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

**SECOND DIVISION**

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| **ITHIEL CORPORATION,** *Petitioner,* | **CTA Case No. 9591** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: JUL 06 2020 4:00 PM |

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# DECISION

***BACORRO-VILLENA, J.:***

At bar is a Petition for Review[1] filed by Ithiel Corporation **(Ithiel/petitioner)** pursuant to Rule 8, Section 3(a)[2] of the Revised Rules of the Court of Tax Appeals **(RRCTA)**. It seeks the reversal of the Final Decision on Disputed Assessment[3] **(FDDA)**, dated 06 April 2017, of respondent Commissioner of Internal Revenue **(CIR/respondent)**. The FDDA found petitioner liable for deficiency taxes, inclusive of interest, in the total amount of Three Million Five Hundred Eighty-

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1 Filed on 16 May 2017, Division Docket, pp. 12-25.

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

3 Exhibit "P-16", Division Docket, pp. 251-255.

Five Thousand Five Hundred Seventy-One Pesos and Thirty-Nine Centavos (₱3,585,571.39), broken down as follows:

| Tax Type | Basic | Interest | Total |
|---|---|---|---|
| Income Tax | ₱ 746,834.32 | ₱1,358,624.63 | ₱ 2,105,458.95 |
| Value-Added Tax | 374,182.31 | 697,311.80 | 1,071,494.11 |
| Expanded Withholding Tax | 21,232.79 | 39,684.95 | 60,917.75 |
| Withholding Tax on Compensation | 121,190.52 | 226,510.06 | 347,700.58 |
| TOTAL | | | ₱ 3,585,571.39 |

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at #770 E. Rodriguez Extension, Malibay, Pasay City. Its primary business purpose is to build, erect, lease, or otherwise acquire, manage, occupy, maintain, operate and deal in market, stalls and slaughterhouses, office buildings and lands, building for market stalls and slaughterhouse and business structures of all kinds for the accommodation of marketers, producers, service providers and the public client, consumers or buyers. Petitioner is also duly registered with the Bureau of Internal Revenue (**BIR**) – Revenue District Office (**RDO**) No. 51 of Pasay City under Revenue Region (**RR**) No. 8, Makati City, Philippines.[4]

Respondent CIR, on the other hand, is the chief official of the BIR; the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes.[5]

## FACTS OF THE CASE

On 02 September 2008, petitioner received Letter of Authority (**LOA**) No. 2007-00044161[6], dated 22 August 2008, authorizing Revenue Officer Flordeliza Ferrer (**RO Ferrer**) and Group Supervisor Rufina

[4] Joint Stipulation of Facts and Simplification of Issues (JSFSI) dated 13 December 2017, id., pp. 307-308.
[5] Id., p. 308.
[6] Exhibit "P-1", id., p. 170.

Baldonasa (**GS Baldonasa**) of RDO No. 51, Pasay City-RR No. 8, Makati City to examine/audit petitioner's internal revenue taxes for the period 01 January 2007 to 31 December 2007.[7]

On 01 April 2009, in compliance with the BIR's directive, petitioner submitted the required documents and records (as evidenced by petitioner's transmittal letter dated 16 March 2009).[8]

On 22 May 2009, petitioner received BIR's Reassignment Notice[9], through the Office of the Regional Director, RR No. 8, revalidating LOA No. 00044161 due to the replacement of the previously assigned RO Ferrer and GS Baldonasa. RO Alona Marie B. Alegre-Sison[10] (**RO Sison**) and GS Enrico Z. Gesmundo (**GS Gesmundo**) were designated as the new authorized representatives to continue the audit examination.[11]

On 26 June 2009, petitioner received a copy of BIR's Notice Before Subpoena *Duces Tecum* (**subpoena**) for the alleged failure to present/submit the necessary records for examination on the claim of RO Sison under GS Gesmundo.[12] In a letter-reply[13] to the subpoena (covering LOA No. 00044161), petitioner transmitted additional documents for the BIR's examination and evaluation. It also informed the BIR that its accounting books and records were ready and available for inspection.[14]

On 28 May 2010, petitioner received a Notice of Informal Conference (**NIC**). Subsequently, on 05 October 2010, petitioner received an amended NIC.[15] In both notices, petitioner was reminded of the result of the tax audit which revealed various deficiency taxes. Likewise, it was requested to appear in an informal conference before the BIR.[16]

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7 JSFSI, id., p. 308.
8 Id.
9 Dated 19 May 2009, Exhibit "P-2", id., p. 171.
10 Also referred to as Alona Maria B. Alegre-Sison.
11 JSFSI, supra, pp. 308-309.
12 Id., p. 309.
13 Dated 13 July 2009.
14 Petition for Review dated 15 May 2017, id., p. 15; Answer dated 14 July 2017, id., p. 147.
15 Dated 30 September 2010.
16 Id.

On 29 December 2010, petitioner received a copy of the Preliminary Assessment Notice[17] **(PAN)** with attached Details of Discrepancies of its alleged deficiency Income Tax **(IT)**, Value-Added Tax **(VAT)**, Expanded Withholding Tax **(EWT)**, and Withholding Tax on Compensation **(WTC)** for taxable year **(TY)** 2007, inclusive of interest in the aggregate amount of **₱8,628,450.78**.

On 20 January 2011, petitioner received copies of Assessment Notices for IT[18], VAT[19], EWT[20] and WTC[21], together with the Formal Assessment Notice[22] **(FAN)** with the Details of Discrepancies, as follows:

| Tax Type | Basic | Interest | Total |
|---|---|---|---|
| Income Tax | ₱4,673,727.52 | ₱2,648,018.77 | ₱7,321,746.29 |
| Value-Added Tax | 251,392.00 | 153,590.18 | 404,982.18 |
| Expanded Withholding Tax | 508,204.31 | 313,276.63 | 821,480.94 |
| Withholding Tax on Compensation | 121,190.52 | 74,706.48 | 195,897.00 |
| **TOTAL** | | | **₱8,744,106.41** |

On 18 February 2011, petitioner filed its Protest to the FAN[23] with Reconciliation of the Deficiency Tax, Analysis of Undeclared Income, Analysis on WTC, Summary Alphalist of Withholding Taxes 2007 and Annual Income Tax Return **(ITR)** 2007.[24]

On 24 May 2011, petitioner received a Letter[25] informing it that the case docket was assigned to RO Ricky G. Depillo **(RO Depillo)** under GS Cherryflor Dela Cruz **(GS Dela Cruz)** and directing petitioner to submit documents to support its protest. On 02 June 2011, petitioner submitted additional documents.[26]

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17 Dated 21 December 2010, Exhibit "P-3", id., pp. 172-175.
18 Exhibit "P-4", id., p. 176.
19 Exhibit "P-5", id., p. 177.
20 Exhibit "P-6", id., p. 178.
21 Exhibit "P-7", id., p. 179.
22 Dated 14 January 2011; Exhibit "P-8", id., pp. 180-185.
23 Dated 17 February 2010; see Exhibit "P-9", id., pp. 186-215.
24 Petition for Review, id., pp. 16-17; Answer, id., p. 147.
25 Exhibit "P-10", id., p. 216.
26 Exhibit "P-11", id., pp. 217-247.

On 18 April 2017, petitioner also received a copy of the FDDA[27] that respondent issued through Glen A. Geraldino, Regional Director of RR No. 8, denying the administrative protest and issued an Amended Assessment Notices for IT[28], VAT[29] and EWT[30], all covering TY 2007.[31]

## PROCEEDINGS BEFORE THE FIRST DIVISION

On 16 May 2017, petitioner filed the instant Petition for Review before this Court.[32] After the Court granted his motions for extension of time to file the same, respondent filed his Answer on 14 July 2017.[33]

Later, after the parties submitted their pre-trial briefs, they also submitted their Joint Stipulation of Facts and Simplification of Issues **(JSFSI)**.[34] On 19 March 2018, the Court issued a Pre-Trial Order.[35]

Meanwhile, petitioner filed a Motion to Commission an Independent Certified Public Accountant[36] and moved for the commissioning of Florencio Y. Rojas, Jr. **(Rojas)** as an Independent Certified Public Accountant **(ICPA)**. Finding merit on the said motion, the Court granted the same and Rojas thereafter took his Oath of Commission.[37]

Trial thereafter ensued where petitioner presented the testimony of its witnesses, namely: (1) William M. Ligot, Jr. **(Ligot)**, petitioner's Tax Specialist; and (2) Rojas, the court-commissioned ICPA.

On the witness stand, Ligot identified his Judicial Affidavit[38] where his testimony revolved around petitioner's receipt of several letters from the BIR relative to the subject assessment and petitioner's

27 Dated 06 April 2017; Exhibit "P-16", id., pp. 251-255.
28 Exhibit "P-12", id., p. 248.
29 Exhibit "P-13", id., p. 249.
30 Exhibit "P-14", id., p. 250.
31 Petition for Review, id., p. 17; Answer, id., p. 147.
32 Dated 15 May 2017, id., pp. 12-25.
33 Id., pp. 147-153.
34 Id., pp. 307-311.
35 Id., pp. 329-335.
36 Id., pp. 314-316.
37 See Order dated 22 March 2018, id., pp. 341-342.
38 Exhibit "P-17", id., pp. 158-169.

submission of documents in support of its position against the assessment. Thereafter, respondent conducted his cross examination.[39]

As for Rojas, he identified his Judicial Affidavit[40] and his Report[41] containing his findings on petitioner's tax liabilities. Respondent did not conduct any cross examination.[42]

Thereafter, on 09 July 2018, petitioner filed its Formal Offer of Evidence (**FOE**).[43] After respondent filed his Comment,[44] the Court issued a Resolution[45] dated 22 August 2018 admitting its documentary evidence.[46]

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39 TSN dated 24 April 2018.
40 Exhibit "P-19", Division Docket, pp. 362-398.
41 Exhibit "P-18", ICPA Report.
42 See also TSN dated 07 June 2018.
43 Division Docket, pp. 404-436.
44 Id., pp. 437-438.
45 Id., pp. 443-445.
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| Exhibit | Description |
|---|---|
| **P-1** | Copy of the Letter of Authority (LOA) dated August 22, 2008 covering taxable year 2007 with No. 2007-00044161. |
| **P-2** | Copy of the Reassignment Notice dated May 19, 2009. |
| **P-3** | Copy of the Preliminary Assessment Notice (PAN) covering taxable year 2007 dated December 1, 2010 *(per Resolution dated 22 August 2018, the Court noted that document identified and actually marked is dated 21 December 2010).* |
| **P-4** | Assessment Notice for Income Tax (IT) covering taxable year 2007. |
| **P-5** | Assessment Notice for Value[-]Added Tax (VAT) covering taxable year 2007. |
| **P-6** | Assessment Notice for Expanded Withholding Tax (EWT) covering taxable year 2007. |
| **P-7** | Assessment Notice for Withholding Tax (WT) covering taxable year 2007. |
| **P-8** | AN-Formal Assessment Notice issued by the BIR for taxable year 2007 for deficiency Income Tax, Value[-]Added Tax and Expanded Withholding Tax and Withholding Tax on Compensation dated January 14, 2011. |
| **P-9** | Administrative Protest dated February 17, 2010 (should be February 17, 2011). |
| **P-10** | BIR Notice dated May 24, 2011. |
| **P-11** | Ithiel Corporation Letter dated June 2, 2011. |
| **P-12** | Amended Assessment Notices for Income Tax covering taxable year 2007 dated April 6, 2017. |
| **P-13** | Amended Assessment Notices for Value[-]Added Tax covering taxable year 2007 dated April 6, 2017. |
| **P-14** | Amended Assessment Notices for Expanded Withholding Tax covering taxable year 2007 dated April 6, 2017. |
| **P-15** | Judicial Affidavit of Florencio Y. Rojas, Jr. dated January 18, 2018. |
| **P-15-1** | Signature of Florencio Y. Rojas, Jr.. |
| **P-16** | Final Decision on Disputed Assessment dated April 6, 2017. |
| **P-17** | Judicial Affidavit of William M. Ligot, Jr. dated November 27, 2017. |
| **P-17-1** | Signature of William M. Ligot, Jr.. |

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| **P-18** | ICPA Report of Florencio Y. Rojas, Jr. dated May 5, 2018. |
| **P-18-1** | Signature of Florencio Y. Rojas, Jr.. |
| **P-19** | Judicial Affidavit of Florencio Y. Rojas, Jr. dated June 1, 2018. |
| **P-19-1** | Signature of Florencio Y. Rojas, Jr.. |
| **P-20** | One Portable USB storage – CTA Case 9591. |
| **P-20-1** | Transmittal Letter dated May 5, 2018 *(per Resolution dated August 22, 2018, the Court noted that the document actually marked is the first page of the ICPA Report but nevertheless acknowledged that said transmittal letter is in the records of the case).* |
| **ICPA Exhibit P-18** | Certification issued by the Securities and Exchange Commission dated March 13, 1995. |
| **ICPA Exhibit P-18.1** | Articles of Incorporation [of] Ithiel Corporation. |
| **ICPA Exhibit P-18.2** | By-Laws of Ithiel Corporation. |
| **ICPA Exhibit P-19** | Certificate of Filing Amended Articles of Incorporation of Ithiel Corporation dated October 7, 2016. |
| **ICPA Exhibit P-19.1** | Amended Articles of Incorporation of Ithiel Corporation. |
| **ICPA Exhibit P-20** | BIR Certificate of Registration OCN No. 9RC0000848899E dated February 6, 2017. |
| **ICPA Exhibit P-20.1** | BIR Certificate of Registration OCN No. RC0000808337 with Registration Date August 2, 2002. |
| **ICPA Exhibit P-20.2** | BIR Certificate of Registration OCN No. 4RC0000659154 with Registration Date October 29, 2003. |
| **ICPA Exhibit P-20.3** | BIR Certificate of Registration OCN No. 3RC0000861817 with Registration Date August 23, 2004. |
| **ICPA Exhibit P-21** | Permit to [U]se Computerized Accounting System with Permit No. 051-CBA-030306-000004 dated March 3, 2006. |
| **ICPA Exhibit P-22** | Notice for Inclusion as Top 20,000 Private Corporation dated January 9, 2009. |
| **ICPA Exhibit P-23** | BIR Certification of Enrollment in BIR Electronic Filing and Payment System dated April 26, 2018. |
| **ICPA Exhibit P-24** | Ithiel Corp. Annual Income Tax Return Manually for year 2007 Filed on April 15, 2008. |
| **ICPA Exhibit P-24.1** | Ithiel Corp. Annual Income Tax Return for year 2007 Electronically Filed April 15, 2008 with Filing Reference No. 120800002187342. |
| **ICPA Exhibit P-24.2** | Amended Annual Income Tax Return Manually Filed on June 23, 2008. |
| **ICPA Exhibit P-25** | First (1st) Quarter Income Tax Return for the year 2007 Filed on May 30, 2007. |
| **ICPA Exhibit P-25.1** | Amended First (1st) Quarter Income Tax Return for the year 2007 Filed on November 27, 2007. |
| **ICPA Exhibit P-25.2** | Second (2nd) Quarter Income Tax Return for the year 2007 Filed on August 29, 2007. |
| **ICPA Exhibit P-25.3** | Amended Second (2nd) Quarter Income Tax Return for the year 2007 Filed on November 27, 2007. |
| **ICPA Exhibit P-25.4** | Third (3rd) Quarter Income Tax Return for the year 2007 Filed November 29, 2007. |
| **ICPA Exhibit P-26** | First (1st) Quarter Value[-]Added Tax (VAT) Returns for the year 2007 Filed on April 25, 2007. |
| **ICPA Exhibit. P-26.1** | Second (2nd) Quarter Value[-]Added Tax (VAT) Returns for the year 2007 Filed on July 25, 2007. |
| **ICPA Exhibit P-26.2** | Third (3rd) Quarter Value[-]Added Tax (VAT) Returns Filed on October 25, 2007. |
| **ICPA Exhibit P-26.3** | Fourth (4th) Quarter Value[-]Added Tax (VAT) Returns [Filed] on February 12, 2007 (per Resolution dated 22 August 2018, the Court noted that document shows that the date of filing is actually January 24, 2008). |

