REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

3M PHILIPPINES, INC., Petitioner,	**CTA CASE NOS. 9213 & 9214**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 19 2019 1:40 p.m.

x - x

AMENDED DECISION

CASTAÑEDA, JR., *J.*:

For resolution are:

1. petitioner's **Motion for Partial Reconsideration**, filed on February 15, 2019, with respondent's **Comment (on Petitioner's Motion for Partial Reconsideration)**, filed on March 25, 2019, and petitioner's **Reply (To Respondent's Comment dated March 22, 2019)**, filed through registered mail on April 8, 2019 and received by the Court on April 15, 2019; and

2. respondent's **Motion for Partial Reconsideration [re: Decision dated January 31, 2019]**, filed on February 15, 2019, with petitioner's **Comment (To Respondent's Motion for Partial Reconsideration dated February 11, 2019)**, filed through registered mail on March

11, 2019 and received by the Court on March 14, 2019.

Both parties seek partial reconsideration of the Court's Decision dated January 30, 2019, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. The assessment issued by respondent against petitioner covering deficiency FWT for TY 2011 in the amount of ₱620,167.17 is **CANCELLED AND WITHDRAWN**. However, petitioner's claim for refund in the amount of ₱5,795,915.59 is **DENIED** and the assessments for deficiency income tax, VAT, EWT, and WTC for TY 2011 are **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **TWENTY MILLION SEVEN HUNDRED EIGHTY-EIGHT THOUSAND FIVE HUNDRED SIXTY-ONE PESOS AND FORTY-SEVEN CENTAVOS (₱20,788,561.47)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	Income Tax (IT)	VAT	EWT	WTC	Total
Basic Tax	₱ 684,788.25	₱ 4,849,804.66	₱ 1,523,108.93	₱ 2,094,229.35	₱ 9,151,931.19
Add: 25% Surcharge	171,197.06	1,212,451.17	380,777.23	523,557.34	2,287,982.80
20% Deficiency Interest					
IT: From Apr. 16,2012 to Nov. 5, 2015 *[₱684,788.25 X 20% X 1298/365 days]*	487,043.91				487,043.91
Deficiency Interest on belated payment of ₱2,105,100.00 income tax due	423,326.96				423,326.96
VAT: From Jan. 26, 2012 to Nov. 5, 2015 *[₱4,849,804.66 x 20% x 1380/365 days]*		3,667,249.55			3,667,249.55
EWT: From Jan. 17, 2012 to Nov. 5, 2015 *[₱1,523,108.93 x 20% x 1389/365 days]*			1,159,231.95		1,159,231.95
WTC: From Jan. 17, 2012 to Nov. 5, 2015 *[₱2,094,229.35 x 20% x 1389/365 days]*				1,593,909.35	1,593,909.35
Total Amount Due, Nov. 5, 2015	**₱1,766,356.18**	**₱ 9,729,505.38**	**₱3,063,118.11**	**₱4,211,696.04**	**₱18,770,675.71**
Add: 20% Deficiency Interest from Nov. 6, 2015 to Nov. 28, 2015					
IT: *[₱684,788.25 x 20% x 23/365 days]*	₱ 8,630.21				₱ 8,630.21
VAT: *[₱ 4,849,804.66 x 20% x 23/365 days]*		₱ 61,120.83			61,120.83

EWT: *[₱1,523,108.93 x 20% x 23/365 days]*			₱ 19,195.35		19,195.35
WTC: *[₱2,094,229.35 x 20% x 23/365 days]*				₱ 26,393.03	26,393.03
20% Delinquency interest from Nov. 6, 2015 to Nov. 28, 2015					
IT: *[₱1,766,356.18 x 20% x 23/365 days]*	22,260.93				22,260.93
VAT: *[₱9,729,505.38x 20% x 23/365 days]*		122,618.42			122,618.42
EWT: *[₱3,063,118.11 x 20% x 23/365 days]*			38,603.68		38,603.68
WTC: *[₱4,211,696.04 x 20% x 23/365 days]*				53,078.91	53,078.91
Total Amount Due, Nov. 28, 2015	**₱1,797,247.32**	**₱ 9,913,244.63**	**₱3,120,917.14**	**₱4,291,167.98**	**₱19,122,577.07**
Less: Payments made under protest	1,606,068.49		1,523,108.93	2,666,738.17	5,795,915.59
Amount Still Due, Nov. 28, 2015	**₱ 191,178.83**	**₱ 9,913,244.63**	**₱1,597,808.21**	**₱1,624,429.81**	**₱13,326,661.48**
Add: 20% Deficiency interest from Nov. 29, 2015 to Dec. 31, 2017 *[₱4,849,804.66 x 20% x 764/365 days]*		₱ 2,030,274.39			₱ 2,030,274.39
20% Delinquency interest from Nov. 29, 2015 to Dec. 31, 2017					
IT: *[(₱1,766,356.18- ₱1,606,068.49) x 20% x 764/365]*	₱ 67,101.26				67,101.26
VAT: *[₱9,729,505.38 x 20% x 764/365 days]*		4,073,064.17			4,073,064.17
EWT: *[(₱3,063,118.11- ₱1,523,108.93) x 20% x 764/365 days]*			₱ 644,694.25		644,694.25
WTC: *[(₱4,211,696.04- ₱2,666,738.17) x 20% x 764/365 days]*				₱ 646,765.92	646,765.92
Total Amount Still Due as of Dec. 31, 2017	**₱ 258,280.09**	**₱16,016,583.19**	**₱2,242,502.46**	**₱2,271,195.73**	**₱20,788,561.47**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total unpaid amount of **₱12,974,760.12** representing basic deficiency income tax, VAT, EWT and WTC plus the corresponding 25% surcharge and deficiency interest for deficiency VAT, EWT and WTC as of November 5, 2015, as determined above, computed from January 1, 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), as implemented by RR NO. 21-2018.

SO ORDERED."

Petitioner's Motion for Partial Reconsideration

Petitioner assails the above-mentioned Decision on the following grounds:

A. The Formal Letter of Demand (FLD) and Final Decision on Disputed Assessment (FDDA) must be cancelled for being jeopardy assessments;

B. The 2009 FLD and FDDA are void for having been issued pursuant to an expired Letter of Authority;

C. Petitioner is not liable for deficiency income tax as assessed under the 2011 FDDA;

D. Petitioner is not liable for deficiency value-added tax as assessed under the 2011 FDDA;

E. Petitioner is not liable for deficiency withholding tax – expanded of ₱1,523,108.93;

F. Petitioner is not liable for deficiency withholding tax – compensation of ₱2,094,229.35;

G. Petitioner is not liable for twenty-five percent (25%) surcharge on the assessed deficiency internal revenue taxes;

H. Petitioner is not liable for the deficiency interest of twenty percent (20%) per annum and delinquency interest of twenty percent (20%) per annum; and

I. Petitioner is entitled to the refund of the ₱5,795,915.59 it paid under protest last November 28, 2015.

FLD and FDDA are not jeopardy assessment.

