REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
****

THUNDERBIRD PILIPINAS HOTELS AND RESORTS, INC., Petitioner,	**CTA CASE NO. 8612**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 06 2018 4:30 p.m.

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AMENDED DECISION

CASANOVA, *J.*:

Submitted before this Court are the following:

1. respondent's **Motion for Partial Reconsideration Re: Decision dated February 3, 2017**[1] filed on February 21, 2017, with petitioner's **Comment/Opposition (Re: Respondent's Motion for Partial Reconsideration dated 21 February 2017)**[2] filed, through registered mail, on March 13, 2017; and,

2. petitioner's **Motion for Reconsideration (Re: Decision dated 03 February 2017)**[3] filed, *via* private courier, on February 24, 2017, without respondent's comment as per Records Verification dated March 23, 2017.

On February 3, 2017, this Court promulgated a Decision[4] in the instant case partially granting petitioner's Petition for Review by setting

[1] Docket (Vol. V), pp. 2065-2075.
[2] *Ibid.,* pp. 2189-2204.
[3] *Id.,* pp. 2078-2110.
[4] *Id.,* 1978-2064.

aside and cancelling respondent's deficiency Final Withholding Tax assessment issued against petitioner for taxable year 2008. As such, petitioner was ordered to pay the reduced amount of ₱76,930,413.43, exclusive of interests, the *fallo* of which reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review filed on February 19, 2013, is **PARTIALLY GRANTED.** The deficiency FWT assessment issued by respondent against petitioner for taxable year 2008 is **CANCELLED** and **SET ASIDE.** However, the deficiency SPRT, FT, EWT and DST assessments issued by respondent against petitioner for taxable year 2008 is **AFFIRMED with MODIFICATION**. Accordingly, petitioner is **ORDERED TO PAY** the amount of **₱76,930,413.43**, inclusive of the 25% surcharge amounting to **₱15,386,082.69** imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

	Basic	Surcharge	Total
I. Special Preferential Rate Tax (SPRT)	₱ 4,421,576.66	₱ 1,105,394.17	₱ 5,526,970.83
II. Franchise Tax (FT)	43,353,088.40	10,838,272.10	54,191,360.50
III. Expanded Withholding Tax (EWT)	13,625,694.96	3,406,423.74	17,032,118.70
IV. Documentary Stamp Tax (DST)	143,970.75	35,992.69	179,963.44
TOTAL	**₱61,544,330.77**	**₱15,386,082.70**	**₱76,930,413.47**

In addition, petitioner is hereby **ORDERED TO PAY**:

a) Deficiency interest at the rate of 20% per annum on the basic deficiency SPRT, FT, EWT, and DST computed from dates until full payment thereof pursuant to Section 249(B) of the NIRC, 1997, as amended:

Tax Type	Basic Tax	20% deficiency interest computed from
SPRT	₱ 4,421,576.66	April 15, 2009
FT	43,353,088.40	January 20, 2009
EWT	13,625,694.96	January 15, 2009
DST	143,970.75	January 10, 2009

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱76,930,413.43 and on the 20% deficiency interest which have accrued as aforestated in

(a), computed from September 14, 2012 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

SO ORDERED."

Aggrieved, the parties filed their respective Motions seeking partial reconsideration of the above Decision.

Meanwhile, on June 2, 2017, petitioner filed an Urgent Motion to Set Petitioner's Motion for Reconsideration Dated 23 February 2017 for Oral Argument and/or Presentation of Additional Evidence (Re: Decision dated 03 February 2017)[5] praying that this Court allow it to orally argue its Motion for Reconsideration; or, in the alternative, allow it to present additional evidence to support the arguments presented in its Motion for Reconsideration.

On June 9, 2017, a Resolution[6] was promulgated by this Court giving respondent a period of ten (10) days, upon receipt thereof, within which to file his comment. After moving for several extension of time within which to file a comment, respondent still failed to file the same as per Records Verification dated July 21, 2017.

Thus, on October 6, 2017, this Court promulgated a Resolution[7] setting the case for hearing for the presentation of petitioner's additional evidence in support of it Motion for Reconsideration while holding the resolution of parties' respective Motions for Reconsideration in abeyance.

Thereafter, on January 31, 2018, petitioner filed a Compliance[8], attaching therewith the Judicial Affidavit of its Corporate Finance Head, **Ms. Aurora Irene A. Pitahin**, as its additional witness. Petitioner claims that the testimony of Ms. Pitahin is being offered for the following purposes, *viz.*:

i. To prove that Ms. Pitahin is the Corporate Finance Head of petitioner Thunderbird Pilipinas Hotels and Resorts, Inc. (TPHRI);

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[5] Docket (Vol. VI), pp. 2225-2230.
[6] *Ibid.*, p. 2232.
[7] *Id.*, pp. 2245-2248.
[8] *Id.*, p. 2260-2263.

ii. To prove that as Corporate Finance Head of petitioner, Ms. Pitahin understands the accounting procedures implemented by TPHRI in recording its transactions and validate the accuracy of the transactions involved for the taxable year ending 31 December 2008 based on available documents and entries made in the course of business;

iii. To show the portion of alleged deficiency Expanded Withholding Tax (EWT) that pertains to the months of January to August 2008 have already prescribed even prior to the execution of the First Waiver;

iv. To prove that the assessment issued against petitioner for alleged deficiency EWT, among others, is void for having been made beyond the three (3) year prescriptive period;

v. To prove that petitioner has withheld and remitted the EWT, where applicable, for the accounts enumerated in Schedule A, page 63 of the Honorable Court of Tax Appeals' Decision promulgated on 03 February 2017 (Decision), which is the basis for respondent's computation of alleged deficiency EWT;

vi. To prove that petitioner is not liable for any alleged deficiency EWT for taxable year 2008;

vii. To prove that petitioner did not obtain any loan or advances during the taxable year 2008;

viii. To prove that the increase in petitioner's equity advances is due to unrealized foreign exchange loss, which must be reported for accounting purposes;

ix. To prove that petitioner is not liable for any deficiency Documentary Stamp Tax (DST) for taxable year 2008;

x. To identify and prove the due execution and/or authenticity of the documents attached to this Judicial Affidavit; and

xi. To testify on all matters relevant to the Petition and Motion for Reconsideration dated 23 February 2017.[9]

On February 28, 2018, petitioner filed another Compliance[10], attaching therewith, this time, the Judicial Affidavit of petitioner's

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[9] Judicial Affidavit (Direct Testimony of Ms. Aurora Irene A. Pitahin), *id.*, pp 2264-2265.

Independent Certified Public Accountant (ICPA), **Mr. Romeo A. De Jesus, Jr.**, as recalled by petitioner. Petitioner recalled the witness to testify for the following purposes, *viz.:*

i. To prove that Mr. De Jesus was commissioned by this Honorable Court as an Independent Certified Public Accountant (ICPA) tasked to come up with his findings as to the alleged tax due of petitioner Thunderbird Pilipinas Hotels and Resorts, Inc. (TPHRI) based on the Bureau of Internal Revenue's (BIR) findings and the documents and/or information provided by TPHRI;

ii. To prove that TPHRI remitted twenty-five percent (25%) of its gross gaming revenue to PAGCOR, which is inclusive of the five percent (5%) Franchise Tax due to the BIR;

iii. To show, on the basis of the documents and/or information provided by TPHRI, that some of its expenses subjected by the BIR to alleged deficiency EWT, were incurred from January to August 2008, and is therefore already prescribed even prior to the execution of the First Waiver;

iv. To show, on the basis of the documents and/or information provided by TPHRI, the expenses incurred from September to December 2008;

v. To prove that with respect to the expenses incurred and/or paid for the months of September to December 2008, the proper EWT was withheld and remitted with the BIR, where appropriate, while with respect to the expenses not subjected to EWT, the same pertains to non-taxable services based on their nature;

vi. To prove that TPHRI did not obtain any loan or advances during the taxable year 2008 as the alleged increase in the Equity Portion of its Long-Term Advances was only a result of foreign exchange fluctuations reflected for accounting purposes;

vii. To identify and prove the due execution and/or authenticity of the documents attached to this Judicial Affidavit; and,

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[10] Docket (Vol. VI), pp. 2394-2397.

viii. To testify on all other matters relevant to the Petition and Motion for Reconsideration dated 23 February 2017.[11]

Then, in an Order[12] dated March 5, 2018, this Court granted petitioner a period of five (5) days within which to file a Formal Offer of Evidence.