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| **ICPA Exhibit P-27** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) for January 2007 Filed on February 12, 2007. |
| **ICPA Exhibit P-27.1** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For December 2006 filed on February 28, 2007. |
| **ICPA Exhibit P-27.2** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For December 2006 Filed on February 28, 2007. |
| **ICPA Exhibit P-27.3** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For February 2007 Filed on March 12, 2007. |
| **ICPA Exhibit P-27.4** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For March 2007 Filed on April 10, 2007. |
| **ICPA Exhibit P-27.5** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For April 2007 Filed on May 10, 2007. |
| **ICPA Exhibit P-27.6** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For May 2007 Filed on June 12, 2007. |
| **ICPA Exhibit P-27.7** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For June 2007 Filed on July 10, 2007. |
| **ICPA Exhibit P-27.8** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For July 2007 Filed on August 10, 2007. |
| **ICPA Exhibit P-27.9** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For August 2007 Filed on September 10, 2007. |
| **ICPA Exhibit P-27.10** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For September 2007 Filed on October 10, 2007. |
| **ICPA Exhibit P-27.11** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For October 2007 Filed on November 8, 2007. |
| **ICPA Exhibit P-27.12** | Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For November 2007 Filed on December 8, 2007. |
| **ICPA Exhibit P-27.13** | Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For December 2007 Filed on January 15, 2008.<br>Monthly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601E) For December 2007 Filed on January 11, 2008. |
| **ICPA Exhibit P-28** | Annual Informational Return of Creditable Income Taxes Withheld (BIR Form No. 1604E) for the year 2007 Filed on February 29, 2008. |
| **ICPA Exhibit P-29** | Alphalist of Payees Subject to Expanded Withholding Tax (BIR Form 1604E – Schedule 4) as of December 31, 2007. |
| **ICPA Exhibit P-30** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For January 2007 Filed on February 12, 2007. |
| **ICPA Exhibit P-30.1** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For February 2007 Filed on March 12, 2007. |
| **ICPA Exhibit P-30.2** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For March 2007 Filed on April 10, 2007. |
| **ICPA Exhibit P-30.3** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For April 2007 Filed on May 10, 2007. |
| **ICPA Exhibit P-30.4** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For May 2007 Filed on June 12, 2007 |
| **ICPA Exhibit P-30.5** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For June 2007 Filed on July 10, 2007. |
| **ICPA Exhibit P-30.6** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For July 2007 Filed on August 10, 2007. |
| **ICPA Exhibit P-30.7** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For August 2007 Filed on September 10, 2007. |
| **ICPA Exhibit P-30.8** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For September 2007 Filed on October 10, 2007. |

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| **ICPA Exhibit P-30.9** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For October 2007 Filed on November 8, 2007. |
| **ICPA Exhibit P-30.10** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For November 2007 Filed on December 8, 2007. |
| **ICPA Exhibit P-30.11** | Monthly Remittance Return of Income Taxes [W]ithheld on Compensation (BIR Form 1601C) For December 2007 Filed on January 11, 2008. |
| **ICPA Exhibit P-31** | Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form 1604CF) for Year 2007 Filed on January 29, 2008. |
| **ICPA Exhibit P-32** | Alphalist of Employees as of December 31, 2007. |
| **ICPA Exhibit P-33** | Checklist of Requirements attached to Letter of Authority Dated August 27, 2008. |
| **ICPA Exhibit P-34** | Notice of Informal Conference Received May 28, 2010. |
| **ICPA Exhibit P-35** | Amended Notice of Informal Conference Dated September 30, 2010. |
| **ICPA Exhibit P-36** | Letter dated March 14, 2011 with BIR Payment Form (BIR Form No. 605) and Related Filing Reference and Payments Details. |
| **ICPA Exhibit P-37** | Professional Fees General Ledger for Taxable Year 2007 for San Pedro, Laguna. |
| **ICPA Exhibit P-37.1** | Professional Fees General Ledger for Taxable Year 2007 for Alaminos. |
| **ICPA Exhibit P-37.2** | Professional Fees General Ledger for Taxable Year 2007 for Dapitan. |
| **ICPA Exhibit P-38** | Salaries and Wages General Ledger for Taxable Year 2007 For San Pedro, Laguna. |
| **ICPA Exhibit P-38.1** | Salaries and Wages General Ledger for Taxable Year 2007 For Alaminos. |
| **ICPA Exhibit P-38.2** | Salaries and Wages General Ledger for Taxable Year 2007 For Dapitan. |
| **ICPA Exhibit P-39** | Summary of Various BIR Form 2307 Signed by Payor and Payee For Taxable Year 2007. |
| **ICPA Exhibit P-39.1 to P-39.3** | Various Certificates of Creditable Tax Withheld at Source (BIR Form 2307) signed by both Payor and Payee For the Taxable Year 2007. |
| **ICPA Exhibit P-40** | Summary of Various BIR Forms 2307 Signed by Payor only For Taxable Year 2007. |
| **ICPA Exhibit P-40.1 to P-40.364** | Various Certificates of Creditable Tax Withheld at Source (BIR Form 2307) signed by the Payor only For the Taxable Year 2007. |
| **ICPA Exhibit P-41** | Summary of various unsigned BIR Forms 2307 For Taxable Year 2007 *(per Resolution dated 22 August 2018, the Court noted that while only "ICPA Exhibit P-41" and "ICPA Exhibit P-41.1" were offered, the documents identified and pre-marked are "ICPA Exhibit P-41 to P-41.3").* |
| **ICPA Exhibit P-41.1** | Various unsigned Certificates of Creditable Tax Withheld at Source (BIR Form 2307) For the Taxable Year 2007 *(per Resolution dated 22 August 2018, the Court noted that while only "ICPA Exhibit P-41" and "ICPA Exhibit P-41.1" were offered, the documents identified and pre-marked are "ICPA Exhibit P-41 to P-41.3").* |
| **ICPA Exhibit P-42** | Summary of Various BIR Forms 2307 Not Under Ithiel's Registered Name For Taxable Year 2007. |
| **ICPA Exhibit P-42.1 to P-42.168** | Various Certificates of Creditable Tax Withheld at Source (BIR Form 2307) Not Under Ithiel's Registered Name For Taxable Year 2007. |
| **ICPA Exhibit P-43** | General Ledger for Transactions Listing in Functional Currency For Taxable Year 2007 For San Pedro, Laguna. |

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| **ICPA Exhibit P-43.1** | General Ledger for Transactions Listing in Functional Currency for Taxable Year 2007 For Alaminos. |
| **ICPA Exhibit P-43.1** | General Ledger for Transaction Listing in Functional Currency for Taxable Year 2007 for Dapitan *(per Resolution dated 22 August 2018, Court noted that "ICPA Exhibit P-43.1" was offered twice while the second "ICPA Exhibit P-43.1" was identified and pre-marked as "ICPA Exhibit P-43.2").* |
| **ICPA Exhibit P-44** | Excerpt from Books of Accounts on CUSA Journal Entries for Taxable Year 2007. |
| **ICPA Exhibit P-45 to P-45.260** | Collection Report Summaries Representing the Daily Collections from January 2, 2007 to December 27, 2007 for the Taxable Year 2007. |
| **ICPA Exhibit P-46** | Audited Financial Statement for the Years Ended December 31, 2007. |
| **ICPA Exhibit P-47** | Sample A/P Batch Listing – Invoice For the Year 2007. |
| **ICPA Exhibit P-47.1** | Accompanying Official Receipt for ICPA Exhibit "P-47". |
| **ICPA Exhibit P-47.2** | Accompanying Billing Statement for ICPA Exhibit "P-47". |
| **ICPA Exhibit P-48** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated February 9, 2007 with accompanying SSS Contribution Report For January 2007. |
| **ICPA Exhibit P-48.1** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated March 9, 2007 with accompanying SSS Contribution Report for February 2007. |
| **ICPA Exhibit P-48.2** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated April 4, 2007 with accompanying SSS Contribution Report For March 2007. |
| **ICPA Exhibit P-48.3** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated May 10, 2007 with accompanying SSS Contribution Report For April 2007. |
| **ICPA Exhibit P-48.4** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated June 8, 2007 with accompanying SSS Contribution Report For May 2007. |
| **ICPA Exhibit P-48.5** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated July 6, 2007 with accompanying SSS Contribution Report For June 2007. |
| **ICPA Exhibit P-48.6** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated August 8, 2007 with accompanying SSS Contribution Report For July 2007. |
| **ICPA Exhibit P-48.7** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated September 10, 2007 with accompanying SSS Contribution Report For August 2007. |
| **ICPA Exhibit P-48.8** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated October 10, 2007 with accompanying SSS Contribution Report For September 2007. |
| **ICPA Exhibit P-48.9** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated November 9, 2007 with accompanying SSS Contribution Report For October 2007. |
| **ICPA Exhibit P-48.10** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated December 10, 2007 with accompanying SSS Contribution Report For November 2007. |
| **ICPA Exhibit P-48.11** | Receipt of Payment issued by the SSS (SSS Form ACD539) Dated January 9, 2008 with accompanying SSS Contribution Report For December 2007. |
| **ICPA Exhibit P-49** | Philippine Health Insurance Corporation Contributions Payment Return Representing Contributions For January to March 2007 with Accompanying Remittance Report. |
| **ICPA Exhibit P-49.1** | Philippine Health Insurance Corporation Contributions Payment Return Representing Contributions For April to June 2007 with Accompanying Remittance Report. |
| **ICPA Exhibit P-49.2** | Philippine Health Insurance Corporation Contributions Payment Return representing Contributions For July to September 2007 with Accompanying Remittance Report. |

On 11 September 2018, petitioner filed a Motion for Partial Reconsideration[47] dated 07 September 2018 and moved that Exhibit "P-3" be recognized to contain the date "21 December 2010"; "ICPA Exhibit P-26.3" be recognized to contain the date "24 January 2008; the second "ICPA Exhibit P-43.1" pertaining to the General Ledger Listing in Functional Currency for TY 2007 for Dapitan be indicated as "ICPA Exhibit P-43.2"; the Transmittal Letter dated 05 May 2018 be marked as Exhibit "P-20-1"; and to include "ICPA Exhibit P-41.2" and "ICPA Exhibit P-41.3" in the formal offer, including the purposes for which the same were offered.[48]

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| **ICPA Exhibit P-49.3** | Philippine Health Insurance Corporation Contributions Payment Return Representing Contributions For October to December 2007 with Accompanying Remittance Report. |
| **ICPA Exhibit P-50** | Home Development Mutual Fund Receipt Dated February 19, 2007 Representing Member's Contributions for January 2007 with Accompanying Contribution Report. |
| **ICPA Exhibit P-50.1** | Home Development Mutual Fund Receipt Dated March 16, 2007 Representing Member's Contributions for February 2007 with Accompanying Contribution Report. |
| **ICPA Exhibit P-50.2** | Home Development Mutual Fund Receipt Dated April 16, 2007 Representing Member's Contributions for March 2007 with Accompanying Contribution Report. |
| **ICPA Exhibit P-50.3** | Home Development Mutual Fund Receipt Dated May 16, 2007 Representing Member's Contributions for April 2007 with Accompanying Contribution Report. |
| **ICPA Exhibit P-50.4** | Home Development Mutual Fund Receipt Dated June 15, 2007 Representing Member's Contributions for May 2007 with Accompanying Contribution Report. |
| **ICPA Exhibit P-50.5** | Home Development Mutual Fund Receipt Dated July 16, 2007 Representing Member's Contributions for June 2007 with Accompanying Contribution Report. |
| **ICPA Exhibit P-50.6** | Home Development Mutual Fund Receipt Dated August 23, 2007 Representing Member's Contributions for July 2007 with Accompanying Contribution Report. |
| **ICPA Exhibit P-50.7** | Home Development Mutual Fund Receipt Dated September 17, 2007 Representing Member's Contributions for August 2007 with Accompanying Contribution Report. |
| **ICPA Exhibit P-50.8** | Home Development Mutual Fund Receipt Dated October 13, 2007 Representing Member's Contributions for September 2007 with Accompanying Contribution Report. |
| **ICPA Exhibit P-50.9** | Home Development Mutual Fund Receipt Dated November 14, 2007 Representing Member's Contributions for October 2007 with Accompanying Contribution Report. |
| **ICPA Exhibit P-50.10** | Home Development Mutual Fund Receipt Dated December 17, 2007 Representing Member's Contributions for November 2007 with Accompanying Contribution Report. |
| **ICPA Exhibit P-50.11** | Home Development Mutual Fund Receipt Dated January 15, 2008 Representing Member's Contributions for December 2007 with Accompanying Contribution Report. |

[47] Id., pp. 446-449.
[48] See Exhibits, supra at note 43.

