REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TSPI MUTUAL BENEFIT ASSOCIATION, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10691

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

OCT 14 2025
4:20 p.m.

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DECISION

MANAHAN, J.:

This is a Petition for Review filed by petitioner on December 2, 2021 praying that judgment be rendered ordering the permanent lifting of the Warrant of Distraint and/or Levy (WDL) dated November 2, 2021 and the cancellation of the tax deficiency assessments for taxable year (TY) 2016, detailed as follows:

Type of Tax	Amount
Percentage Tax	₱5,233,331.34
Expanded Withholding Tax (EWT)	₱3,866,937.51
Withholding Tax on Compensation (WTC)	₱515,152.74
Compromise Penalty	₱50,000.00
TOTAL	**₱9,665,421.59**

THE PARTIES

Petitioner TSPI Mutual Benefit Association, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines,[1] with address at

[1] Exhibits "P-2" to "P-2-1", Docket – Vol. II, pp. 688 to 708.

2363 Nuestra Sra. De Antipolo St., Guadalupe Nuevo, Makati City.[2] It is a registered taxpayer of the Bureau of Internal Revenue (BIR) under the jurisdiction of Revenue District Office (RDO) No. 050, Revenue Region No. 008 with Tax Identification No. (TIN) 241-674-942-000.[3]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC) and other tax laws, rules and regulations.[4]

FACTS

On October 20, 2017, Regional Director (RD) Glen A. Geraldino issued Letter of Authority (LOA) No. AUDM35/015430/2017/SN: eLA201500084386, authorizing Revenue Officer (RO) Mariano Boliche and Group Supervisor (GS) Faisal Mamacotao to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2016 to December 31, 2016. The same was received by Ms. Nelia Nayve on October 25, 2017.

Afterwards, RD Geraldino issued LOA No. AUDM35/015430/2017/SN:eLA201500087072 dated October 20, 2017,[5] authorizing RO Hosnia Sundan and GS Mamacotao to continue the audit in view of the reassignment of RO Boliche.

On May 28, 2019, petitioner received the Preliminary Assessment Notice (PAN) No. P-LA015430-050-2016 dated May 9, 2019,[6] finding petitioner liable for deficiency income tax, percentage tax, WTC, EWT and final withholding tax (FWT) for TY 2016. Petitioner then filed its response to the said PAN on June 11, 2019 through a letter of even date.[7]

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[2] Par. 1, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 259.
[3] Exhibit "P-1", Docket – Vol. II, p. 687.
[4] Par. 2, Facts Admitted, JSFI, Docket – Vol. I, p. 259.
[5] Exhibit "R-2", BIR Records - Folder 1 of 9 (Exhibit "R-25"), p. 170.
[6] Exhibit "P-8", Docket – Vol. II, pp. 851 to 856; Exhibits "R-5" to "R-7", BIR Records - Folder 1 of 9 (Exhibit "R-25"), pp. 1417 to 1421; Refer also to par. 3, Facts Admitted, JSFI, Docket – Vol. I, p. 259.
[7] Exhibit "P-9", Docket – Vol. II, pp. 857 to 871.

Thereafter, respondent issued the Formal Assessment Notice (FAN) dated June 19, 2019, together with Assessment Notices Nos. IT- ELA087072-16-19-322 – ₱18,980,350.57; PT-ELA087072-16-19-322 – ₱5,611,988.63; WC-ELA087072-16-19-322 – ₱462,999.83; WE- ELA087072-16-19-322 – ₱3,475,457.47; WF- ELA087072-16-19-322 – ₱66,291,064.53; and MC- ELA087072-16-19-322 – ₱100,000.00 (FLD/FAN), which was received by petitioner on June 25, 2019.[8] On July 25, 2019, petitioner filed its protest letter to the FLD/FAN.[9] It likewise filed supporting documents on September 20, 2019 with a letter of even date.[10]

Then, on September 17, 2020, petitioner received the Final Decision on Disputed Assessment (FDDA) No. FDDA-233-RR8A-RDO50-2016-eLA No. 201500087072-A.N.322 dated September 11, 2020, dropping the deficiency assessments relative to income tax and FWT.[11]

Thereafter, petitioner filed an appeal with respondent on October 7, 2020 through a letter dated October 6, 2020.[12]

Subsequently, RD Rosario issued the WDL dated November 2, 2021,[13] which was received by petitioner of even date.

On December 2, 2021, petitioner filed the present Petition for Review.[14]

Within the period granted by the Court,[15] respondent posted his Answer (With Special and Affirmative Defenses) on April 11, 2022.[16]

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[8] Exhibits "P-10" to "P-11-5", Docket – Vol. II, pp. 872 to 883; Exhibits "R-8" to "R-16", BIR Records - Folder 1 of 9 (Exhibit "R-25"), pp. 1435 to 1446; Refer also to Par. 4, Facts Admitted, JSFI, Docket – Vol. I, p. 260.
[9] Exhibit "P-12, Docket – Vol. II, pp. 884 to 903.
[10] Exhibit "P-13", Docket – Vol. II, pp. 904 to 906.
[11] Exhibit "P-14", Docket – Vol. II, pp. 907 to 909; Exhibit "R-18", BIR Records - Folder 1 of 9 (Exhibit "R-25"), pp. 1565 to 1567; Refer also to Par. 5, Facts Admitted, JSFI, Docket – Vol. I, p. 260.
[12] Exhibit "P-15", Docket – Vol. II, pp. 910 to 932.
[13] Exhibit "P-16", Docket – Vol. II, p. 933.
[14] Docket – Vol. I, pp. 7 to 20.
[15] Respondent's *Motion for Extension of Time to File Answer* dated March 11, 2022, and Resolution dated April 4, 2022, Docket – Vol. I, pp. 118 to 121 and 124, respectively.
[16] Docket – Vol. I, pp. 125 to 144. *cm*

Respondent then transmitted the BIR Records of the present case on April 25, 2022, containing nine (9) folders.[17]

In the Resolution dated April 26, 2022,[18] the parties were ordered to immediately proceed and to personally appear, or through their authorized representatives, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on June 16, 2022. However, the PMC-CTA issued the "No Agreement To Mediate" dated June 16, 2022,[19] stating that the parties decided not to have their case mediated.

The Pre-Trial Conference was initially set on August 24, 2022,[20] and later reset to,[21] and held on September 22, 2022.[22] Prior thereto, the Petitioner's Pre-Trial Brief was filed on August 16, 2022,[23] while respondent's Pre-Trial Brief was submitted via accredited courier service on August 18, 2022.[24]

On October 14, 2022, the parties submitted their Joint Stipulation of Facts and Issues (JSFI),[25] which was approved by the Court in its Resolution dated October 25, 2022,[26] thereby deeming the termination of the Pre-Trial.

On December 28, 2022, the Court issued the Pre-Trial Order.[27]

In the meantime, petitioner filed a Motion to Admit Amended Judicial Affidavit,[28] with attached Amended Judicial Affidavit of witness Robert Anthony D. Sia[29] on November 17, 2022. This was noted in open court during the hearing held on November 22, 2022.[30]

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[17] *Compliance* dated April 25, 2022, Docket – Vol. I, pp. 214 to 215.
[18] Docket – Vol. I, pp. 218 to 219.
[19] Docket – Vol. I, p. 221.
[20] Resolution dated June 29, 2022, Docket – Vol. I, p. 224; Notice of Pre-Trial Conference dated June 30, 2022, Docket – Vol. I, pp. 225 to 227.
[21] Notice of Resetting dated August 31, 2022, Docket – Vol. I, p. 249.
[22] Minutes of hearing held on, and Order dated, September 22, 2022, Docket – Vol. I, pp. 251 to 254 and 258 to 258-B, respectively.
[23] Docket – Vol. I, pp. 228 to 233.
[24] Docket – Vol. I, pp. 236 to 247.
[25] Docket – Vol. I, pp. 259 to 268.
[26] Docket – Vol. I, p. 287.
[27] Docket – Vol. I, pp. 328 to 345.
[28] Docket – Vol. I, pp. 289 to 291.
[29] Exhibit "P-18", Docket – Vol. I, pp. 292 to 304,
[30] Minutes of the hearing held on, and Order dated, November 22, 2022, Docket – Vol. I, pp. 317 to 317-C and 319 to 319-B, respectively.

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

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Robert Anthony D. Sia,[31] its Accounting & Finance Head; and (2) Mr. Glenn Ian D. Villanueva,[32] the Court-commissioned Independent Certified Public Accountant (ICPA).[33]

The Report of the ICPA was submitted on January 9, 2023.[34]

On February 17, 2023, petitioner filed its Formal Offer of Evidence (FOE),[35] to which respondent filed his Comment (to Petitioner's FOE dated February 16, 2023) via accredited courier service on March 6, 2023.[36] In the Resolution dated May 8, 2023,[37] the Court admitted petitioner's offered exhibits, except Exhibits "P-7", "P-7-1" and "P-17", for failure of petitioner's witness to identify said exhibits.

For his part, respondent presented the testimony of RO III Hosnia Sundad.[38]

On April 1, 2024, respondent filed via accredited courier service his FOE,[39] to which petitioner filed its Comment to Respondent's FOE on April 3, 2024.[40] In the Resolution dated July 22, 2024,[41] the Court admitted all of respondent's offered exhibits.

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[31] Exhibit "P-18", Docket – Vol. I, pp. 292 to 304; Minutes of the hearing held on, and Order dated, November 22, 2022, Docket – Vol. I, pp. 317 to 317-C and 319 to 319-B; Minutes of the hearing held on, and Order dated, January 19, 2023, Docket – Vol. II, pp. 663 and 664 to 665, respectively.
[32] Exhibit "P-58", Docket – Vol. II, pp. 652 to 662; Order dated January 19, 2023, Docket – Vol. I, pp. 666 to 667; Minutes of the hearing held on, and Order dated, January 19, 2023, Docket – Vol. II, pp. 666 to 667 and 664 to 665, respectively.
[33] *Oath of Commission* dated November 22, 2022, Docket – Vol. I, p. 318; Minutes of the hearing held on, and Order dated, November 22, 2022, Docket – Vol. I, pp. 317 to 317-C and 319 to 319-B.
[34] Exhibit "P-22", Docket – Vol. I, pp. 347 to 648.
[35] Docket – Vol. II, pp. 670 to 686.
[36] Docket – Vol. II, pp. 1002 to 1005.
[37] Docket – Vol. II, pp. 1017 to 1021.
[38] Exhibit "R-22", Docket – Vol. I, pp. 149 to 165; Minutes of the hearing held on, and Order dated, March 12, 2024, Docket – Vol. II, pp. 1033 to 1035.
[39] Docket – Vol. II, pp. 1037 to 1049.
[40] Docket – Vol. II, pp. 1053 to 1056.
[41] Docket – Vol. II, pp. 1060 to 1061.