Petitioner contends that the FLD and FDDA for taxable year (TY) 2011 were in the nature of a jeopardy assessment conducted without the benefit of a complete or partial audit. Petitioner claims that it was assessed for deficiency taxes amounting to ₱1,892,110,401.41[1] and ₱1,308,024,461.55 in the Preliminary Assessment Notice (PAN) and FLD, respectively. Thus, it allegedly

[1] The correct aggregate amount is ₱1,892,110,434.40.

shows that the said assessed deficiency taxes were reduced by ₱584,085,939.86. Likewise, petitioner states that respondent assessed the former in the FDDA for deficiency taxes in a much lower amount of ₱45,023,806.45, which was only 2.38% of the original assessment in the PAN. As such, petitioner assumes that the extreme reduction of the assessment for deficiency taxes in the FDDA would show that the PAN and FLD were haphazardly issued by the Bureau of Internal Revenue (BIR), without any valid audit to support its findings. Petitioner also presumes that had the PAN and FLD been issued after a proper audit, the differences in the said amounts would not have been so substantial.

According to petitioner, Revenue Officer (RO) Monforte has admitted that the BIR issued the FLD without conducting a complete audit, because petitioner refused to sign any Waivers of the Statute of Limitations and the three-year prescriptive period for the issuance of an assessment for TY 2011 was about to expire. Petitioner asserts that it submitted all of the documents which respondent requested; however, despite submission of the said documents, respondent took almost two years to issue the FLD based on "raw data". Petitioner contends that the inordinate delay was solely attributable to the BIR. Consequently, petitioner argues that the FLD and FDDA were issued as jeopardy assessments lacking an actual audit, thus, should be cancelled outright.

On the other hand, respondent counter-argues that tax assessments are presumed correct. Respondent denies petitioner's allegation of lack of audit, and instead, insists that the revenue officers painstakingly examined all records of petitioner made available to them. Respondent avers that petitioner was given all opportunity to present its side but failed to present credible evidence to refute the assessment. Respondent posits that the assessment made was proper for failure of petitioner to overcome with competent evidence the presumption of correctness of the assessment.

In its *Reply*, petitioner reiterates the above-mentioned arguments and asserts that the presumption of regularity in the performance of its duties is a disputable presumption which can be rebutted by affirmative evidence. Petitioner notes that respondent neither offered any remark on the alleged admission of RO Monforte nor explanation as to the wide chasm of disparity between the PAN and FLD *vis-à-vis* the FDDA. *ps*

Revenue Regulations (RR) No. 30-2002 has defined jeopardy assessment for the purpose of an offer to compromise a delinquent account or disputed assessment on the ground of reasonable doubt as to the validity of the assessment, as follows:

> "**SEC. 3. BASIS FOR ACCEPTANCE OF COMPROMISE SETTLEMENT.** – The Commissioner may compromise the payment of any internal revenue tax on the following grounds:
>
> 1. **Doubtful validity of the assessment.** – The offer to compromise a delinquent account or disputed assessment under these Regulations on the ground of reasonable doubt as to the validity of the assessment may be accepted when it is shown that:
>
>   (a) The delinquent account or disputed assessment is one resulting from a jeopardy assessment (For this purpose, *'jeopardy assessment'* shall refer to a **tax assessment which was assessed without the benefit of complete or partial audit by an authorized revenue officer, who has reason to believe that the assessment and collection of a deficiency tax will be jeopardized by delay because of the taxpayer's failure to comply with the audit and investigation requirements to present his books of accounts and/or pertinent records, or to substantiate all or any of the deductions, exemptions, or credits claimed in his return)**; or" (*Emphasis supplied*)

RO Monforte testified that he asked petitioner to submit its accounting records for tax audit/investigation and subsequently conducted such audit/investigation, to wit:

> "15Q When the case was assigned to you, how did you conduct your audit/investigation?
>
> 15A On 8 April 2013, we served to petitioner the Letter of Authority together with the List of Audit Requirements and we asked petitioner to submit its accounting records and the documents requested from it by the BIR.
>
> 16Q After petitioner filed the required accounting records and documents, what happened to the audit/investigation that you mentioned earlier?

16A We conducted the investigation and audit of petitioner's accounting records and other submitted documents, and to inform petitioner of the result of investigation"[2]

On cross-examination, Revenue Officer Monforte testified:

"ATTY. JAVELOZA:
Q. Okay. So the issuance of the FDDA Mr. Witness is an admission, the total amounts of ₱1.8 in the FDDA and the ₱1.3 in the FLD were in fact incorrect computations and that that were reconsidered...(*interrupted*)

RO MONFORTE:
A. Let me qualify my answers, Your Honors?

ATTY. JAVELOZA:
Q. Okay.

RO MONFORTE:
A. The assessment were based on raw data, so it's up to the taxpayer if they're going to refute all the assessments. So when the Protest Letter came and it was substantiated, then the assessment would...

JUSTICE CASTAÑEDA:
You reduced the assessment based on the Protest.

RO MONFORTE:
A. Based on the Protest, Your Honors.

ATTY. JAVELOZA:
Q. But you earlier mentioned that you requested for a Waiver. If the taxpayer executed for a waiver, would you had more time to examine the raw data?

RO MONFORTE:
A. Yes, exactly, Your Honors. Because of the refusal to sign a Waiver, I have to go on with my assessment.

ATTY. JAVELOZA:
Q. It's correct for me to speak Mr. Witness, that you were forced to issue the FLD as it was because the taxpayer didn't give you more time pursuant to the Waiver you requested?

[2] Exhibit "R-9", docket, vol. IV, p. 1544.

RO MONFORTE:
A. Hmmm... slight."[3]

Based on the foregoing, it is apparent that RO Monforte continued with the assessment when petitioner refused to sign a Waiver; thus, it conducted a tax audit. The presumption that official duty has been regularly performed[4] and the testimony of RO Monforte can only be overcome through a clear and convincing evidence upon presentation by petitioner of evidence showing that the assessment was made without a complete or partial audit. However, petitioner did not present any proof to establish that RO Monforte did not conduct a tax audit, complete or partial. The disparity on the assessed amounts in the PAN, FAN, and FDDA does not absolutely prove that there was no tax audit made.

FLD and FDDA are valid.

Petitioner avers that Revenue Memorandum Circular (RMC) No. 36-99 allows revenue officers to conduct the audit and submit the required report of investigation only within 120 days from the date the taxpayer received the Letter of Authority (LOA). According to petitioner, if the revenue officers are unable to submit the final report of investigation within the prescribed period, they must submit a Progress Report to the head office and surrender the LOA for revalidation. In this case, petitioner asserts that the tax audit against it started from April 2, 2013; and despite its submission of all of the documents required, respondent took almost two years before the latter issued the FLD. As such, petitioner avers that the LOA was already expired when the PAN, FAN, and FDDA were issued; thus, the revenue officers had no continuing authority to conduct a tax audit against petitioner. Consequently, the PAN, FAN, and FDDA are allegedly void.

However, respondent disagrees with petitioner's allegation. According to respondent, nothing in the law or BIR rules and regulations which provides that failure to revalidate a LOA when the 120-day period lapsed would make the assessment void. Respondent also notes that non-revalidation of the LOA does not nullify the LOA. Being so, the assessment is valid.