On March 12, 2018, petitioner filed a Petitioner's Formal Offer of Additional Evidence (Re: Presentation of Additional Evidence in Support of Petitioner's Motion for Reconsideration dated 23 February 2017)[13] in compliance with this Court's directive. Petitioner offered Exhibits P-40 to P-52, P-38 with Annexes A to T, and P-32-1 to P-32-678, inclusive of sub-markings.

In a Resolution dated June 11, 2018, this Court admitted all exhibits offered by petitioner and, further, ordered the parties to file their respective Memoranda within thirty (30) days from receipt thereof.

On July 30, 2018, petitioner filed a Memorandum (Re: Motion for Reconsideration dated 23 February 2017) while respondent failed to file his as per Records Verification dated July 30, 2018. Accordingly, the parties' respective Motions for Reconsideration are deemed submitted for Resolution.

Respondent's Motion for Partial Reconsideration Re: Decision dated February 3, 2017.

In his Motion, respondent mainly claims that petitioner as withholding agent has the legal duty to collect the tax for the government. Respondent believes that withholding tax assessments are not internal revenue taxes but such assessments were issued for failure of petitioner to withhold the correct taxes, thereby making them imprescriptible.

This Court is not convinced.

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[11] Judicial Affidavit (Direct Testimony of Mr. Romeo A. De Jesus, Jr.), *id.*, pp. 2398-2399.
[12] Docket (Vol. VI), pp. 2444-2445.
[13] *Ibid.*, pp. 2446-2477.

Notably, this is the first time that respondent has come up with the theory that "withholding tax assessments are imprescriptible." Even though the issue has long been settled, this Court, nonetheless, will still take this opportunity to point out why such theory is flawed.

Verily, Section 203[14] of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law. In this regard, internal revenue taxes are enumerated under Section 21 of the same code, which provides as follows:

> "**SEC. 21.** *Sources of Revenue.* — The following taxes, fees and charges are deemed to be national internal revenue taxes:
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> (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 hereafter may be imposed and collected by the Bureau of Internal Revenue."

In our tax system, the concept of withholding implies that the amount of the tax withheld comes from the income earned by the taxpayer – such as Final Withholding Tax (FWT), Withholding Tax on Compensation (WTC), and Expanded Withholding Tax (EWT). As such, considering that the subject withholding tax is the income of a taxpayer, which falls under "Title II – Tax on Income" of the NIRC of 1997, as amended, it shall also therefore be assessed within the period of three (3) years, or ten (10) years as the case maybe.

The role of withholding tax system was further explained by the CTA Court *En Banc* in the case of *Commissioner of Internal Revenue vs. Systems Technology Institute, Inc.*[15] which ruled as follows, *viz.*:

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[14] **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.
[15] CTA EB No. 1050 (CTA Case No. Case No. 7984), September 2, 2015.

"This Court has adequately addressed this issue in the Decision when We held that the ruling of the Supreme Court in *Philippine Guaranty* is not incompatible with the applicability of the statute of limitations under Section 203, Tax Code to EWT. Pertinent excerpts of the Decision are quoted hereunder:

> 'However, this Court also believes that the above pronouncement is not incompatible with the applicability of Section 203.
>
> 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.
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> As agent of the taxpayer, the withholding agent is responsible for filing the necessary withholding tax return and remittance of the tax withheld.
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> 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. <u>The Government must issue an assessment in an effort to 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</u>**. 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.
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> In this case, the Government failed to discharge its duty to assess and collect the deficiency EWT in a timely

> manner. Had it done so, then the liability of the withholding agent for failure to withhold could be properly determined. **It belies logic and reason that liability would attach to the withholding agent when there has yet been no determination that it failed to withhold for lack of a valid and timely assessment.**'" *(Citations Omitted)*

Moreover, there have already been plethora of cases[16] where the Supreme Court uniformly applied the three-year prescriptive period on the assessment of deficiency withholding tax against the taxpayer along with other internal revenue taxes. And, once its judgment becomes final, it is binding on all inferior courts, and hence beyond their power and authority to alter or modify.[17]

That having been settled, this Court shall now proceed to petitioner's allegations.

Petitioner's Motion for Reconsideration (Re: Decision dated 03 February 2017)

In its Motion, petitioner primarily seeks reconsideration of the following items of assessment in the assailed Decision, *viz.*:

I. Deficiency Special Preferential Tax (SPRT)
   A. Undeclared gross revenues in the amount of ₱90,755,618.00
   B. Disallowed direct costs in the amount of ₱67,551,671.70
   C. Other operating income in the amount of ₱16,846,231.48
II. Deficiency Franchise Tax (FT)
III. Deficiency Documentary Stamp Tax (DST)
IV. Deficiency Expanded Withholding Tax (EWT)

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[16] Samar-I Electric Cooperative vs. Commissioner of Internal Revenue, G.R. No. 193100, December 10, 2014.; Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc., G.R. No. 198677, November 26, 2014; Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010; Commissioner of Internal Revenue vs. Kudos Metal Corporation, G.R. No. 178087, May 5, 2010; Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008; Philippine National Oil Company vs. Court of Appeals, et al., G.R. No. 109976, April 26, 2005.
[17] Macansantos vs. Fernan, et. al., L-13726, May 31, 1961; Kabigting vs. Acting Director of Prisons, L-15548, Oct. 30, 1962; Jocson vs. Glorioso, L-22686, Jan. 30, 1968.

I. Deficiency Special Preferential Tax (SPRT)

A. Undeclared gross revenues in the amount of ₱90,755,618.00

Petitioner insists that its revenues from gaming activities are not subject to SPRT in light of the Supreme Court's latest jurisprudence on Philippine Amusement and Gaming Corporation (PAGCOR)'s tax exemption status and the benefit derived therefrom by its contractees and licensees.

In *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, et. al.*[18], the Supreme Court *En Banc* clarified that the benefit of 5% franchise tax in lieu of all other taxes imposed on PAGCOR still stands as to its income derived from gaming operations, while, income from operation of other related services is subject to income tax. The High Court's ruling on the matter reads as follows, *viz.*:

> "Given that petitioner's Charter is not deemed repealed or amended by R.A. No. 9337, petitioner's income derived from gaming operations is subject only to the five percent (5%) franchise tax, in accordance with P.D. 1869, as amended. With respect to petitioner's income from operation of other related services, the same is subject to income tax only. The five percent (5%) franchise tax finds no application with respect to petitioner's income from other related services, in view of the express provision of Section 14(5) of P.D. 1869, as amended, *x x x.*"

Furthermore, in the case of *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue*[19] (*"Bloomberry case"*), the Supreme Court clarified its earlier rulings that the tax benefit being enjoyed by PAGCOR also extends to its contractees and licensees, *to wit*:

> "*x x x* As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the

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[18] G.R. No. 215427, December 10, 2014.
[19] G.R. No. 212530, August 10, 2016.

PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos."

From the foregoing jurisprudence, this Court finds that petitioner, as a licensee of PAGCOR, cannot be held liable for SPRT on its gaming revenues. Accordingly, the deficiency SPRT assessment pertaining to the purported undeclared gross revenues amounting to ₱90,755,618.00 shall be cancelled.

B. Disallowed direct cost in the amount of ₱67,551,671.70
C. Other operating income in the amount of ₱16,846,231.48

After a perusal of petitioner's arguments in its Motion with regard to these particular items shows that they are merely rehash of its previous arguments during trial. Without new arguments or evidence presented, this Court shall not disturb the findings on the matter since it was already passed upon and thoroughly addressed in the assailed Decision.

With the above reconsideration, this Court find that petitioner is not liable for any deficiency SPRT considering that it has sufficient tax credit to cover the SPRT due, as computed below:

Gross income subject to SPR tax per Decision	₱ 107,644,193.18
Less: Undeclared gross revenues	90,755,618.00
Gross income subject to SPR tax after reconsideration	**₱ 16,888,575.18**
Multiply by special preferential tax rate	5%
Special preferential rate (SPR) tax due	**₱ 844,428.76**
Less: Tax credits	960,633.00
SPRT overpayment	**₱ (116,204.24)**

II. Deficiency Franchise Tax (FT)

A perusal of the arguments presented in its Motion for this particular item reveals that they are again reiterations of the arguments previously raised during trial. Without new arguments or evidence

presented, this Court shall not disturb the conclusion reached on the matter which was already considered and addressed in the assailed Decision.

III. Deficiency Documentary Stamp Tax (DST)

In the assailed Decision, petitioner was ordered to pay deficiency DST amounting to ₱143,970.75 which arose from increase in its Equity Advances account during taxable year (TY) 2008 in the amount of ₱28,794,150.00.