On September 6, 2024, petitioner filed its Memorandum,[42] while respondent's Memorandum was submitted via accredited courier service on September 12, 2024.[43]

The present case was considered submitted for decision on September 30, 2024.[44]

THE ISSUE

The parties stipulated the following issues for this Court's resolution, to wit:

> Whether or not Petitioner is liable for the assessed deficiency Percentage Tax, Expanded Withholding Tax, Withholding Tax on Compensation and Compromise Penalty amounting to ₱5,233,331.34, ₱3,866,937.51, ₱515,152.74, and ₱50,000.00, respectively, for taxable year 2016.[45]

Petitioner's arguments:

Petitioner argues that the tax deficiency assessments for TY 2016 are all void on the ground that they were issued in violation of its right to due process. *First,* the FAN dated June 19, 2019 did not set and fix its definite tax liability by stating therein that the amount demanded is still subject to modification or adjustment. Citing the case of *Commissioner of Internal Revenue vs. Fitness by Design (Fitness By Design* case*),*[46] tax deficiency assessments are deemed void if the amount demanded is not yet final and subject to changes. *Second,* petitioner avers that the revenue examiners who conducted the audit were not armed with a validly issued LOA rendering the present assessments void. Petitioner alleges that the LOA was served beyond thirty (30) days from its issuance and that the audit conducted by the RO went beyond the period of one hundred twenty (120) days, without being revalidated. *Third,* petitioner alleges that respondent did not consider its submissions or explanations contained in its protest to the PAN

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[42] Docket – Vol. II, pp. 1062 to 1082.
[43] Docket – Vol. II, pp. 1086 to 1107.
[44] Minute Resolution dated September 30, 2024, Docket – Vol. II, p. 1111.
[45] Issue, JSFI, Docket – Vol. I, p. 260.
[46] G.R. No. 215957, November 9, 2016. *cen*

dated June 11, 2019 as seen from the findings found in the subsequent FAN which merely echoed the findings in the PAN. This constitutes a violation of its right to due process citing the Supreme Court Decision in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. (Avon* case*)*.[47]

As regards the merits of the FAN, petitioner argues that it is not liable to pay percentage tax and maintains that it is exempt from the premium tax under Section 123 of the 1997 NIRC, as amended. Being a non-stock, non-profit mutual aid association which provides the payment of life, sickness or accident or other benefits exclusive to the members of the association, petitioner is deemed to be a purely cooperative association exempt from percentage tax under said Section 123 of the Tax Code.

As to the WTC, the alleged discrepancy discovered by the revenue examiners as a result of the reconciliation of Salaries and Wages per Audited Financial Statements (AFS) as against the withholding tax return (BIR Form No. 1601-C) is due to the fact that the reported amount under the heading "Salaries and Wages" in the AFS is a grossed-up amount which would not tally with the amount reported in the withholding tax return.

Petitioner also objects to the assessment of EWT because these payments were made to general professional partnerships (GPPs) which are not subject to income tax and subsequently to withholding tax in accordance with the provisions of the 1997 NIRC, as amended. Also, with regard to "marketing and sales' payments" amounting to ₱16,671,160.00, these represent reimbursement of expenses which are not subject to tax citing the decision of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Tours Specialists, Inc.*[48] which supposedly ruled that "gross receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit and it is not necessary that there must be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code."

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[47] G.R. Nos. 201398-99 dated October 3, 2018 and G.R. Nos. 201418-19, October 3, 2018.
[48] G.R. No. 66416 dated March 21, 1990.

In sum, petitioner refutes the findings of the revenue examiners as regards the EWT assessment and claims that all expenses it paid are duly accounted for and justified.

Lastly, petitioner objects to the inclusion of the compromise penalty in the amount demanded by respondent simply because it never assented to its imposition. Petitioner stresses that a compromise penalty, being mutual in nature, should be with the conformity or assent of the taxpayer.

Respondent's counter-arguments:

Respondent primarily argues that the Court has no jurisdiction over the subject matter of the present case because the filing of the present Petition for Review is premature. It is the theory of respondent that when a taxpayer opts to file an administrative appeal from an FDDA with its office, any issuance of a preliminary collection letter, final notice before seizure and/or WDL should not be the reckoning point for the thirty (30)-day period to file a judicial appeal with this Court. Therefore, petitioner's Petition for Review filed with this Court on December 2, 2021 within the thirty (30)-day period from the issuance of the WDL on November 2, 2021 is still premature, hence should be dismissed.

On the argument of petitioner that the investigation conducted by the revenue officers on its accounting records for TY 2016 was unauthorized, respondent contends that the said investigation was conducted pursuant to a valid LOA. The second LOA issued on March 13, 2018 replaced the first LOA on account of the transfer of revenue district officer Mariano Boliche to another district office. This second LOA now authorized RO Hosnia Sundad and GS Faisal Mamacotao to continue the audit investigation for the same TY. Both LOAs according to respondent, were signed by the former RD, Glen A. Geraldino.

Respondent also refutes the allegation of petitioner that its right to due process was violated. Respondent avers that petitioner was duly informed in writing of the findings of the BIR and was afforded several opportunities to present its side throughout the course of the audit. As supported by jurisprudence, respondent asserts that due process is satisfied when a taxpayer is informed in writing of the law and the facts upon which the assessment is based pursuant to Section 228 of the 1997 NIRC, as amended. Respondent maintains that his office followed the stages of assessment from the Notice of Informal Conference to the issuance of the PAN, FAN and the FDDA and that petitioner was given the opportunity to refute the findings embodied therein.

Respondent also differs with the contention of petitioner and insists that the FAN contains a definite tax liability and due date pursuant to Section 228 of the 1997 NIRC, as amended, hence the invalidity thereof alleged by petitioner cannot be sustained.

As to the substantive merits of the assessment, respondent remains firm that petitioner is subject to percentage tax and that the tax exemption cited by petitioner under Section 30 of the 1997 NIRC, as amended, is limited only to income tax and does not extend to percentage tax.

As regards petitioner's WTC liability, respondent upholds the findings of its ROs who found that there was a substantial discrepancy upon a review of its Reconciliation of Salaries, Wages and Benefits per its AFS/Income Tax Return (ITR) *vis-à-vis* the salaries and wages per alphalist of its employees. The amount of discrepancy was subjected to withholding tax pursuant to Section 79(A) of the 1997 NIRC, as amended, as implemented by Section 2.78 of Revenue Regulation (RR) No. 2-98, as amended.

Respondent also defended the assessed EWT for TY 2016 on the ground that records show that petitioner failed to withhold and remit the correct withholding tax on its income payments for TY 2016. Respondent finds unsatisfactory the explanations made by petitioner in its request for reinvestigation against the EWT assessment because it was not supported by documentary evidence.

THE RULING OF THE COURT

The Court has jurisdiction over the present case.

For an orderly disposition of this case, the Court shall first address the issue of jurisdiction raised by respondent.

Respondent, citing the case of *Light Rail Transit Authority vs. Bureau of Internal Revenue*[49] (*LRTA* case), argues that when a taxpayer opts to file an administrative appeal from the FDDA before the Office of respondent, and chooses to wait for the final decision of the latter, any issuance of a preliminary collection letter, final notice before seizure, and/or WDL pending such final decision should not be the reckoning point of the thirty (30)-day period to file for an appeal with the CTA because said collection letters are all considered tentative pending the decision of the respondent on the administrative appeal.[50] As such, it is respondent's position that the filing of the present Petition for Review is premature considering that he has yet to issue a final decision on the administrative appeal and that the WDL cannot be deemed as the final decision of the respondent appealable to this Court.[51]

Respondent further submits that the subject matter of the present Petition for Review cannot fall under the second part of Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended (i.e., other matters under the NIRC) because the validity and propriety of the issuance of the WDL was never put in issue, and the WDL was merely made as the reckoning point of the thirty (30)-day period to file the present Petition for Review.[52]

This Court disagrees with respondent.

Jurisdiction over the subject matter is required for a court to act on any controversy. It is conferred by law and not by the consent or waiver upon a court. As such, if a court lacks jurisdiction over an action, it cannot decide the case on the merits and must dismiss it.[53] To inquire into the existence of jurisdiction over the subject matter is the primary concern of a

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[49] G.R. No. 231238, June 20, 2022.
[50] Pars. 36 and 37, respondent's *Memorandum*, Docket – Vol. II, pp. 1093 to 1095.
[51] Par. 42, respondent's *Memorandum*, Docket – Vol. II, p. 1096.
[52] Pars. 43 to 44, respondent's *Memorandum*, Docket – Vol. II, p. 1096.
[53] *CE Casecnan Water & Energy Co., Inc. vs. The Province of Nueva Ecija, et al.*, G.R. No. 196278, June 17, 2015.

court, for thereon would depend the validity of its entire proceedings.[54]

Sections 7(a)(1) and 11 of RA No. 1125,[55] as amended by RA No. 9282,[56] provides, in part, as follows:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;
>
> xxx xxx xxx
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*– **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue xxx may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx. *(Emphases supplied)*

Based on the foregoing provisions, it is clear that the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers

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[54] *Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Tax Appeals*, G.R. No. L-23988, January 2, 1968.

[55] AN CREATING THE COURT OF TAX APPEALS.

[56] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

other cases that arise out of the NIRC or related laws administered by the BIR.[57]

In *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital* case*)*, [58] the said jurisdiction of this Court on "other matters" was reiterated by the Supreme Court, thus:

> Contrary however to the CIR's argument, Section 7(a)(1) of Republic Act No. (RA) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also 'other matters' arising under the NIRC:
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> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue [Code] or other laws administered by the Bureau of Internal Revenue[.]
>
> As explained by the Court in *Commissioner of Internal Revenue vs. Court of Tax Appeals Second Division*, [59] the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy**.[60] *(Emphasis supplied)*

Clearly, the validity of a WDL is an issue that falls under "other matters arising from the National Internal Revenue Code (NIRC)" that is within the jurisdiction of this Court to decide upon. Considering that in the present Petition for Review, what is being primarily assailed is the WDL dated

[57] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[58] G.R. No. 255473, February 13, 2023.
[59] G.R. No. 258947, March 29, 2022.
[60] *Philippine Journalists Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

November 2, 2021[61] issued by the BIR (the chief of which is the respondent),[62] the same then can be taken cognizance by this Court.

In instances when respondent, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds with distraint and levy or institutes an action for collection in the ordinary courts, the Supreme Court has considered this as an implied denial. The taxpayer's remedy then was to appeal to this Court within thirty (30) days from the date that it was notified of the warrant or collection suit.[63]

Relative thereto, Section 11 of RA No. 1125, as amended by RA No. 9282, states, in part, as follows:

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

Thus, petitioner had thirty (30) days from receipt of the WDL on November 2, 2021[64] or until December 2, 2021, within which to file its appeal before this Court. Correspondingly, the filing of the present Petition for Review on December 2, 2021[65] was timely made.