In the meantime, the Court issued an Order[49] dated 26 September 2018, transferring the instant case to the Second Division.

## PROCEEDINGS BEFORE THE SECOND DIVISION

On 05 December 2018, the Court issued a Resolution[50] granting petitioner's Motion for Partial Reconsideration dated 07 September 2018 and admitted Exhibits "ICPA Exhibit P-41.2" and "ICPA Exhibit P-41.3" and its correction on "ICPA Exhibit P-43.2." On the other hand, as to Exhibits "P-3", "P-20-1", "ICPA Exhibit P-26.3", "ICPA Exhibit P-41", "ICPA Exhibit P-41.1" and "ICPA Exhibit P-43.1", the Court merely noted petitioner's submission of the corrections since they were already admitted previously.

When respondent presented his evidence, he presented RO Sison as his lone witness who identified her Judicial Affidavit where she testified essentially that: (1) she and GS Gesmundo were authorized to continue the examination of petitioner's books of accounts and other accounting records under Revalidation/ Reassessment Notice dated 19 May 2009, with reference to the LOA No. 00044161; (2) she prepared and submitted a Memorandum Report to the Regional Director dated 19 October 2019 recommending the issuance of the PAN; and, (3) the 10-year prescriptive period shall apply since petitioner failed to report an amount substantially deficient and did not disclose the truth regarding the correct amount of income subject to tax compared to the amount remitted to the BIR.

On cross examination, RO Sison also testified that she was not the original examiner mentioned in LOA No. 00044161 and that she was already assigned in South Makati when the same was issued.[51]

During the redirect examination, RO Sison explained that the examiners in-charge of petitioner's case were re-assigned to another district hence she took over.

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49 Division Docket, supra, p. 453.
50 Id., pp. 456-458.
51 TSN dated 17 January 2019, pp. 6-12.

Subsequently, respondent submitted its FOE[52] consisting of a Memorandum Report dated 19 October 2010 and RO Sison's Judicial Affidavit. After petitioner submitted its Comment[53] to the FOE, the Court admitted respondent's exhibits.[54] The Court further ordered the parties to submit their respective memoranda within thirty (30) days from receipt thereof.

After the filing of the parties' memoranda, the Court submitted the case for decision.

## ISSUES

As the parties so stipulated, the following issues were submitted for this Court's determination:

I.

WHETHER THE APPLICABLE PRESCRIPTIVE PERIOD TO ASSESS PETITIONER'S DEFICIENCY INCOME TAX, VALUE-ADDED TAX, EXPANDED WITHHOLDING TAX, AND WITHHOLDING TAX ON COMPENSATION FOR TAXABLE YEAR IS TEN (10) YEARS;

II.

WHETHER THE BUREAU OF INTERNAL REVENUE'S RIGHT TO COLLECT FROM PETITIONER ANY DEFICIENCY TAXES COVERING TAXABLE YEAR 2007 HAS PRESCRIBED; AND,

III.

WHETHER RESPONDENT'S ASSESSMENTS AGAINST PETITIONER ON INCOME TAX (IT), VALUE-ADDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT) AND WITHHOLDING TAX ON COMPENSATION (WTC) FOR TAXABLE YEAR 2007 ARE PROPER AND WITH LEGAL AND FACTUAL BASES.

## ARGUMENTS

In support of the present petition, petitioner insists that prescription has already set in with respect to its alleged deficiency

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52 Division Docket, pp. 469-472.

53 Id., pp. 474-475.

54 Except for Exhibits "R-2"[54] and "R-3"[54] for failure to present the originals for comparison; Resolution dated 16 April 2019; id., pp. 479-480.

VAT for the first to third ($1^{st}$ to $3^{rd}$) quarters and alleged deficiency EWT and WTC for the months of January to December, all of the TY 2007.

Likewise, petitioner argues that RO Sison was without authority to examine its books since she was not named in the subject LOA. Bereft of authority, the assessment made against it should be voided. Petitioner further posits that it is not liable for any deficiency IT, VAT, EWT, and WTC, all for TY 2007, in the absence of actual and legal basis for the assessment.

Respondent, on the other hand, claims that the assessment of petitioner's deficiency taxes was issued within the period allowed by law. Additionally, the 10-year prescriptive period should apply as the declarations made on the tax returns would reveal that the same were substantially deficient in amount. Contrary to petitioner's claim, the assessment was duly supported in fact and in law.

## RULING OF THE COURT

Before the Court proceeds to discuss and resolve the parties' issues, the Court deems it more propitious to first settle the supposed invalidity of petitioner's assessment owing to the absence of authority on the part of RO Sison to examine its books of account and other accounting records, as well as the issue on prescription.

### REVENUE OFFICER SISON WAS DULY AUTHORIZED TO CONDUCT THE AUDIT.

In assailing RO Sison's authority to conduct an audit or investigation, petitioner cited the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[55] (**Sony Philippines**). In this case, an LOA was issued to the taxpayer covering "the period 1997 and unverified prior years." The Supreme Court invalidated the assessment as the revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on

[55] G.R. No. 178697, 17 November 2010.

records from January to March 1998 or using the fiscal year which ended in 31 March 1998. The Supreme Court went on to rule that "there must be a grant of authority before any revenue officer can conduct an examination or assessment... [e]qually important is that the revenue officer so authorized must not go beyond the authority given... [i]n the absence of such an authority, the assessment or examination is a nullity".

The Court is unconvinced.

To recall, LOA No. 00044161 named and authorized RO Ferrer and GS Baldonasa to conduct the audit and examination of petitioner. Later, a Reassignment Notice[56] was issued, revalidating LOA No. 00044161 and replacing RO Ferrer and GS Baldonasa with the newly-designated authorized representatives - RO Sison and GS Gesmundo.

**It must be noted that the said Reassignment Notice explicitly referred to LOA No. 00044161 dated 22 August 2008 as its subject and specifically named RO Sison and GS Gesmundo as authorized representatives to continue the examination of the books of account and other accounting records of petitioner. A closer scrutiny of the Reassignment Notice would likewise reveal that its contents are similar to the contents of a LOA.**

*First*, both documents were particularly addressed to petitioner. *Second*, both documents specifically named the ROs authorized to examine petitioner's books of account and other accounting records and the RDO to which they are connected. *Third*, both documents stated that the taxes covered by the examination are petitioner's all internal revenue taxes. *Fourth*, both documents specified the period covered by the authority of the ROs to examine which is from 01 January 2007 to 31 December 2007. *Lastly and more importantly*, both documents were signed by the Regional Director, who is duly authorized to issue LOAs under Section 10 of the NIRC of 1997, as amended, which provides as follows:

56 Exhibit "P-2", Division Docket, p. 171.

> ...
>
> SEC. 10. *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
>
> ...
>
> (c) Issue Letters of Authority for the examination of taxpayers within the region;
>
> ...

**Thus, for all intents and purposes, the Reassignment Notice issued to petitioner, which specifically referred to LOA No. 00044161 and contains essentially all the details of the said LOA, is sufficient authorization given to RO Sison to examine the books of account and other accounting records of petitioner.**

The fact that the Reassignment Notice is sufficient basis for RO Sison's authority to examine the books of account and other accounting records of petitioner further finds support in Revenue Audit Memorandum Order **(RAMO)** No. 01-00 which provides that:

> ...
>
> 2.3. A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue, otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority **or by just simply stamping the words "Revalidated on __________" on the fact of the copy of the Letter of Authority issued.**[57]
>
> ...

Since LOA No. 00044161 was stamped on its face with the words "Revalidated on 19 May 2009,"[58] and signed by Revenue Director Alfredo V. Misajon, the revalidation of said LOA was properly made pursuant to RAMO No. 01-00.

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57 Emphasis supplied.
58 BIR Records, p. 89.

Moreover, while Revenue Memorandum Order (**RMO**) No. 43-90 requires that "any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As", the Reassignment Notice here contains all the necessary information stated in a LOA. As earlier stated, the Regional Director also issued the same with authority. The mere fact that it is not denominated strictly to be a LOA does not mean that it could lose its efficacy and validity as such. Except for the title or denomination (it being a Reassignment Notice but with clear and direct reference to LOA No. 00044161), it is in its truest essence a valid authority given to RO Sison to continue with the audit of petitioner.

Incidentally, although the authority of RO Depillo under GS Dela Cruz or lack thereof was not put an issue here, the Court deems it appropriate to likewise rule on the matter as it is an issue directly related to the validity or invalidity of the assessment.

The records show that RO Depillo under GS Dela Cruz were similarly not named in LOA No. 00044161. Under Section 1, Rule 14 of the RRCTA, "... in deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

As discussed above, it would be recalled that RO Sison and GS Gesmundo were validly tasked to continue the examination of petitioner thus the subsequent examination of petitioner's records and books of account. Through Regional Director Jaime B. Santiago, a FAN was likewise issued as a result of the said examination. Petitioner, at the time, had submitted its Protest Letter[59] when it received a Notice[60] informing it that its case docket was further re-assigned to RO Depillo under GS Dela Cruz. This Notice also directed petitioner to submit documents to support its protest.

[59] Exhibit "P-9", Division Docket, pp. 186-215.
[60] Exhibit "P-10", id., p. 216.

The authority of an RO to conduct the examination of a taxpayer's books of account and other accounting records stems from a LOA to be issued by the Regional Director, as provided under Section 13 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, to wit:

> ...
>
> **SEC.** 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district **may**, pursuant to a Letter of Authority issued by the Revenue Regional Director, **examine** taxpayers within the jurisdiction of the district **in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[61]
>
> ...

Thus, *after* the RO named in the LOA makes his or her recommendation on the deficiency tax due of the taxpayer, if any, no new or separate LOA is necessary for the subsequent assignment of a new RO.

The requirement in RMO No. 43-90 for the issuance of a new LOA in cases of "reassignment/transfer of cases to another RO(s), and revalidation of [LOAs] which have already expired", shall require the issuance of a new [LOA]," has the following purpose and objective:

> ....
>
> A. Purpose.
>
> This Revenue Memorandum Order is hereby promulgated for the purpose of prescribing revised policy **guidelines for the audit/investigation and issuance of letters of authority (L/A) to audit.** This order supersedes Revenue Memorandum Order No. 37-90.
>
> ...
>
> C. Other policies for issuance of [LOAs].

61 Emphasis supplied.

> 1. **All audits/investigations**, whether field audit or office audit, **should be conducted under a Letter of Authority.**[62]
>
> ...

From the above, the requirement of the new LOA applies *only* to the conduct of audit and investigation. It is not necessary to evaluate a taxpayer's request for reinvestigation, as in this case. Such interpretation would be more consistent with the statutory provision it seeks to implement which is Section 13 of the NIRC of 1997, as amended, authorizing a revenue officer, through an LOA, to examine taxpayers in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

As such, if the ROs named in the LOA had terminated the audit or investigation of petitioner's books of accounts and other accounting records (as evidenced by the issuance of FAN), the subsequent reassignment of the case docket no longer required the issuance of a new LOA. This holds more true in this case where the subject Notice[63] made reference to the existing LOA and it specifically stated therein that the reassignment of RO Depillo and GS Dela Cruz was for the purpose of evaluating the petitioner's request for reinvestigation. The Notice reads:

> ...
>
> Attention: **Ms. Eleanor B. Grande**
> Group Accounting Manager
>
> This has reference to the Tax Verification Notice No. 000044161 dated August 22, 2008 issued to cover your **request for reinvestigation** of **All Internal Revenue Taxes** for **Taxable Year 2007** assigned to Revenue Officer RICKY G. DEPILLO under Group Supervisor CHERRYFLOR DELA CRUZ for evaluation.
>
> In this connection, you are hereby requested to submit to the assigned Revenue Officer the documents to support your protest at the **Assessment Section, this District,** located at 3rd Floor, KCT Building, EDSA Extension, Pasay City ***within ten (10) days from receipt*** hereof for evaluation and appropriate action. Otherwise, this case will be forwarded back to the Assessment Division for re-issuance of Formal Assessment Notice without further notice.

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62 Emphasis supplied.
63 Exhibit "P-10", id., p. 216.

Please give this matter your preferential attention.

...

Petitioner's reliance on *Sony Philippines*[64] is also misplaced. Aside from the case being of different factual backdrop from the present case, the assessment in *Sony Philippines* was invalidated because the ROs who conducted the actual audit and investigation went beyond the LOA's scope. There, the LOA was to cover "the period 1997 and unverified prior years" but they based their assessment on records for the periods of January to March 1998. Clearly, the action was repugnant to Section C(3) of RMO No. 43-90 prohibiting the practice of issuing an LOA covering audit of "unverified prior years."

Neither could petitioner take refuge from the more recent case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[65] (***Medicard***). In that case, the Supreme Court also invalidated the assessment simply because there was a complete absence of issuance of an LOA when the revenue officers examined the books of account and other accounting records of the taxpayer therein.

In contrast, in the case at bar, all the revenue officers who audited and examined the petitioner's books of account and other accounting records (from RO Ferrer and GS Baldonasa to RO Sison and GS Gesmundo by virtue of the Reassignment Notice[66]) were duly armed with a valid LOA covering the taxable year 2007 (from when the FAN was issued up until the time the case's reassignment to RO Depillo and GS Dela Cruz for reinvestigation).

Even assuming for the sake of argument that the reassignment to RO Depillo and GS Dela Cruz required the issuance of a new LOA, the assessment may not be invalidated entirely. To reiterate, when the case was reassigned to them, the FAN was already issued. In fact, petitioner had already filed his administrative protest through its request for investigation. Thus, a supposed defect in RO Depillo's and GS Dela Cruz's authority (at the time of the issuance of FDDA) should not invalidate the assessment itself. It should be noted that respondent's decision on a disputed assessment *differs from* the actual assessment

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64 Supra at note 55.

65 G.R. No. 222743, 05 April 2017.

66 Dated 19 May 2009, Exhibit "P-2", Division Docket, p. 171.

itself and the invalidity of former does not necessarily result in the invalidity of the latter.

In *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[67], the Supreme Court, in refusing to invalidate the assessment, had the occasion to highlight the difference between an assessment itself and the CIR's decision on the disputed assessment:

> ...
>
> In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an "assessment" from a "decision." In *St. Stephen's Association v. Collector of Internal Revenue,* the Court has long recognized that a "decision" differs from an "assessment," to wit:
>
>> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by Section 11 of Republic Act No. 1125 within which petitioner should have been appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review "*decisions* of the Collector of Internal Revenue in cases involving *disputed assessment...*"
>>
>> ...
>
> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other—unless the law or regulations otherwise provide.**[68]
>
> ...