Petitioner now seeks reconsideration thereof explaining, through the testimony of its Corporate Finance Head, Ms. Aurora A. Irene Pitahin, that as disclosed in the Notes to the Audited Financial Statements (AFS) of petitioner for the TY 2008,[20] the total equity advances as of December 31, 2007 amount to US$3,850,000.00 which when converted to Philippine Peso using the exchange rate in the amount of ₱41.401 for every US$1.00 as published by the Bangko Sentral ng Pilipinas (BSP) on December 28, 2007, the last business day in 2007, would amount to ₱159,393,850.00.

Then, as of December 31, 2008, the amount of the Equity Advances still remained at US$3,850,000.00. However, due to the inflation of the Philippine Peso, the amount of the equity advances, when converted to Philippine peso using the exchange rate in the amount of ₱47.485 for every US$1.00 as published by the BSP on December 24, 2008, the last business day in 2008, would increase to ₱182,817,250.00.

Petitioner started recognizing the effect of foreign currency exchange in its liabilities denominated in foreign currency during the month of October 2008. Thereafter, monthly adjustments were made at the end of November and December 2008.

Comparing the Philippine Peso equivalent of the Equity Advances as of December 31, 2007 in the amount of ₱159,393,850.00 as against the converted amount at the end of October 2008, an increase in the Equity Advances account was recognized in the amount of ₱28,278,250.00, after which, an additional increase of ₱515,900.00 was recognized at the end of November 2008, and a decrease of

[20] Note 17.2, 2008 AFS, Exhibit "P-18", p. 31.

₱5,370,750.00 at the end of December 2008, as shown in the table below:[21]

Balance as of	Amount in US$	Forex Rate[22]	Amount in Php	Increase/(Decrease) in Balance
December 31, 2007	3,850,000.00	41.401	159,393,850.00	
October 31, 2008	3,850,000.00	48.746	187,672,100.00	₱ 28,278,250.00
November 30, 2008	3,850,000.00	48.880	188,188,000.00	515,900.00
December 31, 2008	3,850,000.00	47.485	182,817,250.00	(5,370,750.00)
			Net Increase/(Decrease)	**₱ 23,423,400.00**

Accordingly, after due consideration, this Court finds merit in petitioner's arguments.

As disclosed in the 2008 AFS,[23] the outstanding Equity Advances as of December 31, 2008 and 2007 both amounted to 3.85 million is denominated in US dollars, a currency which is different from the functional currency[24] of petitioner. Thus, it is considered as a foreign currency transaction – and, as required by Philippine Accounting Standards (PAS) 21, *The Effects of Changes in Foreign Exchange Rates,* these foreign currency transactions should be reported using the closing rate at balance sheet date, *to wit* –

> "A foreign currency transaction should be recorded on initial recognition in the functional currency, by applying to the foreign currency amount the spot exchange rate between the functional currency and the foreign currency at the date of transaction.
>
> *x x x*
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> At each balance sheet date:

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[21] Judicial Affidavit of Ms. Aurora Irene A. Pitahin, Exhibit "P-48", Docket (Vol. VI), pp. 2288 to 2289.
[22] Exhibits "P-47-1" to "P-47-4".
[23] Note 17.2 , 2008 AFS, Exhibit "P-17", p. 31.
[24] The primary economic environment in which an entity operates is normally the one which it primarily generates and expends cash. (Par. 9, PAS 21, *Philippine Financial Reporting Standards (PFRSs) as at December 31, 2006*, Part I of II, Financial Reporting Standards Council and Philippine Institute of Certified Public Accountants, p. 741)

(a) foreign currency monetary items shall be translated using the closing rate;[25]

x x x."[26]

Petitioner treated the foreign currency Equity Advances as a monetary obligation, hence, the outstanding amount as of balance sheet date must be translated into Philippine peso using the closing rate as of December 31, 2008. Hence, as sufficiently demonstrated by petitioner, the changes in the Equity Advances account were only for the purpose of bringing the US dollar balance to its Philippine peso equivalent at balance sheet date in compliance with the requirements of PAS 21.

As such, petitioner was able to establish that the Equity Advances itself had no movement during 2008 and that there was no trace of additional advances in the same nature during the year. Thus, nothing can be subjected to DST.

Taking the foregoing into account, the imposition of deficiency DST is improper and must also be cancelled.

IV. Deficiency Expanded Withholding Tax (EWT)

In the assailed Decision, this Court held that the deficiency EWT for the months of January to August 2008 had already prescribed. But since petitioner failed to specify which portion of said deficiency taxes pertain to the prescribed months, this Court attributed the entire deficiency tax assessments to the unprescribed portion of taxable year 2008.[27]

Petitioner now seeks reconsideration of the above Decision by presenting the general ledgers of the accounts subjected to deficiency EWT for the TY 2008 by showing how much pertains to the prescribed period.

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[25] The spot exchange rate at the balance sheet date. (Par. 8, PAS 21, *Philippine Financial Reporting Standards (PFRSs) as at December 31, 2006*, Part I of II, Financial Reporting Standards Council and Philippine Institute of Certified Public Accountants, p. 741)
[26] Pars. 21 and 23, PAS 21, *Philippine Financial Reporting Standards (PFRSs) as at December 31, 2006*, Part I of II, Financial Reporting Standards Council and Philippine Institute of Certified Public Accountants, p. 744.
[27] Decision, Docket (Vo. V), p. 2021.

As can be recalled, in computing the deficiency EWT, respondent lifted from petitioner's General Ledger of All Revenues and Expenses[28] the expenses subject of the assessment. The accounts subjected to EWT at 2%, 5% and 15% rates are as follows:

Account Name	Amount	2%	5%	15%
Equipment Rental-Slots	9,848,959.20		9,848,959.20	
Equipment Rental-Golf	519,620.00		519,620.00	
Outside Services-Security	5,547,544.11	5,547,544.11		
Outside Services-Maintenance & Housekeeping	156,400.02	156,400.02		
Outside Services-Golf Operations	650,137.23	650,137.23		
Outside Services-Security (Hotel)	1,256,392.77	1,256,392.77		
Outside Services-Laundry (Hotel)	14,852.00	14,852.00		
Consulting Fees-Security	535,294.13			535,294.13
Advertising-Promotions (Golf)	675,603.66	675,603.66		
Advertising-Promotions (Hotel)	1,212,495.51	1,212,495.51		
Outside Services-Human Resources	386,751.27	386,751.27		
Outside Services-General Administration (Hotel)	15,000.00	15,000.00		
Professional Fees	68,575.00			68,575.00
Professional Fees-HRD	180,000.00			180,000.00
Professional Fees-Marketing	266,666.64			266,666.64
Professional Fees-General and Admin (Hotel)	517,596.31			517,596.31
Accounting Fees-General Administration	1,321,640.45			1,321,640.45
Legal-General Administration	507,713.17			507,713.17
Legal-General Administration (Hotel)	1,473,242.17			1,473,242.17
Director and Other Fees	1,769,672.86			1,769,672.86
Advertising (Promotions/Outdoor)	721,914.86	721,914.86		
Newspaper-Marketing	69,750.00	69,750.00		
Other-Marketing	155,167.34	155,167.34		
Marketing-FCC Casino	124,073.93	124,073.93		
Design-Marketing	554,726.02	554,726.02		
Give Away-Marketing	228,148.95	228,148.95		
Rent-Property Admin	27,169,749.80		27,169,749.80	
Rent-Property Admin (Straight Line Method)	8,377,594.61		8,377,594.61	
Courier/Postage-Admin	57,348.54	57,348.54		
Courier/Postage-Accounting (Hotel)	1,833.48	1,833.48		
Shipping and Freight Charges-Administrative	84,042.11	84,042.11		
Management Fee	206,238,123.84			126,424,776.00
Outside Service-fee	17,623,542.48	17,623,542.48		
Total Taxable Amount per Audit	***288,330,172.46***	***29,535,724.28***	***45,915,923.61***	***133,065,176.73***

[28] BIR Records, Folder 6, pp. 400-408.