Having settled that the Court has jurisdiction over the instant case, the Court shall now proceed to discuss petitioner's alleged violation of its right to due process.

There is no violation of petitioner's right to due process.

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[61] Exhibit "P-16", Docket – Vol. II, p. 933.
[62] Section 3, National Internal Revenue Code of 1997.
[63] *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021.
[64] Exhibit "P-16", Docket – Vol. II, p. 933.
[65] Docket – Vol. I, pp. 7 to 20. *cm*

Petitioner argues that the FLD/FAN dated June 19, 2019 merely reiterated the assessments contained in the PAN dated May 9, 2019 and disregarded petitioner's explanations contained in its protest to the PAN, as well as the supporting documents submitted with it. Thus, the BIR, accordingly, failed to meet the due process standards raised in the afore-cited *Avon* case.[66]

Respondent counters that petitioner did not present any document that would support its claims/arguments in its reply to the PAN; and that respondent is not obliged to accept petitioner's explanations which are unsupported by documentary evidence.[67]

The Court agrees with respondent.

Section 228 of the 1997 NIRC, as amended, reads, in part, as follows:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
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> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> xxx xxx xxx. *(Emphasis supplied)*

Under the foregoing provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[68] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[69] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a

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[66] Petitioner's *Memorandum*, Docket – Vol. II, p. 1077.
[67] Par. 56, respondent's Memorandum, Docket – Vol. II, p. 1100.
[68] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq., Id.*
[69] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan,* G.R. No. 232663, May 3, 2021.

hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[70] Furthermore, it must be emphasized that failure to comply with Section 228 of the 1997 NIRC, as amended, does not only render the assessment void, but also finds no validation in any provision of the Tax Code.[71]

To implement the above-quoted Section 228, Section 3 of RR No. 12-99,[72] as amended by RR No. 18-2013[73] (which was still in effect when the subject LOA was issued), provides, in part, as follows:

> SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
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> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based,**

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[70] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[71] *Id.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 191 (2006).
[72] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.
[73] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> ***otherwise, the assessment shall be void*** (see illustration in ANNEX 'B' hereof).
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> 3.1.5 Final Decision on a Disputed Assessment (FDDA). – The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision. *(Emphases supplied)*

The foregoing provisions prescribe, as part of due process in the issuance of tax assessments, that the PAN, FLD/FAN and FDDA must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FLD/FAN and/or FDDA shall be void.

In the *Avon* case relied upon by petitioner, the Supreme Court ruled:

> **Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**
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> In *Ang Tibay v. The Court of Industrial Relations,*[74] this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable**

[74] 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.' It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
(2) The administrative tribunal or body must consider the evidence presented.
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.
(7) **The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.**

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The last requirement relating to the form and substance of the decision is the decision-maker's *'duty to give reason'* to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.

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Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the **party's defenses be considered** by the administrative body in making its conclusions, and **that the party be sufficiently informed of the reasons for its conclusions.**

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The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **Section 3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.

'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, **Final Letter of Demand with the Final Assessment Notices**, and the Final Decision on Disputed Assessment.

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The facts demonstrate that Avon was deprived of due process. It was **not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus,** Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.

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It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**

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> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices,** and Collection Letter **null and void, and of no force and effect**. *(Emphases supplied)*

Based on the foregoing jurisprudential pronouncement, respondent or his duly authorized representative is mandated to perform assessment functions in accordance with, and strict adherence to law, with their own rules of procedure, and always with regard to the basic tenets of due process; and due process requires respondent and/or the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Thus, in the *Avon* case, the Supreme Court elucidated the need for the BIR not only to fully inform the taxpayer of the legal and factual bases of the assessments issued against it, but also to comment or address the defenses and documents submitted by the taxpayer so that the latter would not be left unaware on how the Commissioner or his authorized representatives appreciated the explanations or defenses raised in connection with the assessments.

In the present case, unlike in the *Avon* case, petitioner's protest against the PAN dated June 11, 2019[75] was not at all supported by any documentary evidence, despite the fact that it raised several factual issues that can only be resolved through the presentation of relevant supporting documents, such as: (i) that the rate of 7% service fee collected by petitioner commenced only in June of 2016 and, thus, it was erroneous on the part of the revenue examiners to apply the 7% rate on the entire amount of Marketing & Sales Expenses of TY 2016; (ii) that it can reconcile the discrepancy identified by the revenue examiners with respect to the salaries and wages per Financial Statements vs. Withholding Tax Returns; and (iii) that all-expense paid out by petitioner were duly accounted for and justified. Thus, the BIR cannot be faulted if it merely reiterated the same findings on these matters, without giving any reason for rejecting the above-stated unsubstantiated refutations made by petitioner in its reply to the PAN dated June 11, 2019. Simply put, the *Avon* case is not in all fours with the present case, as petitioner's protest to the PAN was not supported by any relevant documents.

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[75] Exhibit "P-9", Docket – Vol. II, pp. 857 to 871.

Another argument of petitioner is its allegation that the FLD/FAN dated June 19, 2019 should be rendered void as it did not contain a fixed and definite amount of tax to be paid, rendering it legally infirm, citing the *Fitness By Design* case,[76] as shown in the following statements, to wit:

> Please note that the interest and the total amount due will have to be adjusted if paid after the date specified herein.

The Court is not convinced.

In the *Fitness By Design* case, the Supreme Court describes a final assessment in this wise:

> A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'
>
> The disputed Final Assessment Notice is not a valid assessment.
>
> **First, it lacks the definite amount of tax liability** for which respondent is accountable. It does not purport to be a demand for payment of the tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment.
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> **Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** x x x. *(Emphases supplied)*

It can be deduced from the foregoing that in order for a FLD/FAN to be valid, it must contain the following: (1) it must

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[76] Petitioner's *Memorandum*, Docket – Vol. II, pp. 1077 to 1078.

demand a definite amount of tax liability; and (2) it must provide a clear due date for payment.

However, the Court finds that the facts obtaining in the *Fitness by Design* case are different from the present case.

For one, the assessment notices in this case contain a specific due date, which is **July 19, 2019**,[77] unlike in the *Fitness By Design* case where there was none.

Second, the statement that the interest *"will have to be adjusted if paid after the date specified herein"* does not make the assessments indefinite. The statement merely serves as a reminder to the taxpayer that the interest will have to be adjusted if the assessed tax liability remains unpaid on the stated date in the assessment notices. This is nothing but a natural consequence of Section 249 of the 1997 NIRC, as amended, which requires the imposition of interest on unpaid taxes from the time such tax is required to be paid until it is fully paid. Understandably, the interest in the assessment would be subject to changes, considering that the BIR would not have the foresight to determine when respondent would pay the deficiency taxes.

Hence, there is no basis for petitioner to claim that the FLD/FAN should be invalidated for failure to set and fix the tax liabilities of petitioner.

Another challenge of petitioner on alleged due process violations is the invalidity of the LOA.

After quoting the testimony of respondent's witness, RO Sundad, petitioner claims that the LOA dated October 20, 2017, which granted the authority to conduct an audit, was only served on April 12, 2018, or beyond thirty (30) days, as mandated under Revenue Audit Memorandum Order (RAMO) No. 1-00, thereby rendering it null and void.[78]

Respondent, on the other hand, argues that RO Sundad testified that two (2) LOAs were issued in connection with the

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[77] Exhibits "P-11" to "P-11-5", Docket – Vol. II, pp. 878 to 883.
[78] Petitioner's *Memorandum*, Docket – Vol. II, pp. 1078 to 1081.

tax assessments subject of this case: (1) LOA No. eLA201500084386 dated October 20, 2017, which authorized RO Mariano Boliche and GS Faisal Mamacotao to conduct the examination of petitioner's books of accounts for all internal revenue taxes covering the calendar year 2016; and (2) LOA No. eLA201500087072, which was actually issued on March 13, 2018, authorized her and GS Mamacotao to continue the audit of petitioner's accounting records in view of the reassignment of RO Boliche (due to transfer). Said LOAs were duly served to, and received by petitioner on October 25, 2017 and April 12, 2018, respectively.[79]

Petitioner's contention fails to persuade.

Item VIII(C)(2)(2.3) of RAMO No. 1-00 dated March 17, 2000,[80] which was still in effect when the subject LOA was issued, mandates that an LOA must be served within thirty (30) days from its date of issue, *viz.*:

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

Clearly, an LOA must be served or presented to the concerned taxpayer within thirty (30) days from its date of issuance; otherwise, it becomes null and void, unless revalidated. Further, the taxpayer has the right to refuse its service if presented beyond the thirty (30)-day period depending on the policy set up by management.

As borne out of the evidence in this case, the LOA No. AUDM35/015430/2017/SN:eLA201500084386 dated October 20, 2017[81] (*first* LOA), issued by RD Glen A. Geraldino, authorized **RO Mariano Boliche** and GS Faisal Mamacotao to

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[79] Pars. 64 to 65, petitioner's *Memorandum*, Docket – Vol. I, p. 1102.
[80] Subject: Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000).
[81] Exhibit "R-1", BIR Records - Folder 1 of 9 (Exhibit "R-25"), p. 1.

examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2016 to December 31, 2016. The same was received by Ms. Nelia Nayve on October 25, 2017.

Thereafter, RO Hosnia Sundan testified that RD Geraldino issued the LOA No. AUDM35/015430/2017/SN: eLA201500087072 dated October 20, 2017[82] (*second* LOA) authorizing her and GS Mamacotao to continue the audit in view of the reassignment of RO Boliche. While this LOA, indeed, shows that it was only served to petitioner, through Ms. Vilma V. Solemne, on April 12, 2018, or more than thirty (30) days from the date of its issuance on October 20, 2017, RO Sundad, nonetheless, clarified that it was actually issued on March 13, 2018, as shown on the lower portion of the said LOA, and that the date of issuance reflected on the right upper portion of the same was a mere result of system error. Pertinent portions of his testimony are herein quoted for ready reference:

<u>RE-DIRECT EXAMINATION OF WITNESS SUNDAD</u>

Atty. Tuico:	Ms. Witness, you identified two (2) LOAs, two (2) LOAs in your judicial affidavit which are respectively marked as Exhibit R-1 and Exhibit R-2, correct?
Witness Sundad:	Yes, Attorney.
Q:	You also mentioned that LOA marked R-2 is a replacement of the LOA which is marked as R-1, correct?
A:	Yes, Attorney.
Q:	When was the *second* LOA actually issued by the BIR?
A:	On March 13th 2018.
Q:	And what is your proof for that?
A:	In the lower the right portion of the LOA.
Q:	Can you read the date stated in the lower portion of the LOA?
A:	DOP which is the Date of Printing, March 13, 2018, 9:12:38. That is the time.