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[3] Transcript of Stenographic Notes (TSN) dated August 30, 2017, pp. 17 to 18.
[4] Section 3(m), Rule 131 of the Rules of Court provides:
SEC. 3. *Disputable presumptions.* – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
xxx xxx xxx
(m) That official duty has been regularly performed;

The Court agrees with respondent.

RMC No. 23-2009[5] specifically covers the matter of revalidation of LOA in this wise:

> **"I. Revalidation of LAs**
>
> xxx. Failure on the part of the RO to request for the revalidation of LA or the expiration of the 'revalidation period' does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO if the Regional Director, upon the recommendation of the Revenue District Officer, deems it necessary."

It is clear from the foregoing that failure of the revenue officer to request for the revalidation of LOA or the expiration of the 'revalidation period' does not nullify the LOA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. On the other hand, the concerned revenue officer may be subject to disciplinary action. Thus, the FLD and FDDA are valid.

Petitioner has no deficiency income tax.

a. Sales discrepancy per audit - ₱710,752.80

Petitioner posits that this Court erred in ruling that the assessment on petitioner's 2011 Sales Register had factual and legal basis. Petitioner claims that it was not able to respond intelligibly to the said assessment due to the absence of the details of the alleged discrepancy and in fact, it asked respondent to provide the breakdown of the monthly sales amounts used in the BIR's computation. Although petitioner did not dispute that the assessment was based on an alleged discrepancy between the sales declared under its 2011 Sales Register and 2011 Annual Income, petitioner insists that the schedule provided by respondent was not sufficient. Petitioner avers that a breakdown of the gross-figures appearing on the said schedule, showing each sales transactions and

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[5] SUBJECT: Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division.

identification of the vendees, was necessary for petitioner to compare the same with its financial records and books of accounts on a transaction-by-transaction basis.

b.1. Disallowed cost and deductions – payments of accounts pertaining to 2010 charges in the amount of ₱776,721.62

Petitioner postulates that the *disallowed cost and deductions-payments of accounts pertaining to 2010 charges* were not claimed as expense in 2011. Petitioner also claims that it provided respondent a breakdown of the payments and reference journal of the reversal of the said expenses. According to petitioner, the said breakdown marked as Exhibit "P-100", has shown that the transactions were payments of accounts payable representing expenses accrued in taxable year 2010. Petitioner allegedly recorded a reversal on the said accrual upon payment to offset the same, and it did not claim the transactions as expenses in 2011.

b.2. Disallowed cost and deductions – reimbursements of employee expenses with no vendor names in the amount of ₱795,153.14

Petitioner insists that despite its repeated requests, respondent failed to provide the details of the alleged reimbursements such as journal references to allow the petitioner to verify and properly refute the discrepancy; thus, petitioner was allegedly not informed of the factual and legal bases of the said assessment. Petitioner avows that it presented its Purchase Journal Book marked as Exhibit "P-101" supporting the allegation that there was no single employee reimbursement transaction amounting to ₱11,015,135.80.

c. Interest on additional taxable income per amended returns - ₱424,480.44

According to petitioner, respondent has no basis to impute deficiency income tax on petitioner's additional other taxable income amounting to ₱7,017,000.00 declared in its Amended Annual Income Tax Return (AITR) because it timely declared the same as part of its 2011 gross income and paid the corresponding tax. Petitioner points out that respondent acknowledged the aforesaid fact when the latter removed the imposition of the basic deficiency income tax of

₱2,105,100.00 in the FDDA. Thus, petitioner contends that since there was no basic deficiency income tax due, the imposition of the 20% deficiency interest under Section 249(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, has no basis.

At this instance, petitioner has raised for the first time that it had income tax overpayment of ₱6,553,105.97 sufficient to offset the remaining deficiency income taxes assessed in the FLD and FDDA. In any case and without abandoning its arguments on the deficiency income tax assessments, petitioner believes that even if it was indeed liable for the said deficiency in the assailed Decision, it should result to the cancellation of the said assessment on the ground that its overpayment can sufficiently cover the remaining income tax liability.

Respondent objects petitioner's arguments and states that the Court correctly upheld the deficiency income tax assessment.

The Court finds that the arguments raised by petitioner are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision, except the allegations of income tax overpayment that could sufficiently cover the remaining deficiency income tax.

It is worthy to reiterate the ruling of this Court that "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. **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.**"[6] (*Emphasis supplied.*)

Likewise, records show that the Court denied the admission of petitioner's Exhibit "P-100" for failure to present the original for comparison as well as Exhibit "P-101" for not being found in the records.[7]

Further, the Court still finds petitioner liable for deficiency income tax assessments; nevertheless, the Court considers

[6] Page 24 of the Decision.
[7] Resolution dated April 25, 2017, docket, vol. III, pp. 1293 to 1294.

petitioner's overpayment that could sufficiently cover the said deficiency income tax.

To recall, respondent had taken into consideration petitioner's Amended AITR for TY 2011 when the former excluded the amount of ₱7,017,000.00 in the FDDA as adjustment to taxable income and just imposed deficiency interest on the related income tax due of ₱2,105,100.00 from April 15, 2012 up to the filing of the Amended AITR on April 18, 2013 in the amount of ₱424,480.44,[8] to wit:[9]

> "As per your protest, the additional taxable income per amended returns should no longer form part of adjustments to taxable income per audit since this would mean taxing the same income twice. As such, only the interest thereon until the date of filing of amended returns is being assessed as per table below;"

Based on the foregoing, respondent considered petitioner's Amended AITR for TY 2011[10] as proof of payment of the income taxes due for TY 2011, including the additional taxable income not reported in the original return but excluding the assessed sales discrepancy and disallowances discussed above, without questioning the other adjustments incorporated thereto that resulted to an overpayment of ₱6,553,105.97[11]. On this premise, the Court finds the tax overpayment of ₱6,553,105.97 worthy of consideration.

Now, applying the upheld basic deficiency income tax due of ₱684,788.25[12] and the deficiency interest of ₱423,326.96[13] on belated payment of ₱2,105,100.00 income tax due against the overpayment of ₱6,553,105.97, it will still result to a net overpayment of ₱5,444,990.76. However, since the basic deficiency income tax due of ₱684,788.25 was paid only upon the filing of petitioner's Amended Annual ITR on April 18, 2013, the belated payment thereof shall also be subject to 20% deficiency interest computed from April 17, 2012 until April 18, 2013 pursuant to Section 249(A) of the NIRC of 1997, as amended. Consequently, petitioner's tax overpayment for TY 2011 will ultimately be reduced to ₱5,307,282.66, as computed below:

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[8] Page 26 of the Decision.
[9] Exhibit "P-11", Details of Discrepancies, docket, vol. I, p. 67.
[10] Exhibit "P-27-a", docket, vol. II, pp. 759 to 766.
[11] Exhibit "P-27-a", *Line 37,* docket, vol. II, p. 761.
[12] Page 52 of the Decision.
[13] *Ibid.*

Tax overpayment per Amended Return		₱ 6,553,105.97
Less: Upheld deficiency income tax liability		
Basic deficiency income tax		684,788.25
Interest on additional taxable income per amended return		423,326.96
Net Overpayment		₱ 5,444,990.76
Less: Deficiency interest on basic deficiency income tax [(₱684,788.25 x 20%) x 367/365 days]		137,708.10
Net Tax Overpayment		**₱5,307,282.66**

Accordingly, by virtue of the ₱6,553,105.97 income tax overpayment reflected per its Amended AITR, petitioner's deficiency income tax liability as found by the Court is effectively extinguished.

