[66] and

7. HPE's Statistical Summary Report Totals by Ownership Code.[67]

While it appears that HPE, the parent company is publicly-held, there is however, no document that would show that HPE is a shareholder of HP The Hague B.V. The publicly-held status of HPE cannot be appreciated in favor of Hewlett-Packard The Hague B.V. because there is no showing that HPE is a shareholder of Hewlett-Packard The Hague B.V.

Therefore, petitioner failed to prove the nexus between petitioner's shareholder, Hewlett-Packard The Hague B.V. and its alleged ultimate parent company, HPE. Absent any evidence, the bare assertion of petitioner that it is a publicly-held corporation cannot prevail.

---

60 Exhibit "P-22," Docket - Vol. III, p. 852.
61 Exhibit "P-23," Docket - Vol. III, pp. 856 to 1046.
62 Exhibit "P-23-1," Docket - Vol. III, p. 856.
63 Exhibit "P-25," Docket - Vol. III, p. 1166.
64 Exhibit "P-20," Docket - Vol. III, pp. 844 to 850.
65 Exhibit "P-21," Docket - Vol. III, pp. 853 to 855.
66 Exhibit "P-24," Docket - Vol. III, pp. 1047 to 1165.
67 Exhibit "P-25," Docket - Vol. III, p. 1166.

In fine, the Petition for Review is granted because it was able to prove that its earnings were accumulated as working capital for the reasonable needs of its business; thus, exempted from IAET under Section 29 of the NIRC, as amended.

WHEREFORE, the Petition for Review filed by Hewlett-Packard Philippines Corporation is **GRANTED**. Accordingly, the deficiency Improperly Accumulated Earnings Tax and Compromise Penalty for the fiscal year ending October 31, 2019, in the amount of ₱116,194,066.65, as found in the Final Decision on Disputed Assessment, are **CANCELLED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue or any person duly acting on his behalf is **ENJOINED** and **PROHIBITED** from collecting said amount from petitioner.

SO ORDERED.

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

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
Associate Justice

ATTESTATION

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice
Chairperson

1246

CERTIFICATION

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

MA. BELEN M. RINGPIS- LIBAN
Acting Presiding Justice

1247