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[82] Exhibit "R-2", BIR Records - Folder 1 of 9 (Exhibit "R-25"), p. 170.

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Q: Can you read the date in the lower portion of the LOA?

A: 03/30/2018.[83]

Q: And that stands for?

A: Date of printing of the LOA.

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RE-CROS EXAMINATION OF WITNESS SUNDAD

Atty. Montengro: Ms. Witness, you said that the date found at the lower left portion after the words DOP or letters DOP, is the date of printing of this Exhibit R-2, correct?

A: Yes, Attorney.

Q: So, would you agree with me the date of printing is different from the date issuance?

A: Yes, Attorney.

Q: Okay, now will you agree with me that usually the date of issuance of the letter of authority is found on the upper right portion of the document, correct?

A: Yes, Attorney. But system captured the date on the first issuance but the actual printing and service of the letter authority is 2018.

Q: So, are you telling me and correct me if I am wrong with my understanding that this letter of authority identified as R-2 was issued on October 20, 2017 but it was only printed at a later date?

A: No, Attorney. It was printed on Mach 13, 2018 but the system captured the date on its original issuance.

Justice Manahan: And why do you think that happens? Why would the system reflect an old date of an earlier issuance to a new issuance of an LOA? Does that happen? Is that a glitch?

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[83] Should be 03/**13**/2018.

A: I don't.

Justice Manahan: You cannot explain?

A: Yes, because it is the system."[84]

Notably, the second LOA,[85] indeed, bears the following statements on the lower left portion thereof:

> This is replacement of Letter of Authority No. 201500084386 dated October 20, 2017 for the continuation of audit of the herein tax liabilities for the taxable period from January 1, 2016 to December 31, 2016 arising from the reassignment due to transfer of RO Mariano Boliche.'; and

LETTER OF AUTHORITY

AUDM35/015430/2017

DOP: 03/13/2018 09:12:38

The Court finds RO Sundad's testimony that the words "DOP: 03/13/2018 09:12:38" appearing on the lower left portion of the *second* LOA pertains to the date of printing of the same, and that the October 20, 2017 date of issuance reflected on the *second* LOA was merely brought by a system error, more credible and logical.

First, there is a remote possibility on the part of RD Geraldino to issue and sign two (2) LOAs on the same day – October 20, 2017, especially so that the second LOA already contained a statement that the same is a replacement of the Letter of Authority No. 201500084386 dated October 20, 2017 [*first* LOA] "for the continuation of audit of petitioner's tax liabilities for the taxable period from January 1, 2016 to December 31, 2016 arising from the reassignment due to transfer of RO Mariano Boliche." Second, the issuance and the receipt of the *second* LOA cannot be doubted as it was RO Sunda herself who personally served the same at the registered address of petitioner on April 12, 2018,[86] and petitioner does

[84] Transcript of the Stenographic Notes during the hearing held on March 12, 2024, pp. 10 to 13.
[85] Exhibit "R-2", BIR Records - Folder 1 of 9 (Exhibit "R-25"), p. 170.
[86] Q&A 17, Exhibit "R-22", Docket – Vol. I, pp. 153 to 154.

not deny the receipts of the two (2) LOAs on different dates – the *first* LOA was received by Ms. Nelia A. Nayve on October 25, 2017, while the *second* LOA was received by Ms. Vilma Solemne on November 12, 2018. Thus, this Court is convinced that the October 20, 2017 date of issuance appearing on the *second* LOA was only due to system error.

Moreover, the Court notes that the second LOA, printed on "03/13/2018," was received by petitioner's representative on April 12, 2018, or within thirty (30) days from the date of printing thereof, thus there is no violation of the provision of RAMO No. 1-00.

As to petitioner's argument that the FAN dated June 19, 2019 was served upon petitioner more than one hundred twenty (120) days from the issuance of the *first* and *second* LOAs, thus, the result of any investigation and audit conducted beyond the said period should be deemed unenforceable, following the ruling of the Supreme Court in the case of *AFP General Insurance Corporation vs. Commissioner of Internal Revenue* [87](*AFP* case), the same is misplaced. [88]

We disagree with petitioner.

Notably, the aforementioned *AFP* case relied upon by petitioner, likewise ruled as follows:

> Without revalidation, the LOA shall be considered void and the assigned revenue officer is 'prohibited from *further* investigation and contact with the taxpayer.' The revalidation requirement here is aimed at *reconfirming* the revenue officer's authority and *extending the period of <u>audit</u>*. It contemplates a *served LOA* and *an on-going audit investigation.* Stated differently, the revenue officer was already authorized to commence an audit only that he was unable to conclude it within 120 days.
>
> Given this context, it is clear that failure to comply with the 120-day rule does not void LOA *ab initio*. The expiration of the 120-day period merely renders an LOA *unenforceable*, inasmuch as the revenue officer must first seek ratification of his *expired authority to audit* to be able to validly continue investigation beyond the first 120 days.

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[87] G.R. No. 222133, November 4, 2020.
[88] Petitioner's *Memorandum*, Docket – Vol. II, p. 1081.

> That the revenue officer is unable to conduct *further* investigation does not invalidate his/her authority during the first 120 days or the procedures he/she had already performed within that period. He/she may instead render a report based on the results of his/her initial investigation from which an assessment may be legitimately issued.
>
> In any case, AGIC does not even allege facts showing that the assigned revenue officers continued with their audit investigation beyond the first 120 days after issuance/service of the LOA. Failure to revalidate the LOA in accordance with the 120-day rule shall only be an issue in cases where tax authorities proceeded with an extended audit without first seeking the requisite revalidation.
>
> **Furthermore, even if the Court assumes that the BIR illegally extended their investigation, AGIC could have also resisted further investigation as early as the 121st day after the LOA's issuance/service if it truly believed that the assigned revenue officers no longer possessed the requisite authority. That it kept silent about the supposed violation and complained only when it was already found liable for deficiency taxes, once again, only show that it acquiesced to the BIR's extended audit, if any.**
>
> **Based on the foregoing, absent any showing that the failure to revalidate resulted in a violation of AGIC's right to due process, the Court upholds the subject LOA's validity.** (*Emphases supplied)*

Thus, on the basis of the foregoing jurisprudential pronouncements, even granting that the BIR illegally extended their investigation of petitioner, it is noteworthy that the latter did not resist the further investigation despite the lapse of the one hundred twenty (120)-day period from the issuance of the subject LOA. To be sure, petitioner acquiesced to the BIR's extended audit, as it kept silent about the supposed violation and complained only at this late stage of the proceedings.

Furthermore, there is no showing that the failure to revalidate the subject LOA resulted in the violation of petitioner's right to due process, and thus, the same is upheld.

Be that as it may, it must be pointed out that Revenue Memorandum Circular (RMC) No. 23-2009 dated April 16, 2009[89] categorically states that failure on the part of the concerned RO to request for revalidation of an LOA or upon the expiration of the *"revalidation period"* does not nullify the same, nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. The said issuance states, in part, as follows:

> **I. Revalidation of LAs**
>
> The revalidation of LA[90] shall give rise to the extension of the period within which the Revenue Officer (RO) assigned to the case shall submit the report of investigation to higher authorities for review and approval, without the imposition of applicable administrative sanctions. Depending on the classification of the pending tax case, said extension period shall be equivalent to the original prescribed number of days within which to report the case under existing revenue issuances. **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. *(Emphasis supplied)*

After one (1) year from the issuance of RMC No. 23-2009, respondent issued Revenue Memorandum Order (RMO) No. 44-2010 dated May 12, 2010,[91] whereby respondent declares that there is no need for revalidation of the LOA beginning June 1, 2010, to wit:

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> 8. **Beginning June 1, 2010**, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, **there is no need for revalidation of the LA even if the prescribed audit period has been exceeded**. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions.

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[89] 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.
[90] That is, an LOA or a Letter of Authority.
[91] SUBJECT: *Electronic Issuance of Letters of Authority.*

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V. REPEALING CLAUSE

The provisions of existing issuances that are inconsistent herewith are hereby repealed, amended, or modified. *(Emphasis supplied)*

On the basis thereof, it is clear that the revalidation of LOAs which should be done "for failure of the revenue officials to complete the audit within the prescribed period," has been withdrawn beginning on June 1, 2010. The effect of such failure is merely to subject the concerned RO(s) to applicable administrative sanctions, and not to render null the issued LOA. More significantly, the lapse of the said period of audit would not have the effect of revoking the authority given to the concerned RO(s).

Thus, considering that subject LOA No. AUDM35/015430/2017/SN: eLA201500084386 dated October 20, 2017[92] and LOA No. AUDM35/015430/2017/SN: eLA201500087072 were issued after the effectivity of RMO No. 044-2010, the said RMO should therefore govern the present case, as the same was already in full effect at the time of the issuance of the said LOAs. Correspondingly, the lack of revalidation of the subject LOAs, despite the lapse of the one hundred twenty (120)-day period, does not nullify the same.

In view therefore, the Court is convinced by respondent's assertion that the audit of petitioner's tax liabilities for TY 2016 was made pursuant to a valid LOA and that the latter need not be revalidated.

We now proceed to the substantive merits of the subject assessments.

A. Percentage Tax

In its Memorandum, petitioner claims that it is not liable for percentage tax because it is a "purely cooperative" association within the purview of Section 123 of the NIRC, as amended, based on the following documents: (1) SEC Certificate

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[92] Exhibit "R-1", BIR Records - Folder 1 of 9 (Exhibit "R-25"), p. 1.

of Registration/Articles of Incorporation;[93] and (2) Mutual Benefit Association's License issued by the Insurance Commission.[94] Thus, exempt from percentage tax under Section 30(C) of the 1997 NIRC, as amended, following the ruling of the Supreme Court in *Republic of the Philippines vs. Sunlife Assurance Company of Canada*[95].[96]

Respondent, on the other hand, argues that the exemption provided under Section 30(C) of the 1997 NIRC, as amended, does not cover percentage tax, as the same is limited only to income tax on proceeds received by exempt corporations as such, or income received by them in furtherance of the purpose for which they are organized. Thus, respondent correctly subjected the amount of ₱151,041,856.00, representing the premiums collected by petitioner to 2% premium tax pursuant to Section 123 of the 1997 NIRC, as amended.[97]

Respondent further claims that petitioner cannot be deemed as a purely cooperative association as it failed to establish with sufficient evidence that it is managed by its members with money collected from among themselves, and solely for their mutual protection and benefit, and not for profit.[98]

The Court disagrees with respondent's position.

Section 123 of the 1997 NIRC, as amended, defines purely cooperative company or association as one "conducted by the members thereof with the money collected from among themselves and solely for their own protection and not for profit," to wit:

> SEC. 123. *Tax on Life Insurance Premiums.* — There shall be collected from every person, company or corporation (**except purely cooperative companies or associations**) doing life insurance business of any sort in the Philippines a tax of two percent (2%) of the total premium collected, whether such premiums are paid in money, notes, credits or any substitute for money; xxx.