Petitioner is liable for deficiency value-added tax (VAT) - ₱4,849,804.66, deficiency withholding tax-expanded (EWT) - ₱1,523,108.93, and deficiency withholding tax-compensation (WTC) - ₱2,094,229.35.

a. Deficiency VAT – additional taxable income per amended ITR - ₱3,100,000.00

Petitioner avers that this Court erred in ruling that the it was liable for deficiency VAT on additional taxable income per Amended ITR in the amount of ₱3,100,000.00 and on disallowed input tax due to invoicing requirements violation in the amount of ₱4,477,804.66.

As maintained by petitioner, the additional income under the Amended ITR in the amount of ₱3,100,000.00 is allegedly not subject to VAT. According to petitioner, it has explained in its protest the composition of the "other taxable income" as follows:

Other Taxable Income		4,960,000.00
Restatement of available-for-sale financial assets	2,100,000.00	
Miscellaneous income	2,860,000.00	
Proceeds from PPE retirement		240,000.00
TOTAL		5,200,000.00

Petitioner alleges that the restatement of available-for sale of financial assets amounting to ₱2,100,000.00 is not a VATable transaction, thus, not subject to VAT. On the other hand, proceeds from PPE retirement are allegedly not considered as transactions in the ordinary course of business, hence, not also subject to VAT. 𝓆

Also, petitioner explains that the remaining ₱2,860,000.00 miscellaneous income had already formed part of the VATable sales it declared in its 2011 VAT Returns marked as Exhibits "P-29" to "P-48".

Respondent counter-argues that petitioner did not provide supporting documents to establish the latter's allegations; thus, the Court's ruling should be upheld.

b. Deficiency VAT – disallowed input tax due on invoicing requirements violation - ₱4,477,804.66

Petitioner alleges that the Court reduced the disallowed input VAT from ₱16,903,230.64 to ₱4,477,804.66. Petitioner asserts that as per testimony during cross-examination, RO Monforte only examined the copies of receipts and invoices found in the BIR records. As such, petitioner assumes that such fact is substantial proof that the assessment of deficiency VAT on the disallowed input VAT was based on an incomplete audit. Petitioner likewise avers that the assessment must be based on facts and not on mere presumptions.

Respondent denies petitioner's allegation, arguing that the former's witness did not testify and admit that the invoices and receipts found in the BIR records are the only basis of the said assessment.

Petitioner's arguments are a mere rehash of the same facts and issues which have already been discussed upon extensively in the assailed Decision.

The Court notes that petitioner's Exhibits "P-47" and "P-48" were denied admission for not being found in the records.[14] Likewise, the Court observes that the composition of the deficiency VAT on additional taxable income per amended ITR in the amount of ₱3,100,000.00 had been breakdown to the Proceeds from retirement of Property and equipment - ₱240,000.00 and Miscellaneous income - ₱ 2,860,000.00.

It is worthy to reiterate the ruling of this Court that petitioner did not provide supporting documents on the item of additional

[14] Resolution dated August 1, 2017, docket, vol. IV, p. 1531.

taxable income per amended ITR, while the assessed amount on the item of the disallowed input tax due to invoicing requirements violation was reduced, *viz*:

"***a. Additional taxable income per amended ITR***

Respondent's verification revealed that there was still an unreconciled discrepancy of additional VATable income per Amended ITR in the amount of ₱3,100,000.00, as shown below, hence, assessed pursuant to Section 106(A) of the NIRC of 1997, as amended:

Discrepancy per FLD	₱ 5,200,000.00
Restatement of Available for Sale Financial Assets not subject to Vat	2,100,000.00
Net Additional Vatable Income for FDDA	**₱ 3,100,000.00**

The Court-commissioned ICPA provided a breakdown of the assessed amount of ₱3,100,000.00 as follows:[15]

Proceeds from retirement of Property and equipment	₱ 240,000.00
Others: Miscellaneous income, net	2,860,000.00
Net Additional Vatable Income for FDDA	**₱ 3,100,000.00**

Petitioner argues that the transactions pertaining to the amount of ₱3,100,000.00 were not subject to VAT. However, as correctly noted by the ICPA, petitioner did not provide documents in support of the assessed amount of ₱3,100,000.00. Hence, the Court cannot verify the nature of the same and ascertain the proper tax implication. Consequently, the Court is constrained to uphold the deficiency VAT assessment on this item.

b. Disallowed input tax due to invoicing requirements violation

xxx xxx xxx

The Court partially upholds the disallowance.

In *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, the Supreme Court considered the Detailed Notice of Discrepancy or a justification on how the deficiency taxes

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[15] Page 9 of Exhibit "P-107".

were arrived at as sufficient to prove the factual and legal bases in a BIR assessment, to wit:

> 'In the present case, a mere perusal of the FAN for the deficiency EWT for taxable year 1994 will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge and penalty were anchored with legal basis. Petitioner should have at least **attached a detailed notice of discrepancy or stated an explanation why the amount of ₱48,461.76 is collectible against respondent and how the same was arrived at.** xxx.' (*Emphasis supplied*)

Records show that respondent's FLD/FAN was accompanied by Details of Discrepancies, which states that:

> **'3. Input tax in violation of Invoicing Requirements - ₱16,903,230.64**
>
> Verification of supplier's invoices disclosed that some invoices failed to comply with the invoicing requirements as prescribed under Section 110 of the 1997 Tax Code in relation with Section 4.113-1 (B)(3) and 4.113-4 (A)(2) both of Revenue Regulation No. 16-2005 as amended. Input tax disallowed on such improper invoicing amounted to ₱16,903,230.65, please **ANNEX A-13**.'

Petitioner's enumeration of the details of the ₱16,903,230.65 disallowed input taxes in its protest letter[16] to the FLD/FAN belies its claim that it was not given a copy of Annex A-13. Having laid down the legal and factual bases for the disallowed input tax of ₱16,903,230.65, respondent observed the due process requirement on assessment under Section 228 of the NIRC of 1997, as amended.

Verily, the input VAT disallowances made by respondent were based on the documents presented by petitioner during respondent's investigation. While the invoices/ORs found in the BIR records only pertain to ₱2,158,858.62 input VAT as alleged by petitioner, it does not necessarily mean that these were the only documents actually examined by respondent."

<u>Petitioner is liable for deficiency EWT & WTC.</u> gc

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[16] Petition for Review, Annex Q, docket, vol. I, pp. 354 to 355.