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[67] G.R. No. 215534, 18 April 2016.

[68] Citation omitted and emphasis supplied.

**THE PRESCRIPTIVE PERIOD TO ASSESS PETITIONER IS THREE (3) YEARS.**

Sections 203 and 222(a) of the NIRC of 1997, as amended, provide:

> ...
>
> SEC. 203. *Period of Limitation Upon Assessment and Collection.* - **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[69]
>
> ...
>
> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -
>
> (a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.[70]
>
> ...

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[71], the Supreme Court elucidated on the preceding provisions, to wit:

> ...
>
> The prescriptive period in making an assessment depends upon whether a tax return was filed or whether the tax return filed was either false or fraudulent. When a tax return that is neither false

[69] Emphasis supplied.
[70] Emphasis supplied.
[71] G.R. No. 215957, 09 November 2016.

> nor fraudulent has been filed, the Bureau of Internal Revenue may assess within three (3) years, reckoned from the date of actual filing or from the last day prescribed by law for filing. However, in case of a false or fraudulent return with intent to evade tax, Section 222(a) provides:
>
> ...
>
> In *Aznar v. Court of Tax Appeals,* this Court interpreted Section 332 (now Section 222[a] of the [NIRC, as amended]) by dividing it in three (3) different cases: first, in case of false return; second, in case of a fraudulent return with intent to evade; and third, in case of failure to file a return. Thus:
>
> > Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax and failure to file a return is strengthened immeasurably by the last portion of the provision which aggregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission.'
>
> This Court held that there is a difference between 'false return' and a 'fraudulent return.' **A false return simply involves a 'deviation from the truth, whether intentional or not' while a fraudulent return 'implies intentional or deceitful entry with intent to evade the taxes due.'**
>
> Fraud is a question of fact that should be alleged and duly proven. 'The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed.' Fraud entails corresponding sanctions under the tax law. Therefore, it is indispensable for the Commissioner of Internal Revenue to include the basis for its allegations of fraud in the assessment notice.[72]
>
> ...

In this case, it is provided that the basis for the subject assessment is the supposed false returns resulting from understatement of expenses. Respondent's lone witness, RO Sison, confirmed this in her Judicial Affidavit and during her cross-examination. In her Judicial Affidavit, she declared under oath:

[72] Citation omitted and emphasis supplied.

...

34. Q: What is your basis for saying that the [10-year] prescriptive period in the assessment of the deficiency tax liability of the petitioner is applied in this case?

A: The petitioner has failed to report an amount substantially deficient in amount and did not disclose the truth regarding the correct amount of income subject to tax compared the amount remitted to the BIR. So the FAN dated January 14, 2011 issued by the Respondent for deficiency income tax, value-added tax, expanded withholding tax and withholding tax on compensation for taxable year 2007 was validly made within the ten (10) year prescriptive period from the discovery of the said falsity under Section 222 (a) of the 1997 Tax Code.[73]

...

During the cross-examination, RO Sison expounded further:

...

Q: Now, in relation to your Answer in Question No. 34 and Question No. 29, you mentioned that [10-year] prescriptive period shall apply in this case by reason of substantial deficiency in the amount declared in the Income Tax, is that correct?

A: Yes Sir.

Q: **And this is by reason of undeclared expenses as appearing in the details of discrepancy in the Formal Assessment Notice dated January 4, 20011** (sic), is that correct?

A: **Yes Sir.**

Q: So, in short you claimed that there was underestimate (sic) of expenses, is that correct?

A: Yes Attorney.[74]

...

[73] Exhibit "R-4", Judicial Affidavit of Alona Marie B. Alegre-Sison, Division Docket, supra, pp. 293-298.

[74] TSN dated 17 January 2019, p. 7; Emphasis supplied.

Section 248(B) of the NIRC of 1997, as amended, states what constitutes as *prima facie* evidence of false or fraudulent return:

> ...
>
> **SEC. 248.** *Civil Penalties.-*
>
> ...
>
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That **a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further*, <u>That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions shall render the taxpayer liable for substantial under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein</u>.**[75]
>
> ...

Based on the foregoing provision, a *prima facie* evidence of a false or fraudulent return is either a substantial *under-declaration* of sales, receipts or income, or a substantial *overstatement* of deductions. In turn, there is a substantial under-declaration of sales, receipts or income, when there is failure to report sales, receipts or income exceeding 30% of that declared *per* return; and, there is a substantial overstatement of deductions when a claim of deductions exceeds 30% of the actual deductions.

In the case at bar, *there is neither substantial under-declaration of sales, receipts or income, nor a substantial overstatement of deductions, based on the respective 30%-threshold established by law.* As confirmed by respondent's lone witness, the basis for the claim of the 10-year prescriptive period is the alleged undeclared expenses but not under-

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75 Emphasis and underscoring supplied.

declaration of sales, receipts or income, or substantial overstatement of deductions. It is worthy to note that even if these alleged undeclared expenses are to be considered as income, the same will simply be offset by recording the equivalent payment as expense. Hence, no taxable income will result from the said transaction.[76]

Furthermore, while it may be true that, based on the FAN[77], respondent disallowed the amount of ₱10,769,839.26 (i.e., ₱22,314.76 for allegedly being unsupported and ₱10,747,524.50 for non-withholding) as petitioner's deductions, the same fell short of the 30%-threshold of petitioner's claimed actual deductions. Based on petitioner's evidence, it claimed a total deduction of ₱52,294,629.33 (composed of ₱30,668,489.55[78] as "Cost of Sales/Services" and ₱21,626,139.78[79] as "Deductions". Clearly, the amount of disallowed deductions (i.e., ₱10,769,839.26) only constituted 20.59% of the said total deductions declared by petitioner.[80]

With the above disquisition, **petitioner did not appear to have made a substantial overstatement of deductions which, in turn, would constitute *prima facie* evidence of a false or fraudulent return under the law.** With that said, **the applicable period of prescription should be three (3) years counted after the last day prescribed by law (for the filing of the return, pursuant to Section 203 of the NIRC of 1997, as amended).**

Correspondingly, anent the subject deficiency IT, respondent's right to assess the same was to end on 23 June 2011 or the end of the three-year period from the filing of petitioner's Amended Annual Income Tax Return (ITR) for TY 2007 on 23 June 2008.[81]

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76 *IDS Logistics (Phils.), Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7540, 20 May 2010; *Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue*, CTA Case No. 7830, 11 December 2012; *FSM Cinemas, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8551, 02 October 2015; *PNOC Development and Management Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8649, 22 January 2016; *Ithiel Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8872, 23 February 2017.

77 Exhibit "P-8", Division Docket, pp. 180-183.

78 Line 16, Amended Annual Income Tax Return, id., p. 205.

79 Line 20, Amended Annual Income Tax Return, id., p. 205.

80 ₱10,769,839.26 divided by ₱52,294,629.33 is 20.59%.

81 Division Docket, pp. 205-207.

As for the deficiency VAT, EWT and WTC, the period of limitation on respondent's right to assess is shown below:

| Period covered | Date of actual filing | Last day prescribed by law to file the return[82] [83] [84] | Last day to assess under Section 203 of the NIRC of 1997 |
|---|---|---|---|
| **VAT** | | | |
| First Quarter of 2007 | April 25, 2007[85] | April 25, 2007 | April 25, 2010 |
| Second Quarter of 2007 | July 25, 2007[86] | July 25, 2007 | July 25, 2010 |
| Third Quarter of 2007 | October 25, 2007[87] | October 25, 2007 | October 25, 2010 |
| Fourth Quarter of 2007 | January 24, 2008[88] | January 25, 2008 | January 25, 2011 |
| **EWT** | | | |
| January 2007 | February 12, 2007[89] | February 10, 2007 | February 28, 2010 |
| Amended January 2007 | February 28, 2007[90] | N/A | |
| February 2007 | March 12, 2007[91] | March 10, 2007 | March 12, 2010 |
| March 2007 | April 10, 2007[92] | April 10, 2007 | April 10, 2010 |
| April 2007 | May 10, 2007[93] | May 10, 2007 | May 10, 2010 |
| May 2007 | June 12, 2007[94] | June 10, 2007 | June 12, 2010 |
| June 2007 | July 10, 2007[95] | July 10, 2007 | July 10, 2010 |
| July 2007 | August 10, 2007[96] | August 10, 2007 | August 10, 2010 |
| August 2007 | September 10, 2007[97] | September 10, 2007 | September 10, 2010 |
| September 2007 | October 10, 2007[98] | October 10, 2007 | October 10, 2010 |
| October 2007 | November 8, 2007[99] | November 10, 2007 | November 10, 2010 |
| November 2007 | December 8, 2007[100] | December 10, 2007 | December 10, 2010 |
| December 2007 | January 15, 2008[101] | January 15, 2008 | January 15, 2011 |

82 Section 114(A), NIRC of 1997.
83 Section 58(A), NIRC of 1997; Cf.: Section 2.58(A)(2), Revenue Regulations (RR) No. 2-98.
84 Section 81, NIRC of 1997; Cf.: Section 2.81, RR No. 2-98.
85 BIR Records, p. 96.
86 Id., p. 103.
87 Id., p. 109.
88 Id., p. 122.
89 Id., p. 16.
90 Id., p. 18.
91 Id., p. 19.
92 Id., p. 21.
93 Id., p. 22.
94 Id., p. 24.
95 Id., p. 26.
96 Id., p. 28.
97 Id., p. 30.
98 Id., p. 32.
99 Id., p. 33.
100 Id., p. 37.
101 Id., p. 44.

| Period covered | Date of actual filing | Last day prescribed by law to file the return[82] [83] [84] | Last day to assess under Section 203 of the NIRC of 1997 |
|---|---|---|---|
| *WTC* | | | |
| January 2007 | February 12, 2007[102] | February 10, 2007 | February 12, 2010 |
| February 2007 | March 12, 2007[103] | March 10, 2007 | March 12, 2010 |
| March 2007 | April 10, 2007[104] | April 10, 2007 | April 10, 2010 |
| April 2007 | May 10, 2007[105] | May 10, 2007 | May 10, 2010 |
| May 2007 | June 12, 2007[106] | June 10, 2007 | June 12, 2010 |
| June 2007 | July 10, 2007[107] | July 10, 2007 | July 10, 2010 |
| July 2007 | August 10, 2007[108] | August 10, 2007 | August 10, 2010 |
| August 2007 | September 10, 2007[109] | September 10, 2007 | September 10, 2010 |
| September 2007 | October 10, 2007[110] | October 10, 2007 | October 10, 2010 |
| October 2007 | November 8, 2007[111] | November 10, 2007 | November 10, 2010 |
| November 2007 | December 8, 2007[112] | December 10, 2007 | December 10, 2010 |
| December 2007 | January 11, 2008[113] | January 15, 2008 | January 15, 2011 |

Clearly from the foregoing, when the FAN was issued on **14 January 2011**[114], respondent's right to assess petitioner for deficiency VAT for the first to third quarters of 2007 and deficiency EWT and deficiency WTC for the months of January to November 2007 *had already prescribed*. Accordingly, only the assessments for deficiency VAT for the fourth quarter 2007 and the deficiency EWT and WTC for the month of December 2007 were issued within the three (3)-year prescriptive period allowed by law.

It is to be noted, however, that while the Court finds the respondent's right to assess petitioner for deficiency VAT (for the 1st to 3rd quarters of 2007) and deficiency EWT and WTC (for the months of January to November 2007) had prescribed, a further examination of the evidence shows that petitioner failed to establish clearly the portion of said alleged deficiency taxes that pertain to the periods that

102 Id., p. 53.
103 Id., p. 55.
104 Id., p. 57.
105 Id., p. 59.
106 Id., p. 61.
107 Id., p. 63.
108 Id., p. 65.
109 Id., p. 67.
110 Id., p. 69.
111 Id., p. 72.
112 Id., p. 75.
113 Id., p. 80.
114 Exhibit "P-8", Division Docket, pp. 180-183.

prescribed. Consequently, in the absence of proof to the contrary, the Court is constrained to impute the entire deficiency VAT, EWT and WTC assessments to the portion of TY 2007 which has *not* yet prescribed.

**RESPONDENT'S PERIOD TO *COLLECT* HAS NOT YET PRESCRIBED.**

As to petitioner's claim that the respondent's power to *collect* any deficiency taxes covering TY 2007 has prescribed, the Court finds the same claim baseless and without merit.

Section 203 of the NIRC of 1997, as amended, provides the reckoning date by which the respondent's power to collect commences. The provision reads:

> ...
>
> **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and **no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period**: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[115]
>
> ...

In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[116], the Supreme Court clarified that, when the BIR issues the assessment within the three (3)-year period; it has another three (3) years, counted from the date the assessment notice is released, mailed or sent to the taxpayer, within which to collect the tax due by distraint, levy or court proceeding as follows:

115 Emphasis supplied.
116 G.R. No. 197515, 02 July 2014.

> ...
> ... [P]etitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding. The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.**[117]
> ...

Based on the foregoing, respondent herein had three (3) years from the issuance of the assessment on 14 January 2011[118], within which to collect the deficiency internal revenue taxes; whether through distraint, levy or court proceeding. Here, respondent opted to collect the deficiency internal revenue taxes by filing his Answer to the present Petition for Review (a judicial action for the collection of a tax).[119]

It is noted that, at first glance, respondent's power to collect petitioner's deficiency taxes appears to have prescribed since respondent filed his Answer only on 14 July 2017. The records of the case would, however, reveal otherwise.

Section 223 of the NIRC of 1997, as amended, provides categorically that when a taxpayer requests for a reinvestigation, the running of the period to assess and/or to collect is *tolled*:

> ...
> **Sec.** 223. *Suspension of Running of Statute of Limitations.* – The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60)

117 Emphasis supplied.
118 Exhibit "P-8", Division Docket, pp. 180-183.
119 *See Philippine National Oil Company v. The Hon. Court of Appeals, et al.*, G.R No. 109976, 26 April 2005 and *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, 09 July 2018.

> days thereafter; **when the taxpayer requests for a reinvestigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: *Provided*, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.[120]
>
> ...

To distinguish a request for reinvestigation from a request for reconsideration, the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue*[121] is instructive, to wit:

> ...
> This Court gives credence to the argument of petitioner BPI that there is a distinction between a request for reconsideration and a request for reinvestigation. Revenue Regulations (RR) No. 12-85, issued on 27 November 1985 by the Secretary of Finance, upon the recommendation of the BIR Commissioner, governs the procedure for protesting an assessment and distinguishes between the two types of protest, as follows -
>
> *PROTEST TO ASSESSMENT*
>
> SEC. 6. *Protest*. The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation ...
>
> For the purpose of the protest herein -
>
> (a) *Request for reconsideration*. - refers to a plea for a re-evaluation of an assessment **<u>on the basis of existing records</u> without need of additional evidence**. It may involve both a question of fact or of law or both.
>
> (b) *Request for reinvestigation*. - refers to a plea for re-evaluation of an assessment **<u>on the basis of newly-discovered or additional evidence</u> that a taxpayer intends to present in the reinvestigation**. It may also involve a question of fact or law or both.

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[120] Emphasis supplied.
[121] G.R. No. 139736, 17 October 2005.

> With the issuance of RR No. 12-85 on 27 November 1985 providing the above-quoted distinctions between a request for reconsideration and a request for reinvestigation, the two types of protest can no longer be used interchangeably and their differences so lightly brushed aside. It bears to emphasize that under Section 224 of the Tax Code of 1977, as amended, the running of the prescriptive **period for collection of taxes can only be suspended by a <u>request for reinvestigation</u>**, not a request for reconsideration. Undoubtedly, a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited to the evidence already at hand; this justifies why the former can suspend the running of the statute of limitations on collection of the assessed tax, while the latter cannot.[122]
>
> ...

Using the above parameter, petitioner's Letter Protest[123] was actually a request for reinvestigation considering that it was accompanied by supporting documents and additional reconciliation schedules. Even petitioner had a similar view of his Letter Protest when it did not raise any issue even after respondent's Letter dated 24 May 2011.[124] The said letter in part reads:

> ...
>
> Attention: **Ms. Eleanor B. Grande**
> Group Accounting Manager
>
> This has reference to the **Tax Verification Notice No. 000044161** dated August 22, 2008 issued to cover your **request for reinvestigation** of **All Internal Revenue Taxes** for **Taxable Year 2007** assigned to Revenue Officer RICKY G. DEPILLO under Group Supervisor CHERRYFLOR DELA CRUZ for evaluation.
>
> In this connection, you are hereby requested to submit to the assigned Revenue Officer the documents to support your protest at the **Assessment Section, this District,** located at 3rd Floor, KCT Building, EDSA Extension, Pasay City ***within ten (10) days from receipt*** hereof for evaluation and appropriate action. Otherwise, this case will be forwarded back to the Assessment Division for re-issuance of Formal Assessment Notice without further notice.
>
> Please give this matter your preferential attention.
>
> ...

---

122 Emphasis supplied and underscoring in the original text.
123 Exhibit "P-9", Division Docket, p. 186.
124 Exhibit "P-10", id., p. 216.

Furthermore, a comparison of the FAN and the FDDA reveals that respondent actually conducted a reinvestigation of petitioner's tax liabilities that resulted in the amendment of the deficiency tax assessments:

| FAN[125] | | FDDA with Amended Assessment Notices[126] | |
|---|---|---|---|
| **Tax Type** | **Basic Tax Due** | **Tax Type** | **Basic Tax Due** |
| Income Tax | P 4,673,727.52 | Income Tax | P 746,834.32 |
| VAT | 251,392.00 | VAT | 374,182.31 |
| EWT | 508,204.31 | EWT | 21,232.79 |
| WTC | 121,190.52 | WTC | 121,190.52 |

Apparently, during the reinvestigation, respondent took into consideration petitioner's Letter Protest and the additional documents it submitted in support thereof. As a result, there was a decrease in the basic IT and EWT assessments as shown in the FDDA and Amended Assessment Notices.

Indubitably, **with respondent's reinvestigation of petitioner's tax liabilities based on the latter's Letter Protest, the running of the statute of limitation to collect the assessed deficiency taxes was suspended from 24 May 2011 (the date of the issuance of respondent's letter informing petitioner of the reinvestigation of its tax liabilities) to 18 April 2017, the date petitioner received the FDDA with Amended Assessment Notices,[127] all dated 06 April 2017. Consequently, the three-year period to collect the deficiency assessments was extended until 09 December 2019.[128] Since respondent filed his Answer on 14 July 2017, respondent's right to collect petitioner's deficiency IT, VAT, EWT, and WTC, covering the TY 2007, has not prescribed.**

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125 Exhibit "P-8", id., pp. 180-183.

126 Exhibit "P-16", id., pp. 251-255.

127 Exhibits "P-12 to P-14", id., pp. 248-250.

128

| | |
|---|---|
| Issuance of the FAN and Assessment Notices | 14 January 2011 |
| Petitioner requested for reinvestigation | 17 February 2011 |
| Petitioner's receipt of respondent's grant of request for reinvestigation | 24 May 2011 |
| Petitioner received FDDA and Amended Notices | 18 April 2017 |
| Deadline of extended 3-year period to collect | 09 December 2019 |

[365*3 years less 130 days (January 14 to May 24, 2011)]

Having disposed of the issues of prescription and the validity of the assessment in relation to the authority of RO to conduct the examination, the Court shall now discuss the validity of the assessment in *seriatim* and *per* item.

**ASSESSMENT AND EACH TAX ITEM ASSESSED**

A. <u>DEFICIENCY INCOME TAX FOR TAXABLE YEAR 2007</u>

Respondent assessed petitioner the amount of ₱2,105,458.95 composed of ₱746,834.32 basic deficiency IT and interest of ₱1,358,624.63, based on the following computation:[129]

| | | | | | |
|---|---|---|---|---|---|
| Taxable income (loss) per ITR | | | | | P 12,510,720.04 |
| Add: | Undeclared Income from understatement of expenses (Schedule 1) | | | P 38,386.71 | |
| | Unsupported Expenses | | | 22,314.76 | |
| | Disallowed Salaries and Wages due to non-withholding (Schedule 2) | | | 583,438.37 | |
| | Disallowed Expense for Non-Withholding (Schedule 3) | | | 1,061,639.32 | 1,705,779.16 |
| Total Taxable Income | | | | | P 14,216,499.20 |
| Tax Due (35%) | | | | | P 4,975,774.72 |
| Less: | Unexpired Excess of Prior Year's MCIT | | | P 884,459.00 | |
| | Creditable Withholding Tax | | | 203,500.70 | |
| | Tax paid per ITR filed | | | 3,594,886.33 | |
| | Tax paid on undisputed assessment | | | 21,245.51 | |
| | Total | | | 4,704,091.54 | |
| | Less: | Unsupported Creditable Withholding Tax | P 171,057.07 | | |
| | | Excess credits carried forward to succeeding year | 304,094.07 | 475,151.14 | 4,228,940.40 |
| **Basic Deficiency Tax** | | | | | **P 746,834.32** |
| Add: | Interest (4.16.08 to 05.19.17) | | | | 1,358,624.63 |
| **Total Amount Due** | | | | | **P 2,105,458.95** |

---

[129] Exhibit "P-16", Division Docket, pp. 251-255.

In essence, respondent's computation of the alleged deficiency IT of petitioner is based on the following items of assessment:

| Item | Amount |
|---|---|
| Undeclared Income from understatement of expenses | ₱ 38,386.71 |
| Unsupported Expenses | 22,314.76 |
| Disallowed Salaries and Wages due to non-withholding | 583,438.37 |
| Disallowed Expense for Non-Withholding (Schedule 3) | 1,061,639.32 |
| Unsupported Creditable Withholding Tax | 171,057.07 |

B. <u>UNDECLARED INCOME FROM UNDERSTATEMENT OF EXPENSES - ₱38,386.71</u>

Petitioner has not refuted the assessment on undeclared income from understatement of expenses and has already paid the corresponding income tax due.[130]

C. <u>UNSUPPORTED EXPENSES - ₱22,314.76</u>

Petitioner has not refuted the assessment on unsupported expenses and has already paid the corresponding income tax due.[131]

D. <u>DISALLOWED SALARIES AND WAGES DUE TO NON-WITHHOLDING - ₱583,438.37</u>

Respondent's verification disclosed that after comparing the income payment subjected to WTC *per* Alphalist of Employees against the salaries claimed in the Audited Financial Statements (**AFS**), there were payments which were not subjected to WTC. Hence, the noted difference of ₱583,438.37 was disallowed pursuant to Section 34(K)[132] of the NIRC of 1997, as amended.

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130 ICPA Exhibit "P-36".

131 Id.

132 **SEC. 34.** *Deductions from Gross Income.* – ...

...

(K) *Additional Requirements for Deductibility of Certain Payments.* – Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section, Sections 58 and 81 of this Code.

A reconstruction of the Alphalist attached to the Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Tax (BIR Form 1604-CF) would show that petitioner incurred the following expenses relative to the salaries and wages of its employees:

| Particulars | Non-Taxable | Taxable | Total |
|---|---|---|---|
| *PER ALPHALIST* | | | |
| *Schedule 7.1* [133] | | | |
| 13th Month | 43,737.78 | 21,196.75 | 64,934.53 |
| SSS, PHIC, etc. | 21,787.20 | | 21,787.20 |
| Salaries and Other Forms of Compensation | 58,779.08 | | 58,779.08 |
| Basic Salaries | | 632,106.72 | 632,106.72 |
| *Subtotal* | | | *777,607.53* |
| *Schedule 7.3* [134] | | | |
| 13th Month | 731,878.74 | 731,376.00 | 1,463,254.74 |
| SSS, PHIC, etc. | 266,438.43 | | 266,438.43 |
| Salaries and Other Forms of Compensation | 746,738.95 | | 746,738.95 |
| Basic Salaries | | 6,466,884.19 | 6,466,884.19 |
| *Subtotal* | | | *8,943,316.31* |
| *Schedule 7.4* [135] | | | |
| 13th Month | 37,014.00 | 38,948.00 | 75,962.00 |
| SSS, PHIC, etc. | 25,183.62 | | 25,183.62 |
| Salaries and Other Forms of Compensation | 51,922.10 | | 51,922.10 |
| Basic Salaries | | 527,548.05 | 527,548.05 |
| *Subtotal* | | | *680,615.77* |
| **Total** | | | **10,401,539.61** |
| *PER FS/ITR* [136] | | | |
| *Cost of Sales/Services* | | | |
| Direct Charges - Salaries, Wages and Benefits | | 6,676,383.60 | 6,676,383.60 |
| *Allowable Itemized Deduction* | | | |
| Salaries and Allowances | | 4,308,614.38 | 4,308,614.38 |
| **Total** | | | **10,984,997.98** |
| **Discrepancy** | | | **(583,458.37)** |

On the other hand, the Court-commissioned ICPA ascertained that the following benefits were not included as part of the compensation declared in the Alphalist:[137]

133 BIR Records, p. 82.
134 Id., p. 81.
135 Id., pp. 83-84;
136 Exhibit "R-2", id., pp. 189-191.
137 ICPA Report, Exhibit "P-18", p. 30.

| Particulars | Amount per books | |
|---|---|---|
| COS – Expenses not subject to Alphalist | | |
| SSS, Pag-ibig, Philhealth Premiums Contribution | (311,731.48) | |
| Retirement Benefits | (277,941.73) | (589,673.21) |
| GAE – Expenses not subject to Alphalist | | |
| Employee Meals | (18,904.98) | |
| Awards & Incentives | (2,768.29) | |
| Uniform Allowance | (32,500.00) | |
| Medical, Dental & Hospitalization | (25,246.00) | |
| Retirement Expenses | (252,277.11) | (331,696.38) |
| Retirement pay out to AGC - Multi Employer Retirement Fund | | 242,021.00 |
| SLVL 2006 accrued released by 2007 | | 603,888.78 |
| SLVL 2007 accrued released by 2008 | | (508,048.66) |
| **Total** | | **(583,508.47)** |

Thus, by initially comparing the discrepancy that respondent noted or the amount of ₱583,458.37 *vis-à-vis* the ICPA's findings of ₱583,508.47, there is an unaccounted difference of ₱50.10.

1. SSS, PAG-IBIG, PHILHEALTH PREMIUMS CONTRIBUTION – ₱311,731.48 AND ₱104,822.20

As found by the ICPA, aside from the SSS, Pag-IBIG, and PhilHealth premiums contributions in the amount of ₱311,731.48, petitioner likewise claimed ₱104,822.20[138] as a separate item of deduction in its ITR. As such, the total amount claimed for said contributions totaled ₱416,553.68.

Insofar as petitioner's contribution to SSS, Pag-IBIG, and PhilHealth premiums are concerned, the relevant provision is Section 32(B)(7)(f) of the NIRC of 1997, as amended, which provides as follows:

> ...
> **SEC. 32.** *Gross Income.* -
>
> ...
>
> (B) *Exclusions from Gross Income.* - The following items **shall not be included in gross income and shall be exempt from taxation under this Title:**

138 Line 94, Annual Income Tax Return, Exhibit "R-2", BIR Records, p. 189.

...

(7) *Miscellaneous Items.* -

...
(f) *GSIS, SSS, Medicare and Other Contributions.* - **GSIS, SSS, Medicare and Pag-Ibig contributions,** and union dues of individuals.[139]

...

The said provision is further implemented by Section 2.78.1(B)(12) of RR No. 2-98, as amended, to wit:

...

SECTION 2.78.1. *Withholding of Income Tax on Compensation Income.* —

...

(B) *Exemptions from withholding tax on compensation.* — **The following income payments are exempted from the requirement of withholding tax on compensation**:

...

(12) *GSIS, SSS, Medicare and other contributions.* – **GSIS, SSS, Medicare and Pag-ibig contributions**, and union dues of individual employees.[140]

...

Thus, petitioner's contributions for SSS, Pag-IBIG and PhilHealth premiums of its employees are excluded from gross income and are not considered income payments to said employees. As such, the same shall *not* form part of the taxable salaries and wages of the employees in computing the WTC.

It is, however, noted that, out of the total amount of ₱416,553.68, only the amount of ₱415,957.50 is duly supported by pertinent documents such as the SSS Special Bank Receipt,[141] PhilHealth

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[139] Emphasis supplied.
[140] Emphasis supplied.
[141] ICPA Exhibits "P-48" to "P-48.11".

Contributions Payment Return (ME-5)[142] and Pag-IBIG Fund Receipt (Pag-IBIG Fund T1-1),[143] as shown below:

| Period covered (2007) | SSS | PhilHealth | Pag-IBIG | Total |
|---|---|---|---|---|
| January | ₱ 23,714.00 | ₱4,925.00 | ₱ 3,000.00 | ₱ 31,639.00 |
| February | 23,244.70 | 4,850.00 | 2,900.00 | 30,994.70 |
| March | 22,457.40 | 4,712.50 | 2,800.00 | 29,969.90 |
| April | 24,208.70 | 5,012.50 | 3,000.00 | 32,221.20 |
| May | 27,897.80 | 5,937.00 | 3,300.00 | 37,134.80 |
| June | 28,614.50 | 6,062.50 | 3,400.00 | 38,077.00 |
| July | 27,968.50 | 5,950.00 | 3,300.00 | 37,218.50 |
| August | 28,003.80 | 5,950.00 | 3,300.00 | 37,253.80 |
| September | 26,499.80 | 5,687.50 | 3,100.00 | 35,287.30 |
| October | 26,464.40 | 5,825.00 | 3,100.00 | 35,389.40 |
| November | 26,439.20 | 5,887.50 | 3,000.00 | 35,326.70 |
| December | 26,545.20 | 5,900.00 | 3,000.00 | 35,445.20 |
| **Total** | ₱ 312,058.00 | ₱ 66,699.50 | ₱ 37,200.00 | ₱415,957.50 |

Given the above, only the unsupported expenses in the amount of ₱596.18 (₱416,553.68 less ₱415,957.50) pertaining to petitioner's SSS, Pag-IBIG and PhilHealth premiums contribution shall be disallowed as deductions from gross income for failure to substantiate the same.

2. RETIREMENT BENEFITS/EXPENSES – ₱288,197.84

Under Section 32(B)(6)(a) of the NIRC of 1997, as amended, employee retirement benefits received under a qualified private benefit plan shall *not* be included in gross income and shall be exempt from income tax, *viz*:

...

**SEC. 32**. *Gross Income.* —

...

(B) *Exclusions from Gross Income.* –

...

(6) *Retirement Benefits, Pensions, Gratuities, etc.* –

(a) Retirement benefits received under Republic Act No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the

[142] Id., "P-49" to "P-49.3".
[143] Id., "P-50" to "P-50.11".

> employer: *Provided*, That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: *Provided*, *further*, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. For purposes of this Subsection, the term '*reasonable private benefit plan*' means a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials or employees, wherein contributions are made by such employer for the officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the *corpus* or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the said officials and employees.

...

Since petitioner did not adduce evidence to prove that its employee retirement benefits were provided under a reasonable private benefit plan (approved by the BIR) and that the recipient/s thereof are qualified (in terms of age and minimum years of service), the Court finds that this assessment item must stand against petitioner.

3. EMPLOYEE MEALS; AWARDS & INCENTIVES; UNIFORM ALLOWANCE; AND, MEDICAL, DENTAL & HOSPITALIZATION - ₱79,419.27

Section 2.78.1(A) of RR No. 2-98 defines the term compensation to mean "all remuneration for services performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the Code." Further, Section 2.78.1(A)(6) of the same Regulation also provides, in part, that "fixed or variable transportation, representation and other allowances which are received by a public officer or employee of a private entity, in addition to the regular compensation fixed for his position or office, is compensation subject to withholding."

Simply put, any and all remuneration an employee receives, including any and all allowances, shall be considered as compensation subject to withholding tax, unless specifically excluded by law.

Upon a careful perusal of the records, the Court finds that petitioner likewise failed to present evidence to substantiate its claim that these other benefits given to its employees are exempt from IT and consequently, from WTC. Again, for its failure to do so, the Court is constrained to uphold respondent's disallowance of ₱79,419.27.

4. SICK LEAVE/VACATION LEAVE ACCRUALS

In the same manner, petitioner also failed to offer any evidence to substantiate its expenses for sick leave and vacation leave accruals. This item of assessment must likewise be sustained.

*To summarize,* the Court affirms the disallowance of salaries and wages due to non-withholding for TY 2007 in the adjusted amount of ₱272,323.07, computed as follows:

| **Particulars** | **Amount** | |
|---|---|---|
| Disallowed Salaries Expense | | ₱ 583,458.37 |
| Less: | | |
| Substantiated employer's mandatory contributions | ₱ 415,957.50 | |
| Less: | | |
| Claimed as Employer's Contribution in the Annual ITR[144] | 104,822.20 | 311,135.30 |
| **Total** | | **₱ 272,323.07** |

(i) DISALLOWED EXPENSES FOR NON-WITHHOLDING - ₱1,061,639.32

*Per* Schedule 1 found in the Details of Discrepancies,[145] respondent disallowed the following deductions due to non-withholding of the applicable tax:

144 Line 94, Annual Income Tax Return, Exhibit "R-2", BIR Records, p. 189.
145 Exhibit "P-16", Division Docket, pp. 251-255.

**Schedule 1**

| Income Payments | Per FS/ITR | Per BIR Form No. 1601-E | Understatement of Expenses per FAN | Adjustment | Understatement of Expenses per REIN | Disallowed Expense |
|---|---|---|---|---|---|---|
| Prime/Sub-Contractors | | | | | | |
| Advertising expense | 30,735.02 | | | | | |
| Repairs & maintenance | 330,638.33 | | | | | |
| Others | 6,670,044.95 | | | | | |
| **Total** | **7,031,418.30** | **9,087,964.89** | **(2,056,546.59)** | **3,118,185.91** | - | **1,061,639.32** |

Petitioner claims that the disallowed expense of ₱1,061,639.32 results from the unaccounted difference between the amount stated in its FS/ITR as compared to the amount claimed in its BIR Form No. 1601-E, after considering the adjustment on non-trade receivables from tenants for the common use service area (**CUSA**) utilities.[146] However, upon perusal of the records of the case, the petitioner again failed to adduce evidence to support this claim.

As regards petitioner's contention that the amounts ₱6,670,044.95 and ₱3,118,185.91 used by respondent were mere estimates and were not verified[147], the Court finds the same bereft of merit. *First*, the ₱3,118,185.91 shown above is an adjustment that resulted from the reconciliation submitted by petitioner itself and as an attachment to its Letter Protest dated 17 February 2011.[148] According to petitioner, this amount of ₱3,118,185.91 should be considered as a reconciling item (i.e., to be deducted from its *Per BIR Form No. 1601-E*) because it pertained to CUSA payments made and subjected to withholding (which it did not report or recorded as expenses). *Second*, the amount of ₱6,670,044.95 corresponding to the entry "*Others*" had long been included by respondent in its Amended NIC[149], PAN[150] and FAN[151] but petitioner never questioned such amount; neither had it asked respondent to provide breakdown or details thereof. In fact, in petitioner's attachment to its Protest Letter[152], it classified categorically the amount ₱6,670,044.95 as "*Others*" *per* its FS/ITR, to wit:[153]

146 Petition for Review, id., pp. 20-21.
147 Memorandum, id., p. 509.
148 Exhibit "P-9", id., p. 186.
149 BIR Records, pp. 257-260.
150 Id., pp. 265-268.
151 Exhibit "P-8", Division Docket, pp. 180-183.
152 Exhibit "P-9", id., p. 186.
153 BIR Records, p. 321.

**Ithiel Corporation**
**Analysis of Undeclared Income from understatement of Expenses - Sched 1**
**For the year 2007**

| Income Payments | Per BIR | | | Per Taxpayer | | | | |
|---|---|---|---|---|---|---|---|---|
| | Per FS/ITR | Per BIR Form No. 1601-E | Understatement of Expenses per FAN | Per ITR/FS | Per BIR Form No. 1601-E | Adjustment | Understatement of Expenses | Remarks |
| Professional Fee | 3,181,108.57 | 3,219,495.28 | (38,386.71) | 3,181,108.57 | 3,219,495.28 | | (38,386.71) | |
| Prime/Sub-Contractors | | | | | | | | |
| Advertising expense | 30,735.02 | | | 30,735.02 | | | | |
| Repairs & maintenanc | 330,638.33 | | | 330,638.33 | | | | |
| Others | 6,670,044.95 | | | 6,670,044.95 | | | | |
| Subcontractor | 7,031,418.30 | 9,087,964.89 | (2,056,546.59) | 7,031,418.30 | 9,087,964.89 | (3,118,185.91) | - | Adjustment - expenses charged to Vendor - CUSA |
| **Total** | **10,212,526.87** | **12,307,460.17** | **(2,094,933.30)** | **10,212,526.87** | **12,307,460.17** | **(3,118,185.91)** | **(38,386.71)** | |

With the above, the Court could not subscribe to petitioner's posturing that the amount of ₱3,118,185.91 reflected as its own reconciliation item or the ₱6,670,044.95 it classified as "Others" account are mere estimates and unverified. It is well-established that "bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed."[154] As such, the Court could lend credence to petitioner's bare allegations.

Tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[155] 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.[156] Accordingly, the disallowance in the amount of ₱1,061,639.32 should likewise be maintained against petitioner.

(ii) UNSUPPORTED CREDITABLE WITHHOLDING TAX - ₱171,057.07

In its ITR creditable withholding tax (**CWT**), petitioner claimed the total amount of ₱203,500.70. However, upon examination of pertinent Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 (**CWT certificates**), respondent found that the CWT claim amounting to ₱171,057.07, which also pertained to the creditable

---

154 *LNS International Manpower Services v. Padua Jr.*, G.R. No. 179792, 05 March 2010.
155 *Commissioner of Internal Revenue v. Hon. Gonzalez, et al.*, G.R. No. 177279, 13 October 2010.
156 *Marcos II v. Court of Appeals, et al.*, G.R. No. 120880, 05 June 1997.

tax withheld for the fourth quarter of 2007, was not supported by actual CWT certificates. Respondent then disallowed the same as tax credit[157] pursuant to Section 2.58.3(B) of RR No. 2-98.[158] Petitioner, however, insisted that all of its CWT for TY 2007 were properly supported, in stark contrast to respondent's allegation. The Court finds merit in this particular concern of petitioner.

Based on the ICPA's examination, out of the disputed CWT claimed in the fourth quarter of 2007 amounting to ₱171,057.07, only ₱149,958.87 were supposedly substantiated by individual CWT certificates.[159]

Upon further scrutiny of the submitted CWT certificates, together with the report of the ICPA, the Court finds that no valid CWT certificates supported the amounts below:

| Payor's Name | CWT | ICPA Exhibit |
|---|---|---|
| ***Certificates issued were not signed by the payor/payor's authorized representative*** | | |
| Crispin Legaspi | 838.66 | "P-39.1" to "P-39.3" |
| Mr. Quickie The Shoe & Bag Hospital | 1,601.50 | "P-41.1" to "P-41.2" |
| Myrna Casta | 438.16 | "P-41.3" |
| *Subtotal* | **2,878.32** | |
| ***Payee's TIN indicated in the certificate is not that of the petitioner*** | | |
| Roseta Guzman Reyes | 101.03 | "P-40.3" |
| Hesus De Guzman Reyes | 121.88 | "P-40.4" |
| Roseta Guzman Reyes | 91.25 | "P-40.24" |
| Hesus De Guzman Reyes | 125.94 | "P-40.25" |
| Jimmy Peralta | 172.50 | "P-40.28" |
| Luzviminda Paz | 161.25 | "P-40.29" |
| Letecia Ico | 73.75 | "P-40.32" |
| Hesus De Guzman Reyes | 125.94 | "P-40.36" |
| Eliseo Radoc | 108.75 | "P-40.49" |
| Myrna Casta | 133.36 | "P-40.50" |
| Letecia Ico | 81.65 | "P-40.55" |
| Letecia Ico | 81.65 | "P-40.64" |

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157 Exhibit "P-16", Division Docket, pp. 251-255.

158 SEC. 2.58.3. *Claim for Tax Credit or Refund.* –

...

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

159 Table 15, ICPA Report, Exhibit "P-18".

| | | |
|---|---|---|
| Roseta Guzman Reyes | 101.03 | "P-40.77" |
| Roseta Guzman Reyes | 97.77 | "P-40.82" |
| Hesus De Guzman Reyes | 121.88 | "P-40.83" |
| Hesus De Guzman Reyes | 125.94 | "P-40.104" |
| Jimmy Peralta | 190.98 | "P-40.108" |
| Letecia Ico | 79.00 | "P-40.115" |
| Jonard Veluz | 56.00 | "P-40.129" |
| Roseta Guzman Reyes | 299.83 | "P-40.179" |
| Neri Villanueva | 412.50 | "P-40.209" |
| Letecia Ico | 242.30 | "P-40.212" |
| Jesus Reyes | 521.58 | "P-40.271" |
| Letecia Ico | 242.30 | "P-40.272" |
| Roseta Guzman Reyes | 299.83 | "P-40.276" |
| Gina Cortez | 109.82 | "P-40.313" |
| *Subtotal* | **4,279.71** | |
| ***No Payee's TIN indicated in the certificate*** | | |
| Rosita Rabanal | 423.03 | "P-40.234" |
| Rosita Rabanal | 546.25 | "P-40.235" |
| Shirley Zamora | 34.82 | "P-40.344" |
| *Subtotal* | **1,004.10** | |
| ***Already claimed in the previous quarters*** | | |
| LBC Imaging Network Inc. | 3,050.55[160] | "P-40.67" |
| Mr. Quickie The Shoe & Bag Hospital | 2,404.10[161] | "P-40.68" |
| Philippine Prime Meat Marketing Corporation | 1,709.09[162] | "P-40.69" |
| Philippine Prime Meat Marketing Corporation | 1,709.09[163] | "P-40.71" |
| LBC Imaging Network Inc. | 1,951.22[164] | "P-40.139" |
| Digital Paradise Inc. | 2,764.36[165] | "P-40.140" |
| Philippine Prime Meat Marketing Corporation | 3,762.25[166] | "P-40.141" |
| Philippine Prime Meat Marketing Corporation | 1,960.88[167] | "P-40.142" |
| Philippine Prime Meat Marketing Corporation | 3,457.55[168] | "P-40.143" |
| *Subtotal* | **22,769.09** | |
| ***Out of period*** | | |
| Alvin Laguisma | **831.25** | "P-40.279" |
| | | |
| ***Certificates not under petitioner's registered name*** | | |
| Romenito Pader | 182.22 | "P-40.89" |
| Romenito Pader | 187.41 | "P-40.211" |
| Edna Solas | 172.99 | "P-42.1" |
| Noramia Sarap | 125.00 | "P-42.2" |