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[93] Exhibit "P-2", Docket – Vol. II, pp. 688 to 695.
[94] Exhibit "P-3", Docket – Vol. II, pp. 709 to 710.
[95] G.R. No. 158085 dated October 14, 2005.
[96] Petitioner's *Memorandum*, Docket – Vol. II, p. 1070.
[97] Pars. 68 to 69, respondent's *Memorandum,* Docket – Vol. II, p. 1103.
[98] Par. 71, respondent's *Memorandum,* Docket – Vol. II, p. 1103. *an*

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> **Cooperative companies or associations are such as are conducted by the members thereof with the money collected from among themselves and solely for their own protection and not for profit**. (*Emphases supplied)*

Thus, for purely cooperative companies to be exempt from payment of tax on life insurance premiums, the following requisites must be satisfied: (1) it must be conducted by the members thereof, (2) with the money collected from among themselves and solely for their own protection and, (3) not for profit.

In Republic of the *Philippines vs. Sunlife Assurance Company of Canada* (*Sunlife* case),[99] the Supreme Court explained the aforementioned requisites in this wise:

> The Tax Code defines a cooperative as an association 'conducted by the members thereof with the money collected from among themselves and solely for their own protection and not for profit.' Without a doubt, respondent is a cooperative engaged in a mutual life insurance business.
>
> *First*, it is managed by its members. Both the CA and the CTA found that the management and affairs of respondent were conducted by its member-policyholders.
>
> A stock insurance company doing business in the Philippines may 'alter its organization and transform itself into a mutual insurance company.' Respondent has been mutualized or converted from a stock life insurance company to a nonstock mutual life insurance corporation pursuant to Section 266 of the Insurance Code of 1978. On the basis of its bylaws, its ownership has been vested in its member-policyholders who are each entitled to one vote; and who, in turn, elect from among themselves the members of its board of trustees. Being the governing body of a nonstock corporation, the board exercises corporate powers, lays down all corporate business policies, and assumes responsibility for the efficiency of management.
>
> *Second*, it is operated with money collected from its members. Since respondent is composed entirely of members who are also its policyholders, all premiums collected obviously come only from them.

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[99] G.R. No. 158085, October 14, 2005.

> The member-policy holders constitute 'both insurer and insured' who 'contribute, by a system of premiums or assessments, to the creation of a fund from which all losses and liabilities are paid.' The premiums pooled into this fund are earmarked for the payment of their indemnity and benefit claims.
>
> *Third,* it is licensed for the mutual protection of its members, not for the profit of anyone.

Based on these pronouncements, to determine whether an association is a cooperative falling under the provision of Section 123 of the 1997 NIRC, as amended, it must comply with the following requisites:

1. It is managed by its members;
2. It is operated with money collected from its members; and
3. It is licensed for the mutual protection of its members, and not for the profit of anyone.

On the first requisite, records disclose that petitioner's Amended Articles of Incorporation[100] and Amended By-Laws[101] would show that it is managed and operated by its members as shown by the fact that each member thereof is "entitled to one vote" in electing the members of its Board of Trustees from among themselves,[102] which performs oversight functions, as testified to by Mr. Robert Anthony D. Sia during his cross-examination.[103] Further, the ICPA was able to ascertain that petitioner's officers are all members of petitioner, as he was able to trace "the customer ID numbers of [petitioner's] officers per page 2 of the Association's submitted General Information Sheet (GIS), dated November 16, 2016 (Exhibit P-25), and sample copies of minutes of meetings dated December 7, 2016 (Exhibit P-25) to the Association's certified copy of membership listing (Exhibits P-27-1 and P-27-2)."[104] Thus, petitioner fulfilled the first requisite.

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[100] Exhibit "P-2", Docket – Vol. II, pp. 688 to 695.
[101] Exhibit "P-2-1", Docket – Vol. II, pp. 696 to 708.
[102] Section X of Exhibit "P-2-1", Docket – Vol. II, p. 701; Fifth portion of Exhibit "P-2", Docket – Vol. II, p. 692.
[103] TSN during the hearing held on January 19, 2023, p. 8.
[104] Exhibit "P-22", Docket – Vol. I, p. 357.

Anent the second requisite, this Court notes that based on petitioner's Mutual Benefit Association's License[105] and its Amended Articles of Incorporation,[106] petitioner is a non-stock, non-profit mutual benefit association which was formed to extend financial assistance to its "members and immediate members of their families in the form of death benefits, medical reimbursement, pension, loan redemption assistance, disability benefit and other services for the benefit of its members" using the "fixed dues and assessments regularly" collected from its members.[107] Consequently, petitioner cannot be considered to be engaged in "business" as it does not operate for profit, but only for the exclusive benefit or welfare of its own members.

In relation thereto, the ICPA was also able to trace "the revenue per AFS amounting to ₱151,041,856.00 to the total contributions and premiums indicated per Association's certified copy of membership listing" and, in doing so, he was able to verify "that all revenues amounting to ₱151,041,856.00 is generated from the members of the Association."[108] Hence, petitioner likewise satisfied the *second* requisite.

With regard to the third requisite, the ICPA mentioned in his Report that he was "able to obtain a copy of the Mutual Benefit Association's License issued by the Insurance Commission, dated January 1, 2016, authorizing the Association to transact business as a Mutual Benefit Association (Exhibit P-29)."[109] Thus, there is no doubt that petitioner also complied with the third requisite.

Nonetheless, respondent insists that the ruling laid down in *Sunlife* case is inapplicable on the sole ground that the organization involved in the *Sunlife* case is a mutual life insurance company, while petitioner is a mutual benefit association and, thus, petitioner is not similarly situated with *Sunlife*.

Again, this Court does not agree with respondent.

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[105] Exhibit "P-29", USB (Exhibit "P-59").
[106] Exhibit "P-2", Docket – Vol. II, pp. 688 to 695.
[107] Exhibit "P-2", Docket – Vol. II, p. 691.
[108] Exhibit "P-22", Docket – Vol. I, p. 357.
[109] Exhibit "P-22", Docket – Vol. I, p. 358.

While it is true that petitioner is a mutual benefit association, its line of business/industry was categorized by no less than the BIR itself as "LIFE INSURANCE", as shown in petitioner's *Certificate of Registration.*[110] Thus, the Court finds no reason to deviate from the Supreme Court's ruling in the *Sunlife* case, which, as pointed out by respondent, is a mutual life insurance company.

Similarly, as discussed above, petitioner's operations fall within the definition of "Mutual Benefit Associations" under Section 403 of RA No. 10607 or the *Amended Insurance Code, i.e.*, "without capital stock, formed or organized not for profit but mainly for the purpose of paying sick benefits to members, or of furnishing financial support to members while out of employment, or of paying to relatives of deceased members of fixed or any sum of money, irrespective of whether such aim or purpose is carried out by means of fixed dues or assessments collected regularly from the members, or of providing, by the issuance of certificates of insurance, payment of its members of accident or life insurance benefits out of such fixed and regular dues or assessments."

In this Court's mind, this mutuality of cooperation among its members and the promotion of the welfare of its own members makes a mutual benefit association similar to the "cooperative or association" being referred to in Section 123 of the NIRC, as amended.

Thus, petitioner being deemed to be a cooperative company under Section 123 of the 1997 NIRC, as amended, is exempt from paying the assessed percentage tax.

B. Deficiency WTC – ₱515,152.74

Respondent's reconciliation of salaries, wages and benefits accounted per AFS/ITR against the salaries and wages per *Alphalist of Employees* resulted to a discrepancy amounting to ₱3,454,205.85, which was not subjected to WTC. Thus, respondent assessed petitioner of deficiency WTC for TY 2016 in the amount of ₱515,152.74, inclusive of interest, pursuant to Section 79(A) of the 1997 NIRC, as amended, and implemented

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[110] Exhibit "P-1", Docket – Vol. II, p. 687.

under Section 2.78 of RR No. 2-98, as amended, computed as follows:[111]

Salaries and Wages			₱48,043,133.00
Incentives			1,290,404.00
Salaries and Wages per Audit			₱49,333,537.00
Less: Salaries and Wages per Alphalist			45,879,331.15
Disallowed Expenses			**₱3,454,205.85**
Multiplied by:	Tax Due per 1601C	₱3,162,631.41	
	Taxable Salaries per Alphalist	₱32,481,934.23	9.7366%
Basic Tax Due			**₱336,321.72**
Add: Interest 20% (Jan. 16, 2017 to Dec. 31, 2017)		₱ 64,500.06	
Interest 12% (Jan. 1, 2018 to Oct. 30, 2020)		114,330.96	178,831.02
Total Amount Due			**₱515,152.74**

Petitioner contends that the difference in the salaries and wages amounting to ₱3,454,205.85 includes statutory contributions [*i.e.* Pag-ibig contributions, Social Security System (SSS), Medicare, Philhealth contributions, and the like], representation allowance, separation pay and other *de minimis* benefits that are not subject to WTC. Petitioner further asserts that the revenue examiners failed to consider the accounting accruals which are not subject to tax, such as bonuses which do not exceed the threshold amount of ₱30,000.00.[112]

To prove the foregoing allegations, petitioner submitted the following documents:

1. AFS;[113]
2. Annual Alphalist of Employees – Schedules 7.1, 7.3 and 7.4;[114]
3. Trial Balance;[115]
4. Philhealth Contribution Ledger [116] and its supporting documents;[117]

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[111] Exhibits "P-14" and "P-10", Docket – Vol. II, at pp. 907 and 875 to 875, respectively.
[112] Item no. 2.a. BIR assessment and Petitioner's Contentions, Exhibit "P-22", Docket – Vol. I, p. 360; Par. 23, *Petition for Review*, Docket – Vol. I, p. 13; Par. II. Withholding Tax on Compensation, Petitioner's *Memorandum*, Docket – Vol. II, p. 1073.
[113] Exhibit "P-5", Docket – Vol. II, pp. 721 to 765.
[114] Exhibit "P-30", USB (Exhibit "P-59").
[115] Exhibit "P-31", USB (Exhibit "P-59").
[116] Exhibit "P-32", USB (Exhibit "P-59").
[117] Exhibits "P-35-1", "P-35-2" and "P-35-3" (actually marked as Exhibit "P-35"), USB (Exhibit "P-59").