According to petitioner, the Court erred in ruling that petitioner did not provide adequate documentary evidence to refute the deficiency EWT assessment. Petitioner has purportedly attached to its protest and supporting documents a schedule presenting the breakdown of purchases and offices supplies for the period January to November 2011 and for the month of December 2011. Petitioner argues that based on the said schedule, the purchases were not made to regular suppliers of goods, thus, not subject to 1% withholding tax. Petitioner also asserts that a detailed examination of the FDDA would show that it had no income payments on which it failed to withhold the required 2% withholding tax-expanded on regular suppliers of services. It is further alleged by petitioner that the figures used by respondent in generating the 2% EWT were incorrect and that the correct purchases declared were shown on the schedules attached to its protest and supporting documents.

As regards deficiency WTC, petitioner disagrees with the Court's ruling in the assailed Decision. Petitioner maintains that the charges to the salaries and allowances account under the 2011 Audited Financial Statement figures used by respondent in generating the WTC assessment included the aggregate amount of ₱20,512,026.70, representing SSS employer contributions share, employee food, meals and other expenses, payments for employee medical and dental coverage, PhilHealth, and Pag-ibig employer contributions share, which are not allegedly subject to WTC.

A careful evaluation of petitioner's arguments with respect to the deficiency EWT and WTC reveals that these are essentially mere rehash of the same facts and issues which have already been evaluated thoroughly in the assailed Decision.

The Court emphasizes that the admission of petitioner's supporting documents marked as Exhibit "P-10" was denied for failure to present the original for comparison.[17]

It is worthy to note that petitioner failed to raise any new matters substantially plausible to warrant the reversal or reconsideration of the Court's findings on the deficiency EWT and WTC. On this note, the Court reiterates the pertinent portions of the assailed Decision, thus:

"III. Deficiency EWT - ₱2,670,656.75

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[17] Resolution dated August 1, 2017, docket, vol. IV, p. 1531.

xxx xxx xxx

As discussed earlier, the assessment covering the months of January to November of CY 2011 had already prescribed. However, since petitioner was unable to point out which portion of the assessment pertains to the months of January to November of CY 2011, the entire EWT assessment shall be considered as pertaining to the month of December 2011.

xxx xxx xxx

Anent the purchases allegedly not subjected to 1% EWT, petitioner posits that these purchases were not made to regular suppliers of goods, hence, not subject to the 1% EWT. However, petitioner failed to provide documentary evidence to support its position.

With regard to the amount purportedly subject to 2% EWT, petitioner maintains that Annex A-2 of the BIR's schedule shows that it had no income payments on which it failed to withhold the required 2% EWT on regular suppliers of services.

While the amount not subjected to withholding tax per FLD' under the 2% column of Annex A-2 reflected a zero amount, it is clear that the EWT assessment did not arose therefrom as the same schedule shows that the said assessment was derived from the amount of Outside Services initially assessed as subject to 15% EWT in the FLD, which were then reconsidered by respondent as subject to 2% EWT in the FDDA.

Aside from its Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) [BIR Forms No. 1601-E][18] and Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax [BIR Form No. 1604-E][19], no other document was provided by petitioner in relation to the EWT deficiency. Neither did the latter provide other justification to overturn the said assessment.

Thus, the Court upholds the basic deficiency 1% and 2% EWT assessments of ₱340,222.15 and ₱1,182,886.78, respectively, totaling ₱1,523,108.93.

IV. Deficiency WTC - ₱4,675,924.46

xxx xxx xxx

[18] Exhibits "P-49" to "P-60", docket, vol. III, pp. 1345 to 1377.
[19] Exhibit "P-98", docket, vol. III, p. 1440.

> As can be seen from respondent's computation, the amount of ₱20,512,026.70 consisting of the items highlighted above, were already excluded in the ₱8,333,557.02 net amount not subjected to WTC per FDDA.
>
> Considering that petitioner neither presented any supporting documents, nor provided any other explanation to overturn the assessed amount of ₱8,333,557.02, the same shall be sustained. And since petitioner was unable to point out which portion of the assessment pertains to the prescribed months of January to November of CY 2011, the entire assessment shall be considered as pertaining to the month of December 2011.
>
> xxx xxx xxx
>
> Thus, petitioner is liable to pay basic deficiency WTC for CY 2011 in the amount of ₱2,094,229.35 (₱8,333,557.02 x 25.1300776%)."

Petitioner is liable for twenty-five percent (25%) surcharge on the assessed deficiency internal revenue taxes.

Petitioner avers that pursuant to Section 228 of the NIRC of 1997, as amended, a taxpayer is required to be informed in writing of the facts and the law on which the assessment is made, otherwise, the assessment is void. Following this premise, petitioner objects to the imposition in the assailed Decision of the 25% surcharge on the upheld deficiency income tax, VAT, EWT, and WTC on the ground that respondent did not impose the same in the FLD and FDDA.

Petitioner's assertion lacks merit. In accordance with Section 248(A)(3) of the NIRC of 1997, as amended, the 25% surcharge shall be imposed in case of taxpayer's failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment, to wit:

> "SEC. 248. *Civil Penalties.* –
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> xxx xxx xxx

> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment;"

In *Republic of the Philippines vs. The Philippine Bank of Commerce*[20], the Supreme Court Court pronounced that the imposition of surcharge is mandatory to discourage delay in payment of taxes due to the State, to wit:

> "The above legal provision makes no distinctions nor does it establish exceptions. It directs the collection of the surcharge and interest at the stated rate upon any sum or sums due and unpaid after the dates prescribed in subsections (b), (c), and (d) of the Act for the payment of the amounts due. The provision therefore is mandatory in case of delinquency. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature — they are compensation to the State for the delay in payment, or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State (Castro vs. Collector etc., Resolution on Motion for Reconsideration, G.R. No. L-12174, December 28, 1962)."

In the FDDA[21], respondent has indicated therein that the deficiency taxes be paid immediately upon receipt thereof and the same is his final decision which may appealed to this Court. Applying the foregoing provision, since petitioner failed to pay the deficiency taxes on November 5, 2015[22], the date when petitioner received the FDDA, the 25% surcharge is properly imposed upon its deficiency VAT, EWT and WTC liabilities.

Note that the surcharge on the basic deficiency income tax shall be removed since the basic deficiency income tax due was already paid from petitioner's overpayment on April 18, 2013, which is prior to the date indicated in the FDDA.

Petitioner is liable for the deficiency interest of twenty percent (20%) per annum and delinquency interest of twenty percent (20%) per annum.

[20] G.R. No. L-20951, July 31, 1970.
[21] Exhibit "P-11", docket, vol. I, p. 62 to 63.
[22] *Ibid*, p. 61.

Petitioner submits that this Court erred in imposing the old deficiency and delinquency interest rates of 20%, when the applicable interest rate should be twice the legal interest rate, that is twelve percent (12%), pursuant to Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN Law).

The TRAIN Law, which took effect on January 1, 2018, amended Section 249 of the NIRC of 1997, as amended, to read as follows:

> "SEC. 75. Section 249 of the NIRC, as amended is hereby further amended to read as follows:
>
> 'SEC. 249. *Interest.* –
>
> '(A) *In General.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid: *Provided*, That in no case shall the deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof be imposed simultaneously.
>
> '(B) *Deficiency Interest.* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier.
>
> '(C) *Delinquency Interest.* - xxx."