160 Claimed in the 2nd Quarter ITR.
161 Claimed in the 2nd Quarter ITR.
162 Claimed in the 2nd Quarter ITR.
163 Claimed in the 2nd Quarter ITR.
164 Claimed in the 3rd Quarter ITR.
165 Claimed in the 3rd Quarter ITR.
166 Claimed in the 3rd Quarter ITR.
167 Claimed in the 3rd Quarter ITR.
168 Claimed in the 3rd Quarter ITR.

| | | |
|---|---|---|
| Rosalyn Recepcion | 89.95 | "P-42.3" |
| Gown Rentals | 101.02 | "P-42.4" |
| Market Mayon Br | 3,858.81 | "P-42.5" |
| Trinita Villanes | 49.82 | "P-42.6" |
| Edna Solas | 125.00 | "P-42.7" |
| Elsa Miranda | 257.25 | "P-42.8" |
| Evelyn Martinez | 96.25 | "P-42.9" |
| Noramia Sarip | 112.50 | "P-42.10" |
| Rosalyn Recepcion | 81.75 | "P-42.11" |
| Irene Antones | 159.15 | "P-42.12" |
| Reynaldo De Leon | 89.95 | "P-42.13" |
| Irene Antones | 143.75 | "P-42.14" |
| Elizabeth Rivera | 208.08 | "P-42.15" |
| Noramia Sarip | 125.00 | "P-42.16" |
| Elsa Miranda | 354.27 | "P-42.17" |
| Evelyn Martinez | 106.56 | "P-42.18" |
| Rosalyn Recepcion | 88.71 | "P-42.19" |
| Bonifacio Razote | 101.02 | "P-42.20" |
| Conchita Ramirez | 101.02 | "P-42.21" |
| Liza Dulato | 69.20 | "P-42.22" |
| Lorenza Ferrer | 81.65 | "P-42.23" |
| Luzviminda Rabaya | 116.25 | "P-42.24" |
| Ricardo Rausa | 89.95 | "P-42.25" |
| Conchita Ramirez | 91.25 | "P-42.26" |
| Liza Dulato | 62.50 | "P-42.27" |
| Lorenza Ferrer | 73.75 | "P-42.28" |
| Bonifacio Razote | 91.25 | "P-42.29" |
| Siaria Rausa | 91.25 | "P-42.30" |
| Estela Ranches | 86.25 | "P-42.31" |
| Luzviminda Rabaya | 81.25 | "P-42.32" |
| Conchita Ramirez | 101.02 | "P-42.33" |
| Liza Dulato | 69.20 | "P-42.34" |
| Lorenza Ferrer | 81.65 | "P-42.35" |
| Roseta Guzman Reyes | 101.03 | "P-42.36" |
| Reynaldo De Leon | 89.15 | "P-42.37" |
| Estela Ranches | 96.68 | "P-42.38" |
| Luzviminda Rabaya | 88.71 | "P-42.39" |
| Irene Antones | 159.15 | "P-42.40" |
| Leonilo Quino | 120.40 | "P-42.41" |
| Lorlei De Ramos | 125.94 | "P-42.42" |
| Ronaldo Ofrancia | 125.94 | "P-42.43" |
| Nena Domenden | 141.62 | "P-42.44" |
| Sara Rausa | 924.10 | "P-42.45" |
| Danilo Pobleta | 283.24 | "P-42.46" |
| Elisa Caluya | 210.09 | "P-42.47" |
| Carmen Jovido | 141.62 | "P-42.48" |
| Virginita Raxote | 512.61 | "P-42.49" |

| | | |
|---|---|---|
| Angelita Cacho | 210.09 | "P-42.50" |
| Conchita Ramirez | 97.77 | "P-42.51" |
| Edna Solas | 142.54 | "P-42.52" |
| Estela Ranches | 92.41 | "P-42.53" |
| Roberto Ranchez | 116.52 | "P-42.54" |
| Neri Villanueva | 412.50 | "P-42.55" |
| Lorenza Ferrer | 81.65 | "P-42.56" |
| Reynaldo De Leon | 87.05 | "P-42.57" |
| Conchita Ramirez | 97.77 | "P-42.58" |
| Lorenza Ferrer | 79.00 | "P-42.59" |
| Ricardo Rausa | 87.05 | "P-42.60" |
| Ronaldo Ofrancia | 121.86 | "P-42.61" |
| Ronaldo Ofrancia | 125.93 | "P-42.62" |
| Ronaldo Ofrancia | 125.93 | "P-42.63" |
| Mary Ann Villanueva | 96.43 | "P-42.64" |
| Ramil Domenden | 34.81 | "P-42.65" |
| Reynaldo Salvador | 20.08 | "P-42.66" |
| Elsa Miranda | 275.89 | "P-42.67" |
| Ferdinand Manabat | 108.86 | "P-42.68" |
| Rosalyn Recepcion | 87.04 | "P-42.69" |
| Reynaldo De Leon | 87.05 | "P-42.70" |
| Bonifacio Razote | 97.77 | "P-42.71" |
| Carmelita Valenzuela | 56.25 | "P-42.72" |
| Gina Cortez | 109.82 | "P-42.73" |
| Democrito Cuerpo | 40.18 | "P-42.74" |
| Digna Bautista | 148.66 | "P-42.75" |
| Shirley Zamora | 34.82 | "P-42.76" |
| Dante Rabadon | 24.10 | "P-42.77" |
| Leonilo Quino | 116.52 | "P-42.78" |
| Acmad Macalangcom | 117.86 | "P-42.79" |
| Lorelie De Ramos | 121.86 | "P-42.80" |
| Gimayna Garcia | 64.29 | "P-42.81" |
| Maria Vilma Dela Cruz | 137.95 | "P-42.82" |
| Estela Ranches | 95.49 | "P-42.83" |
| Luzviminda Rabaya | 88.57 | "P-42.84" |
| Elsa Miranda | 285.09 | "P-42.85" |
| Evelyn Martinez | 106.56 | "P-42.86" |
| Bonifacio Razote | 103.79 | "P-42.87" |
| Reynaldo De Leon | 89.95 | "P-42.88" |
| Gina Cortez | 113.48 | "P-42.89" |
| Democrito Cuerpo | 27.68 | "P-42.90" |
| Leonilo Quino | 120.40 | "P-42.91" |
| Lorelie De Ramos | 125.93 | "P-42.92" |
| Gimayna Garcia | 66.43 | "P-42.93" |
| Gimayna Garcia | 64.29 | "P-42.94" |
| Lorelie De Ramos | 121.88 | "P-42.95" |
| Leonilo Quino | 116.51 | "P-42.96" |

| | | |
|---|---|---|
| Irene Antones | 154.02 | "P-42.97" |
| Sara Rausa | 97.76 | "P-42.98" |
| Gina Cortez | 109.82 | "P-42.99" |
| Bonifacio Razote | 97.77 | "P-42.100" |
| Rosalyn Recepcion | 88.30 | "P-42.101" |
| Corazon Maninang | 120.53 | "P-42.102" |
| Evelyn Martinez | 103.12 | "P-42.103" |
| Edna Solas | 137.95 | "P-42.104" |
| Elsa Miranda | 275.90 | "P-42.105" |
| Estela Ranches | 92.41 | "P-42.106" |
| Noramia Sarip | 121.00 | "P-42.107" |
| Florendo Rabago | 87.13 | "P-42.108" |
| Helen De Francia | 17.42 | "P-42.109" |
| Jonard Veluz | 56.00 | "P-42.110" |
| Noramia Sarip | 122.00 | "P-42.111" |
| Elizabeth De Asis | 35.98 | "P-42.112" |
| Gina Cortez | 109.82 | "P-42.113" |
| Democrito Cuerpo | 41.52 | "P-42.114" |
| Josephine Moises | 101.75 | "P-42.115" |
| Bonifacio Razote | 101.03 | "P-42.116" |
| Zenaida Manzano | 131.41 | "P-42.117" |
| Reynaldo De Leon | 89.96 | "P-42.118" |
| Buenvenido Mariano | 106.56 | "P-42.119" |
| Reynaldo Salvador | 41.52 | "P-42.120" |
| Edna Solas | 142.54 | "P-42.121" |
| Conchita Ramirez | 101.03 | "P-42.122" |
| Ferdinand Manabat | 101.03 | "P-42.123" |
| Gimayna Garcia | 57.38 | "P-42.124" |
| Bonifacio Razote | 101.03 | "P-42.125" |
| Estela Ranches | 95.49 | "P-42.126" |
| Roberto Ranchez | 120.40 | "P-42.127" |
| Letecia Sindayen | 24.91 | "P-42.128" |
| Ronaldo Ofrancia | 125.94 | "P-42.129" |
| Gimayna Garcia | 66.43 | "P-42.130" |
| Gimayna Garcia | 24.91 | "P-42.131" |
| Kareen Caragas | 121.79 | "P-42.132" |
| Acmad Macalangcom | 120.40 | "P-42.133" |
| Leonilo Quino | 24.91 | "P-42.134" |
| Dante Rabadon | 35.92 | "P-42.135" |
| Shirley Zamora | 153.62 | "P-42.136" |
| Digna Bautista | 99.65 | "P-42.137" |
| Abrid Nick | 55.36 | "P-42.138" |
| Marlon Arquiro | 56.00 | "P-42.139" |
| Jonard Veluz | 58.12 | "P-42.140" |
| Jonard Veluz | 56.00 | "P-42.141" |
| Jonard Veluz | 56.00 | "P-42.142" |
| Gerlita Gamboa | 130.00 | "P-42.143" |

| | | |
|---|---|---|
| Raquel Torres | 384.00 | "P-42.144" |
| Raquel Torres | 384.00 | "P-42.145" |
| Gimayna Garcia | 66.45 | "P-42.146" |
| Jonard Veluz | 56.00 | "P-42.147" |
| Ernesto Vila | 296.83 | "P-42.148" |
| Ernesto Vila | 296.83 | "P-42.149" |
| Ernesto Vila | 296.83 | "P-42.150" |
| Helen De Francia | 56.25 | "P-42.151" |
| Democrito Cuerpo | 40.18 | "P-42.152" |
| Trinita Villanes | 56.25 | "P-42.153" |
| Jonard Veluz | 56.00 | "P-42.154" |
| Letecia Sindayen | 24.11 | "P-42.155" |
| Lorenza Ferrer | 81.65 | "P-42.156" |
| Elisa Caluya | 213.56 | "P-42.157" |
| Irvyne De Vera | 321.34 | "P-42.158" |
| Carmelita Jovido | 164.30 | "P-42.159" |
| Angelita Cacito | 213.46 | "P-42.160" |
| Elisa Caluya | 213.46 | "P-42.161" |
| Analita Mamas | 409.90 | "P-42.162" |
| Jonard Veluz | 56.00 | "P-42.163" |
| Gerlita Gamboa | 126.00 | "P-42.164" |
| *Subtotal* | **24,591.48** | |
| | | |
| **TOTAL** | **56,353.95** | |

To reiterate, the rule is that "the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee."[169] Thus, insofar as the CWT certificates that were not signed by the payor or payor's authorized representative/s and those not under petitioner's registered name, they should be denied for they were not issued in accordance with the said rule.

With respect to the CWT certificates that were already claimed in the previous quarters, they must likewise be denied after they were utilized and credited against petitioner's IT liabilities for TY 2007. The same is true with respect to the lone CWT certificate that was issued outside the period in question, which covered the period beginning 01 October 2006.

As regards the CWT certificates where the payee's TIN indicated in the certificate was not petitioner's or that no payee's TIN was

169 Section 2.58.3(B) of RR No. 2-98, as amended.

indicated therein, denial should be expected in the light of the Court's consistent pronouncements in *Zuellig Pharma Corporation v. Commissioner of Internal Revenue,*[170] citing *Commissioner of Internal Revenue v. Philippine Bank of Communications*[171] where the Court held:

> ...
>
> **This Court has previously discussed why CWT certificates without the claimant's TIN are properly disallowed.** In the case of *Commissioner of Internal Revenue vs. Philippine Bank of Communication,* the Court *en banc* declared:
>
> > "... [A] claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. **It must be kept in mind that the TIN serves as identification of taxpayers in relation to their payment with the BIR. Absent this, even with the taxpayer's name, it cannot be verified if indeed the taxpayer paid the correct amount to the government.** Well entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.
> >
> > **Thus, the certificates with corrections not properly countersigned and with incomplete details, such as absence of PBCom's TIN, are properly disallowed.**"
>
> Thus, *We* uphold the Court in Division's ruling to disallow petitioner's CWT in the amount of ₱10,144,896.40 for being supported by CWT certificates with incorrect TIN. [172]
>
> ...

Since petitioner was able to establish that only the amount of ₱114,703.12 (₱171,057.07 less ₱56,353.95) of its CWT for the fourth quarter of TY 2007 was properly supported by CWT certificates, it is to this extent that it may validly claim a tax credit from its IT liability.

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170 CTA EB Nos. 1793 and 1794, 01 October 2019.
171 CTA EB Nos. 1421 and 1423, 23 May 2017.
172 Citation omitted, emphasis supplied and emphasis in the original text.