5. Pag-ibig Contribution Ledger[118] and its supporting documents;[119]
6. SSS/EC Contribution Ledger[120] and its supporting documents;[121]
7. Post-Employment Benefit Cost General Ledger;[122] and
8. Actuarial Valuation Report as of December 31, 2016.[123]

A perusal of petitioner's Trial Balance and as determined by the ICPA, the breakdown of the salaries and incentives accounts per AFS are as follows:[124]

AFS (Exhibit "P-5")[125]		**Trial Balance** (Exhibit "P-31")[126]			**Rounding off difference**
Account	Amount	Account Code	Account Description	Amount	
Salaries and other employee benefits	₱48,043,133.00	521010	Salaries and Wages	₱32,503,126.78	₱0.56
		521020	13th month/Bonuses/Incentives	8,758,827.73	
		521021	Leave Conversion	468,581.10	
		521050	Other Employee Welfare and Benefits	2,908,460.00	
		521031	SSS/EC Contribution	2,224,289.70	
		521032	Pag-ibig Contribution	249,600.00	
		521033	Philhealth Contribution	345,300.00	
		521040	Post-Employment Benefit Cost	249,606.00	
		522010	Professional and Technical Development - Staff Training	335,341.13	
			Subtotal	*₱48,043,132.44*	
Incentives	1,290,404.00	516020	Membership Enrollment and Mktg Exp - Incentives	₱1,290,403.79	0.21
Total	**₱49,333,537.00**			**₱49,333,536.23**	**₱0.77**

From the above accounts and based on the ICPA Report, the ₱3,454,205.85 assessment on the differences of salaries and wages per BIR audit and per Annual Alphalist of Employees, arose from the following:[127]

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118 Exhibit "P-33", USB (Exhibit "P-59").
119 Exhibits "P-36-1", "P-36-2" and "P-36-3" (actually marked as Exhibit "P-36"), USB (Exhibit "P-59").
120 Exhibit "P-34", USB (Exhibit "P-59").
121 Exhibits "P-37-1", "P-37-2" and "P-37-3" (actually marked as Exhibit "P-37"), USB (Exhibit "P-59").
122 Exhibit "P-38", USB (Exhibit "P-59").
123 Exhibit "P-39", USB (Exhibit "P-59").
124 Exhibit "P-22", Docket – Vol. I, p. 361.
125 Docket – Vol. II, p. 725.
126 USB (Exhibit "P-59").
127 Exhibit "P-22", Docket – Vol. I, pp. 362 to 364.

Particular		Amount
Respondent's assessment		
Salaries and Wages per Audit		₱49,333,537.00
Salaries and wages	₱48,043,133.00	
Incentives	1,290,404.00	
Less: Salaries and Wages per Alphalist		45,879,331.15
Disallowed Expenses		**₱3,454,205.85**
ICPA Findings		
Employer's Share of Statutory Contributions		₱2,819,189.70
SSS/EC Contribution	₱2,224,289.70	
Pag-ibig Contribution	249,600.00	
Philhealth Contribution	345,300.00	
Post-Employment Benefit Cost		249,606.00
Professional and Technical Development - Staff Training		335,341.13
Unaccounted Difference		50,068.25
Salaries and Wages	₱32,503,126.78	
13th month/ Bonuses/ Incentives	8,758,827.73	
Leave Conversion	468,581.10	
Other Employee Welfare and Benefits	2,908,460.00	
Membership Enrollment and Mktg Exp - Incentives	1,290,403.79	
Gross Compensation per Trial Balance	*₱45,929,399.40*	
Less: Salaries and Wages per Alphalist	*45,879,331.15*	
Total		**₱3,454,205.08**
Rounding off difference		**₱0.77**

1. Employer's Share of Statutory Contributions - ₱2,819,189.70

The ICPA noted that the account salaries and wages per BIR audit include the employer's share in SSS, Home Development Mutual Fund (HDMF), and Philippine Health Insurance Corporation (PHIC) contributions in the total amount of ₱2,819,189.70, as follows:[128]

Account Description	Account Code[129]	Amount
SSS/EC Contribution	521031	₱ 2,224,289.70
Pag-ibig Contribution	521032	249,600.00
Philhealth Contribution	521033	345,300.00
Total Statutory Contributions		**₱2,819,189.70**

To verify its existence, the ICPA traced each transaction presented in the extracted General Ledgers to its corresponding supporting documents – *i.e.*, journal vouchers and official

[128] Exhibit "P-22", Docket – Vol. I, p. 362.
[129] Refer to Exhibit "P-31", USB (Exhibit "P-59"). *cen*

receipts.[130] Further, the ICPA ascertained that the employer's share in the statutory contributions totaling ₱2,819,189.70 are duly supported by SSS, HDMF, and PHIC issued receipts, hence, should not be subject to WTC.[131]

The Court agrees with the ICPA that the employer's share in the statutory contributions should not form part of the employees' compensation income subject to withholding tax pursuant to Section 32(B)(7)(f) of the 1997 NIRC, to wit:

> SEC. 32. *Gross Income.* —
>
> xxx xxx xxx
>
> (B) *Exclusions from Gross Income.* — The following items shall not be included in gross income and shall be exempt from taxation under this Title:
>
> xxx xxx xxx
>
> (7) *Miscellaneous Items.* —
>
> xxx xxx xxx
>
> (f) *GSIS, SSS, Medicare and Other Contributions.* — GSIS, SSS, Medicare and Pag-Ibig contributions, and union dues of individuals.

Consequently, the aforesaid employer's contributions are exempt from the requirement of WTC pursuant to Section 2.78.1 of RR No. 2-98, which provides:

> SECTION 2.78.1. *Withholding of Income Tax on Compensation Income.* —
>
> xxx xxx xxx
>
> (B) *Exemptions from withholding tax on compensation.* — The following income payments are exempted from the requirement of withholding tax on compensation:
>
> xxx xxx xxx

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[130] Exhibits "P-35-1" to "P-35-3", "P-36-1" to "P-36-3" and "P-37-1" to "P-37-3" (actually marked as Exhibits "P-35", "P-36" and "P-37", respectively), USB (Exhibit "P-59"); See also Annexes 2-3, 2-4-A, 2-4-B, 2-4-C, 2-5-A, 2-5-B and 2-5-C, Exhibit "P-22", Docket – Vol. I, pp. 381 to 391.

[131] Exhibit "P-22", Docket – Vol. I, p. 362.

> (12) *GSIS, SSS, Medicare and other contributions.* — GSIS, SSS, Medicare and Pag-Ibig contributions, and union dues of individual employees.

Moreover, even the Supreme Court has confirmed in the case of *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), et al. vs. Commissioner, Bureau of Internal Revenue,* et al., et seq.,[132] that the above-stated contributions are exempt from WTC, to wit:

> However, not all income payments to employees are subject to withholding tax. The following allowances, bonuses or benefits, excluded by the NIRC of 1997, as amended, from the employee's compensation income, are exempt from withholding tax on compensation:
>
> xxx xxx xxx
>
> 8. GSIS, SSS, Medicare and Pag-Ibig contributions, and union dues of individual employees [Section 32(B)(7)(f) of the NIRC of 1997, as amended and Section 2.78.1(B)(12) of RR No. 2-98].

However, upon review of the submitted supporting documents, the Court notes that there are Pag-Ibig contributions which are only evidenced by bank statements bearing the description "elink transfer."[133] Thus, out of the ₱2,819,189.70 alleged employer's contributions to SSS, HDMF, and PHIC, the Court is unable to verify the existence and accuracy of the ₱119,400.00 alleged employer's share of Pag-Ibig contributions, detailed as follows:

Date	Reference	Description per GL	Per General Ledger[134]
July 29, 2016	APV003429	HMDF - Payment for Pag-Ibig Contribution for the month of July 2016.	₱ 21,100.00
Aug. 31, 2016	APV003485	Payment For Pag-Ibig Contribution for the month of August 2016.	19,500.00
Sep. 30, 2016	APV0000000003553	Payment For Pag-Ibig Contribution for the month of September 2016.	19,400.00
Oct. 31, 2016	APV0000000003603	Payment For Pag-Ibig Contribution for the month of October 2016.	20,000.00

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132 G.R. Nos. 213446 & 213658, July 3, 2018.
133 Exhibit "P-36", pp. 7 to 12, 19 to 24 and 31 to 36, USB (Exhibit "P-59").
134 Exhibit "P-33", USB (Exhibit "P-59"). *cen*

Nov. 29, 2016	APV0000000003670	Payment For Pag-Ibig Contribution for the month of November 2016.	19,600.00
Dec. 29, 2016	APV0000000003726	Home Development Mutual Fund - Payment for Pag-Ibig Contribution for the month of December 2016.	19,800.00
		Total	**₱119,400.00**

Consequently, the WTC assessment on the ₱119,400.00 unverified employer's contributions must be sustained.

2. Post-Employment Benefit Cost - ₱249,606.00

The amount of ₱249,606.00 recorded under Post Employment Benefit Cost account pertains to the accrued retirement expense of petitioner for the year 2016. As disclosed under Note 21 of the AFS, petitioner has a funded, non-contributory defined benefit retirement plan covering all of its regular employees. [135] The accrual of retirement expense amounting to ₱249,606.00 for the period ended December 31, 2016 was computed based on Actuarial Valuation Report as of December 31, 2016.[136]

Petitioner asserts that mere accrual of retirement expenses, in general, are not subject to WTC.[137]

Section 32(B)(6)(a) of the 1997 NIRC, as amended, provides:

> SEC. 32. *Gross Income.* —
>
> xxx xxx xxx
>
> (B) *Exclusions from Gross Income.* — x x x
>
> xxx xxx xxx
>
> (6) *Retirement Benefits, Pensions, Gratuities, etc.* —
>
> (a) Retirement benefits received under Republic Act No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer:

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[135] Note 21, Exhibit "P-5", Docket – Vol. II, p. 763.
[136] Exhibit "P-39", USB (Exhibit "P-59"); It is noted, however, that there is a minimal discrepancy of ₱1.00 compared to the defined benefit cost of ₱249,607.00 per *Actuarial Valuation Report*, p. 5.
[137] Exhibit "P-22", Docket – Vol. I, p. 363.

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

However, under Section 2.78.1(B)(1)(a) of RR No. 2-98, in relation to Section 32(B)(6)(a) of the 1997 NIRC, as amended, in order to avail of the exemption with respect to retirement benefits, the following requirements must be met:

a. the plan must be reasonable;
b. the benefit plan must be approved by the Bureau;
c. the retiring official or employee must have been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of retirement; and
d. the retiring official or employee should not have previously availed of the privilege under the retirement benefit plan of the same or another employer.

In the present case, no evidence was presented showing that petitioner's retirement benefit plan was approved by the BIR. Consequently, the accruals pertaining to its retirement benefit plan must be subject to tax.

Moreover, the Supreme Court, in *ING Bank N.V. vs. Commissioner of Internal Revenue,*[138] held that the obligation of the payor/employer to deduct and withhold the related withholding tax arises at the time the income was paid or accrued or recorded as an expense in the payor's/employer's books, whichever comes first.

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[138] G.R. No. 167679, July 22, 2015.

Petitioner accrued or recorded the Post Employment Benefit Cost as deductible in its books. Therefore, its obligation to withhold the related withholding tax due from the deductions for accrued retirement expense arose at the time of accrual.