Thereafter, petitioner sorted the above accounts into months as follows:

Account Name	GL Exhibit No.[29]	January to August 2008 *(in Php)*	September to December 2008 *(in Php)*	Total *(in Php)*
Equipment Rental-Slots	P-42-1	6,112,436.40	3,736,522.80	9,848,959.20
Equipment Rental-Golf	P-42-2	-	519,620.00	519,620.00
Outside Services-Security	P-42-3	3,981,263.51	1,566,280.60	5,547,544.11
Outside Services-Maintenance & Housekeeping	P-42-4	106,079.98	50,320.04	156,400.02
Outside Services-Golf Operations	P-42-5	-	650,137.23	650,137.23
Outside Services-Security (Hotel)	P-42-6	-	1,256,692.77	1,256,692.77
Outside Services-Laundry (Hotel)	P-42-7	-	14,852.00	14,852.00
Consulting Fees-Security	P-42-8	-	535,294.13	535,294.13
Advertising-Promotions (Golf)	P-42-9	-	675,603.66	675,603.66
Advertising-Promotions (Hotel)	P-42-10	-	1,212,495.51	1,212,495.51
Outside Services-Human Resources	P-42-11	369,175.43	17,575.84	386,751.27
Outside Services-General Administration (Hotel)	P-42-12	-	15,000.00	15,000.00
Professional Fees	P-42-13	24,375.00	44,200.00	68,575.00
Professional Fees-HRD	P-42-14	120,000.00	60,000.00	180,000.00
Professional Fees-Marketing	P-42-15	266,666.64	-	266,666.64
Professional Fees-General and Admin (Hotel)	P-42-16	-	517,596.31	517,596.31
Accounting Fees-General Administration	P-42-17	866,441.65	455,198.80	1,321,640.45
Legal-General Administration	P-42-18	274,717.93	232,995.24	507,713.17
Legal-General Administration (Hotel)	P-42-19	-	1,473,242.17	1,473,242.17
Director and Other Fees	P-42-20	1,298,456.77	471,216.09	1,769,672.86
Advertising (Promotions/Outdoor)	P-42-21	287,297.25	434,617.61	721,914.86
Newspaper-Marketing	P-42-22	67,750.00	2,000.00	69,750.00
Other-Marketing	P-42-23	103,131.64	52,035.70	155,167.34
Marketing-FCC Casino	P-42-24	-	124,073.93	124,073.93
Design-Marketing	P-42-25	179,733.73	374,992.29	554,726.02
Give Away-Marketing	P-42-26	109,421.35	118,727.60	228,148.95
Rent-Property Admin	P-42-27	18,150,267.24	9,019,482.10	27,169,749.34
Rent-Property Admin (Straight Line Method)	P-42-28	3,242,538.24	5,135,056.37	8,377,594.61
Courier/Postage-Admin	P-42-29	50,727.52	6,621.02	57,348.54
Courier/Postage-Accounting (Hotel)	P-42-30	-	1,833.48	1,833.48
Shipping and Freight Charges-Administrative	P-42-31	84,042.11	-	84,042.11
Management Fee	P-42-32 to P-42-33	26,832,019.95	99,592,756.20	126,424,776.15
Outside Service-fee	P-42-34	11,772,685.38	5,850,857.10	17,623,542.48
TOTAL		**74,299,227.72**	**134,217,896.59**	**208,517,124.31**

[29] Docket (Vol. VI), pp. 2488 to 2534.

As previously held, the deficiency assessment on the amount of ₱74,299,227.72 pertaining to income payments from January to August 2008 shall be cancelled due to prescription. As such, we shall focus on petitioner's purported income payments from September to December 2008 aggregating ₱134,217,896.59.

- **Expenses subject to 2%**

Respondent assessed petitioner for 2% deficiency EWT on the following income payments, with expenses pertaining only to those incurred from September to December 2008, *to wit*:

Item No.	Account Name	Amount (in Php)
A.1	Outside Services-Security	1,566,280.60
A.2	Outside Services-Maintenance & Housekeeping	50,320.04
A.3	Outside Services-Golf Operations	650,137.23
A.4	Outside Services-Security (Hotel)	1,256,692.77
A.5	Outside Services-Laundry (Hotel)	14,852.00
A.6	Advertising-Promotions (Golf)	675,603.66
A.7	Advertising-Promotions (Hotel)	1,212,495.51
A.8	Outside Services-Human Resources	17,575.84
A.9	Outside Services-General Administration (Hotel)	15,000.00
A.10	Advertising (Promotions/Outdoor)	434,617.61
A.11	Newspaper-Marketing	2,000.00
A.12	Other-Marketing	52,035.70
A.13	Marketing-FCC Casino	124,073.93
A.14	Design-Marketing	374,992.29
A.15	Give Away-Marketing	118,727.60
A.16	Courier/Postage-Admin	6,621.02
A.17	Courier/Postage-Accounting (Hotel)	1,833.48
A.18	Shipping and Freight Charges-Administrative	-
A.19	Outside Service-fee	5,850,857.10
	Total Taxable Amount per Audit	***₱ 12,424,416.38***

A.1 Outside Services-Security – ₱1,566,280.60

Petitioner's GL shows that Outside Services-Security is composed of the following:[30]

Gards Inc.	1,466,280.60
Roberto Ortega	100,000.00
Total	**₱ 1,566,280.60**

[30] Exhibit "P-42-3".

Unfortunately, no additional document was submitted to support the payments to Gards, Inc. Hence, this Court cannot verify the actual nature of the said expense and its tax implications.

More so, petitioner's 2008 Alphalist, as attached to BIR Form 1604-E,[31] shows that the total income payments to Gards, Inc. subjected to withholding tax at 2% rate amounted to ₱5,862,649.00. However, this amount represents income payments to Gards, Inc. for the whole year of TY 2008. As such, this Court cannot verify whether the assessed amount was accordingly subjected to withholding tax since this Court cannot determine how much portion of said total payments pertain to the months of September to December 2008.

Even the total payments to Gards, Inc. per GL for TY 2008 which amounted to ₱4,647,544.11 do not match with the income payments per Alphalist amounting to ₱5,862,649.00. As such, this Court cannot verify if the income payments declared in the Alphalist pertains to one and the same transactions as payments to Gards, Inc. per GL.

As for the payments to Roberto Ortega, journal entries and supporting documents (check vouchers, acknowledgment receipts and request for payments)[32] for payments described as Consultancy Fee show a total of ₱100,000.00 and were entered in the Outside Services – Security account. A scrutiny of the documents presented also shows that the same was in fact not subjected to withholding tax. Petitioner did not provide other documents that would prove that the same is not subject to withholding tax. Consequently, the assessment thereon shall remain.

A.2 Outside Services-Maintenance & Housekeeping – ₱50,320.04

Petitioner's GL shows that the amount of ₱50,320.04 was paid to Rentokil Initial Philippines Inc.[33] but no documents were submitted to support the same. Again, this Court cannot verify the actual nature and tax implications of the transactions.

More so, petitioner's 2008 Alphalist shows that the total income payments to Rentokil subjected to withholding tax at 2% rate amounted to ₱200,660.00. However, this amount represents the whole year

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[31] Exhibit "P-40".
[32] Exhibit "P-36-278 to 281".
[33] Exhibit "P-42-4".

income payments to Rentokil. As such, this Court cannot verify whether the assessed amount was accordingly subjected to withholding tax since this Court cannot determine how much portion of said total payments pertain to the months of September to December 2008.

Even the total payments to Rentokil per GL for TY 2008 which amounted to ₱156,400.02 do not match with the income payments per Alphalist amounting to ₱200,660.00. As such, this Court cannot verify if the income payments declared in the Alphalist pertains to one and the same transactions reflected in the Outside Services-Maintenance & Housekeeping per GL of petitioner.

Given the above findings, the assessment over it must be upheld for petitioner's failure to discharge its burden of proof in disputing the same.

A.8 Outside Services-Human Resources – ₱17,575.84

Out of the total amount of ₱17,575.84, petitioner was only able to substantiate with supporting documents the amount of ₱16,961.84 which pertains to salaries of various reliever nurses (Martina Lopez and Sheena Neri).[34]

However, this Court finds that the applicable EWT on these salaries must be at 15% in accordance with Section 2.57.2(A)(1) of Revenue Regulations (RR) No. 2-98, as amended by RR No. 30-2003[35]. The fact that these nurses accepted a reliever shift connotes that they are individually engaged in the practice of their profession, hence, falls within the purview of the aforementioned RR. Neither did petitioner

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[34] Exhibit "P-42-11"; Exhibits "P-36-40 to 43" and "P-36-62 to 105".