In sum, petitioner should be held liable for basic deficiency IT in the amount of ₱523,240.85, computed as follows:

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Taxable income (loss) per ITR | | | | | | | P | 12,510,720.04 |
| Add: | Undeclared Income from understatement of expenses (Schedule 1) | | | | P | 38,386.71 | | |
| | Unsupported Expenses | | | | | 22,314.76 | | |
| | Disallowed Salaries and Wages due to non-withholding (Schedule 2) | | | | | 272,323.07 | | |
| | Disallowed Expense for Non-Withholding (Schedule 3) | | | | | 1,061,639.32 | | 1,394,663.86 |
| Total Taxable Income | | | | | | | P | 13,905,383.90 |
| Tax Due (35%) | | | | | | | P | 4,866,884.37 |
| Less: | Unexpired Excess of Prior Year's MCIT | | | | P | 884,459.00 | | |
| | Creditable Withholding Tax | | | | | 203,500.70 | | |
| | Tax paid per ITR filed | | | | | 3,594,886.33 | | |
| | Tax paid on undisputed assessment | | | | | 21,245.51 | | |
| | Total | | | | | 4,704,091.54 | | |
| | Less: | Unsupported Creditable Withholding Tax | P | 56,353.95 | | | | |
| | | Excess credits carried forward to succeeding year | | 304,094.07 | | 360,448.02 | | 4,343,643.52 |
| **Basic Deficiency Tax** | | | | | | | **P** | **523,240.85** |

I. DEFICIENCY VALUE-ADDED TAX FOR TAXABLE YEAR 2007

Based on the records, petitioner was assessed of deficiency VAT in the amount of ₱1,071,494.11, inclusive of interest, computed as follows:[173]

| | | | | | | |
|---|---|---|---|---|---|---|
| Receipts per VAT Returns filed | | | | | P | 64,128,394.95 |
| Add: | Undeclared Income from understatement of expenses (Schedule 4) | | | | | |
| | | Professional fees (Schedule 1) | P | 38,386.71 | | |
| | | Janitorial/Security Services - CUSA (charged to vendors) | | 3,118,185.91 | | 3,156,572.62 |
| Total revenues subject to VAT | | | | | P | 67,284,967.57 |

[173] Exhibit "P-16", Division Docket, pp. 251-255.

| | | | | | |
|---|---|---|---|---|---|
| Output Tax (12%) | | | | P | 8,074,196.11 |
| Less: | Input Tax Claimed per VAT Returns filed | P | 3,252,896.95 | | |
| | Input Tax Carry Over from Previous Period | | 1,604,116.07 | | |
| | Total | | 4,857,013.02 | | |
| | Less: Excess input tax carried over to the succeeding quarter | | 41,108.63 | | 4,815,904.39 |
| VAT Payable | | | | P | 3,258,291.72 |
| Less: | Tax Paid per VAT returns filed | P | 2,879,503.00 | | |
| | Tax Paid on undisputed assessment | | 4,606.41 | | 2,884,109.41 |
| **Basic Deficiency Tax** | | | | **P** | **374,182.31** |
| Add: | Interest (1.26.08 to 05.19.17) | | | | 697,311.80 |
| **Total Amount Due** | | | | **P** | **1,071,494.11** |

Respondent assessed petitioner of deficiency VAT based essentially on these items, to wit:

| Item | Amount |
|---|---|
| Undeclared income due to the understatement of professional fees | P 38,386.71 |
| Undeclared income due to the understatement of Janitorial/Security and other CUSA fees (charged to vendors) | 3,118,185.91 |

(i) UNDERSTATEMENT OF PROFESSIONAL FEES - ₱38,386.71

In this particular respect, petitioner did not refute the assessment on undeclared income from understatement of professional fees and it paid the corresponding IT due.[174]

(ii) JANITORIAL/SECURITY SERVICES - CUSA (CHARGED TO VENDORS) - ₱3,118,185.91

As the records so yield, respondent treated as income subject to 12% VAT the janitorial, security and other CUSA fees that were ultimately charged to the tenants.

174 ICPA Exhibit "P-36".

In negating respondent's stance, petitioner argues that there was no undeclared income arising from undeclared expenses because fees received from said tenants were only held in trust and for which no VAT official receipt or invoice was issued to support such collections. Again, on this note, the Court finds no merit in petitioner's arguments.

Other than the excerpt of petitioner's sample journal entries as regards CUSA[175] and the Collection Report Summary,[176] no other documents (like third-party supplier billing statements) were presented to prove CUSA fees in the total amount of ₱3,118,185.91 or that the said amount was indeed attributed to reimbursements at cost for CUSA charges.

Assuming *arguendo* that the amount of ₱3,118,185.91 in fact pertained to reimbursement-on-cost basis only, without realizing any profit; 12% VAT may still cover such charges since petitioner benefited from third-party CUSA charges when it recorded and claimed input VAT thereon. The following *pro-forma* entries of petitioner in recording third-party CUSA charges are telling[177]:

...

| | | **Debit** | **Credit** |
|---|---|---|---|
| 1. | *To record billing of supplier to Ithiel* | **Debit** | **Credit** |
| | A/R CUSA Clearing | xxx | |
| | **<u>V12 (Input Tax)</u>** | **<u>xxx</u>** | |
| | Accounts Payable Trade | | xxx |
| | WTP – Withholding Taxes Payable | | xxx |
| 2. | *To record billing of Ithiel to Tenants* | **Debit** | **Credit** |
| | A/R Non-Trade Common Utility | xxx | |
| | A/R CUSA Clearing | | xxx |
| 3. | *To record collection from Tenants* | **Debit** | **Credit** |
| | RCBC SA#1-281-63110-8 SANPEDRO | xxx | |
| | A/R Non-Trade Common Utility | | xxx |
| 4. | *To record payment to Supplier* | **Debit** | **Credit** |
| | Accounts Payable Trade | xxx | |
| | RCBC SA#1-281-63110-8 SANPEDRO[178] | | xxx |

...

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[175] Id., Exhibit "P-44".
[176] Id., Exhibit "P-45" to "P-260".
[177] Id., Exhibit "P-18", p. 41.
[178] Emphasis and underscoring supplied.

Moreover, Revenue Memorandum Circular (**RMC**) No. 09-2006[179] provides conditions that must be met for the reimbursable expenses to be VAT-exempt:

> ...
>
> In sum, reimbursable expenses and/or advanced payments shall not be subject to VAT on the part of the broker if the following conditions/procedures are complied with:
>
> 1. The reimbursable expenses and/or advanced payments, except those incurred for the benefit of the brokers, are receipted <u>separately</u> using NON-VAT Official Acknowledgement Receipts to be issued by the brokers to the Customers upon collection of the reimbursements or advances previously recorded as RECEIVABLE FOR CASH ADVANCES ON BEHALF OF CUSTOMERS, which recording was done upon payment, on behalf of customers, of the advances to the third-party service providers **who issued official receipts in the name of the customers and not of the brokers**;
> 2. The third-party service providers to whom the advanced payments or reimbursable expenses of the customers have been paid by the brokers, **shall issue receipts <u>in the name of the Customers</u>**;
> 3. The brokers shall record the reimbursable expenses of or the advanced payments on behalf of Customers under the account "RECEIVABLE FOR CASH ADVANCES ON BEHALF OF CUSTOMERS"; and
> 4. For liquidation purposes, **the brokers shall <u>attach the original copy</u> of all said official receipts issued by the third-party service providers in the name of the customers to the NON-VAT official acknowledgement** receipts of the brokers issued to their Customers upon payment by the latter of the reimbursable expenses.[180]
>
> ...

Based on the foregoing rules, third-party suppliers must issue a VAT official receipt under the name of the customers (i.e., tenants) since such reimbursable expenses would ultimately redound to the benefit of said customers. However, upon perusal of the records of the case, Macro Vision Management & Gen. Services Co., one of the petitioner's suppliers of CUSA charges, issued a VAT official receipt in

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[179] Clarifying the Amount Subject to VAT and Expanded Withholding Tax (Income Tax) of Brokers and Others Similarly Situated and the Other Parties with Whom They Transact Business.

[180] Emphasis supplied and underscoring in the original text.

the name of petitioner and correspondingly, petitioner claimed the related input VAT thereon.[181]

Thus, aside from the fact that petitioner failed to comply with the foregoing requirements, there would likewise be unjust enrichment on the part of petitioner if the Court were to rule that such alleged reimbursable expenses, from which petitioner benefited in the form of input VAT, would not be subjected to 12% VAT. Hence, this assessment item shall remain.

To conclude, the entire deficiency VAT assessment is upheld.

II. DEFICIENCY EXPANDED WITHHOLDING TAX FOR TAXABLE YEAR 2007

Respondent also assessed petitioner of alleged deficiency EWT for TY 2007 amounting to ₱60,917.74, inclusive of interest[182], computed as follows:

**Schedule 3**

| Income Payments | Per FS/ITR | Per BIR Form No. 1601-E | Understatement of Expenses per FAN | Adjustment | Disallowed Expense | EWT Rate | EWT Due |
|---|---|---|---|---|---|---|---|
| Prime/Sub-Contractors | | | | | | | |
| Advertising expense | 30,735.02 | | | | | | |
| Repairs & maintenance | 330,638.33 | | | | | | |
| Others | 6,670,044.95 | | | | | | |
| Total | 7,031,418.30 | 9,087,964.89 | (2,056,546.59) | 3,118,185.91 | 1,061,639.32 | 2% | 21,232.79 |
| Add: Interest (1.16.08 to 05.19.17) | | | | | | | 39,684.95 |
| **Total Amount Due** | | | | | | | 60,917.74 |

As discussed previously, petitioner failed to prove that the above discrepancy of ₱1,061,639.32 was properly subjected to withholding tax. Hence, the imposition of deficiency EWT thereon is likewise upheld.

181 ICPA Report, Exhibit "P-47.1".
182 Exhibit "P-16", Division Docket, pp. 251-255.

III. DEFICIENCY WITHHOLDING TAX ON COMPENSATION FOR TAXABLE YEAR 2007

Respondent assessed petitioner of alleged deficiency WTC for TY 2007 amounting to ₱347,700.58, inclusive of interest[183], computed as follows:

**Schedule 2**

| | | | |
|---|---|---|---|
| Salaries and Wages per FS/ITR | | | 10,984,997.98 |
| Salaries and Wages per Alphalist | | | 10,401,559.61 |
| Salaries not subjected to withholding tax | | | 583,438.37 |
| Multiplied by: | Tax Due (Per 1604CF) | 1,748,580.62 | |
| | Taxable Salaries (Per 1601C) | 8,418,059.71 | 20.77% |
| **Basic Deficiency Tax** | | | **121,190.52** |
| Add: Interest (1.16.08 to 05.19.17) | | | **226,510.06** |
| **Total Amount Due** | | | **347,700.58** |

As likewise earlier discussed, inasmuch as petitioner failed to prove that ₱272,323.07 out of ₱583,438.37 pertained to non-taxable compensation income, respondent's assessment of WTC shall be sustained. Accordingly, petitioner is liable to pay the basic deficiency WTC in the amount of ₱56,561.10, computed as follows:

| | | | |
|---|---|---|---|
| Salaries not subjected to withholding tax | | | 272,323.07 |
| Multiplied by: | Tax Due (Per 1604CF) | 1,748,580.62 | |
| | Taxable Salaries (Per 1601C) | 8,418,059.71 | 20.77% |
| **Basic Deficiency Tax** | | | **56,561.50** |

**WHEREFORE**, premises considered, the Petition for Review filed by petitioner Ithiel Corporation is **PARTIALLY GRANTED**. The assessment on deficiency income tax, value-added tax, expanded withholding tax, and withholding tax on compensation shall be adjusted as a result. Accordingly, petitioner Ithiel Corporation is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amounts of **₱1,879,179.10**, **₱1,362,611.13**, **₱77,452.14**, and **₱206,322.85**, representing basic deficiency income tax, value-added tax, expanded withholding tax, and withholding tax on compensation,

[183] Id.

respectively, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed thereon under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until 31 December 2017, as determined below:

| | IT | VAT | EWT | WTC | TOTAL |
|---|---|---|---|---|---|
| **Basic** | 523,240.85 | 374,182.31 | 21,232.79 | 56,561.50 | 975,217.45 |
| **Surcharge (25%)** | 130,810.21 | 93,545.58 | 5,308.20 | 14,140.38 | 243,804.37 |
| **Deficiency Interest (20%) until May 8, 2017**[184] | | | | | |
| IT - 4/16/08 to 5/8/17 (P523,240.85 x 20% x 3310 days/ 365 days) | 949,001.21 | | | | 949,001.21 |
| VAT - 1/26/08 to 5/8/17 (P374,182.31 x 20% x 3,391 days/ 365 days) | | 695,261.49 | | | 695,261.49 |
| EWT - 1/16/08 to 5/8/17 (P21,232.79 x 20% x 3,401 days/ 365 days) | | | 39,568.61 | | 39,568.61 |
| WTC - 1/16/08 to 5/8/17 (P56,561.50 x 20% x 3,401 days/ 365 days) | | | | 105,405.84 | 105,405.84 |
| ***Total Amount Due as of May 8, 2017*** | 1,603,052.27 | 1,162,989.38 | 66,109.60 | 176,107.72 | 3,008,258.97 |
| **Deficiency Interest (20%) from May 9, 2017 to December 31, 2017** | | | | | |
| IT - 5/9/17 to 12/31/17 (P523,240.85 x 20% x 237 days/ 365 days) | 67,949.63 | | | | 67,949.63 |
| VAT - 5/9/17 to 12/31/17 (P374,182.31 x 20% x 237 days/ 365 days) | | 48,592.44 | | | 48,592.44 |
| EWT - 5/9/17 to 12/31/17 (P21,232.79 x 20% x 237 days/ 365 days) | | | 2,757.35 | | 2,757.35 |
| WTC - 5/9/17 to 12/31/17 (P56,561.50 x 20% x 237 days/ 365 days) | | | | 7,345.25 | 7,345.25 |

[184] Deadline for payment stated in the Amended Assessment Notices, Exhibits "P-12", P-13" and "P-14", id., pp. 248-250.

| | | | | | |
|---|---|---|---|---|---|
| **Delinquency Interest (20%) from May 9, 2017 to December 31, 2017** | | | | | |
| IT - 5/9/17 to 12/31/17 (P1,603,052.27 x 20% x 237 days/ 365 days) | 208,177.20 | | | | 208,177.20 |
| VAT - 5/9/17 to 12/31/17 (P1,162,989.38 x 20% x 237 days/ 365 days) | | 151,029.31 | | | 151,029.31 |
| EWT - 5/9/17 to 12/31/17 (P66,109.60 x 20% x 237 days/ 365 days) | | | 8,585.19 | | 8,585.19 |
| WTC - 5/9/17 to 12/31/17 (P176,107.72 x 20% x 237 days/ 365 days) | | | | 22,869.88 | 22,869.88 |
| **Total Amount Due as of December 31, 2017** | **1,879,179.10** | **1,362,611.13** | **77,452.14** | **206,322.85** | **3,525,565.22** |

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12% computed from 01 January 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018[185], on said deficiency taxes based the following principal amounts:

| | |
|---|---|
| Income Tax | ₱ 1,603,052.27 |
| Value Added Tax | 1,162,989.38 |
| Expanded Withholding Tax | 66,109.60 |
| Withholding Tax on Compensation | 176,107.72 |

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

185 Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law).

**I CONCUR:**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
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.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
2nd Division Chairperson

## 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.

**ROMAN G. DEL ROSARIO**
Presiding Justice