Accordingly, the WTC assessment on the ₱249,606.00 accrued retirement expense must likewise be sustained.

3. Professional and Technical Development - Staff Training - ₱335,341.13

Petitioner states that it holds regular training and seminars for its employees together with other external organizations. Further, petitioner contends that it incurred expenses such as meals, lodging, and transportation which are being reimbursed by the employees, and recorded under "Professional and Technical Development -Staff Training" Account, and that it does not hire any speaker or trainer to conduct such training and seminars.[139]

However, upon verification of the records, it was disclosed that there were no documents that would support the foregoing contentions of petitioner. Thus, the assessment on the alleged reimbursements for the training-related expenses, in the amount of ₱335,341.13, must be subject to WTC.

4. Unaccounted Difference - ₱50,068.25

The ICPA's comparison of gross compensation per Trial Balance[140] and per Annual Alphalist of Employees[141] reveals a discrepancy amounting to ₱50,068.25, detailed as follows:[142]

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[139] iii. Training-Related Expenses, Exhibit "P-22", Docket – Vol. I, p. 364.
[140] Exhibit "P-31", USB (Exhibit "P-59").
[141] Exhibit "P-30", USB (Exhibit "P-59").
[142] Exhibit "P-22", Docket – Vol. I, at p. 364; Annex 2-7, Exhibit "P-22", Docket – Vol. I, p. 394.

Account Title	Classification	Amount
Salaries and Wages	Taxable	₱32,503,126.78
13th month/ Bonuses/ Incentives	Non-Taxable	8,758,827.73
Leave Conversion	Non-Taxable	468,581.10
Other Employee Welfare and Benefits	Non-Taxable	2,908,460.00
Membership Enrollment and Mktg Exp - Incentives	Non-Taxable	1,290,403.79
Gross Compensation per Trial Balance		**₱45,929,399.40**
Less: Salaries and Wages per Alphalist		**45,879,331.15**
Unaccounted Difference		**₱ 50,068.25**

Thus, for petitioner's failure to account/explain the unaccounted difference of ₱50,068.25, the assessment thereon is sustained.

In sum, the assessment on basic deficiency WTC should be lowered to ₱73,454.30, computed as follows:

Unverified statutory contributions		₱119,400.00
Post-Employment Benefit Cost		249,606.00
Professional and Technical Development - Staff Training		335,341.13
Unaccounted Difference		50,068.25
Total disallowed expenses		**₱754,415.38**
Multiply by:		
Tax Due per 1601C / Taxable Salaries per Alphalist	₱3,162,631.41 / ₱32,481,934.23	9.7366%
Basic deficiency WTC		**₱73,454.30**

C. Deficiency EWT - ₱3,866,937.51

Respondent's verification disclosed that petitioner failed to withhold the appropriate withholding tax due on its income payments. Hence, respondent assessed petitioner of deficiency EWT for TY 2016 in the amount of ₱3,866,937.51, inclusive of interest, pursuant to Section 2.57.2 of RR No. 2-98, as amended, computed as follows:[143]

Basic Tax Due		₱2,524,562.12
Add: Interest 20% (Jan. 16, 2017 to Dec. 31, 2017)	₱484,162.60	
Interest 12% (Jan. 1, 2018 to Oct. 30, 2020)	858,212.79	1,342,375.39
TOTAL AMOUNT DUE		**₱3,866,937.51**

[143] Exhibit "P-14", Docket – Vol. II, at p. 907; Exhibit "P-10", Docket – Vol. II, p. 875.

The basic deficiency EWT assessment of ₱2,524,562.12 represents the discrepancies found by respondent on the income payments to professionals of ₱238,881.15 and marketing and sales of ₱16,671,160.00, subjected to 10% and 15%, respectively, as reflected in petitioner's AFS/ITR *vis-à-vis* Alphalist of Payees subject to EWT/BIR Forms No. 1604-E/1601-E, as follows:[144]

Expenses/ Income Payments	Amount per AFS/ITR	Per Alphalist/ 1601-E	Discrepancy	Rate	EWT Due
Professional Fees	₱771,981.00	₱533,099.85	₱238,881.15	10%	₱23,888.12
Marketing and Sales	16,671,160.00	-	16,671,160.00	15%	2,500,674.00
TOTAL	**₱17,443,141.00**	**₱533,099.85**	**₱16,910,041.15**		**₱2,524,562.12**

1. Professional Fees - ₱238,881.15

Petitioner asserts that respondent's findings on ₱238,881.15 professional fees pertain to payments made to general professional partnerships (GPP), which are not subject to income tax, and consequently, to withholding tax pursuant to Section 26 of the 1997 NIRC, as amended.[145]

Based on the ICPA Report, the difference in professional fees is attributable to a year-end accrual based on the extracted Technical and Professional Fees ledger, as follows:[146]

Date	Reference	Description per GL	Amount
Dec. 29, 2016	JV1216-073	TO SET UP ACCRUED EXPENSE FOR PROFESSIONAL FEES OF INDEPENDENT ACTUARY (INSTITUTIONAL SYNERGY, INC) AND KPMG MANABAT SANAGUSTIN & CO., CPAs AMOUNTING TO 3,360 AND 236,670.	₱292,670.00

To support the propriety of the recorded expense, petitioner presented the journal voucher and computation sheet[147] in which the accrual was based. As noted by the ICPA, the amount of ₱292,670.00 pertains to expense accruals for the following payees:[148]

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[144] Schedule 4, *Details of Discrepancy*, Exhibit "P-10", Docket – Vol. II, p. 875.
[145] Petitioner's *Memorandum*, Docket – Vol. II, pp. 1073 to 1074.
[146] Exhibit "P-22", Docket – Vol. I, at p. 366; Exhibit "P-41", USB (Exhibit "P-59").
[147] Exhibit "P-42", USB (Exhibit "P-59").
[148] Exhibit "P-22", Docket – Vol. I, p. 366.

Payees per Computation Sheet	**Amount**
Institutional Synergy, Inc.	₱ 56,000.00
KPMG Manabat Sanagustin & Co., CPAs	236,670.00
Difference	**₱292,670.00**

Notably, the accrual amounting to ₱56,000.00 pertains to petitioner's independent actuary for retirement, Institutional Synergy, Inc.[149]

With respect to the accruals on professional fees amounting to ₱236,670.00, the ICPA verified that the said amount represents audit of the 2016 financial statements by R.G. Manabat & Co., a GPP, as shown in the excerpts of the Amended Articles of Partnership of R. G. Manabat & Co.,[150] which states that the purpose and business of the partnership shall be that of a general practice of public accounting. Likewise, the ICPA noted that it is stated in page 4 of the engagement contract between petitioner and R. G. Manabat & Co.,[151] that the latter is a GPP, and is exempt from withholding tax, to wit:[152]

> Please be advised that income payments to RGM&Co., as a general professional partnership, remain exempt from withholding taxes.

The ICPA also checked the subsequent payments to R.G. Manabat & Co. in 2017 through petitioner's journal vouchers, billing statements,[153] and official receipts, and ascertained that such payments pertain to the services for the audit amounting to ₱236,670.00.[154]

Apropos, Section 22(B) of the 1997 NIRC, as amended, defines a GPP as partnerships formed by persons for the sole purpose of exercising their common profession, and no part of the income of which is derived from engaging in any trade or business.

Moreover, Section 26 of the 1997 NIRC, as amended, provides that a GPP *shall not* be subject to income tax; and that

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[149] Exhibit "P-44", pp. 9 to 13, USB (Exhibit "P-59").
[150] Exhibit "P-55", USB (Exhibit "P-59").
[151] Exhibit "P-43", USB (Exhibit "P-59").
[152] Exhibit "P-22", Docket – Vol. I, pp. 366 to 367.
[153] Exhibit "P-44", USB (Exhibit "P-59").
[154] Exhibit "P-22", Docket – Vol. I, at p. 367; Annex 3-4, Exhibit "P-22", Docket – Vol. I, p. 401.

persons engaging in business as partners in a GPP shall be liable for income tax only in their separate and individual capacities.

Relative thereto, Section 2.57.5 of RR No. 2-98, as amended by RR No. 14-2002,[155] provides that GPPs are exempt from withholding tax, as follows:

> Sec. 2.57.5. *Exemption from Withholding.* — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
>
> xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> xxx xxx xxx
>
> (4) **General professional partnerships**; *(Emphasis supplied)*

Upon examination of the supporting documents,[156] it was established that the accruals on professional fees amounting to ₱236,670.00, made by petitioner to R.G. Manabat & Co., pertain to professional fees paid to a GPP. As such, said accruals are not subject to EWT.

On the other hand, no available documents were presented to support the remaining difference of ₱2,211.15.[157] As such, petitioner is liable for deficiency EWT on professional fees in the amount of ₱221.12 (₱2,211.15 multiply by 10% EWT rate).

2. Marketing and Sales - ₱16,671,160.00

The ICPA noted that the Marketing and Sales per AFS amounting to ₱16,671,160.00, with ₱1.50 minimal rounding off

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[155] SUBJECT: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as amended.
[156] Exhibits "P-41" to "P-44", USB (Exhibit "P-59").
[157] ₱238,881.15 less ₱236,670.00; Exhibit "P-22", Docket – Vol. I, p. 367.

difference, is comprised of the following expenses per Trial Balance:[158]

Account Title	Account Code	Amount
1. Membership Enrollment and Mktg Exp- Ad & Promo- Policy Forms	516005	₱186,666.67
2. Membership Enrollment and Mktg Exp- Common	516030	12,131,640.65
3. Membership Enrollment and Mktg Exp- Operation Meeting	516040	439,044.05
4. Membership Enrollment and Mktg Exp- Lodging	516050	193,780.00
5. Membership Enrollment and Mktg Exp- Meals	516060	3,020,809.64
6. Membership Enrollment and Mktg Exp- Training	516080	31,767.50
7. Membership Enrollment and Mktg Exp- Transportation	516090	667,449.99
Total Marketing and Sales per Trial Balance		**₱16,671,158.50**

Petitioner presented the general ledgers for each of the above accounts in which no differences were noted.[159]

1. Membership Enrollment and Mktg Exp- Ad & Promo- Policy Forms - ₱186,666.67

Based on the extracted Member Enrolment & Mktg Exp.- Policy Forms General Ledger, this expense account is a reclassification from Printing, Stationery and Office Supplies account amounting to ₱186,666.67 to Mktg & Sales - Policy Forms as of December 2016.[160] Allegedly, the reclassification made pertains to the printing cost of the application forms. To prove the said transactions, petitioner submitted the official receipts[161] from Work @ Print, Inc.[162] However, the said official receipts do not reflect any withholding tax deducted on the payment made to Work @ Print, Inc. Although there was an amount of tax withheld from Work @ Print, Inc. per Alphalist of Payees Subject to EWT,[163] petitioner still failed to prove that such withheld amount pertains to the same transactions being subjected to EWT.