To implement the same, RR No. 21-2018[23] was issued on September 14, 2018. The relevant portions thereof provide:

> "**SECTION 2. RATE OF INTEREST. –** There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the effective legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas (BSP) from the date prescribed for payment until the amount is fully paid.

[23] Subject: 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)".

> The rate of interest per BSP Memorandum No. 799 series of 2013 for loans or forbearance of any money in the absence of an express stipulation is six percent (6%). Thus, the rate of legal interest imposable under Section 249 of the Tax Code, as amended, shall be twelve percent (12%). A Circular shall be issued by the Commissioner in case BSP prescribes new rate of interest.
>
> xxx xxx xxx
>
> **SECTION 6. TRANSITORY PROVISION.** - In cases where the tax liability/ies or deficiency tax/es became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment thereof will only be accomplished after the said effectivity date, the interest rates shall be applied as follows:

Period	*Applicable Interest Type and Rate*
For the period up to December 31, 2017	Deficiency and/or delinquency interest at 20%
For the period January 1, 2018 until full payment of the tax liability	Deficiency and/or delinquency interest at 12%"

Based on the foregoing, one of the amendments introduced by the TRAIN Law is the reduction of the interest rate for deficiency and/or delinquency to 12%. However, in case where the deficiency taxes became due before the effectivity of the TRAIN Law on January 1, 2018 and the full payment thereof will only be accomplished after the said effectivity date, the interest rate of 20% shall be applied for the period up to December 31, 2017 and 12% shall be applied for the period January 1, 2018 until full payment thereof.

Considering that the deadline stated in the FDDA for the payment of petitioner's deficiency VAT, EWT, and WTC for TY 2011 was on November 5, 2015, which was prior to the effectivity date of the TRAIN Law, the applicable interest rates, as properly computed by this Court in the assailed Decision, shall be *(a)* 20% deficiency interest rate from the date prescribed for its payment until December 31, 2017; *(b)* 20% delinquency interest from November 6, 2015 until December 31, 2017; and *(c)* 12% delinquency interest from January 1, 2018 until full payment thereof.

However, as to the deficiency income tax for TY 2011, only the 20% deficiency interest rate from the date prescribed for its payment until full payment thereof shall apply as earlier discussed. *ge*

Petitioner is entitled to a refund in the amount of ₱1,606,068.49.

Petitioner posits that since there are no validly assessed deficiency taxes against which its payment of ₱5,795,915.59 under protest may be applied, it is entitled to a refund in accordance with Section 229 of the NIRC of 1997, as amended.

As discussed in the assailed Decision, to be entitled to a refund of erroneously or illegally collected tax under Sections 204(C) and 229 of the NIRC of 1997, as amended, petitioner must be able to prove that the claim for refund has been filed within two years from the date of payment of tax and that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected.

It has been established that petitioner's administrative and judicial claims were timely filed before this Court on December 1, 2015 and December 4, 2015, respectively.[24]

As regards whether there are excess/erroneous tax payments, the Court maintains its ruling in the assailed Decision in so far as the deficiency EWT and WTC are concerned. Considering that the Court finds petitioner's motion for reconsideration on the deficiency EWT and WTC without merit and that the corresponding payments made by petitioner under protest are lower than the amounts upheld by the Court, there is no erroneous payment on deficiency EWT and WTC that may be refunded to the latter.

Meanwhile, it can be recalled that out of petitioner's ₱5,795,915.59 payments under protest, ₱1,606,068.49 pertained to the deficiency income tax, to wit:

Tax Type	Exhibit Nos		Taxes Paid		
	BIR Form No. 0605/Filing Ref. No.[25]	**Efps payment confirmation[26]**	**Basic**	**Interest**	**Total**
Income Tax	P-17 to P-18	Annex B *(P-23)*	₱ 684,788.25	₱ 921,280.24	₱ 1,606,068.49
EWT	P-15 to P-16	Annex D *(P-23)*	1,523,108.93		1,523,108.93
WTC	P-21 to P-22	Annex F *(P-23)*	2,666,738.17		2,666,738.17

[24] Page 49 of the Decision.
[25] Docket, vol. II, pp. 715 to 718 and 721 to 722.
[26] Docket, vol. II, pp. 729, 732 and 735.

	Total		**₱4,874,635.35**	**₱921,280.24**	**₱5,795,915.59**

As earlier discussed, petitioner's overpayment per its Amended Annual ITR sufficiently covered the assessed basic deficiency income tax and the accrued interests thereon for TY 2011. Since nothing is left of petitioner's deficiency income tax liability for TY 2011, the payment under protest of deficiency income tax in the amount of ₱1,606,068.49 is considered an erroneous payment, thus, may be refunded to petitioner in accordance with Sections 204(C) and 229 of the NIRC of 1997, as amended.

Respondent's Motion for Partial Reconsideration

Respondent anchors his arguments on the following grounds:

I. The Court erred in ruling that the assessment for deficiency VAT for the first to third quarters of taxable year 2011 and deficiency EWT, WTC and FWT for January 2011 has already prescribed;

II. The Court erred in ruling that the deficiency VAT assessment arising from disallowed discrepancy on beginning and ending balances of deferred input tax should be cancelled and withdrawn; and

III. The Court erred in using an effective rate in computing the deficiency withholding tax on compensation.

Respondent's right to assess petitioner for deficiency VAT covering the 1st to 3rd quarters of TY 2011 and deficiency EWT, WTC, and FWT for January to November 2011 has already prescribed.

Respondent contends that the assessments for deficiency EWT, WTC, and FWT were imprescriptible. Respondent alleges that the withholding tax assessments are not for petitioner's personal tax liabilities but for failure of petitioner to withhold and remit the taxes that it is duty bound to collect as agent. Being penalties, respondent submits that the said assessments were not covered by the prescriptive period provided under Section 203 of the NIRC of 1997, as amended, which only covered taxes.

Likewise, respondent invokes the applicability of the ten-year period in accordance with Section 222 of the NIRC of 1997, as amended, to assess petitioner for deficiency VAT because the latter filed false returns.

Notably, this is the first time that respondent raised in these cases the issues of imprescriptibility of withholding tax assessments and applicability of ten-year prescriptive period to deficiency VAT assessment. Nonetheless, the Court shall discuss the said issues to thresh out the same.

Withholding taxes are internal revenue taxes which are covered under Section 203[27] of the NIRC of 1997, as amended. Further, Section 21 of the same Code enumerates internal revenue taxes as follows:

> "SEC. 21. *Sources of Revenue.* - The following taxes, fees and charges are deemed to be national internal revenue taxes:
>
> (a) Income tax;
> (b) Estate and donor's taxes;
> (c) Value-added tax;
> (d) Other percentage taxes;
> (e) Excise taxes;
> (f) Documentary stamp taxes; and
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue."

Verily, the concept of withholding implies that the amount of the tax withheld by a withholding agent comes from the income earned by a taxpayer. Considering that the subject withholding taxes (FWT, WTC and EWT) were actually part of the income of taxpayers for whom petitioner acted as withholding agent, the same fall under "Title II – Tax on Income" of the NIRC of 1997, as amended, and shall therefore be assessed within the period of three (3) years.

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[27] 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.

In *Commissioner of Internal Revenue vs. Systems Technology Institute, Inc.*[28], the CTA Court *En Banc* elucidated the withholding tax system in this wise:

> "The Withholding Tax System is more sufficiently explained in *Philippine Guaranty Co., Inc. vs. Commissioner of Internal Revenue* wherein the Supreme Court declared that:
>
>> 'The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. **Thus, the withholding agent is constituted the agent of both the government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer.** The withholding agent, therefore, is no ordinary government agent especially because under Section 53(c) he is held personally liable for the tax he is duty bound to withhold; whereas, the Commissioner of Internal Revenue and his deputies are not made liable to law.'
>
> xxx xxx xxx
>
> As withholding agent of the Government who failed to withhold, Section 80 mandates that an employer shall be liable to pay the tax together with the penalties or additions to the tax otherwise applicable in respect to such failure to withhold and remit.
>
> As agent of the taxpayer, the withholding agent is responsible for filing the necessary withholding tax return and remittance of the tax withheld.
>
> This dual role of a withholding agent is *sui generis.* Petitioner is splitting hairs when it seeks remedies under the umbrella of one role to the exclusion of the other. **The deficiency payment the Government seeks is an internal revenue tax. As such, as with any taxpayer, Section 203 applies. The Government must issue an assessment in an effort to**

[28] CTA EB No. 1050 (CTA Case No. 7984), March 24, 2015.

> **collect the tax within three (3) years after the last day prescribed by law for filing of the return, or in cases where the return is filed beyond the period prescribed by law, from the day the return was filed.** The rationale for this is further explained in *Bank of the Philippine Islands vs. Commissioner of Internal Revenue* which states that 'The statute of limitations on assessment and collection of taxes is for the protection of the taxpayer and, thus, shall be construed liberally in his favor.'
>
> Section 203 was instituted to benefit the taxpayer, the principal of the withholding agent. This Court sees no reason why a rule that applies to the principal should not apply to the agent as well." *(Emphasis supplied)*

Based on the foregoing, the Court finds that the assessment for deficiency EWT, WTC, and FWT can be barred by prescription.

With respect to the alleged applicability of the ten-year prescriptive period on assessment of deficiency VAT, the Court finds the argument without merit.

Let it be stressed that nowhere in the PAN[29], FLD/FAN[30], FDDA[31], not even in respondent's Answer[32], was it indicated that the ten-year prescriptive period shall apply to the deficiency VAT assessments because petitioner filed false returns. Also, respondent failed to present any evidence that would sufficiently prove the falsity of the VAT returns filed by petitioner to justify the application of the ten-year period.

Section 222[33] of the NIRC of 1997, as amended, provides that the ten-year period of assessment shall be applied in case a taxpayer filed a false or fraudulent return. In relation thereto, Section 248(B)[34] of the same Code, provides that failure on the part of the

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[29] Exhibit "P-6", BIR records, pp. 857 to 867.
[30] Exhibit "P-8", BIR records, pp. 1177 to 1190.
[31] Exhibit "P-11", docket, vol. I, pp. 61 to 75.
[32] Docket, vol. II, pp. 446 to 457.
[33] 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.
[34] SEC. 248. *Civil Penalties.* -
xxx xxx xxx
(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

taxpayer to report sales, receipts or income in an amount exceeding 30% of what is declared in its returns constitutes substantial under-declaration, which is a *prima facie* evidence of a false return.

Evidently, no *prima facie* evidence of false return exists since there was no substantial under-declaration of sales in these cases. The upheld additional taxable income of ₱3,100,000.00 does not even amount to 1% of petitioner's sales reflected per its 4th Quarterly VAT Return in the amount of ₱761,605,994.31[35].

Thus, the Court maintains its ruling that the right of respondent to assess petitioner for deficiency EWT, WTC and FWT for January to November 2011 and deficiency VAT covering the first to third quarters of TY 2011 has already prescribed in accordance with Section 203 of the NIRC of 1997, as amended.

Deficiency VAT assessment arising from disallowed discrepancy on beginning and ending balances of deferred input tax should be cancelled for lack of factual and legal basis.

Respondent maintains that petitioner had excessive deferred input VAT. As allegedly shown in the FDDA, petitioner's ending balance of deferred input VAT per its Audited Financial Statements is higher than the reported deferred input VAT per the 4th Quarterly VAT return. By deducting the lower amount in the return for TY 2011, petitioner purportedly carried over to the next period a higher amount of deferred input tax. Respondent claims that this higher deferred input tax in the succeeding period clearly resulted to a lower output VAT liability; thus, taxes should allegedly be imposed from such benefit realized in the succeeding quarter.

The Court finds respondent's argument misplaced.

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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 underdeclaration 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,* 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 underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

[35] Exhibit "P-46", *Line 19A,* docket, vol. III, p. 1343.

Contrary to respondent's interpretation thereof, a deduction of lower amount of deferred input VAT in the 4th quarterly VAT return will not result to a higher amount of deferred input VAT carried over in the succeeding taxable quarterly VAT return/s, assuming there was proper reporting of deferred input VAT carry-over in the VAT returns.

Logically, the amount deducted as deferred input VAT on the VAT return for the current taxable period is the same amount of deferred input VAT that shall be carried over to the succeeding taxable period/s.

Petitioner's 2011 quarterly VAT returns[36] properly illustrate the same, to wit:

	1st Qtr (Exh. P-31)	**2nd Qtr (Exh. P-36)**	**3rd Qtr (Exh. P-41)**	**4th Qtr (Exh. P-46)**
Input Tax deferred on capital goods exceeding ₱1M from previous quarter *(Line 20B)*	₱1,829,563.69	₱3,656,453.33	₱3,759,016.27	₱3,540,915.15
Add: Input tax on purchases of capital goods exceeding ₱1M *(Line 21D)*	2,027,443.95	310,320.00	-	-
Total	₱3,857,007.64	₱3,966,773.33	₱3,759,016.27	₱3,540,915.15
Less: **Input Tax on purchases of capital goods exceeding ₱1M deferred for the succeeding period *(Line 23A)***	3,656,453.33	3,759,016.27	3,540,915.15	3,322,814.04
Amortization of input	**₱200,554.31**	**₱207,757.06**	**₱218,101.12**	**₱218,101.11**

Respondent failed to prove that petitioner reported a higher amount of deferred input VAT carry-over in the succeeding period from which the latter allegedly realized a benefit through a lower amount of output VAT liability. But, even assuming that petitioner actually benefited from the carry-over of a higher amount of deferred input VAT in the succeeding period, the same is beyond the scope of the subject assessment. Hence, it is improper to assess the same because any tax benefit derived by petitioner from the said carry-over would redound to the succeeding TY 2012. Since the tax benefit will be in the succeeding taxable year, at most, petitioner may only be assessed in the said succeeding year. *Jr*

[36] Exhibits "P-31", "P-36", "P-41", and "P-46", docket, vol. III, pp. 1312 to 1313, 1322 to 1323, 1333 to 1335 and 1342 to 1344, respectively.

<u>The Court has correctly used the effective income tax rate in arriving at petitioner's deficiency WTC.</u>

According to respondent, the Court has erroneously applied the effective tax rate of 25.1300776% instead of the maximum tax rate of 32% assessed by respondent in computing petitioner's deficiency WTC. Respondent explains that he gave petitioner the opportunity to present the list of its employees so that the correct tax can be computed but the latter failed to do so. Respondent alleges that failure to present proof of error in assessment will justify judicial affirmation of said assessment. As such, since the employees to whom the compensation pertained to were not individually identified, respondent insists that the maximum tax rate of 32% must be used.

The Court disagrees with respondent.

Based on the FDDA, respondent has indicated Section 24 of the NIRC of 1997, as amended, as one of the legal bases of the imposition of deficiency WTC. The pertinent portion of which provides:

> "SEC. 24. *Income Tax Rates.* -
>
> (A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* -
>
> xxx xxx xxx
>
> (2) *Rates of Tax on Taxable Income of Individuals.* - The tax shall be computed in accordance with and at the rates established in the following schedule:
>
> Not over ₱10,000..5%
> Over ₱10,000 but not over ₱30,000..........₱500 + 10% of the excess over ₱10,000
> Over ₱30,000 but not over ₱70,000.............₱2,500 + 15% of the excess over ₱30,000
> Over ₱70,000 but not over ₱140,000............₱8,500 + 20% of the excess over ₱70,000
> Over ₱140,000 but not over ₱250,000............₱22,500 + 25% of the excess over ₱140,000
> Over ₱250,000 but not over ₱500,000............₱50,000 + 30% of the excess over ₱250,000

Over ₱500,000...₱125,000 + 32% of the excess over ₱500,000."

The foregoing provision distinctly establishes the graduated rates of 5% to 32% depending on the amount of income as basis for computing the income tax of an individual, which includes the tax withheld (WTC) by employers from the compensation earned by its employees.

Since respondent's computation of deficiency WTC resulted from the comparison of salaries and allowances and share-based compensation per petitioner's Audited FS and amounts of compensation subjected to withholding tax per returns, the amount of the assessed compensation per employee cannot be ascertained. However, a perusal of petitioner's Alphalist of employees[37] and Monthly Remittance Returns of Income Taxes Withheld on Compensation (BIR Forms 1601-C)[38] clearly shows that petitioner's employees do not all belong to the same income bracket, and that the rate used in computing its monthly WTC is not the maximum rate of 32%. Hence, the use of 32% rate has no factual basis.

Considering that petitioner's employees are of different income brackets and the employees to whom the assessed compensation pertained to were not individually identified, the Court maintains that it cannot ascertain the exact income tax rate that should be imposed. Thus, it is only fair and just to use the effective income tax rate based on total withholding taxes paid and taxable gross compensation reported during the TY 2011, as properly computed by the Court.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration [re: Decision dated January 31, 2019]** is **DENIED** for lack of merit. On the other hand, petitioner's **Motion for Partial Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated January 30, 2019, is amended to read as follows:

> "**WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax and FWT for TY 2011 are **CANCELLED AND WITHDRAWN**.

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[37] BIR records, pp. 475 to 482.

[38] Exhibits "P-61" to "P-72", docket, vol. III, pp. 1378 to 1401.

Likewise, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱1,606,068.49**, representing the latter's erroneous payment under protest for deficiency income tax. On the other hand, the assessments for deficiency VAT, EWT, and WTC for TY 2011 are **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **TWENTY MILLION FIVE HUNDRED THIRTY THOUSAND TWO HUNDRED EIGHTY-ONE PESOS AND THIRTY-EIGHT CENTAVOS (₱20,530,281.38)**, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	VAT	EWT	WTC	Total
Basic	₱ 4,849,804.66	₱ 1,523,108.93	₱ 2,094,229.35	₱ 8,467,142.94
Add: 25% Surcharge	1,212,451.17	380,777.23	523,557.34	2,116,785.74
20% Deficiency Interest				
VAT: From Jan. 26, 2015 to Nov. 5, 2015 *[₱4,849,804.66 x 20% x 1380/365 days]*	3,667,249.55			3,667,249.55
EWT: From Jan. 17, 2012 to Nov. 5, 2015 *[₱1,523,108.93 x 20% x 1389/365 days]*		1,159,231.95		1,159,231.95
WTC: From Jan. 17, 2012 to Nov. 5, 2015 *[₱2,094,229.35 x 20% x 1389/365 days]*			1,593,909.35	1,593,909.35
Total Amount Due, Nov. 5, 2015	**₱ 9,729,505.38**	**₱3,063,118.11**	**₱4,211,696.04**	**₱17,004,319.53**
Add: 20% Deficiency Interest from Nov. 6, 2015 to Nov. 28, 2015				
VAT: *[₱4,849,804.66 x 20% x 23/365 days]*	61,120.83			61,120.83
EWT: *[₱1,523,108.93 x 20% x 23/365 days]*		19,195.35		19,195.35
WTC: *[₱2,094,229.35 x 20% x 23/365 days]*			26,393.03	26,393.03
20% Delinquency interest from Nov. 6, 2015 to Nov. 28, 2015				
VAT: *[₱9,729,505.38 x 20% x 23/365 days]*	122,618.42			122,618.42
EWT: *[₱3,063,118.11 x 20% x 23/365 days]*		38,603.68		38,603.68
WTC: *[₱4,211,696.04 x 20% x 23/365 days]*			53,078.91	53,078.91
Total Amount Due, Nov. 28, 2015	**₱ 9,913,244.63**	**₱3,120,917.14**	**₱4,291,167.98**	**₱17,325,329.75**
Less: Payments made under protest	-	1,523,108.93	2,666,738.17	4,189,847.10
Amount Still Due, Nov. 28, 2015	**₱ 9,913,244.63**	**₱1,597,808.21**	**₱1,624,429.81**	**₱13,135,482.65**
Add: 20% Deficiency interest from Nov. 29, 2015 to Dec. 31, 2017 *(₱4,849,804.66 x 20% x 764/365 days)*	2,030,274.39			2,030,274.39
20% Delinquency interest from Nov. 29, 2015 to Dec. 31, 2017				
VAT: *[₱9,729,505.38 x 20% x 764/365 days]*	4,073,064.17			4,073,064.17
EWT: *[(₱3,063,118.11-1,523,108.93) x 20% x 764/365 days]*		644,694.25		644,694.25
WTC: *[(₱4,211,696.04-2,666,738.17) x 20% x 764/365 days]*			646,765.92	646,765.92
Total Amount Still Due as of Dec. 31, 2017	**₱16,016,583.19**	**₱2,242,502.46**	**₱2,271,195.73**	**₱20,530,281.38**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total unpaid amount of **₱12,814,472.43**[39] representing basic deficiency VAT, EWT, and WTC plus the corresponding 25% surcharge and deficiency interest as of November 5, 2015, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018.

SO ORDERED."

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I concur:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

[39] Total amount due as of November 5, 2015 of ₱17,004,319.53 less payments of ₱4,189,847.10.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

Juanito C. Castañeda, Jr.
JUANITO CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division