[35] SECTION 2.57.2. Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon. – xxx

(A) Professional fees, talent fees, etc., for services rendered by individuals — On the gross professional, promotional and talent fees or any other form of remuneration for the services of the following individuals - Fifteen percent (15%), if the gross income for the current year exceeds P720,000; and Ten percent (10%), if otherwise;

(1) Those individually engaged in the practice of professions or callings; lawyers; certified public accountants; doctors of medicine; architects; civil, electrical, chemical, mechanical, structural, industrial, mining, sanitary, metallurgical and geodetic engineers; marine surveyors; doctors of veterinary science; dentist; professional appraisers; connoisseurs of tobacco; actuaries; interior decorators, designers and all other profession requiring government licensure examinations and/or regulated by the Professional Regulations Commission, Supreme Court, etc.

show any proof that these reliever nurses were employed with an outsourced human resource contractor for the 2% EWT to apply.

The 15% EWT rate shall be applied since according to Section 2.57.2(A) of RR No. 2-98, as amended, failure of professional payee to submit the June 30 annual declaration/disclosure of gross income to the BIR, and to furnish the payor/s a copy thereof, the payor shall withhold the tax at the rate of 15%.

Thus, for its failure to show that the reliever nurses complied with the annual declaration/disclosure requirement of said RR, this Court finds it proper to impose upon it the higher tax rate.

As for the remaining ₱614.00 (₱17,575.84 - 16,961.84), no documents were submitted to support the same. Hence, this Court cannot verify the actual nature and tax implications of the transactions. As such, the assessment to the extent of ₱614.00 must be upheld.

A.10 Advertising (Promotions/Outdoor) - ₱434,617.61

Petitioner's GL shows the following composition of Advertising (Promotions/Outdoor) account:[36]

SAG-Itrading	108,000.00
AGN Advertising	60,000.00
DWST 101.7 Love	48,000.00
ABS CBN Corp	65,922.25
Northwest Advertising Services Inc.	45,000.00
Travel expenses	66,628.71
LC Pascual	29,333.32
Bohrn's Plastic Arts and Signs	11,733.33
	₱ 434,617.61

Unfortunately, no other supporting documents were submitted by petitioner to substantiate the above expenses.

On the other hand, petitioner's 2008 Alphalist shows the following total income payments to the above suppliers with the corresponding rates:

[36] Exhibit "P-42-21".

	Income Payments	EWT Rate
SAG-Itrading	₱ 135,000.00	2%
AGN Advertising	120,000.00	2%
DWST 101.7 Love	73,714.50	2%
ABS CBN Corp	-	-
Northwest Advertising Services Inc.	350,357.20	5%
Travel expenses	-	-
LC Pascual	179,400.00	5%
Bohrn's Plastic Arts and Signs	251,800.00	5%

However, these amounts represent the whole year income payments paid to the aforementioned suppliers. Petitioner did not provide clear evidence that would show that the above expenses per GL, were already part of the income payments subjected to withholding tax per Alphalist, thus, this Court is constrained to sustain the assessment thereto.

A.11 Newspaper-Marketing – ₱2,000.00

Petitioner's GL shows that Newspaper-Marketing is composed of income payments to Amianan Tribune.[37] However, the 2008 Alphalist does not show any income payments to Amianan.

Unfortunately, no documents were submitted to support the same. Hence, this Court cannot verify whether or not the same is not be subject to withholding tax. As such, the assessment over them must be upheld.

A.12 Other-Marketing – ₱52,035.70

Petitioner's GL shows that Other-Marketing is composed of the following:[38]

Dependable Packaging & Printing	14,000.00
Sunset Bay Resorts	11,250.00
Post Master	26,785.70
Total	**₱ 52,035.70**

[37] Exhibit "P-42-22".
[38] Exhibit "P-42-23".

Unfortunately, no other supporting documents were submitted by petitioner to substantiate the above expenses.

On the other hand, petitioner's 2008 Alphalist shows the following total income payments to the above suppliers with the corresponding rates:

	Income Payments	EWT Rate
Dependable Packaging & Printing	₱ 454,346.00	2%
Sunset Bay Resorts	1,111,809.00	2%
Post Master	26,786.00	1%

Except for the income payments to Post Master which already tallied with the total expense per GL, the above amounts represent the whole year income payments to the payees. As such, this Court cannot verify whether the assessed amount was already subjected to withholding tax with the appropriate EWT rate since this Court cannot determine how much portion of said total income payments in the Alphalist pertain to the months of September to December 2008.

Even considering the payments to Dependable lodged under Marketing-FCC Casino amounting to ₱107,900.00 (*see A.13*), the total payment to said payee amounting to ₱121,900.00, as detailed below, still does not match with the total income payments in the Alphalist amounting to ₱454,346.00.

Account	Amount
Other-Marketing	14,000.00
Marketing-FCC Casino	107,900.00
Total	**₱ 121,900.00**

Given such, this Court cannot verify if the income payments declared in the Alphalist pertains to one and the same transactions as payments to the above suppliers per GL.

However, petitioner did not explain as to why the payments to Post Master was subjected to a different EWT rate, and without any supporting documents to substantiate the transactions, this Court cannot ascertain the actual nature of such payment and the appropriate EWT thereon. Therefore, this Court shall maintain the assessment at

2%. However, the 1% EWT already remitted by petitioner shall be accordingly credited.

With the foregoing findings, this Court upholds the assessment in the amount of ₱25,250.00. As for the income payment to Post Master amounting to ₱26,785.70, it shall only be assessed with the deficient 1% EWT.

A.13 Marketing-FCC Casino – ₱124,073.93

Petitioner's GL shows that Marketing-FCC Casino is composed of the following:[39]

Dependable Packaging & Printing	107,900.00
Altronic Graphic Communications Solution	3,948.18
FLM Printing Corp	760.00
Martina Lopez	6,135.75
New Malayan Commercial	3,880.00
Marione Leigh	1,450.00
	₱ 124,073.93

Unfortunately, no other supporting documents were submitted by petitioner to substantiate the above expenses.

On the other hand, petitioner's 2008 Alphalist shows the following total income payments to the above suppliers with the corresponding EWT rates:

	Income Payments	EWT Rate
Altronic Graphic Communications Solution	₱ 12,269.00	2%
FLM Printing Corp	-	-
Martina Lopez	-	-
New Malayan Commercial	753,661.00	1%
Marione Leigh	2,140,311.00	1%

The income payments to Dependable were already excluded in the above table as the issue over the same were already discussed in assessment for Other-Marketing (*see A.12*).

[39] Exhibit "P-42-24".

For the remaining payments, the amounts involved represent the whole year income payments to the payees. As such, this Court cannot verify whether the assessed amount was already subjected to withholding tax with the appropriate EWT rate since this Court cannot determine how much portion of said total income payments in the Alphalist pertain to the months of September to December 2008.

Further, petitioner did not explain as to why the payments to New Malayan and Marione Leigh were subjected to a different EWT rate. Without any supporting documents to substantiate the subject transactions, this Court cannot ascertain the actual nature of the payment and tax implication of such.

Given such, we cannot verify if the income payments declared in the Alphalist pertains to one and the same transactions as payments made to the above suppliers per GL.

With the foregoing findings, this Court is constrained to uphold the assessment.

A.14 Design-Marketing – ₱374,992.29

Petitioner's GL[40] shows that payments under this account was made to Impacto Panama which is allegedly a non-resident foreign corporation, hence, income payments to the latter are not subject to income tax and EWT.

However, petitioner did not offer any documentary proof that Impacto is a non-resident foreign corporation and the services it rendered to petitioner were performed outside the Philippines in order to warrant its claim that income payments made thereto are not subject to any income tax. As such, the assessment over the same shall not be disturbed.

A.15 Give Away-Marketing – ₱118,727.60

Petitioner's GL shows that Give Away-Marketing is composed of the following:[41]

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[40] Exhibit "P-42-25".
[41] Exhibit "P-42-26".

Lux Asia Inc.	94,652.60
Rustans Marketing Corp	24,075.00
	₱ 118,727.60

An examination of the supporting documents submitted reveals that the following transactions transpired between petitioner and supplier:

Supplier	Transaction	Amount	Exhibit Nos.
Lux Asia Inc.	Grocery package gift items	₱ 94,652.60	P-36-242
Rustans Marketing Corp	Lacoste fragrance perfumes	24,075.00	P-36-221 to 230

The income payments to Lux Asia Inc. amounting to ₱94,652.60 tallied with the income payments declared in the 2008 Alphalist and was accordingly subjected to 1% EWT.[42] As such, the deficiency assessment pertaining thereto shall be cancelled.

As for the payments to Rustans Marketing, the supporting documents presented (OR, Purchase Requisition Form, and Purchase Order Voucher) reveal that petitioner properly subjected the same to appropriate withholding tax, thus the deficiency assessment pertaining thereto shall likewise be cancelled.

A.16 Courier/Postage-Admin – ₱6,621.02

Petitioner's GL shows that Courier/Postage-Admin is composed of the following:[43]

WWW Express Corp	6,600.02
Martina Lopez	21.00
	₱ 6,621.02

Unfortunately, no other supporting documents were submitted by petitioner to substantiate the above expenses.

Moreover, petitioner's 2008 Alphalist shows that total income payments to WWW Express subjected to withholding tax at 2% rate amounted to ₱52,349.50 while no EWT was remitted for income

[42] Exhibit "P-40".
[43] Exhibit "P-42-29".

payments to Martina Lopez. However, the amount per Alphalist represents the whole year income payments to WWW Express. As such, this Court cannot verify whether the assessed amount was already subjected to withholding tax since this Court cannot determine how much portion of said total payments pertain to the months of September to December 2008.

Even the total 2008 payments to WWW Express per GL which amount to ₱52,056.42 do not match with the income payments per Alphalist amounting to ₱52,349.50. As such, this Court cannot verify if the income payments declared in the Alphalist pertains to one and the same transactions reflected in the GL of petitioner.

Given the above findings, the assessment over them must be upheld for petitioner's failure to discharge its burden of proof in disputing the same.

A.19 Outside Service-fee – ₱5,850,857.10

Petitioner's GL[44] shows that this account pertains to accrued expenses for "Success Fee" billed by Andres Moralda Hernandez and Associates Law Office.[45] Being a general professional partnership (GPP) established to engage in the practice of law in the Republic of the Philippines and outside the country,[46] it is not subject to income tax and consequently to EWT pursuant to Section 22(B) in relation to Section 27 of the Tax Code. As such, the assessment over the same must be cancelled.

A.3 Outside Services-Golf Operations - ₱650,137.23
A.4 Outside Services-Security (Hotel) - ₱1,256,392.77
A.5 Outside Services-Laundry (Hotel) - ₱14,852.00
A.6 Advertising-Promotions (Golf) - ₱675,603.66
A.7 Advertising-Promotions (Hotel) - ₱1,212,495.51
A.9 Outside Services-General Administration (Hotel) - ₱15,000.00
A.17 Courier/Postage-Accounting (Hotel) - ₱1,833.48

Petitioner asserts that the above expenses are not subject to EWT and submitted documents consisting of a journal entry[47] showing

[44] Exhibit "P-42-34".
[45] Exhibit "P-36-352 to 359"
[46] Exhibit "P-44".
[47] Exhibit "P-36-644 to 649".

TRANSFER_TPDVI[48] and the Technical and Administrative Consultancy Services Contract between petitioner and Thunderbird Poro Development Ventures, Inc. (TPDVI) which allegedly stipulates the cost-sharing agreement between them.[49]

However, this Court finds these documents insufficient to warrant reversal of the assessment.

First, journal entries merely prove that the petitioner made an accounting entry of the transactions. However, this Court cannot determine the actual nature of the expenses and the applicable withholding tax rate, if there is any.

Second, the Consultancy Services Contract does not stipulate any cost-sharing agreement. What is clear therein is that TPDVI shall render technical and administrative counselling and assistance to petitioner for a fixed monthly fee.

Even if petitioner presented a valid cost-sharing agreement, the same cannot be given credence by the Court to cancel the assessed items since it was not shown that the costs allegedly transferred by TPDVI to petitioner were actually incurred and that the corresponding withholding tax was remitted by the latter for us to say that no more EWT is due from said expenses or that petitioner already paid the shared costs to TPDVI for it to be absolved from the burden of proof as to the proper withholding on the involved expenses.

As such, this Court finds no cogent reason to disturb respondent's deficiency EWT assessment on these items.

Below is the summary of our findings on each account and found that the amount which must be subjected to 2% deficiency EWT is reduced to ₱6,435,459.14, while the amount of ₱26,785.70 must be subjected to additional 1% EWT:

Item No.	Account Name	Expenses from Sept-Dec 2008	Adjustments	Subjected to 1% EWT	Subject to 2% EWT
A.1	Outside Services-Security	₱ 1,566,280.60	₱ -		₱ 1,566,280.60
A.2	Outside Services-Maintenance & Housekeeping	50,320.04	-		50,320.04

[48] Annex N-2 of ICPA Report, Exhibit "P-38".
[49] Exhibit "P-43".

A.3	Outside Services-Golf Operations	650,137.23	-		650,137.23
A.4	Outside Services-Security (Hotel)	1,256,692.77	-		1,256,692.77
A.5	Outside Services-Laundry (Hotel)	14,852.00	-		14,852.00
A.6	Advertising-Promotions (Golf)	675,603.66	-		675,603.66
A.7	Advertising-Promotions (Hotel)	1,212,495.51	-		1,212,495.51
A.8	Outside Services-Human Resources	17,575.84	(16,961.84)		614.00
A.9	Outside Services-General Administration (Hotel)	15,000.00	-		15,000.00
A.10	Advertising (Promotions/Outdoor)	434,617.61	-		434,617.61
A.11	Newspaper-Marketing	2,000.00	-		2,000.00
A.12	Other-Marketing	52,035.70	(26,785.70)		25,250.00
				₱ 26,785.70	
A.13	Marketing-FCC Casino	124,073.93	-		124,073.93
A.14	Design-Marketing	374,992.29	-		374,992.29
A.15	Give Away-Marketing	118,727.60	(118,727.60)		-
A.16	Courier/Postage-Admin	6,621.02	-		6,621.02
A.17	Courier/Postage-Accounting (Hotel)	1,833.48	-		1,833.48
A.18	Outside Service-fee	5,850,857.10	(5,850,857.10)		-
	Total	**₱12,424,716.38**		**₱26,785.70**	**₱6,411,384.14**

- **Expenses subject to 5%**

The following accounts were subjected to deficiency EWT at the rate of 5%:

Item No.	Account Name	Expenses from Sept-Dec 2008
B.1	Equipment Rental-Slots	3,736,522.80
B.2	Equipment Rental-Golf	519,620.00
B.3	Rent-Property Admin	9,019,482.10
		₱ 13,275,624.90

B.1 Equipment Rental-Slots – ₱3,736,522.80

Petitioner insists that the payments under said account made to IGT Asia-Macau Lda. are not really rental of equipment but payments for maintenance services of gaming software installed in slot machines. IGT

Asia is a non-resident foreign corporation and the services were rendered outside the Philippines. As such, payments made to it are not subject to EWT.

To support its arguments, petitioner presented the SEC Certificate of Non-Registration of IGT Asia-Macau Lda.,[50] a copy of petitioner's contract with IGT Asia effective during the year 2008,[51] and the payment confirmation from IGT Asia, which was offered and admitted as Exhibits "P-36-632 to 633" but cannot be found in the records.

A study of the relevant provisions in the agreement between IGT Asia and petitioner shows that IGT Asia's responsibility is to provide petitioner with Application and Technical Support stated as follows, *viz.*:[52]

> "4. <u>IGT's Responsibilities</u>
>
> A. Application Support. IGT will provide support or the licensed Application Software through its Technical Assistance Center (TAC) (TAC 888-999-1190) on a twenty-four hour, seven days a week by three hundred sixty five days per year basis. Such support will typically consist of troubleshooting system issues and answering questions about how the Application Software and Associated Equipment can be used to meet the customer's business and operational requirements. Where on-site assistance is required, TAC will dispatch a System Engineer. On-site support requires the completion of a Service Ticket that must be signed by the Customer. *x x x*
>
> B. Technical Support
>
> i. *x x x*
>
> ii. The parties hereto will confer and jointly determine when on-site Technical Support is required. If it is determined that on-site Technical Support is necessary then TAC will dispatch the appropriate technical personnel. *x x x.*"

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[50] Exhibit "P-45-1".
[51] Exhibit "P-45-2".
[52] Exhibit "P-45-2".

Based on the agreement, IGT Asia may have to perform on-site services if necessary. As such, it is not absolute that all services by IGT Asia are performed outside the Philippines. Petitioner, however, failed to adduce sufficient evidence to prove that the services were indeed performed outside the Philippines. As such, we are constrained to treat the transaction as services performed by a non-resident foreign corporation (NRFC) within the Philippines.

However, considering that the service was rendered by a NRFC, the same shall be subject to final withholding tax pursuant to Sec. 28(B)(1) of the Tax Code,[53] as implemented by Sec. 2.57.1(I)(1) of Revenue Regulations (RR) No. 2-98,[54] instead of EWT. Clearly then, this item must be removed from the deficiency EWT assessment.

B.2 Equipment Rental-Golf – ₱519,620.00

Petitioner posits that the above expenses are not subject to EWT and submitted documents consisting of a journal entry[55] showing TRANSFER_TPDVI[56] and the Technical and Administrative Consultancy Services Contract between petitioner and Thunderbird Poro

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[53] SEC. 28. *Rates of Income Tax on Foreign Corporations.* – x x x

(B) *Tax on Nonresident Foreign Corporation.* - (1) In General. - Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs (C) and (d): Provided, That effective 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and, effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).

[54] SECTION 2.57.1. *Income Payments Subject to Final Withholding Tax.* —

The following forms of income shall be subject to final withholding tax at the rates herein specified; x x x

(I) *Income Derived From all Sources Within the Philippines by Non- Resident Foreign Corporation.* — The following shall be subject to final withholding tax based on the gross amount of income and at the rate of tax prescribed therefor:

(1) *In general* — On gross income derived from all sources within the Philippines such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments, or other fixed or determinable annual, periodic or casual gains, profits and income and capital gains (except capital gains realized from sale, exchange, disposition of shares of stock in any domestic corporation which is subject to capital gains tax under Sec. 28(B)(5)(c) — at the following rates:

34% - beginning January 1, 1998
33% - beginning January 1, 1999 and
32% - beginning January 1, 2000 and thereafter

[55] Exhibit "P-36-644 to 649".

[56] Annex N-2 of ICPA Report, Exhibit "P-38".

Development Ventures, Inc. (TPDVI) which allegedly stipulates the cost-sharing agreement between them.[57]

To reiterate this Court's ruling, specifically under *subsections A.3 to A.7, A.9 and A.17,* these documents are insufficient to warrant reversal of the disputed assessment for the following reasons, *viz.* –

First, journal entries merely prove that petitioner made an accounting entry of the transactions. However, it cannot determine the actual nature of the expenses and the applicable withholding tax rate, if there is any.

Second, the Consultancy Services Contract does not stipulate any cost-sharing agreement. What is clear therein is that TPDVI shall render technical and administrative counselling and assistance to petitioner for a fixed monthly fee.

Even if petitioner presented a valid cost-sharing agreement, the same cannot be given credence by the Court to cancel the assessed items since it was not shown that the costs allegedly transferred by TPDVI to petitioner were actually incurred and that the corresponding withholding tax was remitted by the latter for us to say that no more EWT is due from said expenses or that petitioner already paid the shared costs to TPDVI for it to be absolved from the burden of proof as to the proper withholding on the involved expenses.

As such, this Court finds no cogent reason to disturb respondent's deficiency EWT assessment on these items.

B.3 Rent Property-Admin – ₱9,019,482.10

Petitioner's GL shows that Rent Property-Admin is composed of the following:[58]

Laigo's Residential	252,000.00
PPMC/BCDA	9,137,482.10
Metrobank Corporation	(370,000.00)
	₱ 9,019,482.10

[57] Exhibit P-43.
[58] Exhibit P-42-27.

As held in the assailed Decision, petitioner's rental payment to PPMC/BCDA, as a governing body of the PPFZ which is entitled to the same tax incentives enjoyed by petitioner, is exempted from withholding, thus, the 5% EWT assessment thereon shall be cancelled.

As for payments to Laigo Residential, as shown in its GL for 2008, petitioner's total rental payments thereto amount to ₱756,000.00. On the other hand, petitioner's Alphalist for 2008 also shows that petitioner was able to subject and remit the corresponding 5% EWT on the rental payments of ₱756,000.00 to Laigo Residential. Thus, the deficiency assessment pertaining thereto shall be cancelled.

As for rental payments to Metrobank Corporation, the details of transactions recorded in the GL show the following:[59]

Date	Description	Amount
9/30/08	To accrue monthly ATM rental	105,000.00
10/31/08	Adj MBTC ATM Rental_2006-2008	(330,000.00)
10/31/08	Adj MBTC ATM Rental_2006-2008	(145,000.00)
		₱ (370,000.00)

Based on the above breakdown, the accruals made in September 2008 should have been subjected to 5% EWT. However, no clear evidence was presented to show that the 5% EWT due thereon was indeed remitted by petitioner.

In sum, the amount of ₱105,000.00 from Rent Property-Admin should be retained in the assessment.

Accordingly, in view of the foregoing, the deficiency assessment on the rental payment of ₱624,620.00, as broken down below, must be sustained:

Item No.	Account Name	Subject to 5% EWT
B.1	Equipment Rental-Slots	-
B.2	Equipment Rental-Golf	519,620.00
B.3	Rent-Property Admin	105,000.00
		₱ 624,620.00

[59] *Ibid.*

- **Expenses subject to 15%**

In the assailed Decision, the following accounts were subjected to deficiency 15 % EWT, *viz.*:

Item No.	Account Name	Amount
D.1	Consulting Fees-Security	₱ 535,294.13
D.2	Professional Fees	68,575.00
D.3	Professional Fees-HRD	180,000.00
D.4	Professional Fees-Marketing	266,666.64
D.5	Professional Fees-General and Admin (Hotel)	517,596.31
D.6	Accounting Fees-General Administration	1,321,640.45
D.7	Legal-General Administration	507,713.17
D.8	Legal-General Administration (Hotel)	1,473,242.17
D.9	Director and Other Fees	1,769,672.86
D.10	Management Fee	90,485,744.46
		₱ 97,126,145.19

Out of the foregoing amount, petitioner was able to prove that ₱94,275,487.20 pertain to expenses that were paid and/or incurred from September to December 2008, *viz.*:

Item No.	Account Name	Amount
D.1	Consulting Fees-Security	₱ 535,294.13
D.2	Professional Fees	44,200.00
D.3	Professional Fees-HRD	60,000.00
D.4	Professional Fees-Marketing	-
D.5	Professional Fees-General and Admin (Hotel)	517,596.31
D.6	Accounting Fees-General Administration	455,198.80
D.7	Legal-General Administration	232,995.24
D.8	Legal-General Administration (Hotel)	1,473,242.17
D.9	Director and Other Fees	471,216.09
D.10	Management Fee	90,485,744.46
		₱ 94,275,487.20

As such, this Court shall discuss the veracity of the payments made during the said period and the percentage of EWT applicable to them.

D.1 Consulting Fees-Security – ₱535,294.13

Based on petitioner's GL, the amount ₱535,294.20 lodged in this particular account was paid to Roberto Ortega.[60] Likewise, the Alphalist for 2008 shows that the payment to Roberto Ortega with the same amount was subjected to 15% EWT. Verily, petitioner was able to prove remittance of the subject withholding tax, thus, the deficiency assessment pertaining thereto shall be cancelled.

D.2 Professional Fees – ₱44,200.00

Petitioner's GL shows that the above amount pertains to accrual of 2008 fee for actuarial valuation performed by EM Zalamea Actuarial Services.[61]

The Alphalist shows that only the amount of ₱24,375.00, the payment of which was made in April 2008, was subjected to EWT. Consequently, the subject professional fee of ₱44,200.00 was not subjected to EWT, thus, the deficiency assessment thereon shall be sustained.

D.3 Professional Fees-HRD – ₱60,000.00

Petitioner's GL shows that the above amount was paid to Dr. Eva Marie M. Dayag.[62]

The 2008 Alphalist shows that the income payments paid to Eva Marie M. Dayag amounted to ₱180,000.00. Apparently, this amount tallies with the total income payments to Eva Marie M. Dayag 2008 lodged under this account amounting to ₱180,000.00 based on petitioner's GL. Verily, petitioner was able to prove remittance of EWT but only as much as the corresponding 10% EWT only.

As held in the assailed Decision, the rate of 15% shall be imposed on professional's income in the absence of proof that it submitted the June 30 annual declaration/disclosure of gross income to the BIR, and furnished petitioner the copy thereof, in accordance to Section 2.57.2(A)

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[60] Exhibit "P-42-8".
[61] Exhibit P-42-13.
[62] Exhibit P-42-14.

of RR No. 2-98, as amended. Consequently, the amount of ₱60,000.00 shall be subject to additional 5% deficiency EWT.

D.6 Accounting Fees-General Administration – ₱455,198.80
D.7 Legal-General Administration – ₱232,995.24

Petitioner's GL shows that Accounting Fees-General Administration account in the amount of ₱455,198.80 is composed of payments to Punongbayan & Araullo (P&A)[63] while the Legal-General Administration account in the amount of ₱232,995.24 is composed of the following:[64]

Reyes Cabrera and Associates	₱ 188,307.50
Atty. Felomino Balbin	40,000.00
Fortun and Narvasa	4,687.74
	₱ 232,995.24

These entities, except for Atty. Balbin, are GPPs as evidenced by their respective SEC Certificates of Registration and/or Articles of Partnership.[65] As such, they are not subject to income tax and consequently to EWT pursuant to Section 22(8) in relation to Section 27 of the NIRC of 1997, as amended.

However, in order to be merited with the exemption sought, petitioner must prove that indeed it paid the aforesaid GPPs.

Out of the total payments to P&A, only the amount of ₱47,285.00 was sufficiently established to be incurred and paid in September to December 2008,[66] hence shall be exempted from EWT.

Meanwhile, out of the total payments to Reyes Cabrera, only ₱63,665.00 was supported by billing statements for services rendered in November 2008[67], hence, only the said amount shall be considered exempt from EWT.

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[63] Exhibit "P-42-17".
[64] Exhibit "P-42-18".
[65] Annexes O1, O2 and O3 of ICPA Report, Exhibit "P-38".
[66] Exhibits "P-36-464", "P-36-472", and "P-36-478".
[67] Exhibit "P-36-585".

Unfortunately, no supporting documents which can clearly establish the payments or amounts due to Fortun & Narvasa were presented. This Court finds that mere records of payments in the journal entry[68] are insufficient to prove that they were actually paid to the GPP. As such, the assessment for the whole amount allegedly paid to Fortun & Narvasa must be upheld.

No supporting documents were presented to support the payments to Atty. Balbin, thus, the deficiency assessment thereon shall remain.

In sum, only a total of ₱577,244.04 is upheld to be subjected to 15% deficiency EWT on Accounting & Legal Fees-General Administration:

Professional fees assessed with deficiency EWT:		
Accounting Fees-General Administration	₱ 455,198.80	
Less: Income payments exempted from EWT	47,285.00	₱ 407,913.80
Legal-General Administration	₱ 232,995.24	
Less: Income payments exempted from EWT	63,665.00	169,330.24
Professional fees subject to 15% deficiency EWT		**₱ 577,244.04**

D.8 Director and Other Fees – ₱471,216.09

Petitioner's GL shows that Director and Other Fees are composed of the following:[69]

Shaun Thomsen	₱ 216,830.80
Fabio Moretti	189,345.04
Coralyn Cullado	65,040.25
	₱ 471,216.09

Aside from journal entries for the accrual of Director Fees,[70] no other supporting documents were submitted by petitioner to substantiate the above expenses.

[68] Exhibit "P-36-575".
[69] Exhibit "P-42-20".
[70] Exhibit "P-36-601 to 605".

On the other hand, petitioner's 2008 Alphalist shows the following total income payments to the above suppliers with the corresponding rates:

	Income Payments	EWT Rate
Shaun Thomsen	₱ 722,674.10	10%
Fabio Moretti	962,909.20	10%
Coralyn Cullado	299,473.90	10%

However, this Court cannot ascertain whether the amounts subject of the present assessment already formed part of the amounts in the Alphalist which were already subjected to EWT. Even the total 2008 payments to the above payees per GL, as detailed below, do not match with the total income payments in the Alphalist.

	Total Expense per GL	Total Income Payments per Alphalist	Difference
Shaun Thomsen	₱ 680,636.91	₱ 722,674.10	₱ 42,037.19
Fabio Moretti	604,214.25	962,909.20	358,694.95
Coralyn Cullado	222,439.58	299,473.90	77,034.32

Petitioner also presented its BIR Form No. 1604-E for TY 2009 with the attached Alphalist[71] in its attempt to prove that the payments to the directors have been withheld with the corresponding tax upon payment to them. However, none of the above directors were found in the 2009 Alphalist.

As such, the assessment thereon shall remain.

D.7 Legal-General Administration (Hotel) – ₱1,473,242.17

Petitioner posits that the above expenses are not subject to EWT and submitted documents consisting of a journal entry[72] showing TRANSFER_TPDVI[73] and the Technical and Administrative Consultancy Services Contract between petitioner and TPDVI which allegedly stipulates the cost-sharing agreement between them.[74]

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[71] Exhibit "P-46".
[72] Exhibits "P-36-644 to 649".
[73] Annex N-2 of ICPA Report, Exhibit "P-38"
[74] Exhibit "P-43".

Considering that only those documents were submitted by petitioner to support its arguments and as such have already been discussed earlier under subsections A.3 to A.7, A.9, A.17, and B.2, this Court shall apply the same ruling on these items.

D.10 Management Fee – ₱90,485,744.46

The income payment in the amount ₱90,485,744.46, recorded in Management Fee expense account pertains to payment made to Thunderbird Poro Point, Ltd., a non-resident foreign corporation[75]. The income payment made to Poro Point, Ltd. pertains to consultancy services in connection with casino operations, which services were rendered outside of the Philippines. Thus, considering that the consultancy services were performed outside the Philippines, petitioner's income payment thereon should be excluded from the deficiency EWT assessment.

As such, this Court find petitioner liable to pay the deficiency EWT at 15% and additional 5% rates, on the following income payments, including the additional findings in subsection A.8, *viz.*:

Item No.	Account Name	EWT at 15%	EWT at 5%
A.8	Outside Services-Human Resources	16,961.84	
D.2	Professional Fees	44,200.00	
D.3	Professional Fees-HRD		60,000.00
D.4	Professional Fees-General and Admin (Hotel)	517,596.31	
D.5	Accounting Fees-General Administration	407,913.80	
D.6	Legal-General Administration	169,330.24	
D.7	Legal-General Administration (Hotel)	1,473,242.17	
D.8	Director and Other Fees	471,216.09	
	Total	**3,100,460.45**	**60,000.00**

Accordingly, this Court finds petitioner liable for basic deficiency EWT for the periods September to December 2008 in the total amount of ₱627,796.06, as computed below:

Particulars	Amount	EWT Rate	EWT Due
Expenses subject 2%	₱ 6,411,384.14	2%	₱ 128,227.68
1% Deficiency EWT on expenses which should have been subjected to 2%	26,785.70	1%	267.86

[75] Exhibit "P-26".

Expenses subject 5%	624,620.00	5%	31,231.00
Expenses subject 15%	3,100,460.45	15%	465,069.06
5% Deficiency EWT on expenses which should have been subjected to 15%	60,000.00	5%	3,000.00
Basic Deficiency EWT			**₱ 627,796.60**

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration Re: Decision dated February 3, 2017 is hereby **DENIED** for lack of merit. While, petitioner's Motion for Reconsideration (Re: Decision dated 03 February 2017) is **PARTIALLY GRANTED**. Accordingly, the Decision dated February 3, 2017 is hereby amended to read as follows:

"**WHEREFORE**, premises considered, the Petition for Review filed on February 19, 2013, is **PARTIALLY GRANTED**. The deficiency SPRT, FWT and DST assessments issued by respondent against petitioner for taxable year 2008 are **CANCELLED** and **SET ASIDE**. However, the deficiency FT and EWT assessments issued by respondent against petitioner for taxable year 2008 are **AFFIRMED with MODIFICATION**. Accordingly, petitioner is **ORDERED TO PAY** the amount of **₱54,976,106.11**, inclusive of the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

	Basic	**Surcharge**	**Total**
Franchise Tax (FT)	43,353,088.40	10,838,272.10	54,191,360.50
Expanded Withholding Tax (EWT)	627,796.60	156,949.01	784,745.61
TOTAL	**₱43,980,885.00**	**₱10,995,221.11**	**₱54,976,106.11**

In addition, petitioner is hereby **ORDERED TO PAY**:

a) Deficiency interest at the rate of 20% per annum on the basic deficiency FT and EWT computed from dates below ***until December 31, 2017*** pursuant to Section 249(B) of the NIRC, 1997, as amended:

Tax Type	**Basic Tax**	**20% deficiency interest computed from**
FT	43,353,088.40	January 20, 2009
EWT	627,796.60	January 15, 2009

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱54,976,106.11 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from September 14, 2012 ***until December 31, 2017***, pursuant to Section 249(C) of the 1997 NIRC, as amended.

c) Delinquency interest at the rate of 12% per annum on the total unpaid franchise tax of ₱131,799,327.52 and expanded withholding tax of ₱1,406,951.16 representing basic tax, surcharge, and deficiency interest, as determined above, ***from January 1, 2018 until the amount is fully paid pursuant to Sec. 249(C) of the NIRC of 1997, in relation to Sec. 249(A) of the same Code, as amended by the TRAIN law***.

SO ORDERED."

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended 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.
Acting Presiding Justice