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158 Exhibit "P-22", Docket – Vol. I, p. 367.
159 Exhibits "P-45-1" to "P-45-7", USB (Exhibit "P-59").
160 Exhibit "P-45-1", USB (Exhibit "P-59").
161 Exhibit "P-51", USB (Exhibit "P-59").
162 Annexes 3-6-A and 3-6-B, Exhibit "P-22", Docket – Vol. I, pp. 403 to 404.
163 Line 32, page 5, Exhibit "P-40", USB (Exhibit "P-59"). cm

Thus, the amount of ₱186,666.67 under account "Membership Enrollment and Mktg Exp- Ad & Promo- Policy Forms" should be retained in computing the deficiency EWT.

2. Membership Enrollment and Mktg Exp- Common - ₱12,131,640.65

As verified by the ICPA, the Tulay Sa Pag-unlad, Inc. (TSPI), a non-stock, non-profit organization, with the same key management as petitioner, collects member's contributions and premiums from the petitioner's members.[164] TSPI is considered as petitioner's related party.

TSPI provides the promotion and marketing of petitioner's products to TSPI's microfinance clients including collection of members' contributions and premiums for petitioner's products. Petitioner reimburses the marketing and sales expenses incurred by TSPI on behalf of petitioner. Effective July 1, 2016, TSPI charges petitioner 7% service fee based on members' contributions and premiums collected for the services rendered for the petitioner.[165]

Aside from the General Ledger for this account,[166] petitioner submitted the related party's Amended Articles of Incorporation dated June 27, 2018,[167] and Certificate of Accreditation dated March 28, 2018,[168] issued by Microfinance NGO Regulatory Council, to prove that the transactions with TSPI should not be subjected to EWT, pursuant to RA No. 10693 or the "Microfinance NGOs Act," and Section 2, Rule 6 and Section 1, Rule 4 of the Implementing Rules and Regulations of RA No. 10693 dated August 16, 2016.[169]

However, upon examination, it is noted that the *Certificate of Accreditation* dated March 28, 2018[170] issued by the Microfinance NGO Regulatory Council, is only valid for the year 2018 until the 1st quarter of 2019, which is outside the period covered in this case – TY 2016. Furthermore, no additional supporting documents, such as invoices or official receipts,

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[164] Note 12a, Exhibit "P-5", Docket – Vol. II, p. 758.
[165] Note 12c, Exhibit "P-5", Docket – Vol. II, p. 759.
[166] Exhibit "P-45-2", USB (Exhibit "P-59").
[167] Exhibit "P-57", USB (Exhibit "P-59").
[168] Exhibit "P-56", USB (Exhibit "P-59").
[169] Exhibit "P-22", Docket – Vol. I, pp. 368 to 370.
[170] Exhibit "P-56", USB (Exhibit "P-59").

were presented to substantiate the amounts recorded as expenses.

Thus, the assessment related to ₱12,131,640.65 portion of marketing and sales should be upheld.

3. Membership Enrollment and Mktg Exp- Operation Meeting - ₱439,044.05;
4. Membership Enrollment and Mktg Exp- Lodging - ₱193,780.00;
5. Membership Enrollment and Mktg Exp- Meals - ₱3,020,809.64;
6. Membership Enrollment and Mktg Exp- Training - ₱31,767.50; and,
7. Membership Enrollment and Mktg Exp- Transportation - ₱667,449.99.

Transactions recorded on these expense accounts totaling ₱4,352,851.18[171] allegedly pertain to reimbursements and liquidations of advances for the various payments made by petitioner's employees in connection to their branch visits and operation meetings.[172]

However, the Court cannot verify the actual nature and proper tax implications of these claimed expenses, as there were no supporting documents (such as invoices, billing statements and official receipts) submitted on this matter.

Correspondingly, the Court finds that petitioner failed to discharge its burden of proof in refuting the assessments issued against it. This is in view of the basic rule that mere allegation

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171

Account Title	**Amount**
3. Membership Enrollment and Mktg Exp- Operation Meeting	₱ 439,044.05
4. Membership Enrollment and Mktg Exp- Lodging	193,780.00
5. Membership Enrollment and Mktg Exp- Meals	3,020,809.64
6. Membership Enrollment and Mktg Exp- Training	31,767.50
7. Membership Enrollment and Mktg Exp- Transportation	667,449.99
Total	**₱4,352,851.18**

172 Exhibit "P-22", Docket – Vol. I, at pp. 371 to 372.

is not evidence and is not equivalent to proof, the allegation is essentially self-serving and devoid of any evidentiary weight.[173]

Thus, the deficiency EWT in the assessed amount of ₱2,500,674.00 for the income payments on marketing and sales of ₱16,671,160.00, subjected to 15% EWT rate, must also be sustained.

Thus, petitioner is liable for basic deficiency EWT in the amount of ₱2,500,895.12 for TY 2016, computed as follows:

Account	Expenses/ Income Payments Discrepancy	EWT Rate	EWT Due
Professional Fees	₱ 2,211.15	10%	₱ 221.12
Marketing and Sales	16,671,160.00	15%	2,500,674.00
TOTAL	**₱16,673,371.15**		**₱2,500,895.12**

To summarize, petitioner is liable for a total of ₱2,574,349.42 basic deficiency taxes for TY 2016, as follows, to wit:

Type of Tax	**Amount of Basic Deficiency Tax**
Percentage Tax	₱ -
WTC	73,454.30
EWT	2,500,895.12
Compromise	-
Total	**₱2,574,349.42**

In addition to the foregoing basic deficiency taxes, petitioner is liable to a penalty of 25% surcharge imposed on the basic deficiency taxes pursuant to Section 248(A)(3) of the 1997 NIRC, as amended, which provides:

> 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

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[173] *Santiago DJ. Sillano vs. JGC Philippines, Inc., et al.*, G.R. No. 273562, February 24, 2025.

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

Moreover, petitioner is liable to pay the deficiency interest at the rate of 20% *per annum* computed from the date prescribed for its payment until December 31, 2017 and 12% computed from January 1, 2018, upon the effectivity of the Tax Reform for Acceleration and Inclusion (TRAIN) Law, until the demand made by respondent or his authorized representative, under Section 249(B) of the 1997 NIRC, as amended by the TRAIN Law.

In the present case, the Assessment Notices bear the date July 19, 2019 as the time prescribed to pay the total amount due.[174]

Likewise, petitioner is liable to pay the delinquency interest at the rate of 12% *per annum* imposed on the basic deficiency tax, 25% surcharge and deficiency interest computed from July 19, 2019 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

Thus, for TY 2016, petitioner is liable to pay the aggregate amount of ₱4,188,431.25 consisting of basic deficiency taxes, surcharges, and deficiency interest computed as of July 19, 2019, detailed as follows:

	WTC	**EWT**	**Total**
Basic Tax Due	**₱73,454.30**	**₱2,500,895.12**	**₱2,574,349.42**
Add: 25% Surcharge	18,363.58	625,223.78	643,587.36
Subtotal	**₱91,817.88**	**₱3,126,118.90**	**₱3,217,936.78**
Add: Deficiency Interest			
WTC:			
20% Deficiency Interest from Jan. 17, 2017[175] to Dec. 31, 2017 *[₱73,454.30 x 20% x 349/365days]*	14,046.88		14,046.88
12% Deficiency Interest from Jan. 1, 2018 to Jul. 19, 2019 *[₱73,454.30 x 12% x 565/365days]*	13,644.39		13,644.39
EWT:			

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[174] Exhibits "P-11" to "P-11-5", Docket – Vol. II, pp. 878 to 883.

[175] January 15, 2017, the last day for filing and paying the December 2016 WTC/EWT return fell on a Sunday, hence, due date is moved to the next working day, *i.e.*, January 16, 2017.

20% Deficiency Interest from Jan. 17, 2017 to Dec. 31, 2017 *[₱2,500,895.12 x 20% x 349/365days]*		478,253.37	478,253.37
12% Deficiency Interest from Jan. 1, 2018 to Jul. 19, 2019 *[₱2,500,895.12 x 12% x 565/365days]*		464,549.83	464,549.83
Total Amount Due, July 19, 2019	**₱119,549.40**	**₱4,068,922.10**	**₱4,188,431.25**

In addition, petitioner is liable for delinquency interest at the rate of 12% per annum on the total amount still due of **₱4,188,431.25** as of July 19, 2019, as determined above, or equivalent to the amount of ₱1,377.02[176] per day, computed from July 20, 2019 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by TRAIN Law and implemented by RR No. 21-2018.

Petitioner, however, is not liable to pay the subject compromise penalty.

Petitioner cannot be held liable to pay the compromise penalty in the amount of ₱50,000.00 as stated in the FDDA dated September 11, 2020.[177] It must be stressed that a compromise is, by its nature, mutual in essence.[178] It implies agreement. One party cannot impose it upon the other.[179] Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event of refusal to pay the suggested amount.[180] Considering that there is no indication that petitioner consented to the subject compromise penalty, the said amount cannot be sustained.

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

Accordingly, the subject deficiency percentage tax assessment amounting to ₱5,233,331.34, and compromise penalty being imposed amounting to ₱50,000.00, as reflected in

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[176] ₱4,188,431.25 multiplied by 12% divided by 365 days.
[177] Exhibit "P-14", Docket – Vol. II, at pp. 907 and 909; Exhibit "R-18", BIR Records - Folder 1 of 9, pp. 1565 and 1567
[178] Refer to *Vda. De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.
[179] *Commissioner of Internal Revenue vs. Abad, et al.*, G.R. No. L-19627, June 27, 1968.
[180] Refer to Part III.5, Revenue Memorandum Order No. 7-2015.

the FDDA dated September 11, 2020, for TY 2016, are **CANCELLED** and **WITHDRAWN**.

However, respondent's deficiency WTC and EWT assessments for TY 2016 are **UPHELD WITH MODIFICATIONS**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **₱4,188,431.25**, broken down as follows:

	Basic	**Surcharge**	**Deficiency Interest**	**Total**
WTC	₱ 73,454.30	₱ 18,363.58	₱ 27,691.27	₱119,509.15
EWT	2,500,895.12	625,223.78	942,803.20	4,068,922.10
Total	**₱2,574,349.42**	**₱643,587.36**	**₱970,494.47**	**₱4,188,431.25**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of 12% per annum on the total amount due of **₱4,188,431.25** as of July 19, 2019, or equivalent to the amount of ₱1,377.02[181] per day, computed from July 20, 2019 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by TRAIN Law and implemented by RR No. 21-2018.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

HENRY S. ANGELES
Associate Justice

[181] ₱4,188,431.25 multiplied by 12% divided by 365 days.

ATTESTATION

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

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice